

How the Innovation Act crushes American inventors:

Why big business wants to silence the small inventor

Thought Leadership From



Rep. Dana Rohrabacher



Rep. Marcy Kaptur



Carly Fiorina

A Special Report Prepared By
The Washington Times Advocacy Department.

The Innovation Act:

Panacea for 'patent trolls' or death knell for inventors?

By THE WASHINGTON TIMES

When House Republicans restarted their campaign earlier this year to reform U.S. patent laws, they found the same bipartisan backing from heavyweights such as Google and Facebook but an increased opposition from some conservatives who are fearful it will trample inventors' protections.

At the center of the debate is the Innovation Act, which attempts to address a timeworn issue aimed at cracking down on "patent trolls," mostly shell companies that buy up vague patents with the intent of later suing other companies for infringement.

The questions being contested is whether the bill imposes overreaching standards on patent litigation that would make it hard for innovators to protect their property rights or whether it has

by a vote of 325-91 but was killed in the Senate. Since the reintroduction, his committee has held four hearings.

Supporters say the bill will update intellectual property laws to rein in patent trolls.

"In recent years, we have seen an exponential increase in the use of weak or poorly granted patents by patent trolls to file numerous patent infringement lawsuits against American businesses with the hope of securing a quick payday," Mr. Goodlatte said. "With our current patent laws being abused, American businesses small and large are being forced to spend valuable resources on litigation rather than on innovating and growing their businesses."

Opponents of the legislation unveiled their high-profile pitchwoman, former Hewlett-Packard CEO and potential presidential

allow the big, who can afford the teams of lawyers and lobbyists, to get bigger and the individual inventor will get weaker. Conservatives should continue to stand for innovation and property rights," she said.

The revamped Innovation Act aims to discourage plaintiffs in patent lawsuits from dragging out cases over vague patent infringements in order to bank on settlements.

The bill would require plaintiffs to disclose the owner of a patent before a lawsuit is filed and explain why they are suing, and would require courts to determine the validity of patent cases early in the process.

The bill also would shift attorney fees to parties who bring lawsuits "that have no reasonable basis in law and in fact," Mr. Goodlatte's office said.

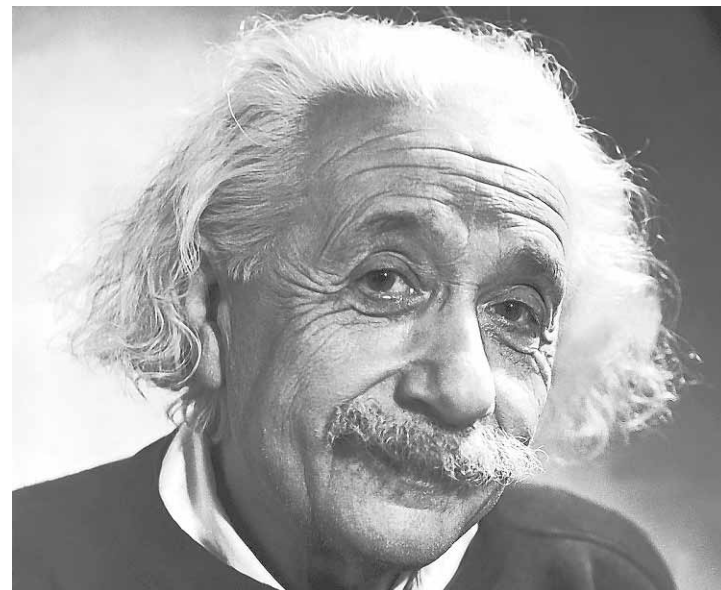
Many in the software and computer industry jumped to applaud the announcement and vowed to work with lawmakers to see the bill through to its enactment.

"As Congress works through the process, we remain outcome-oriented, focusing on protecting businesses from patent trolls," said Michael Beckerman, CEO of the Internet Association, whose members include Google and Facebook. "The final bill must be as strong or stronger than the Innovation Act passed by the House in 2012 with overwhelming bipartisan support, in order to bring a permanent end to the chaos caused by patent trolls."

Some conservatives see the reform legislation as a gift from the administration to Google, which stands to gain from a tightened legal patent process as it battles competitors such as Apple Inc.

Google has lobbied the administration heavily over the patent legislation. Google employees contributed more than \$800,000 to each of President Obama's two White House campaigns, according to Federal Election Commission data from the Center for Responsive Politics.

Last year, Google spent about \$17 million on lobbying, and the majority of its efforts were focused on patent reform. In fact, Google spent more money than any other tech company on copyright, patent and trademark lobbying last year, according to the Center for Responsive Politics,



which tracks campaign and lobbying expenditures.

With a new GOP majority in the Senate, House Republicans see an opportunity to pass the bill with bipartisan support and are making it a priority on the legislative docket.

Critics say Republicans are not considering how the proposal could unintentionally weaken property rights for startups and small innovators.

"Unfortunately, what they are sacrificing for the sake of this bipartisanship is the very basis by which our economy works," said Adam Mossoff, a professor of law and senior scholar of the Center for the Protection of Intellectual Property at George Mason University.

"Rushing to pass bad legislation just so we can demonstrate a willingness to work with the White House is not the path to take. Despite the support of many Republicans in the last Congress, this legislation, as it now stands, is just another one-size-fits-all, big-government overhaul of a sector of the economy that is not broken," Ken Blackwell, a former Ohio secretary of state, wrote in a January letter to 75 conservative leaders.

In a Jan. 21 letter to the House committee, a host of 250 companies, startups and innovators — including Qualcomm Inc., Merck & Co. and Monsanto Co. — objected to the bill, claiming the congressional action was unnecessary in the wake of legal measures that have adequately reined in the worst patent litigation abuses.

"As a result of these

developments, we are even more concerned that some of the measures under consideration over the past year go far beyond what is necessary or desirable to combat abusive litigation. Indeed, new patent lawsuit filings already have dropped dramatically — 40 percent, year over year, from September 2013 to 2014," they wrote.

A study by Lex Machina found that patent litigation rates were declining steadily and last year were back to 2009 and 2010 levels.

