

21C

THE COALITION FOR 21ST CENTURY PATENT REFORM

Protecting Innovation to Enhance American Competitiveness

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21C on Reintroduction of the Innovation Act

The Coalition for 21st Century Patent Reform (“21C”) believes that reintroduction of the Innovation Act today in the House of Representatives is an important first step toward finding appropriate solutions to curb abusive patent litigation practices and other needed changes to the patent system. 21C urges Congress to enact patent legislation that ensures a fair, objective process – both for patent owners and those accused of infringement – while preventing opportunities for abuse.

The Innovation Act includes provisions that 21C has long advocated to curtail litigation abuse, including authorizing courts to award attorney’s fees to prevailing parties in patent cases and creating a right to stay patent cases brought against customers and end users.

The Innovation Act also will make important improvements to the America Invents Act (“AIA”) to ensure that it works as intended. Most important, 21C is pleased that the bill requires the U.S. Patent and Trademark Office (“PTO”), when construing patent claims in post-grant review (“PGR”) and inter partes review (“IPR”) proceedings, to use standards consistent with those applied by the courts.

21C urges that the reforms set forth in the Innovation Act be coupled with additional legislative provisions to ensure that fairness is provided to all parties in PGR and IPR proceedings and to protect patent owners from duplicative, costly and unnecessary validity challenges. 21C looks forward to providing its support for a bill that combines reasonable and balanced litigation reforms with these additional improvements to the patent system. We pledge to continue working with Chairman Goodlatte, IP Subcommittee Chairman Issa, Ranking Member Conyers, other members of the House Judiciary Committee, and other stakeholders to craft a comprehensive package of fair and balanced patent reform legislation.

Background

For the past decade, 21C has advocated for more frequent fee shifting in patent cases as a means to curb litigation abuse. Notwithstanding the recent decisions by the Supreme Court, fee shifting legislation is needed. Congress should provide clear and predictable standards under which an award of attorney's fees is appropriate to address abusive litigation behavior in patent cases. The Innovation Act achieves this important objective by making clear that fee shifting is appropriate "unless the court finds that the position and conduct of the nonprevailing party or parties were reasonably justified in law and fact or that special circumstances (such as severe economic hardship to a named inventor) make an award unjust." The assertion of claims or defenses in patent cases that are not reasonably justified in law and fact has no place in a well-functioning patent system and any litigant engaging in such behavior should face the prospect of "loser pays."

The Innovation Act also includes a "customer stay" provision, which 21C has long viewed as an important component of legislation to curtail patent litigation abuse. This provision will go a long way to addressing abuses in the system.

Although the Innovation Act will also make improvements to the AIA, such as requiring the PTO to use the same claim construction standards as courts when construing patent claims in PGR and IPR proceedings, 21C believes that additional provisions are essential to ensure that the procedures used by the PTO to conduct IPR and PGR proceedings are fair to all parties. 21C has advocated a number of such changes and we urge that they be added to the bill as it moves through the legislative process.

21C also urges that amendments be made to certain provisions of the bill that are drafted more broadly than is needed to achieve their intended purpose of curbing abusive patent litigation practices. Without modification, these provisions may have the unintended consequence of making it more difficult, costly and uncertain for American innovators and manufacturers to prevent infringers from threatening their business investments. For example, the Innovation Act includes an automatic stay of discovery in patent cases that will delay the ability of patent owners to obtain relief while infringers continue to sell their infringing products. Similarly, provisions directed to pleading requirements, discovery and case management should be carefully tailored to curb patent litigation abuses without unduly undermining the ability of all patent owners to enforce their patents against infringers.

As the Innovation Act moves forward in the 114th Congress, 21C commits to continue working with Members of the House Judiciary Committee and IP Subcommittee, as well as Members of the Senate Judiciary Committee, to reach consensus on measured, targeted legislative reforms that will curb litigation abuse without imposing unnecessary limitations on the ability of American innovators, manufacturers, universities, and independent inventors to enforce their patents; ensure that PGR and IPR proceedings are conducted fairly for all participants; and, protect patent owners from duplicative, costly and unnecessary validity challenges.

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>.