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Patent Reform Bill Progresses through the House

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The steady rise in patent litigation in the United States has captured the attention of Congress, which currently has several bills regarding patent reform active in various stages of the legislative process. On December 5, 2013, the first major patent reform bill of this year, Rep. Bob Goodlatte's Innovation Act, passed the House by a vote of 325-91 on the strength of bipartisan unity.

Patent litigation has become an **enormous industry impacting companies of all sizes**, from independent coffee houses to multinational technology firms. In 2012 alone, there were 5,189 patent suits filed, which was a 29% increase from the previous year. Over half of all patent suits are brought by corporations created solely for the purpose of enforcing patent rights, formally called "nonpracticing entities" (NPEs) or "patent assertion entities" (PAEs) but colloquially referred to as "patent trolls." Over 70% of patents now being asserted are acquired patents, that is, the patents are not being asserted by the inventor(s) or original owner, compared to 10 years ago, when only 30% of asserted patents were acquired.

In the current political climate characterized by discord and obstruction, patent reform has arisen as an easy target for Congress to attack with bipartisan legislation. The current iteration of patent reform, including the 2011 America Invents Act, capitalizes on the public's appreciation for small business and innovation. Large companies with extensive IP portfolios have also encouraged measured patent reform to protect the patent system from abuse.

The bills that remain active in various stages of the legislative process include:

Innovation Act (H.R. 3309) (Goodlatte, R-VA)

H.R. 3309 attempts to reduce the granting of overbroad patents by repealing a provision of the U.S. Code enabling applicants to circumvent the USPTO by filing an action in federal district court instead of having to appeal a rejection to the Federal Circuit. It also redefines and narrows the estoppel impact of post-grant review and prevents double-patenting by amending the prior art requirements. The bill would reduce the impact of vaguely-written demand letters, heighten pleading standards, and impose new procedural and disclosure requirements on would-be patent asserters. It would allow prevailing parties to more readily recover litigation fees and discovery costs. Finally, the bill permits accused infringers to add parties having an ownership or financial interest in the patent to the litigation and expedite overall case disposition by streamlining case management and discovery procedures.

Patent Transparency and Improvements Act of 2013 (S. 1720) (Leahy, D-VT)

Senate Judiciary Committee Chairman Leahy's bill makes similar strides to curb overbroad patents and prevent double patenting. The bill would take a stronger stance on demand letters by labeling them unfair and deceptive trade practices under the Federal Trade Commission Act § 5(a)(1) and authorize the FTC to bring enforcement actions against issuers of false threats. S. 1720 would also require financial interest disclosures at the onset of litigation and create a customer stay provision.

Patent Litigation Integrity Act of 2013 (S. 1612) (Hatch, R-UT)

Sen. Hatch's bill is designed to make patent enforcement a high-risk gamble for the asserting entity. It would introduce a mandatory, two-way shifting of attorneys' fees to the losing party absent any special circumstances and would further require the patentasserter to post a bond sufficient to ensure the payment of such at the commencement of the action.

Patent Abuse Reduction Act (S. 1013) (Cornyn, R-TX)

Sen. Cornyn's Senate bill largely mirrors the Innovation Act. It provides for heightened pleading standards, increased initial disclosures, shifting of discovery costs and fees, permissive joinder or parties, and the curtailing of runaway discovery.

Other Bills

These omnibus bills have subsumed several smaller, more targeted bills introduced over the past year. Sen. Schumer's (D-NY) **Patent Quality Improvement Act** (S. 866), echoed by Rep. Issa's (R-CA) **STOP Act** (H.R. 2766), would expand post-grant review to allow challenges to, *inter alia*, all software patents. Rep. Polis' (D-CO) **Demand Letter Transparency Act of 2013** (H.R. 3540) would regulate demand letter content and create a demand letter database under the eaves of the USPTO. Rep. Jeffries' (D-NY) **Patent Litigation and Innovation Act of 2013** (H.R. 2639) creates heightened pleading standards, new disclosure requirements, and the opportunity for sanctions. Finally, Rep. Deutch's (D-FL) **End Anonymous Patents Act** (H.R. 2024) would require disclosure of all interested parties upon patent issuance and the payment of maintenance fees.

Venable's **Patent** and **Legislative** groups continue to monitor and participate in this legislation. If you have any questions, please contact the authors or any other member of the **Patent** and **Legislative** Groups.

*Tyler Hale's bar admission in Virginia is pending.