THE COALITION FOR 21ST CENTURY PATENT REFORM

Protecting Innovation to Enhance American Competitiveness

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November 18, 2013

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte:

The Coalition for 21st Century Patent Reform applauds you for continuing to move ahead on the "Innovation Act" (H.R. 3309) with the introduction of your Manager's Amendment, in which there are a number of positive features and improvements.

Specifically, as we indicated in our letter to you upon introduction of H.R. 3309, we are pleased that the bill properly repeals the "or reasonably could have raised" estoppel for civil litigation, which inadvertently appeared in the text of the AIA through a scrivener's error. Likewise, we are pleased that the bill requires the USPTO to construe patent claims involved in the AIA's new post-issuance proceedings in accordance with the ordinary and customary meaning of the claim language, as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. We also applaud removal of most of the provisions relating to the CBM transitional program (although we remain concerned that CBM proceedings are still expressly exempted from the aforementioned claim construction requirements).

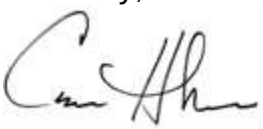
As you know, we have long been a proponent of a relaxation of the "exceptional" case standard to permit fee shifting in more cases to encourage both plaintiffs and defendants to assert only meritorious positions, and support the bill's language that would amend Section 285 to achieve that result. We also believe that the significant improvements have been made in the language of pleading requirements section, although we believe its continued requirement that each Complaint disclose detailed contentions on a product-by-product, claim-by-claim and element-by-element basis is unworkable, and should not be retained in the final bill. We also believe that repeal of Section 145, which has long served as an important procedural protection for innovators, is a bad idea that should be dropped from the bill.

We continue to have a serious concern that the provision related to stays of discovery pending claim construction would prolong all patent litigation by a year or more, substantially increase its cost, and deny parties with meritorious positions of the timely

relief they deserve. Unless it is substantially revised, this provision should not remain in the bill.

As the bill continues to move through the legislative process, 21C remains committed to continuing to work with you and the other members of the Committee, and of the House, to achieve measured, targeted legislative reforms designed to curb litigation abuse.

Sincerely,



Carl B. Horton
Coalition for 21st Century Patent Reform

cc: The Honorable John Conyers, Jr., Ranking Member
Members of the Committee on the Judiciary