

# Patent Public Advisory Committee Quarterly Meeting

## Legislative Update



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## Judiciary Committee Leadership in the 114<sup>th</sup> Congress

### The 114<sup>th</sup> Congress (2015-2016)

#### U.S. House of Representatives



##### ***Committee on the Judiciary***

Bob Goodlatte (R-VA-6), Chairman

John Conyers (D-MI-13), Ranking Member

##### ***Subcommittee on Courts, Intellectual Property, and the Internet***

Darrell Issa (R-CA-49), Chairman

Jerry Nadler (D-NY-10), Ranking Member

#### U.S. Senate



##### **Committee on the Judiciary**

Chuck Grassley (R-IA), Chairman

Patrick Leahy (D-VT), Ranking Member



## *IP Issues in 114<sup>th</sup> Congress*

### ***Key IP issues the 114<sup>th</sup> Congress is likely to address:***

- Patent Litigation Abuse
- Copyright Statute Review
- Enforcement of Trade Secrets
- Trade Promotion Authority

### ***Hearings:***

- 2<sup>nd</sup> Nomination Hearing, Senate Judiciary Committee – January 21, 2015
- *“Examining Recent Supreme Court Cases in the Patent Arena,”* House Judiciary, Subcommittee on Courts, Intellectual Property and the Internet – February 12, 2015

### ***Other Relevant Events:***

- USPTO Trade Secrets Protection Symposium (panel discussion with congressional staff) – January 8, 2015



# Various Activity on Patent Related Issues: Proposals Address Abusive Patent Litigation

## Activity during the 113<sup>th</sup> /114<sup>th</sup> Congresses:

### White House Activity

- Series of USPTO-lead Administrative Actions in 2013 and 2014
- Seven legislative recommendations made in early 2013.

### Congressional Activity

- H.R. 3309, “The Innovation Act” (Goodlatte, R-VA-6) – passed 12/5/2013 – reintroduced in the 114<sup>th</sup> Congress (2/5/2015)
- S. 1720, “Patent Transparency and Improvements Act” (Leahy, D-VT)
- Several other bills introduced; Numerous hearings and staff briefings held during the 113<sup>th</sup> Congress

### USPTO Activity

- Continued Implementation of Administrative Actions
- Continued PTAB Implementation of AIA post issuance proceedings
- Monitoring Impact of Court cases and continued engagement with stakeholders
- Patent Quality Initiative announced in January 2015

## STRENGTHENING OUR PATENT SYSTEM

Building on five executive actions the White House announced in June of 2013, today the Obama administration is taking additional actions to help creators and inventors spend more time innovating, researching, and developing — instead of tying up their dollars in costly litigation.

### PROGRESS TO DATE



#### HELP FOR PATENT TROLL VICTIMS

**LAUNCHED:** Website to help consumers and businesses who receive demand letters understand their rights and get answers to common questions.

If you've recently received a patent demand letter, find resources to help respond. [USPTO.GOV/PATENTLITIGATION](http://USPTO.GOV/PATENTLITIGATION)



#### MORE TRANSPARENCY

**ISSUED:** Draft rule that will help enhance competition, facilitate faster technology transfer, and make it harder to hide abusive litigation tactics behind shell companies.



#### HIGHER QUALITY PATENTS

**IMPLEMENTED:** Training program to address concerns about overly broad patent claims.



#### OUTREACH AND RESEARCH

**ONGOING:** Engaging stakeholders to provide input on high-tech patent issues and policies, and research root causes of abusive litigation.



#### EXCLUSION ORDER ENFORCEMENT

**LAUNCHED:** Review of the processes and standards utilized during exclusion order enforcement activities.

### FURTHER ACTION



#### CROWDSOURCING PRIOR ART

**LAUNCHING:** An initiative to create new ways for people to help share the technical information needed to determine when an invention is truly novel.



