



November 14, 2013

The Honorable Robert W. Goodlatte
Chairman, House Committee on the Judiciary
2138 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 2015

Dear Chairman Goodlatte:

On behalf of the Biotechnology Industry Organization (BIO), I am writing to share our views about H.R. 3309: The Innovation Act of 2013 in light of upcoming Judiciary Committee action. H.R. 3309 was introduced with the goal of furthering reform of the patent system, particularly with respect to patent-related litigation. Some of the provisions in the legislation would complement the 2011 patent reforms in beneficial ways, and should be supported. However, other provisions are problematic as currently drafted because, in sum, they would erect unreasonable barriers to access to justice for innovators, especially small start-ups that must be able to defend their businesses against patent infringement in a timely and cost-effective manner, and without needless and numerous procedural hurdles or other obstacles. We also remain cautious as to whether patent-specific litigation reform is the most appropriate way to address some of the Committee's identified concerns. It is our strong desire to see this bill amended and improved based on our concerns, and we welcome the opportunity to work with you and your staff to do so.

BIO supports the provisions that protect IP licenses in bankruptcy proceedings, harmonize the claim interpretation standards in administrative patent litigation with those in district court, and clarify how the doctrine of "double patenting" applies to related patent applications under the new first-inventor-to-file system. BIO also appreciates the bill's recognition of the already existing and specific statutory schemes that apply to certain types of litigation in the biopharmaceutical sector. Unfortunately, other provisions included in the bill are concerning in their current form. This list includes provisions that:

- Routinely defer or suspend discovery and litigation on the merits in patent infringement cases, whether in whole or against certain parties;
- Permit infringers to add additional parties to the litigation under overly broad criteria; and permit parties to seek reimbursement of their litigation costs from other parties under a vaguely-defined and potentially very broad set of patent-related cases;
- Require unreasonable amounts of pleading specificity and disclosure and public recordation of patent ownership, litigation interests, and other business or confidential information;

- Direct courts and judges how to handle patent case management in an overly-prescriptive and one-size-fits-all manner that would unduly interfere with the responsibility of judges and courts to craft case-appropriate management orders that reflect the complexity of the matters at issue and the respective positions of the parties; and
- Single out patents on certain technologies for unfavorable treatment in open-ended administrative litigation, contrary to long-standing U.S. policy and international treaty obligations.

Taken as a whole, the provisions bulleted above create opportunities for systematic delays in patent litigation by inviting piecemeal discovery and adjudication that would push back a determination of patent infringement liability until much later in the case, and by the inclusion of potentially numerous and unnecessary parties – raising the time and expense of patent litigation, contrary to the legislation’s purported goals. While many of the provisions are well-intentioned and aimed at addressing legitimate patent litigation concerns, the current language is overly-broad and would result in too many unintended and unknowable consequences for innovators who rely on the patent system to fund and protect their inventions. In short, we are concerned that, in an attempt to target abusive litigation practices by the few, the proposals impose unjustified burdens on too many legitimate patent owners seeking to enforce and defend their inventions in good faith. Accordingly, such proposals are not supportable without significant amendment.

We appreciate your consideration of our comments and hope to have the opportunity to work with you and your staff to make improvements.

Sincerely,

A handwritten signature in black ink that reads "Jim Greenwood". The signature is written in a cursive, flowing style with a large loop at the beginning of the name.

James C. Greenwood
President and CEO
Biotechnology Industry Organization