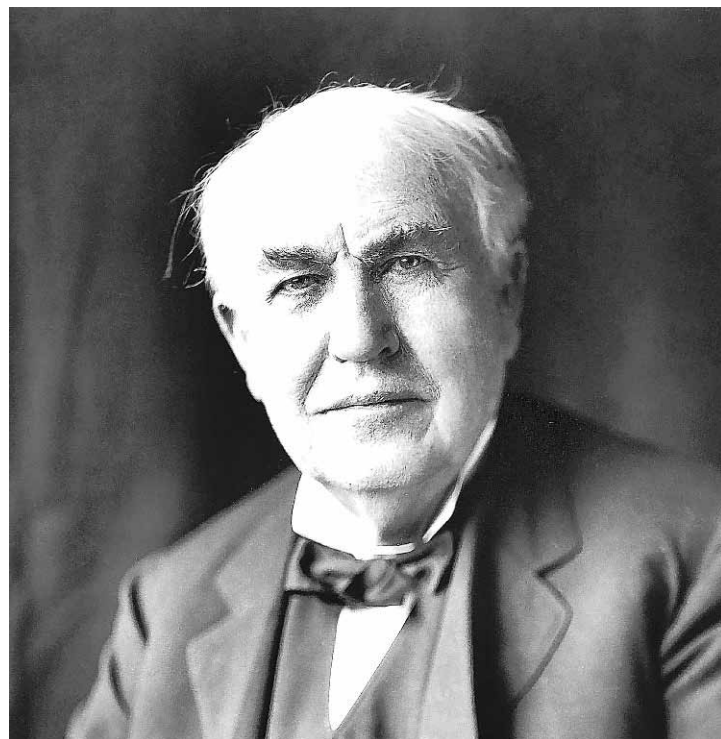
Mr. Mossoff said sweeping congressional action was unnecessary and that the bill was just a form of micromanagement.

"In fact, this is Congress kind of coming too late to the party and making things worse by now trying to appear as if they are contributing to the party. Moreover, what they're actually doing is beginning to engage in micromanaging through direct legislation."

Critics of the bill say that targeting individual problems would be a better solution than revamping the whole patent litigation system with unintended negative consequences.

Mr. Mossoff said Congress doesn't have reliable evidence identifying the specific problems. He referenced a Government Accountability Office report that debunked studies used in drafting the legislation.

"Once you have the evidence that there is a problem, address it through targeted, limited, incremental approaches that ensure, while addressing the problem, you don't actually damage the good innovators and the people who do need patents," Mr. Mossoff said.



just the right touch in making it tougher and more financially risky for patent trolls to file groundless lawsuits.

The legislative fight is pitting universities against industry groups, entrepreneurial innovators against the titans of Silicon Valley and some establishment Republican politicians against political newcomers.

Rep. Bob Goodlatte, Virginia Republican and House Judiciary Committee chairman, reintroduced the Innovation Act, which passed in the House last session

candidate Carly Fiorina, who argued that the bill imposes overreaching standards on patent litigation that would make it hard for innovators to protect their property rights.

"There are some problems in our patent system and there are people who use the threat of patents inappropriately, but here we have a vast, sweeping piece of legislation that causes more problems than it solves," Ms. Fiorina said.

"Just like with Dodd-Frank or our Byzantine tax system, this will



By Rep. Dana Rohrabacher

With the best intentions, and naively going along with the corporate world's hugely financed publicity machine, Congress is about to stomp on America's most creative citizens, its inventors.

The target is not the much-hyped "patent trolls." They are a minuscule matter. What's at stake is average Americans' constitutional right to own what they've created. We're really up against corporate lawyers acting like ogres, devouring the little guy's innovative accomplishments.

Many of my colleagues, without understanding the legislation's impact, will soon vote on HR 9, a misnamed "patent reform," also dubbed "pro-innovation," that is anything but. In reality, it deforms our patent system beyond recognition.

This legislation — pushed by my Republican colleague, House Judiciary Committee Chairman Bob Goodlatte, and deep-pocketed multinational corporations — appears on its way, again through the House, to the Senate, then to an eager President Obama for signing.

When that happens, America's exceptional system of invention

will be shoved into the depths of mediocrity, there to seep into the murk in which less-scrupulous global competitors spend their resources.

In the last session, a bipartisan band of my Republican friends, some of whom made their pre-political marks as patent-holding inventors; members of the Black Caucus; and a heroic Ohio congresswoman, Democrat Marcy Kaptur, failed to dissuade our House colleagues that the bill was not the litigation-curbing effort as advertised.

The bill went to the Senate, where, fortunately, it stalled. It's back, this time resurfacing in the House with just one hearing. A whole class of small inventors, among the many who will be injured, is being kissed off as scarcely deserving a voice. All in a day's work for the corporate influencers who shaped HR 9 from start to finish.

Just because a measure holds itself up as "tort reform" should not mean it escapes the scrutiny of free-market Republicans. It should instead call for a skeptical second look, and then more throughout its progress. Guaranteed: Such close-eyed analyses of this bill will encourage deep suspicion.

Fair-minded members will find themselves aghast at how this leaves defenseless our individual inventors, small and mid-sized companies, researchers, even universities that depend financially

on their patent portfolios. It is a coup in the making by the biggest and best-protected operators.

Preposterously, even the United States Defense Advanced Research Projects Agency, with its multiple patents, under this law would fall into the dread category of "patent trolls." These scary creatures who hide under bridges were themselves plucked from mythology by corporate marketers to misrepresent what is at stake.

Legislative reform efforts invariably build on a narrative of great injustice. This one moves wildly beyond the need to fix real abuses, wherein at considerable cost companies must defend their legitimately acquired patents against unscrupulous claimants.

But the term "patent troll," directed against such bad actors, has been transmogrified by corporate marketers to include legitimate small inventors — many of them minorities, which is why my Black Caucus friends sized up the issue astutely — who are outgunned and outspent when they try to protect their intellectual property.

Almost all infringement cases are brought by people who own a patent legitimately. If not, such cases should be decided in court. There is nothing wrong with bringing such matters to court — a cornerstone, not of crony capitalism, but of the free market itself.

Our economy and culture depend on the disruptive nature of innovation. Our Constitution

deliberately made all people equal, giving no advantage to those of social status, wealth or position. The founders, even before they added the Bill of Rights, secured the right to hold patents in Article I of the Constitution itself, the only right mentioned prior to the amendments.

We all know our country's history of innovation. Large companies reject new ideas. It is the innovator, not the corporation, who challenges the status quo.

Under the proposed bill, the pretrial discovery process — just one part of many dubious sections — tilts heavily against the small inventor, who, of course, must share his or her secrets with an opposing corporation's well-armed legal team. In another era, I might have considered this an innocent, unintended consequence of ill-considered drafting. Not now.

I implore my colleagues in both the House and Senate to stop

this monster aborning. If it helps, take a slow, thoughtful walk along the National Mall, which overwhelmingly celebrates American inventiveness.

The National Air and Space Museum? It would not exist without patents as we have known them.

That unfinished African-American history museum? Doubtless it will honor the numerous minority patent holders to whom we all are indebted and who wouldn't have had a chance without our first civil right: the right to invent and reap the rewards from intellectual property.

This Republican Congress must not allow this creativity-killing legislation to be a part of its legacy.

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Rep. Dana Rohrabacher, a Republican, represents California's 48th District. He serves on the House Science and Technology Committee.

The China Connection: Why would a Chinese-owned firm support the Innovation Act?

By The Washington Times

Some of the voices expressing concern about the Innovation Act have suggested the proposed law would weaken U.S. patent protections, putting them more on par with countries like China.

Rep. Thomas Massie, Kentucky Republican, recently made that point in an opinion piece he penned for The Washington Times.

