

Patent Public Advisory Committee Meeting

Legislative Update



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Congressional Hearings (Patent Issues)

- “Abusive Patent Litigation: The Impact on American Innovation & Jobs, and Potential Solutions” - March 14, 2013, *House Judiciary Committee, Subcommittee on Courts, Intellectual Property and the Internet*
- “Abusive Patent Litigation: The Issues Impacting American Competitiveness and Job Creation at the International Trade Commission and Beyond” – April 16, 2013, *House Judiciary Committee, Subcommittee on Courts, Intellectual Property and the Internet*
- “Patent Reform implementation and New challenges for Small Businesses” – May 15, 2013, *House Committee on Small Business*
- “Standard Essential Patent Disputes and Antitrust Law” – July 30, 2013, *Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights*
- “Demand Letters and Consumer Protection: Examining Deceptive Practices by Patent Assertion Entities” – Nov. 7, 2013, *Senate Commerce, Subcommittee on Consumer Protection, Product Safety, and Insurance*
- “The Impact of Patent Assertion Entities on Innovation and the Economy”– Nov. 14, 2013, *House Energy and Commerce Committee, Subcommittee on Oversight and Investigations*



Congressional Hearings (Copyright Issues)

Copyrights

- ↗ “The Satellite Television Law: Repeal, Reauthorize, or Revise?” June 12, 2013, **House Energy and Commerce**, *Subcommittee on Communications and Technology*

- *In front of **House Judiciary**, Subcommittee on Courts, Intellectual Property and the Internet:*
 - ↗ “A Case Study for Consensus Building: The Copyright Principles Project” – May 16, 2013

 - ↗ “Unlocking Consumer Choice and Wireless Competition Act” – June 6, 2013

 - ↗ "Innovation in America: The Role of Copyrights" - July 25, 2013

 - ↗ "Innovation in America: The Role of Technology" - August 1, 2013

 - ↗ “The Rise of the Innovative Business Model: Content Delivery Methods in the Digital Age” – November 19, 2013



Various proposals/approaches to address abusive patent litigation:

White House Announcement (June 4, 2013):

5 Executive Actions (4 of which USPTO is implementing):

1. Making “Real Party-in-Interest” the New Default.
2. Tightening Functional Claiming.
3. Empowering Downstream Users.
4. Expanding Dedicated Outreach and Study.

7 legislative recommendations:

1. Require applicants to disclose the “Real Party-in-Interest”
2. Permit more discretion to the court to award fees to prevailing parties
3. Expand the PTO’s Transitional Program for Covered Business Methods
4. Protect off-the-shelf use by consumers and businesses
5. Change the ITC standard for obtaining an injunction
6. Use demand letter transparency to help curb abusive suits
7. Ensure the ITC has adequate flexibility in hiring qualified Administrative Law Judges



Bills introduced to address abusive patent litigation 113th Congress

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| <p>H.R. 845, “Saving High-Tech Innovators from Egregious Legal Disputes” (SHIELD) Act of 2013 (Rep. Defazio, D-OR-4) – introduced: 2/27/2013</p> | <p>Fee shifting</p> |
| <p>H.R. 2024, “End Anonymous Patents Act” (Rep. Deutch, D-FL-21) – introduced: 5/16/2013</p> | <p>Patent Owner Disclosure / Real Party in Interest</p> |
| <p>H.R. 2236, “Promoting Start-up Innovation Act” (Rep. Chabot, R-OH-1) – introduced: 6/4/2013</p> | <p>Raising the limits for Micro-entities</p> |
| <p>H.R. 2639, “Patent Litigation and Innovation Act” (Rep. Jefferies, D-NY-1) – introduced: 6/4/2013</p> | <p>Heighten Pleading Standards, Joinder, Stays, Discovery, Rule 11 sanctions</p> |
| <p>H.R. 3309, “Innovation Act” (Rep. Goodlatte, R-VA-6) – introduced: 10/23/2013</p> | <p>Various Litigation-Related and Other Provisions</p> |
| <p>H.R. 3349, “Innovation Protection Act” (Rep. Conyers, D-MI-13) – introduced 10/28/2013</p> | <p>USPTO Funding</p> |
| <p>S.866, “Patent Quality Improvement Act of 2013” (Sen. Schumer, D-NY) – introduced: 5/6/2013</p> | <p>Expanding PTO’s Transitional Proceeding for CBM</p> |
| <p>S. 1013, “Patent Abuse Reduction Act of 2013” (Sen. Cornyn, R-TX) – introduced: 5/21/2013</p> | <p>Litigation-Related Provisions <i>inc.</i> Discovery, Joinder</p> |
| <p>S. 1612, “Patent Litigation Integrity Act” (Sen. Hatch, R-UT) – introduced: 10/30/2013</p> | <p>Fee Shifting</p> |
| <p>S.1720, “Patent Transparency and Improvements Act of 2013” (Sen. Leahy, D-VT) – introduced 11/18/2013</p> | <p>Various Litigation-Related Provisions and “Bad Faith” Demand Letters</p> |



