



November 19, 2013

The Honorable Bob Goodlatte, Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr., Ranking Member
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), hereby submits this letter in strong opposition to H.R. 3309, the “Innovation Act of 2013,” and the recently released manager’s amendment to the bill. AAJ, with members in the United States, Canada and abroad, is the world’s largest trial bar. It was established in 1946 to safeguard victims’ rights, strengthen the civil justice system, and protect access to the courts. AAJ members represent numerous inventors and small business patent holders, and this proposal will detrimentally impact those patent holders’ ability to duly enforce their intellectual property rights in court.

The Innovation Act makes radical and unnecessary changes to United States patent law that would close the courthouse door to individual inventors and small start-ups. Without the practical ability to enforce their patent rights, it would leave inventors and small businesses powerless to stop large corporations from simply stealing their ideas. Further, instead of a targeted and perhaps carefully-crafted effort to limit so-called “patent trolling,” H.R. 3309 goes far beyond any justifiable step to address abusive patent litigation practices. To be clear, AAJ does not condone non-meritorious patent infringement claims. That said, this bill is overly broad, rewriting important and well-settled aspects of patent law with the express purpose of creating a litigation advantage for corporate patent defendants.

I. “Loser Pays” Attorney Fees and Expenses Requirement Will Deter Meritorious Cases

AAJ strongly objects to the “loser pays” attorney fee and expense provision in H.R. 3309 because it will have a chilling effect on patent holders’ willingness and ability to protect their valid patent rights. A “loser pays” provision will deter patent holders from pursuing meritorious

patent infringement claims and protects institutional defendants with enormous resources who can use the risk of fee shifting to force inventors into accepting unfair settlements or dismissing their legitimate claims.

Patent litigation is already extremely risky and costly for plaintiffs. The “loser pays” fee-shifting provision creates yet another disincentive for inventors and small businesses to defend their patent rights in court. Inventors and small businesses should not be discouraged from legitimately protecting their patents by having to factor into their consideration the unjustified risk of paying a corporate defendant’s legal fees and costs. Furthermore, this “loser pays” fee shifting provision is completely unnecessary since the patent statute already provides a balanced approach to fee shifting for non-meritorious cases.

II. Current Notice Pleading and Form 18 Requirements Will Be Replaced with Burdensome Pleading Requirements

H.R. 3309’s heightened pleading standards will have a detrimental effect on patent holders with legitimate infringement claims. This provision would eliminate notice pleading and Form 18 (*standard form used to make initial pleadings in patent cases*) and require that plaintiffs provide overly detailed claim charts and information not readily available or accessible prior to discovery. The practical effect of this change is that many meritorious cases will face early dismissal because corporate defendants will simply refuse to provide the information necessary to plead the case.

Many AAJ members have represented inventors and small start-ups that were kept totally in the dark about the existence or extent of patent infringement until court-ordered discovery demonstrated that the inventor’s patent was indeed being infringed. These heightened pleading requirements would make it near impossible for patent holders to bring such cases, because without discovery, these plaintiffs will not have access to the information necessary to meet these new pleading standards. The proposed pleading requirements in the bill would potentially derail even the most meritorious infringement claim before the case even gets off the ground.

III. The Bill Converts a Neutral Claim Construction Process into One that Favors Large Corporate Defendants

Experience has proven that claim construction is most useful when conducted towards the middle of a case and not the beginning. Courts should be given the discretion to manage their own dockets. By requiring claim construction at the beginning of a case, this bill unfairly prejudices a plaintiff and gives the defendant an unjust advantage. The defendant has full knowledge of their confidential information and consequently will be able to strategically craft their arguments to avoid infringement without allowing any discovery necessary for a patent holder to prove their case.

IV. The Bill Bypasses the Rulemaking Process for Our Justice System as Outlined in the Rules Enabling Act.

The Innovation Act unnecessarily requires the Judicial Conference to implement specific rules concerning discovery and case management. As outlined in the Rule Enabling Act, this type of rulemaking and docket management has traditionally, and rightfully, been left to the discretion of the United States Courts and not Congress. This bill sets a dangerous precedent for interference in a coequal branch of government. As the Constitution sets out, the courts themselves are best suited to manage their own dockets in patent infringement cases.

V. The Proposal Drastically Limits Discovery and Shifts the Burden and Cost of Additional Discovery onto the Plaintiff


The Federal Rules of Civil Procedure that govern discovery in patent cases would be replaced by limits so severe that many meritorious cases will become completely unwinnable. Placing such severe limits on discovery would inhibit an inventor's and small business' ability to access vital documents and materials necessary to prove their patent infringement claims. Inventors would also have to bear the burden of additional costs for the discovery of documents that are deemed outside the scope of "core documentary evidence." Ultimately, the plaintiff would either be forced to expend more financial resources to compel additional discovery or abandon their patent infringement claim altogether. This would unfairly prejudice the plaintiff and add yet another financial hardship to an inventor simply trying to defend their rights.

VI. Conclusion

H.R. 3309, as currently drafted, takes patent reform in the wrong direction. It will deter small businesses and inventors from lawfully protecting their patent rights and allow large corporations to infringe upon patents without any legal accountability. These types of proposals, which add unnecessary and unfair requirements to patent holders, will serve as a template for additional significant and burdensome tort "reforms."

AAJ looks forward to continuing to work with the committee to craft policy that is fair and balanced, taking into account the rights of inventors and small businesses. We understand that Ranking Member Conyers and Congressman Watt will offer a substitute to H.R.3309 that strongly tracks Senator Leahy's patent bill. AAJ urges members of the committee to oppose H.R. 3309 and support the Conyers-Watt Substitute.

Sincerely,


Linda Lipsen
Chief Executive Officer
American Association for Justice