"Our system of patent protection is what sets the United States apart from nations like China and India," he wrote. "In those countries, theft of intellectual property is rampant, statutory protections for intellectual property are

weak or nonexistent, and courts are notoriously hostile to small inventors.

"If we water down our patent system and give up our competitive advantage, America will cease to be a global hub for innovation," he added.

Ironically, one of the companies now throwing its support behind the legislation is based far for America's shoreline — in China, in fact.

ZTE Corp., China's largest telecommunications equipment company, announced this month it is joining the United for Patent Reform coalition in the United States that is lobbying for the

Innovation Act.

"Technology innovation is central to ZTE's business, as evidenced by our expanded patent portfolio of more than 60,000 patents filed. This commitment to patent research allows us to deliver award-winning products to consumers and thus grow our business globally," said Lixin Cheng, chairman and CEO of ZTE's U.S. arm. "We hope that by joining other companies who share our mutual respect for intellectual property in the United for Patent Reform [coalition], we can encourage others to use their resources to develop new and innovative products for the consumer."

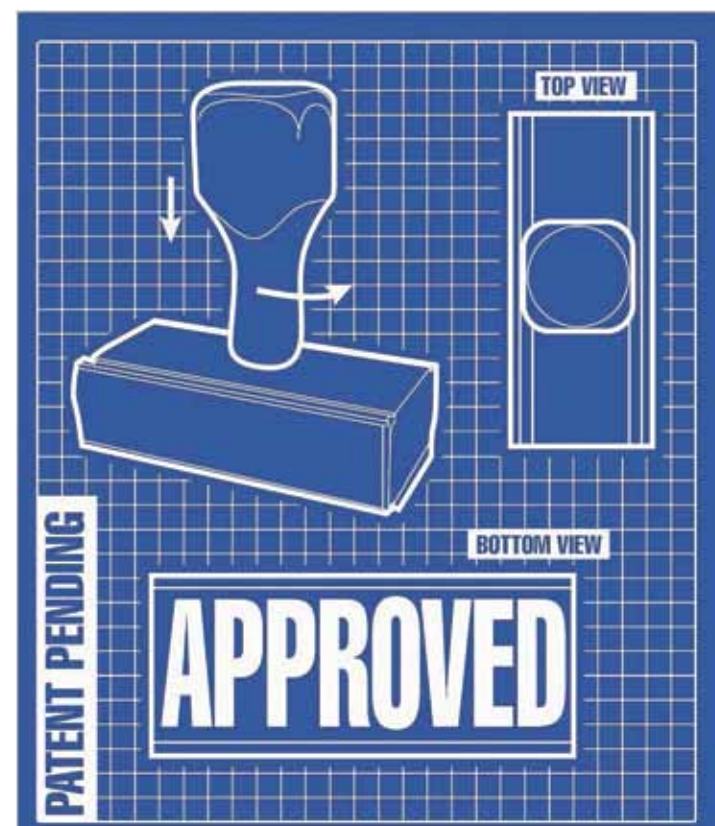


ILLUSTRATION BY LINAS GARSYS

The company's announcement made clear its reason for supporting the reform: "ZTE is constantly faced with upwards of 50 patent cases brought against the company at any given time by patent-assertion entities which have no intent to manufacture products."

ZTE said it was joining the fight

to change U.S. patent law to "create a system that fosters innovation and investment that benefits the American economy."

Critics of the legislation are likely to seize upon ZTE's role in the lobbying effort to raise concerns about foreign interference in the American patent market.



By Rep. Marcy Kaptur

The U.S. patent system is the envy of the world. It has nurtured small inventors and innovative small businesses in this country for centuries. In effect, H.R. 9, known as the Innovation Act, would do great harm to this system. It would block innovation and dismantle important aspects of the system that, at most, need only minor changes.

The Innovation Act goes well beyond what is needed to address bad actions of a small number of patent holders, and it instead raises costs for all legitimate patent holders to enforce their Constitutionally-given property rights in court. The perceived need for legislation to address abusive litigation practices already is being dealt with effectively by the Supreme Court, the U.S. Patent &

Trademark Office, and the Federal Trade Commission. Any legislative action should be limited and focused on specific abusive behavior, not the overly broad approach on procedural aspects of enforcing patents, as H.R. 9 does.

The Innovation Act's negative impacts include:

- Chilling investment in patent-intensive companies, depressing innovation and job creation.
- Making it more difficult, risky, and expensive for emerging companies to enforce their patents.
- Increasing costs and risks for smaller companies trying to defend against patent litigation brought by larger, incumbent competitors.
- Making conditions hostile for small inventors and is opposed by small inventors, at least 144 major universities, and other organizations including Club for Growth, American Conservative Union, biotech & pharmaceutical advocates, Business & Industry Council, and venture capitalist & patent

advocates.

The five most dangerous provisions included in the Innovation Act are:

1. Mandatory fee-shifting (Loser Pays) requires courts to award attorneys' fees and costs to the winning party, with a possible waiver of fee-shifting based on vague, subjective criteria. The prospect of substantially increased financial risk will discourage individual inventors and small business patent holders lacking extensive litigation resources from enforcing their patents. This increased risk will deter potential licensees and venture capitalists from investing in patents, reducing the number of research discoveries that advance the marketplace.
2. Involuntary joinder pierces the corporate veil to apply Loser Pay to all "interested parties," forcing investors to pay damages for actions of third parties over which they had no control. This threat will drastically reduce investment in inventors, patents, startup

and technology companies, and patent licensing.

3. Excessive Heightened Pleading Standards require patent holders to allege, beyond what every other party in any civil action is required, how each asserted claim under a given patent is found within each infringing process, product, or instrumentality. The Act's rigorous requirements may effectively bar valid infringement claims as an unintended consequence.
4. Discovery limitations require courts to delay a patent holder's discovery requests until a hearing on the claims of the patent is completed. This delay deprives the patent holder from obtaining valuable information to form the case, will increase attorneys fees, and will prolong the litigation.
5. Shrinking Post Grant Review (PGR) Estoppel incentivizes infringers to prolong litigation and bankrupt an individual inventor or small business patent holder. The bill strikes "or

reasonably could have raised" from current law prohibiting petitioner from later arguing "any ground that the petitioner raised or reasonably could have raised during the post-grant review." A petitioner could effectively slow walk the PGR process by filing a PGR under one ground while holding back other grounds until the first PGR is completed. If they do not get the result they want, they can file another PGR under the ground they held back or bring it up in court. This will prolong court costs and raise attorney fees.

In the end, small inventors must have equal footing in the innovation race, not be muscled out by larger, wealthier, and better-established competitors. Our patent system deserves measured reform, not a hatchet job like H.R. 9

Rep. Marcy Kaptur is a Democrat who has represented Ohio's 9th Congressional District since 1983.

Why major firms that practice federal law oppose the Innovation Act

By THE WASHINGTON TIMES

Among the powerful voices in Washington to weigh in against the proposed Innovation Act in recent months is the Federal Circuit Bar Association, the umbrella group for lawyers who practice law in federal courts.

