March 12, 2015

Free-Market Groups Support House Patent Reform Legislation

The Honorable Bob Goodlatte
The Honorable John Conyers, Jr.
United States House Judiciary Committee
Washington, DC 20515

Dear Committee Members,

On behalf of the undersigned free-market organizations, we write to express our strong support for your committee's ongoing efforts on patent reform. As advocates for a healthy innovation economy with a strong and effective patent system, we urge you to support the important litigation reforms in H.R. 9, also known as the Innovation Act, sponsored by Chairman Bob Goodlatte.

Last year, an identical version of this legislation passed through your committee and then passed the House of Representatives with broad bipartisan support and an overwhelming margin of 325-91. Republicans support was even more decisive, with a margin of more than seven to one.

While efforts were stalled in the Senate last year, we firmly believe these reforms are essential to buttress the structure of our patent system against predatory litigation, and in so doing, create more clarity and better protections for legitimate intellectual property rights.

The Progress Clause in Article I, Section 8 of the United States Constitution establishes a patent system, first and foremost, with a mandate to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Though many other provisions of the document drafted at the Constitutional Convention were controversial, this language was agreed to unanimously and without debate. This reflects the foundational importance our nation's framers placed on a robust legal structure that could protect inventors' rights in their existing creations and, at the same time, foster new inventions and innovations.

Sadly, it has become clear that the current litigation environment surrounding our patent system has become an immense burden on the very innovators and innovations that the Constitution sought to encourage and protect. Each year, abusive patent litigation drains tens of billions of dollars from the economy, creating tremendous deadweight losses as well as a great deal of uncertainty. This, in turn, dramatically reduces spending on research and development, venture capital investment and other essential business activities.

These assertion entities, otherwise known as “patent trolls,” don’t just go after big tech companies. About half the defendants in these lawsuits are small businesses, which make easier targets since they are less well-positioned financially to defend themselves in court. Most of these businesses choose to settle, because patent litigation is risky, time-intensive and can cost millions of dollars in legal fees. Even when they know a claim against them is spurious, small businesses know it’s seldom a sensible business decision to put their entire enterprise on hold and risk bankruptcy in an extended legal battle.

We agree, of course, that patent-asserting entities do play a valued role in creating healthy secondary markets. However, the current civil-litigation environment amounts to an Achilles’ heel that invites abuse and exploitation from a multitude of bad actors.

The Innovation Act would address these problems by implementing several important reforms to the litigation process. These reforms include allowing judges more discretion in fee shifting; adopting pleading standards that appropriately identify alleged infringements; and reducing abuse of the discovery process. Together, these reforms would reduce the cost of defending spurious patent claims, and therefore make companies less likely to resolve such disputes by paying out extortion in the form of nuisance settlements.

With these changes, H.R. 9 would help reduce the economic harm associated with expensive and frivolous patent troll suits, while improving the overall strength and quality of America’s patent system, in accordance with what the founders intended. In other words, it would create a system that promotes the freedom to innovate, rather than one that promotes increased business for trial lawyers and windfall revenues for patent-holders who are not themselves adding to innovation and economic growth.

Thus we urge you to support this package of reforms once again, to better align our patent system with its constitutional mandate and to send a message that bad actors can no longer hold the innovation economy hostage.

Sincerely,

R Street Institute
Americans for Tax Reform
Digital Liberty
Competitive Enterprise Institute
Independent Women’s Forum
American Consumer Institute
Frontiers of Freedom
Institute for Liberty
Hispanic Leadership Fund
Latino Coalition
Minnesota Center-Right Coalition
Citizen Outreach