



Entrepreneurs for Growth
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TO: The Honorable Patrick Leahy, Chairman
The Honorable Bob Goodlatte, Chairman
The Honorable Chuck Grassley, Member
The Honorable John Conyers, Jr., Member

FROM: Entrepreneurs for Growth

RE: SUPPORT Strong Intellectual Property Rights
and balanced approach to patent reform.

Entrepreneurs for Growth brings together thousands of individual entrepreneurs and start-up investors from across the U.S. who have built and sold their own companies, who provide their own time, risk, and money to finance new start-up companies and are often running start-up companies themselves.

From practical experience, our members know well the importance of strong intellectual property rights, especially for new, innovative businesses.

Strong and enforceable patent rights are essential for the following:

- Increase a start-up's chances of securing financing from outside investors at a time when capital has been increasingly scarce for start-ups.
- Allow start-ups to successfully enter markets otherwise dominated by large incumbent firms, providing new (often disruptive) and more affordable innovations to consumers.

Indeed, without the promise of strong patent protections, many entrepreneurs would likely eschew making risky investments in patentable inventions and inventors would not put in the risky efforts to pursue their inventions in the first place—thus dampening an important source of U.S. job creation and innovation.

Research has shown that small start-up companies are the primary drivers of job creation in this country, creating an average of 3 million jobs in their first year, even during recession years. Unlike established large corporations who can rely on their market power, startup innovators are critically dependent on patents for their survival. Large corporations can do all of their financing, R&D, testing, manufacturing, and marketing in-house. In contrast, startup innovators must accomplish these functions by marshaling and coordinating outside resources and licensees to successfully exploit their inventions – efforts that are virtually doomed without strong patent rights. While innovative startups'

often depend on the *prospect* of asserting their patent rights, large-corporate innovators regard patent rights a nuisance and thus seek to weaken patent rights generally.

Indeed, over the past few months and before the ink was dry on the America Invents Act (AIA), five patent reform proposals have been introduced or circulated in the Congress, purportedly aimed at curtailing abuse of patent litigation. While patent litigation abuse occasionally occurs, as it does in any other civil litigation, we believe the case was not made that *patent-specific* legislation is appropriate when such infrequent abuse should be dealt with more generally by proper use (or revision) of the Federal Rules of Civil Procedure.

Unfortunately, as currently drafted the current reform proposals cast an overly broad scope; they would undermine patent rights of every patentee who ever considers asserting a patent (by definition, a “patent assertion entity”) – not only those of a few abusers. We urge you not to rush to enact legislation that would further harm the dominant U.S. job creators – startups and small technology businesses. Congress should tread with extreme caution; it must first establish an objective and independently-derived factual record of the “problem” being addressed; it should avoid relying on anecdotal outlier stories selectively supplied by proponents of weakening patent rights. Congress must also compel agencies, who have contravened the AIA by failing to perform the studies required under the AIA, to do so forthwith. This includes the SBA-USPTO study on the effect of First-to-File laws and the effective elimination of the grace period on small businesses – a study that was statutorily due on September 16, 2012 but was never done.

Some argue that more changes in patent law are necessary, citing the rise of patent lawsuits due to litigation abuse by “patent assertion entities.” However, before destabilizing yet again our patent laws and perpetuating legal uncertainties, we urge Congress to seek the full factual record of the true causes for a surge in patent litigation: evidence strongly suggests that such surge is actually the *result* of the AIA, not despite it.¹

Thus, before making any further changes to our recently-amended patent laws, we encourage Congress to first evaluate the effects of the America Invents Act (AIA), and to carefully consider the consequences of any other reform proposals on American entrepreneurs and their investors.

A balanced approach to patent reform, which protects the rights of patent holders while allowing poor quality patents to be efficiently challenged, would allow our businesses to continue creating U.S. jobs and the innovations that drive U.S. economic growth.

Thank you for considering this important matter.

Sincerely,

[Signatories on the following page]

¹ Ron Katznelson, *The America Invents Act at Work – The Major Cause for the Recent Rise in Patent Litigation*, IPWatchdog, (April 15, 2013) at <http://j.mp/AIA-Litigation>.

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