In a letter to House Judiciary Committee Chairman Bob Goodlatte, Virginia Republican, the group this year said the efforts to reform patent law were "well intentioned" but no longer needed now that the courts have created their own solutions for abusive lawsuit behavior. "No need now exists," the group wrote.

The proposed law, known as HR 9, as currently constructed is both "unnecessary and ... problematic," the group's executive director, James E. Brookshire, told Congress, citing recent Supreme Court rulings clarifying fees recovery standards, recent district court enforcement of the standards and proposed Judicial Conference Federal Rules amendments.

Mr. Brookshire argued that patent law issues where some abuses have occurred are complicated and best left to the courts to address, rather than an overarching legislative solution that can overlook the nuances of complex law.

"Abusive behavior, whether by so-called 'patent trolls' or anyone else, is unacceptable. It unfairly challenges America's most successful economic engine — innovation and the patent system which supports innovation," he wrote. "Our dedicated judicial officers best understand nuances, motives, tactics, and merits of the cases which come before them every day. The tool available to them — the justice of the given case — is not available with a legislative vehicle."

The group noted that the Supreme Court unanimously ruled in the last few years that concerns about patent trolls and abusive lawsuits could be effectively addressed by district judges through:

- The matter of whether fee

shifting will apply is at the discretion of the federal district judge overseeing the case.

- The prevailing party may establish its entitlement to fees by a standard of "a preponderance of evidence" rather than the stronger "clear and convincing evidence" previously used.
- District judges have the discretion to award fees that simply "stand out" from other cases in terms of substantive strength.
- The District judge's decision is reviewable at the federal circuit only for abuse of discretion, not the de novo review the federal circuit previously used. Such a solution addresses all forms of abusive lawsuits, whereas the Innovation Act addresses "only one specie of complex litigation — patent cases," the group noted.

Since the court system took matters into its own hands, the number of patent lawsuits has dropped, further indicating

there is little need for Congress to intervene now that federal judges are being proactive.

"We support the Judiciary's increased emphasis on early case management," the lawyers group wrote. "Finally, new case filings have dropped, by one count, from 6238 in 2013 to 5036 in 2014. At the same time, the post-AIA PTAB administrative docket increased (1677 in 2014). This shows a significant process shift making HR 9's proposed terms premature."

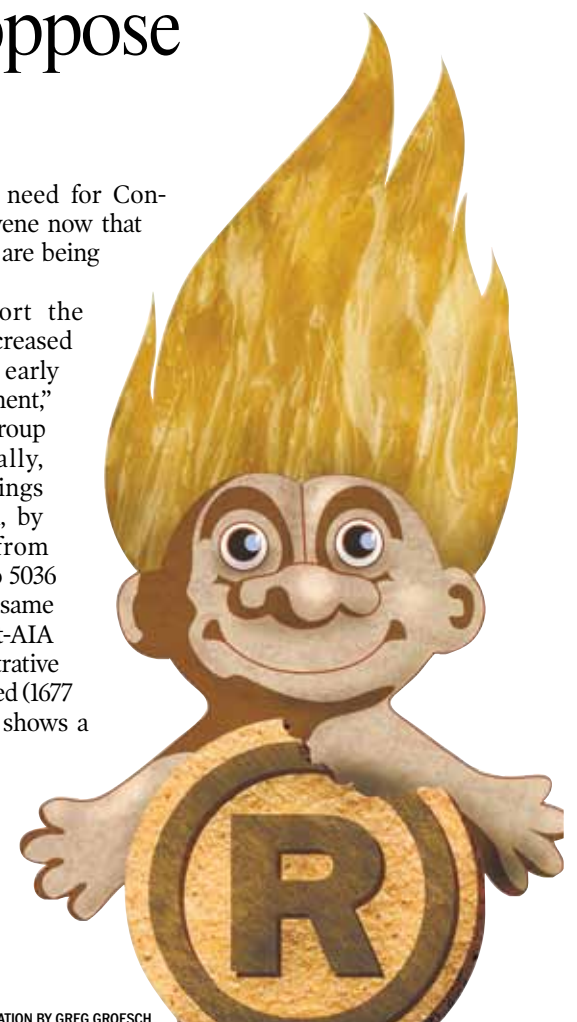


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Inventor's perspective: A less-innovative future

By Charles Sauer

In the next month, the House Judiciary Committee is poised to pass an intellectual property bill that will slow U.S. innovation to a crawl. As an entrepreneur and inventor this is a troubling prospect. The United State is currently an innovative power house. Innovation has helped us grow to a \$17.45 trillion Gross Domestic Product, and if left undisturbed we are on track to maintain our top economic position for years to come.

However, our top position isn't guaranteed, and if Congress weakens patents we are almost guaranteed to lose our top spot even sooner than anticipated.

Why is Intellectual Property so important? Property is the key to capitalism.

In 2012, China filed more patents than the United States. In fact, more patents were filed in China than any other country in the world. However, when Ronald Reagan moved into the White House the Chinese patent office had only existed for two years.

Before China implemented a patent system they needed to recognize that it was economically behind. It needed to recognize that a disdain for capitalism and its support and defense of personal

property was hurting their nation as a whole. It was, China was behind almost every other developed country including Japan. A cultural revolution later, political leaders understood that a new direction was needed, and China implemented a patent system.

China is currently on a pace to overtake the U.S. economy by 2021 according to the Economist. The Chinese are experiencing this growth by opening up their eyes to capitalism. Has China fully embrace capitalism? No. However, it has embraced property rights and is now reaping the rewards of economic growth around 7 percent of GDP. In the United States, GDP growth is more like 2.25%.

The U.S. was founded on the key tenets of capitalism. Our Founding Fathers knew that a strong patent system would help foster a high-growth economy. They also understood that one of the ways that the United States would be different from England is that here a King or Queen wouldn't and shouldn't be granted the power to dole out property rights to supporters. In the end, our founders thought that intellectual property rights were important enough to enshrine them into our Constitution.

Article 1, Section 8 "...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;..."

Property rights give the owner a reason to invest, a reason to develop, and an asset to sell. The reason is simple: it ensures the ability to protect their idea. If anyone could move into my house and the law assumed that if I, the home owner, attempted to kick them out that I would be guilty then my home would be worth a lot less.

The bill that the Judiciary Committee is planning to consider is HR. 9, the Innovation Act, and it is the same bill that the House passed last Congress. While the forecast is for less votes this year, it is still forecast to pass out of Committee and eventually the House where its destiny in the Senate is still up for grabs.

HR. 9 weakens intellectual property rights by making it harder for small businesses to assert a patent against an infringer and forcing them first to sue Chinese chip manufactures. It makes it more expensive to defend intellectual property by introducing default fee shifting. It makes it more burdensome to find investors because HR. 9 pierces the corporate veil with a provision called "joinder."

If we were to do a quick thought experiment and think about whether a bill that weakens patent rights would be good for Capitalism or economic growth, the answer comes pretty quickly.

