



December 2, 2013

Speaker John A. Boehner
H-232 The Capitol
Washington, DC 20515

Minority Leader Nancy Pelosi
H-204 The Capitol
Washington, DC 20515

Dear Mr. Speaker and Leader Pelosi:

The Innovation Alliance writes to oppose the Innovation Act, H.R. 3309. We have repeatedly said that while we support targeted measures to address abusive behavior in patent litigation targeted at small business end-users and retailers, we have serious concerns with the H.R. 3309 as drafted. Many of the provisions will unfairly advantage large incumbent companies which incorporate patented technology in their products and services over the interests of innovators. Because those concerns have not been addressed in the reported version of the bill to be considered by the House of Representatives, we must oppose it.

We have repeatedly articulated concerns, both publicly and privately, that the customer-suit exception as drafted is far too broad, applying to all entities throughout the supply chain, including multi-billion dollar global companies that benefit most from the sale of an infringing article. The provision must be narrowed to target the small business end-users and retailers that are the true victims of abusive patent litigation and which have motivated its inclusion. Otherwise, we fear the measure will result in significantly more litigation and infringement, not less.

The heightened pleading and transparency in ownership requirements, while clearly supportable in principle, are simply not supportable in their current form. As drafted, they will place an extraordinary burden on patent holders while providing defendants far more information than needed to reveal the identity of the entity accusing them of infringement and the actions that constitute the infringement of which they are accused. Some degree of additional disclosure is clearly desirable, but these provisions appear to be written with the mindset that all infringement actions are brought for purposes of harassment and therefore must be deterred.

Similarly, provisions governing discovery sequencing, discovery cost shifting, and mandatory joinder would unduly restrict the traditional case management authority of judges in a manner that could lead to inefficiencies and inequities for litigants, particularly small innovators.

We also believe that a party invoking post-grant review procedures should not be permitted to pursue piecemeal actions to invalidate a patent, and for that reason oppose the repeal of the “could have raised estoppel” standard for subsequent patent litigation.

The Innovation Alliance believes a consensus on measures to target abusive behavior in patent litigation is achievable, but H.R. 3309 unfortunately falls far below that standard, and we must oppose it. We stand ready to work with leaders in the House and the Senate to modify this bill so that it targets abusive behavior in a manner that does not undermine the world’s best patent system, an engine for American economic growth and job creation.

Sincerely,

A handwritten signature in black ink that reads "Brian Pomper". The signature is written in a cursive style with a large, looped initial "B".

Brian Pomper
Executive Director
Innovation Alliance