

21C

THE COALITION FOR 21ST CENTURY PATENT REFORM

Protecting Innovation to Enhance American Competitiveness

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21C Opposes H.R. 9, the Innovation Act, After Yesterday's Markup Tilted the Balance Against All Patent Owners

(Washington, DC) -- The Coalition for 21st Century Patent Reform ("21C") today made the following statement regarding the House Judiciary Committee's markup of H.R. 9, the Innovation Act, yesterday. Please attribute below to Kevin Rhodes, Chairman of the 21C Coalition and Chief Intellectual Property Counsel of 3M Company:

"21C has made it clear that comprehensive reform legislation is needed to address abuses of America's patent system, and that meaningful patent reform must include sensible litigation reforms and effective measures that restore basic fairness to patent validity reviews in the U.S. Patent and Trademark Office (PTO). While we appreciate the improvements to the Innovation Act added in the Managers' Amendment to H.R. 9, this bill took a major step backward yesterday when it was further amended in the Committee markup. As reported, the bill upsets carefully crafted compromises on a number of issues and will have the unintended consequence of making it more difficult, costly and uncertain for all American innovators and manufacturers to prevent patent infringers from threatening their business investments.

"For example, the amended bill permits a stay of discovery in patent cases based on motions filed a full three months after the case begins, which is a recipe for delay, gamesmanship and abuse. Moreover, the competitive harm exception to this stay of discovery, which was intended to ensure that such stays would not harm legitimate patent owners seeking to stop infringement of their rights by unscrupulous competitors, was rendered effectively meaningless by an amendment that requires a preliminary injunction be granted before discovery may proceed.

“Likewise, amendments to the newly-added venue provision go well beyond what is needed to ensure that cases are brought in judicial districts with a substantial connection to the alleged infringement and will threaten the ability of legitimate patent owners to seek relief from infringement in their home districts. Indeed, the venue provision now jeopardizes the rights of U.S. patent owners with enormous R&D and manufacturing expenditures in the U.S. from suing in the jurisdiction of their own headquarters, even when the infringer has conducted infringing activity in that jurisdiction.

“And regrettably, the bill still falls short in terms of meaningful reforms to the procedures used by the PTO in conducting Inter Partes Review (IPR) and Post-Grant Review (PGR) proceedings. Additional provisions are still needed to provide greater fairness to all parties in PGR and IPR proceedings and to protect patent owners from duplicative, costly and unnecessary validity challenges.

“It remains our sincere hope that as the legislative process moves forward, 21C can continue a constructive dialogue with Members and staff to develop a legislative package that will both: (1) curb abusive patent litigation practices in a manner that does not undermine the ability of all patent owners to defend their inventions and businesses against infringement; and (2) restore balance and fairness in PTO patent validity reviews for patent owners and patent challengers alike. However, as reported yesterday, the Innovation Act does neither.

“Accordingly, we urge that H.R. 9 as reported by the House Judiciary Committee not be brought to the House Floor unless and until a greater consensus among stakeholders in the patent system is achieved by fashioning a better balanced and fair set of reforms.

The Coalition for 21st Century Patent Reform has more than 40 members from 18 diverse industry sectors and includes many of the nation’s leading manufacturers and researchers. The coalition’s steering committee includes 3M, Bristol-Myers Squibb, Caterpillar, ExxonMobil, General Electric, Procter & Gamble, Johnson & Johnson, and Eli Lilly. For more information, visit <http://www.patentsmatter.com>