The most troubling part of this legislation is that Congressional Republicans understand what they are doing. They have held several hearings on the bill and have failed to call even one inventor to testify. The minority has invited one: and that one inventor opposed the changes in the bill. Legislators need to listen to the small innovators in their districts. Legislators need to reach out to Universities they represent. Legislators need to ask themselves whether they want to be like pre-cultural revolution communist China and fall behind everyone else or whether they want to continue to stay on top of the economic leaderboard and accelerate the growth of the U.S. economy by supporting Intellectual property instead of harming it.

As an innovator, I hope that they choose growth, instead of less innovation.

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Charles Sauer is the president of Entrepreneurs for Growth and co-director of the Inventors Project

End of the American inventor

By Richard Baker

Individual inventors are asking Congress to defeat H.R. 9 – the Innovation Act. Yet, the House Judiciary Committee appears determined to put an end to the American inventor while refusing to hear from the very inventors that are impacted by its legislation. In the last few weeks, the Judiciary Committee held hearings on H.R. 9. Inventors see this bill as the final nail in their coffin, a concerted effort of unscrupulous corporations to destroy the U.S. Patent System. Yet House Judiciary Chairman Robert Goodlatte stacked the hearings with companies who want to take ideas from patentees without paying. Only a single small company that relies on patent protection was called to testify.

The current legislation, along with its predecessor bill, the American Invents Act (AIA) passed in 2011, are both designed to weaken the U.S. Patent System. The AIA put a heavy burden on the American economy, diminishing the value of the average patent by more than 66 percent. Where an average patent was worth about \$100,000 in 2010, after the implementation of AIA, the average price of a U.S. patent dropped to \$30,000.

(It costs \$20,000 to obtain a patent). For independent inventors who make their living creating new products and features, the impact has been devastating. Many lost their businesses as large companies took their patented ideas without paying. And many more lost their patents to a proceeding called an Inter Partes Review (IPR), a patent death squad created by the AIA legislation.

To use an analogy, this is similar to the buyers of stolen cars arguing with the government to invalidate the titles to automobiles. Caught with a hot car in their hands, these companies are arguing that the real owner's title is not valid. And the House Judiciary committee only wants to hear from the thieves, inviting only one "car owner" to the hearing.

For a large company today, there is almost no incentive to respect patents. In the past decade, the courts have made it virtually impossible to get an injunction; thus nearly impossible to stop a company using a patented invention. In our auto analogy, the car owner can no longer prevent the thief from driving the stolen car.

Our modern courts have decided that the infringing companies need only pay a reasonable royalty for the patents they

use. In auto terms, the thief must only pay the blue book value for the car he stole. This means that the worst case the thief must pay retail price as a penalty, if he gets caught.

And yet, the thieves are arguing to Congress that it is unfair that they have to pay even that minimum amount. The tactic in the AIA legislation was to set up an administrative proceeding to invalidate any patent that the infringing companies did not like. The IPR proceeding, as it is called, takes 83 percent of the patents away from their rightful patent owners. In the auto analogy, this means that if your car is stolen and you catch the thief, he has an 83 percent chance of revoking your title to your car.

But even this is not enough for the patent thieves. Not satisfied with the ability to take away almost every patent from inventors, their congressional allies are now bullying H.R. 9 through Congress, to further punish the inventor who put his money, time, and brainpower into creating new products for the American consumer. This bill allows the thief, if he wins in court, to also take an inventor's house and retirement away to pay the corporation's legal bills.

And the House Judiciary Committee

is intent on passing H.R. 9 without giving all sides a chance to speak. The hearings lawmakers held included testimony from a number of large companies who benefit from weak patent protection, and only one small company that relies on a patented invention. Goodlatte called no one from the individual inventor community. No one from the university research community. No licensing executives, no patent litigators, no angel investors, and not even a patent enforcement company, the supposed target of this legislation. This is as if Congress only wanted to hear from car thieves and their customers, and ignored the car owners, manufacturers, dealers, and auto mechanics as they debated a law outlawing automobile titles.

As an inventor on 19 U.S. patents, I am deeply troubled that the House Judiciary Committee is more concerned about corporations that want to knock off my inventions than my rights as an owner of my intellectual property.

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Richard Baker is the president of New England Intellectual Property LLC and a member of Entrepreneurs for Growth.

Why Carly Fiorina opposes the Innovation Act

‘We are fixing problems that don’t exist. We are boiling the ocean.’

By The Washington Times

Carly Fiorina, a likely Republican presidential candidate and former CEO of Hewlett-Packard, has become one of the most vocal critics of the proposed Innovation Act, repeatedly warning that it could harm the innovation cycle of America.

Her arguments have drawn upon her experience as a former technology executive and her allegiance to the principles of the Constitution, which she defends as chairwoman of the American Conservative Union Foundation.

During a March 4 speech, Ms. Fiorina laid out her concerns with the proposed legislation. Here are some excerpts that illuminate the arguments she has made:

My story, a young woman sort of with no plans, not a great resume, getting the opportunity to go from secretary to CEO of the largest technology company in the world. That story is only possible here. And I’ve traveled and lived all over the world, done business all over the world, and it is still true that my story is possible here and only here. And it is because truly of the genius of our Founding Fathers who were willing to protect certain truths, who were willing to protect what they call certain inalienable rights. Our founders knew that everyone has God-given gifts, that everyone has potential, and they wanted to put in place a system that permitted people to fulfill their potential.

So what does that have to do with patent reform? When our founders wrote the Constitution, they coupled this idea of everyone having God-given gifts, everyone having potential, everyone having the right to fulfill their potential and that right coming from God not being taken away by man or government. They added to that the idea that you own the product of your labors. That you own the output of your gifts. And they said, if you work hard and imagine something in your mind and build something with your hands, you own it. It was, once again, a fairly radical visionary idea, and it is why our founders had the foresight to talk about intellectual property and patent protection all those many hundreds of years ago.

So, as we are talking about patent reform, let us not forget how impactful that incredibly important insight has been in

our nation’s history. Our nation has thrived because this is the country where virtually everything worth inventing has been invented. Think about the inventions that have occurred here. Think about the revolutionary inventions that were invented here, by people here. And the reason it happened here is because people understood that they would get to benefit. That the world would benefit from their inventions but that they would also get to benefit from the investment of their time and their talent and their treasure in creating something.

We have a lot of great big companies in this country, and we are very proud of them. I was the chief executive officer of Hewlett-Packard for six years, and in that time we took it from \$45 billion to

companies are and big capital is to our economy, to job creation, to invention ... the small inventor, the individual entrepreneur is even more important, and we need to think about that as we discuss patent reform.

