

December 5, 2013

Dear Representatives,

Rep. Bob Goodlatte's H.R. 3309, the "Innovation Act," seeks to strengthen the patent system by protecting intellectual property rights while also limiting the economic harm of predatory litigation and nuisance settlements over low-quality and poorly structured patents. Without a doubt, intellectual property rights are an essential building block of our growing knowledge economy.

Article I, Section 8 of the United States Constitution is explicit in calling for a patent system to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Though many other provisions of the document drafted at the Constitutional Convention were controversial, this language was agreed to unanimously and without debate. This reflects the foundational importance our nation's framers placed on a robust legal structure protecting copyrights and patents.

But the patent system is not perfect, and in some cases leads to stifling the innovation the Constitution sought to protect and at a substantial economic cost. There are bad actors, often referred to as "patent trolls," [see [IPI's new TechByte](#)] who bring, or threaten to bring, abusive, frivolous litigation that is designed to leach innovation of its value. The litigation they threaten to bring typically takes advantage of low-quality patents—sloppily awarded patents that are vague and obvious, often covering commonsense steps that are performed every day in a number of businesses. Armed with such ill-defined patents the bad actors threaten litigation against a broad swath of companies seeking settlements as the companies seek to avoid costly litigation. In a word, it's a shakedown.

According to one study, this weakness in the patent system cost \$29 billion in 2011 alone. This does not include indirect costs to businesses such as diversion of resources, delays in new products, and loss of market share. Patent troll lawsuits are effectively imposing a significant tax on investment and entrepreneurship.

The Innovation Act would improve America's patent system and discourage trolls by implementing several important reforms to the litigation process such as shifting fees to losers of patent suits, pleading standards that appropriately identify alleged infringements, greater transparency about owners of disputed patents, and provisions to reduce abuse of the discovery process. Together, these reforms would reduce the cost of defending against spurious patent claims, and therefore make companies less likely to resolve such disputes by paying nuisance settlements. With these improvements, the Innovation Act would increase protections for small patent-holding innovators, while minimizing what it costs for legitimate plaintiffs to defend their patents.

Of course, in all cases, both large and small defendants must be considered with care to make sure that changes do not have an adverse impact on legitimate claimants, including those who are simply protecting their property. Not everyone who collects portfolios of patents for the purpose of licensing is a troll.

www.ipi.org

Tom Giovanetti
President
tomg@ipi.org

Board of Directors

Mary Bramlett
Chairman

David B. Moseley, Jr.
Glast, Phillips & Murray, P.C.

Joseph Sullivan
President, JSA

Tom Giovanetti
Institute for Policy Innovation

Board of Advisors

Ernest S. Christian
Center for Strategic Tax Reform

Stephen J. Entin
*President and Executive Director
Institute for Research on the Economics
of Taxation*

Stephen Moore
*Editorial Board
Wall Street Journal*

Gordon Tullock
*Professor of Law and Economics
George Mason University*

James R. Von Ehr, II
*President and CEO
Zyrex*

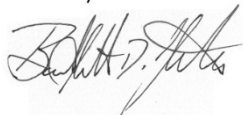
Thomas G. West
*Professor of Politics
Hillsdale College*

1660 South Stemmons,
Suite 245
Lewisville, TX 75067
(972) 874-5139 voice
(972) 874-5144 fax

email ipi@ipi.org

In a phrase, the appropriately named “Innovation Act” supports innovation. That is something we should all support.

Sincerely,

A handwritten signature in black ink, appearing to read "Bartlett D. Cleland". The signature is written in a cursive style with a large initial "B".

Bartlett D. Cleland
Resident Scholar
Institute for Policy Innovation