



Congress of the United States
House of Representatives

**VOTE NO ON H.R. 3309
SO-CALLED "INNOVATION ACT"
WOULD HARM INNOVATION AND JOBS, NOT "TROLLS"**

December 4, 2013

Dear Colleague:

If H.R. 3309 comes to the floor on Thursday, we would urge you to vote against it on final passage.

Although we support more targeted legislation responding to the abuses typical of patent trolls, the bill before us is not about trolls, but would instead limit the rights of every single patent holder in America and discourage innovation – the lifeblood of our economy. As a matter of fact we participated in a briefing yesterday where a prominent venture capital investor told us that the weakening of the patent system resulting from the passage of H.R. 3309 would lead to a significant decrease in venture capital funding.

In addition to the unfair and unduly expedited process, we oppose this legislation for several reasons, including the following:

- **Failure to End PTO Fee Diversion** – H.R. 3309 fails to respond to the single most important problem facing our patent system today – the continuing diversion of patent fees. Nearly \$150 million in badly needed user fees have been diverted in Fiscal Year 2013, on top of the estimated \$1 billion in fees diverted over the last two decades. By failing to provide patent examiners the resources they need to review and analyze effectively the hundreds of thousands of complex and interrelated patent applications they receive every year, ongoing efforts at the USPTO to keep pace with innovation and to continue to enhance patent quality will be stymied.
- **The Bill's Heightened Pleading Requirements Will Deny Legitimate Inventors Access to the Courts** – The heightened pleading requirements will work an unfairness against patent holders across the board; are drafted in a one-sided manner; will prolong litigation; and are unnecessary because the courts are already addressing pleading standards.
- **The Bill's Fee Shifting Standard Will Favor Wealthy Parties and will Chill Potential Meritorious Claims** – The fee shifting requirement in H.R. 3309 will favor wealthy corporate parties over individual inventors; is drafted in an over-broad manner to apply beyond patent infringement actions; deprives courts of discretion; and is unnecessary because both the Supreme Court and the Federal Circuit are preparing to rule on litigation concerning the phrase "exceptional cases." Fee-shifting provisions favor the party with greater financial resources, and thus could chill potential meritorious claims. Enacting a mandatory regime into our patent law would not only work an unfairness to independent inventors, it will strip the courts of discretion to assess all parties' behavior in determining whether to depart from the American rule.
- **The Bill's Discovery Limitations Will Prolong Litigation and Increase Costs** - The legislation's limitations on discovery prior to holding hearings to construe patent claims and determine their scope

will delay litigation and lead to greater expenses for the parties and should be more properly dealt with by the courts. In addition, H.R. 3309 dictates that the federal judiciary adopt a series of new rules and judicial changes that will also make it more difficult for inventors to protect their patent rights. These changes are strongly opposed by the Federal Judicial Conference.

In addition, the bill includes a hodgepodge of special interest provisions that also have nothing to do with the issue of patent trolls.

A wide and deep range of participants and stakeholders in the patent system have issued letters opposing or expressing numerous serious concerns with the legislation, including the Club for Growth, the American Association for Justice, the American Conservative Union, the American Bar Association, the American Intellectual Property Law Association, the Patent Officers Professional Association, the American Association of Universities, the Biotechnology Industry Association, the Coalition for Twenty-First Century Patent Reform, the Innovation Alliance, the Eagle Forum, the Institute of Electrical and Electronics Engineers, the National Small Business Association, the National Association of Patent Practitioners, the National Venture Capital Association, and the National Bankruptcy Conference.

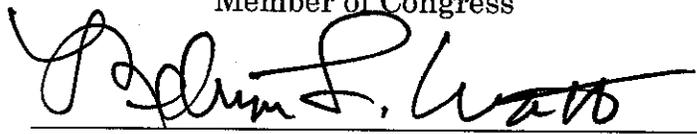
The Legislation Limits the Rights of All Patent Holders, not Just Patent "Trolls." We urge a NO vote to protect American innovation, which is responsible for nearly half of our GDP and one third of the jobs in our economy.

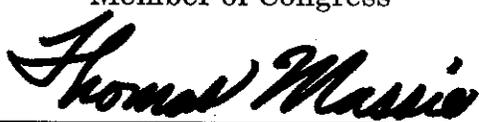
Additional information can be obtained by contacting our respective staffs.

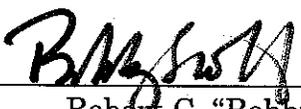
Sincerely,

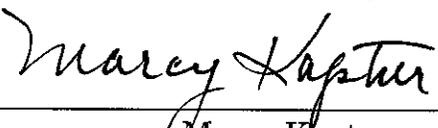

John Conyers, Jr.
Member of Congress

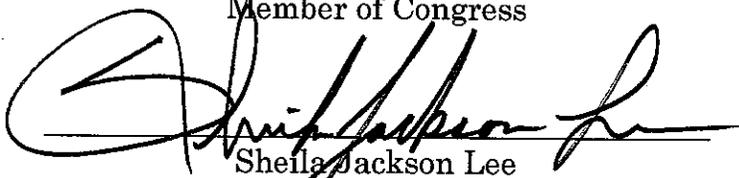

Dana Rohrabacher
Member of Congress

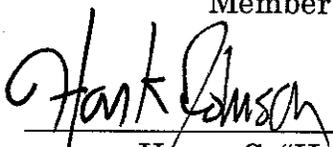

Melvin L. Watt
Member of Congress


Thomas Massie
Member of Congress


Robert C. "Bobby" Scott
Member of Congress


Marcy Kaptur
Member of Congress


Sheila Jackson Lee
Member of Congress


Henry C. "Hank" Johnson, Jr.
Member of Congress