So now let’s come to another reality of our current economy. Crony capitalism is alive and well. What is crony capitalism? Crony capitalism is when big government and big business work together to make it harder for everyone else. You will hear many liberals say things like “Only big government can check big business.” But that’s exactly wrong because big government and big business enable and protect each other. Why do I say that? Because if you’re Hewlett-Packard and you are trying to deal with the com-

legislation was created with the cooperation of all the big banks who were trying to figure out how to protect their competitive position. What was the result of Dodd-Frank? A huge complicated bill accompanied by tens of thousands of pages of regulation. We have 10 banks too big to fail who have become five banks too big to fail, and no matter how much those five banks complain, the truth is their competitive position is stronger today than it was five years ago.

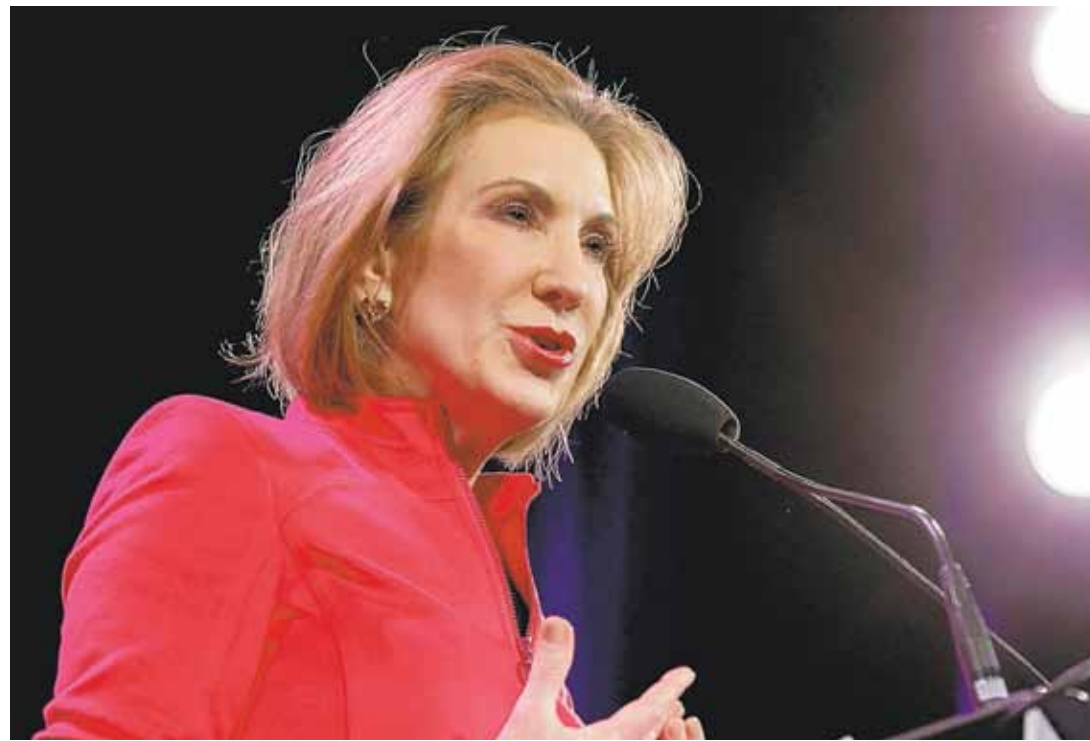
What happened with the Affordable Care Act? A problem was identified and the ocean was boiled. And the ocean was boiled because everyone who was going to get impacted by that legislation all came to town to help write that legislation to solve what was

your advantage.

And that is what we have sadly now, with the Innovation Act. We have a set of people who believe that there is a real problem. There are some real problems. There are people who are committing fraud with patents. We have solutions for that. We have the court system. There was targeted legislation, called the Troll Act, in the House that would have taken a look at that very specific problem. But people were not content with that. People decided it was time to boil the ocean. And, frankly, what happens frequently people hope you don’t read the fine print. Watch carefully who is supporting that legislation. It’s not the small; it’s the big. It’s the big companies whose ongoing economic benefit depends upon their ability to acquire innovations and patents at a lower cost. If the Innovation Act were law tomorrow, Thomas Edison would be a patent troll. Some of our greatest inventors would be patent trolls under this law. Our universities would be patent trolls. We are fixing problems that don’t exist. We are boiling the ocean.

I think we have the greatest economic and innovation engine in this nation in history. And if you doubt that, pause and think about these: the iPhone, Google, Facebook. The iPhone was first introduced to the marketplace in 2007. And in less than a decade, our entire world has changed. In less than a decade we are now sitting at a point in human history unlike any other, because for the first time in human history any person, anywhere, can gain access to any piece of information they choose and communicate with anyone else they choose at the time and place of their choosing. It is revolutionary, and that reality will spawn many, many, many more inventions. It will create many more entrepreneurs, it will give so many more people the opportunity to find their God-given gifts and to build lives of dignity and purpose and meaning, but we can stop it. We can crush it.

The thing that always crushes that incredible power of individualism and invention and entrepreneurship is big, complicated, bloated bureaucracy. Let us be humble and cautious before we decide to boil the ocean and solve problems that maybe don’t need legislators to resolve them.



\$90 billion. But Hewlett-Packard started as an idea of two guys in a garage. Google started with two guys in a dorm room, and the list goes on and on. And, in fact, it has been the small companies, the individual inventors and entrepreneurs who have had the biggest impact on our economy. It is true that small and new businesses create two-thirds of the new jobs in this country. And small and new businesses innovate at seven times the rate of big businesses.

One of the drugs that saved my life, and has saved the lives of millions and millions of women, was invented by a single entrepreneur. So as important as big

complexity of regulation and legislation and the tax code, you might not like it but you can handle it. You can hire the accountants and the lawyers and the lobbyists to try and influence that to your advantage.

But let’s back up and talk about a couple of other pieces of legislation that have followed a similar pattern to what frankly I believe is going on with the Innovation Act. Let us start with Dodd-Frank. Dodd-Frank came about because people identified a problem and the problem was consumers have been harmed in the financial crisis. And so a big, huge, complicated piece of

told to us at the time was a very targeted problem. People with pre-existing conditions aren’t getting covered, real problem. People can’t afford health insurance. Real problem. Let’s boil the ocean. What’s the result of that? The result is a piece of legislation that is longer than a Harry Potter novel. Of course, no one’s read it. It’s also accompanied by tens of thousands of pages of regulation. It’s too complicated for anyone to understand it. But if you have the resources to hire lots of lobbyists and lots of accountants and lots of lawyers, you’re going to figure out how you can use that brand new complicated set of rules to



By DAVID KEENE

THE WASHINGTON TIMES

In a divisively partisan Washington, politicians and pundits lament the lack of bipartisanship, compromise and a willingness to put aside partisan and ideological interests in the name of the common good. It is true that major policy initiatives are often derailed by partisan or ideological differences, but before condemning the failure to compromise out of hand, it is necessary to determine whether the differences are petty or justifiable.

History tells us that major, or what Washington politicians like to call “comprehensive,” reform requires the development of a bipartisan consensus and compromise to win public as well as congressional and presidential support. Truly significant “comprehensive” legislation that is rammed through Congress without such support often creates more problems than it solves and gets its supporters into political trouble. The successful bipartisan civil rights bills of the 1960s and President Obama’s Affordable

Care Act are examples of the two approaches.