#### TRAINING FOR PATENT EXAMINERS

**EXPANDING:** A program to help patent examiners keep up with fast-changing technological fields.



#### PRO BONO LEGAL HELP

**INCREASING:** Dedicated educational and practical resources for inventors and small businesses who lack legal representation.



#### PATENTS FOR HUMANITY

**SUSTAINING:** A program that creates stronger incentives for inventors who are delivering game-changing technologies to address global humanitarian needs.



## H.R.9, “The Innovation Act” (114<sup>th</sup> Congress)

### Procedural Highlights:

- *Introduced 2/5/2015 (Goodlatte, R-VA), and 19 cosponsors*
- *Hearing held 2/12/2015 on impact of recent Supreme Court cases*

### Substantive Highlights:

<b>Transparency &amp; Demand Letters</b>	<ul style="list-style-type: none"> <li>○ Real-Party-in-Interest disclosure in pleadings</li> <li>○ Sense of Congress on demand letters and limitations on treble damages</li> </ul>
<b>Patent Infringement Actions</b>	<ul style="list-style-type: none"> <li>○ Shifts presumption and enhances fee-shifting under 35 USC 285.</li> <li>○ Establishes core discovery; Limits discovery before <i>Markman</i> claim construction hearing</li> <li>○ Directs the Judicial Conference to consider/issue rules related to discovery</li> <li>○ Provides heightened pleading requirements</li> <li>○ Customer stay based on consent of manufacturer or supplier</li> </ul>
<b>Studies, Technical Changes and Clarification</b>	<ul style="list-style-type: none"> <li>○ Extends term of patent cases pilot from 10 to 20 years</li> <li>○ Switch from BRI to district court claim construction</li> <li>○ Clarifies law as it relates to treatment of IP in bankruptcy cases</li> <li>○ Codifies language on obvious-type double patenting for FITF patents</li> <li>○ Requires USPTO and GAO to conduct studies on secondary market oversight, government patents, examination quality and patent small claims court</li> <li>○ Makes technical changes and clarifications               <ul style="list-style-type: none"> <li>✓ Revises language under “Inventor’s Oath or Declaration”</li> <li>✓ Codifies patent term adjustment calculations (<i>In Re Exelixis</i>)</li> <li>✓ Codifies language on obvious-type double patenting for FITF patents</li> <li>✓ Changes estoppel for PGR appeals (strikes “or could have raised”)</li> </ul> </li> </ul>



## H.R.9, “The Innovation Act” (114<sup>th</sup> Congress)

**Sponsor:** Rep. Goodlatte [R-VA-6] (*Chairman of the House Judiciary Committee*)

**Co-Sponsors for H.R. 9:**

- Rep. DeFazio, Peter A. [D-OR-4]
- Rep. Issa, Darrell E. [R-CA-49]
- Rep. Nadler, Jerrold [D-NY-10]
- Rep. Smith, Lamar [R-TX-21]
- Rep. Lofgren, Zoe [D-CA-19]
- Rep. Chabot, Steve [R-OH-1]
- Rep. Eshoo, Anna G. [D-CA-18]
- Rep. Forbes, J. Randy [R-VA-4]
- Rep. Pierluisi, Pedro R. [D-PR-At Large]
- Rep. Chaffetz, Jason [R-UT-3]
- Rep. Jeffries, Hakeem S. [D-NY-8]
- Rep. Marino, Tom [R-PA-10]
- Rep. Farenthold, Blake [R-TX-27]
- Rep. Holding, George [R-NC-13]
- Rep. Johnson, Bill [R-OH-6]
- Rep. Huffman, Jared [D-CA-2]
- Rep. Honda, Michael M. [D-CA-17]
- Rep. Larsen, Rick [D-WA-2]
- Rep. Thompson, Mike [D-CA-5]
- Rep. Swalwell, Eric [D-CA-15] – added: 02/11/2015

10 Republicans

11 Democrats

*Various Cosponsors; from  
House Judiciary, Energy and  
Commerce, Silicon Valley and  
elsewhere*



*Thank you.*

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