S. 1720, the “Patent Transparency and Improvements Act of 2013” (Leahy-D-VT) - Introduced Nov. 18, 2013

Summary of Provisions:

- Real-Party-in-Interest disclosure in pleadings
- Customer stay based on consent of manufacturer or supplier
- “Bad-faith” demand letters subject to FTC Act as unfair or deceptive acts or practices
- PTO outreach/education on abusive litigation and web site on litigation information
- Switch from BRI to district court claim construction
- Protection of IP licenses in Bankruptcy proceedings
- Codification of double-patenting doctrine for FITF patents
- Studies and reports on secondary market oversight, government patents, examination quality and patent small claims court

Introduced bill does not include provisions on expanding CBM or fee-shifting, but will likely be discussed in committee



Outcome of the Nov. 20. "Mark-up" on H.R.3309

House Judiciary Committee Markup of H.R. 3309 – the "Innovation Act" November 20, 2013

Amendment Highlights:

- **Manager's Amendment** (Chairman Goodlatte) -- amended per below, passed and favorably reported on 33-5 vote.
 - Reps. Chaffetz (R-UT)/Deutch (D-FL) – demand letters (passed on voice vote)
 - Rep. Marino (R-PA) - requires USPTO study of abusive demand letters (passed on voice vote)
 - Rep. Issa (R-CA) - requires GAO study within 6 months on business method patents, passed on voice vote.
 - Rep. Richmond (D-LA) - requires USPTO Ombudsman to consult with veterans, minorities and women (passed on voice vote)
 - Rep. Jeffries (D-NY) – additions to the fee shifting provisions (passed on 36-2 vote)



Other Considerations for the 113th Congress

- **Opening USPTO Satellite Offices**
 - ✦ Announcement to open in San Jose, Nov. 19, 2013
 - ✦ Continued interest from Capitol Hill
 - ✦ Local support for outreach and education (in Detroit and in Silicon Valley, Denver, Dallas)

- **Outreach Effort in 2014 related to the White House Executive Actions**

- **Green Paper on, “*Copyright Policy, Creativity, and Innovation in the Digital Economy*”**
 - ✦ DOC Conference planned for Dec. 12 along with additional outreach efforts in 2014

- **International Treaties – implementation**
 - ✦ Beijing Treaty on Audiovisual Performances
 - ✦ Marrakesh Treaty for the Visually Impaired
 - ✦ The Geneva Act of the Hague Treaty on Industrial Designs

- **Capitol Hill Awareness and Outreach:**
 - ✦ Highlight Partnership with the Smithsonian Institution -- Innovation Pavilion & exhibits
 - ✦ Meetings with Judiciary Committee Members/Staff, and New Members, Congressional Caucuses
 - ✦ “Day in the Life” Visits for Congressional Staff
 - ✦ “Everything You Ever Wanted to Know About IP in China (and More)” at USPTO’s Global IP Academy



Thank you.

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