There are a number of ways reforms attract bipartisan support. They can make so much sense that Republicans, Democrats, liberals and conservatives find themselves actually agreeing with one another on the merits. The president’s view of bipartisanship is a bit different. He believes his opponents should join him or face rhetorical beatings as obstructionists — a strategy that sometimes attracted weak-kneed types willing to surrender principle so they could look like the kinds of folks content to sit before the campfire with their opponents, holding hands and singing kumbaya.

Then there are bipartisan proposals forged by special interests willing to spend as much as they might have to get what they want. The “comprehensive” patent law reform proposals working their way through Congress might serve as poster children for this sort of bipartisanship. There are problems with our current patent laws that haven’t been updated in decades, and Congress is rightly focused on perhaps tweaking them to fix those problems and especially

to make it more difficult for “trollers,” who scam the system by threatening businesses large and small with lawsuits claiming patent infringement unless they pay them to go away.

But some see an opportunity to turn the need for a limited “fix” into an opportunity to push through the sorts of “comprehensive” reforms that would increase their bottom lines. Chief among those trying to do just that is Google, which spent something approaching \$17 million last year lobbying with “comprehensive” patent reform at the top of the com-

pany’s executives are to be found everywhere within an administration solidly behind the sort of “reform” Google lusts after.

Republicans, meanwhile, see a problem that needs to be solved, a chance to attract some of the money now going to Mr. Obama and his friends and a way to share the thrill of a bipartisan moment. As a result, a bipartisan comprehensive patent reform proposal is working its way through Congress and could end up on Mr. Obama’s desk for all the wrong reasons.

“Comprehensive” proposals that would completely rewrite our laws are prone to producing potentially dangerous unforeseen consequences and should set off warning sirens whenever they appear. This is especially true when industry giants are

spending millions of dollars to win their passage. Congress should address the problem that needs fixing while refraining from the temptation to rewrite patent laws that have sparked innovation and largely protected the property rights of our most creative citizens, no matter how much Google spends or how badly Republicans crave a

bipartisan moment.

Former Ohio Secretary of State Ken Blackwell summed up the danger of compromising one’s principles to look accommodating in a letter to conservatives and lawmakers on this subject last month. “Rushing to pass bad legislation,” Blackwell wrote, “just so we can demonstrate a willingness to work with the White House is not the path to take.”

On the other hand, there are very real problems in this area that Congress ought to address. The problem is devising a reasonable approach to solving them without throwing out a system that has and continues to work pretty well in the name of reform. Fortunately, there are those in both parties taking a serious look at the problem with an eye to doing just this rather than either exaggerating or dismissing the concerns of innovators, small-business owners and consumers.

Democrats like Sen. Chris Coons of Delaware are hoping to avoid the pitfalls of comprehensive proposals that could play into the hands of big players out to gain competitive advantages over those without the resources or clout to game the system. He and others looking to improve a patent system that has served the nation well deserve our support as they tackle truly difficult problems. His proposed legislation may not be perfect, but at least he is on the right track.

There are problems with our current patent laws that haven’t been updated in decades, and Congress is rightly focused on perhaps tweaking them to fix those problems and especially to make it more difficult for “trollers,” who scam the system by threatening businesses large and small with lawsuits claiming patent infringement unless they pay them to go away.

pany’s wish list. An investment of that size should be enough to get members to question how Google defines “comprehensive,” “reform” and “good public policy.”

In addition to spending millions of dollars on lobbying, Google executives contributed \$800,000 to President Obama’s political campaign coffers, and

Conservative groups, academics oppose Innovation Act bill pressure GOP to block legislation

By THE WASHINGTON TIMES

Conservatives and many academics are stepping up their opposition to a Republican-backed patent-reform bill in Congress that they warn will trample on American inventors’ rights in the name of stopping frivolous lawsuits.

Two dozen prominent conservative political groups, led by the influential American Conservative Union, the Club for Growth and the Eagle Forum, sent a letter earlier this year to House Speaker John A. Boehner, Senate Majority Leader Mitch McConnell and the Democratic leadership seeking to block floor votes

on the so-called Innovation Act.

The bill is being shepherded through Congress by Republican Reps. Bob Goodlatte of Virginia, chairman of the House Judiciary Committee, and Darrell E. Issa of California to reform patent laws and diminish the rise of “patent troll” lawsuits, in which parties seek to win money for infringements of obscure patents.

But the conservative groups argue the bill, which is backed by Google, goes far beyond what is necessary to address the litigation issue and instead creates a big-government solution that could infringe on inventors’ rights and actually increase legal

disputes.

The current version of the legislation “would weaken American patents and the ability of innovators — particularly independent inventors — to secure their constitutionally guaranteed right to their inventions and discoveries,” the conservative groups argued in their letter.

“While sponsors and proponents of this legislation claim it is designed to curb abusive tactics in patent litigation, the bill would in fact increase litigation at the expense of innocent inventors,” the letter added. “The bill’s overly broad provisions apply to all litigants seeking

to assert patents, not just ‘patent trolls,’ and as a result will severely undercut the ability of inventors to enforce their intellectual property rights, ultimately devaluing patents, stifling American innovation, and diminishing our global competitiveness.”

The intraparty dispute has raged for weeks, surfacing at February’s Conservative Political Action Conference in Washington, where 2016 presidential contender Carly Fiorina led the charge against the legislation in a series of speeches and visits with conservatives.

Across the political aisle, Sen.

Christopher A. Coons, Delaware Democrat, is offering an alternative patent-reform solution that is narrower in scope and may draw some Republican support.

Economists and lawyers, likewise, have made some objections to the bill, suggesting it may create new problems in an effort to fix a current concern.

“Legislation that substantially raises the costs of patent enforcement for small businesses risks emboldening large infringers and disrupting our startup-based innovation economy,” 40 academics argued in a letter to Congress.

The Honorable John Boehner
The Honorable Mitch McConnell
The Honorable Harry Reid
The Honorable Nancy Pelosi

Dear Speaker Boehner, Senators McConnell and Reid, and Rep. Pelosi:

As advocates for a strong, innovative America, we write to express our opposition to the patent revision legislation proposed by House Judiciary Committee Chairman Bob Goodlatte and Rep. Darrell Issa. H.R. 9, the so-called “Innovation Act,” would weaken American patents and the ability of innovators — particularly independent inventors — to secure their constitutionally guaranteed right to their inventions and discoveries.

While sponsors and proponents of this legislation claim it is designed to curb abusive tactics in patent litigation, the bill would in fact increase litigation at the expense of innocent inventors. The bill’s overly broad provisions apply to all litigants seeking to assert patents, not just “patent trolls,” and as a result will severely undercut the ability of inventors to enforce their intellectual property rights, ultimately devaluing patents, stifling American innovation, and diminishing our global competitiveness. This bill is the intellectual property infringer’s best friend.

Of further concern is the reason this bill is being catapulted forward. Some companies need to use others’ patents in their products, and they want to pay as little as possible for the right to these patented inventions. While that may make good business sense for them, it makes no sense for America, if lowering the licensing costs of a patent come by way of patent infringement, piracy, unfair competitive practices, artificially devaluing a patent, or reducing the ability to defend one’s patent through our legal system. China is already eating our lunch, stealing our patented inventions and harassing American companies with Chinese facilities. Why would we want to willingly give up the competitive edge we enjoy in incentivizing innovation through the strongest IP regime in the world? Surrendering our innovation advantage to China makes absolutely no sense.

In short, the Goodlatte-Issa bill, if enacted, will erode private property protections grounded in Article I, Section 8 of the Constitution: “The Congress shall have Power ... [t]o 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.” The Founders rightly recognized the importance of intellectual property and its protection as vital to innovation. We must preserve a strong patent system that promotes the right of innovators and inventors to protect their ideas, not diminishes their value and disincentivizes investment.

We urge a scalpel, not a cleaver, in addressing patent revision legislation. We have all seen the impact of Washington approaching every problem with another sweeping overhaul that “fixes” everything instead of addressing specific problems. We ask that you support innovation and a strong patent system by opposing the “Innovation Act” and stopping any such bill from reaching the floor.

Sincerely,

Phyllis Schlafly
 Founder and President
 Eagle Forum

Charles Sauer
 President
 Entrepreneurs for Growth

Susan A. Carleson
 Chairman/CEO
 American Civil Rights Union

C. Preston Noell, III
 President
 Tradition, Family, Property, Inc.

Robert W. Patterson
 Opinion Contributor
 Philadelphia Inquirer

Jim Backlin
 Christian Coalition of America

Dee Hodges
 President
 Maryland Taxpayers Association

Nadine Maenza
 Executive Director
 Patriot Voices

Dan Schneider
 Executive Director
 American Conservative Union

David McIntosh
 President
 Club for Growth

James Edwards
 Co-Director
 The Inventor’s Project

Paul Caprio
 Director
 Family Pac Federal

Ron Pearson
 President
 Council for America

Peter J. Thomas
 Chairman
 Americans for Constitutional Liberty

Richard and Susan Falknor
 Publishers
 Blue Ridge Forum

Colin A. Hanna
 President, Let Freedom Ring
 Co-Chair, The Weyrich Lunch

Hon. J. Kenneth Blackwell
 Visiting Professor
 Liberty University School of Law

Kevin L. Kearns
 President
 U.S. Business & Industry Council

Seton Motley
 President
 Less Government

Sandy Rios
 Director of Governmental Affairs
 American Family Association

Ambassador Henry F. Cooper
 Former Director
 Strategic Defense Initiative

Richard A. Viguerie
 Chairman
 ConservativeHQ.com

Cherilyn Eager
 President
 American Leadership

Ned Ryun
 Founder and CEO
 American Majority



By CHARLES J. COOPER

In three great phases, America's economy has been transformed. Before the Civil War, we were a nation where agriculture was the dominant economic driver. Between the Civil War and the 1960s, America became the most powerful manufacturing economy in the world. Beginning in the 1960s, America's dominance in aerospace and computing technology remade the world economy in the most fundamental way. Through it all, America's Constitution and laws have provided risk-takers, visionaries, and other men and women with valuable ideas a fundamental protection for their work: the patent.

More than 200 years ago, the framers of the Constitution saw the value of protecting the works of America's inventors, innovators and builders: "The Congress shall have Power 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." They recognized that work, even before the Industrial Revolution, didn't just include the sweat of a man's brow, but the value of ideas, concepts and intellectual vision. They viewed the patent as a property right, held by the inventor and protected by the government.

Now, that crucial private property right and the innovation it drives could be put at risk if special interests in Washington have their way. American innovation in software, information technology, biomedical research and a host of other fields that represent the future of the U.S. economy would be put in grave peril by a special-interest scheme that will have devastating economic consequences.

Unfortunately, some conservatives have joined with President Obama to put the future of innovation in danger with ill-considered and ideologically driven patent "reform" proposals. In the early days of the new Congress, some conservatives may

Congress shouldn't undo patent protections the Founding Fathers so wisely created

abandon their long-held views on the value and importance of private property rights and join hands with Mr. Obama to try to enact a bill that will weaken property rights and disrupt the patent system enshrined in our Constitution.

There's a reason we use the phrase "intellectual property" when we talk about patents. The word "property" is the key. An inventor is no different from the owner of any other kind of property. Like physical property, patents can be bought, sold or utilized by the owner as he or she sees fit. Like physical property, intellectual property should rest in the hands of its creator and owner.

Unfortunately, the debate over this bill has morphed into one about "tort reform," as advocates claim that this is some strike against the trial bar. However, this debate is not about tort reform — it is about defending property rights, and on that we cannot give ground. Because a patent is property, patent infringement amounts, no more and no less, to trespass. The owner of intellectual property, no less than the owner of a home, must have the legal right and practical ability to protect his or her property by ejecting those who invade that property without invitation or authorization. Weakening the right to defend one's property right is not tort reform. In fact, there is great likelihood that this legislation will only prolong litigation and make it costlier.

Some people argue that this so-called reform is designed to stop a few opportunistic "patent trolls" from unleashing a flood of

litigation. They claim that such "trolls" do not make productive use of their patents themselves, but instead use the patents to harass businesses into inefficient licensing arrangements

example, lease it to others to plant and harvest, but no one would call such a landowner a farming "troll" for objecting to the presence of trespassers on his property.

differentiate such entirely legitimate and productive uses of intellectual property from actions that truly amount to abuse of the patent system. Their "reforms," therefore, threaten to trample property rights and to stifle the types of innovation that fuel the 21st-century economy.

In any event, there are ways to fight so-called "patent trolls" that are more targeted and more effective than the kind of sweeping, reckless revision argued for by Mr. Obama and his allies. In fact, the Supreme Court and the Judicial Conference in a number of decisions and rule changes have already tightened patent litigation, addressing the bad lawsuits that proponents of this approach claim to be concerned about. Patent litigation is actually down significantly since last year, according to a number of analyses.

We must tread carefully as the unintended consequences of this legislative approach will have economic ramifications that could cripple American innovation and drive new technology development overseas to nations where property rights are not protected.

We're faced with a clear choice: either we honor the protections that have helped inspire and motivate the most dynamic technology innovation in the history of the world, or we send a message to the inventors and innovators of the future that their work, their vision and their entrepreneurial commitment are free for anyone to take, to use and to profit from.

Charles J. Cooper is founding partner of the Washington law firm of Cooper & Kirk, PLLC.



ILLUSTRATION BY GREG GROESCH

and nuisance-value settlements. This argument is specious and false.

Again, one of the inherent features of any type of property is the owner's right to use, sell, rent, license or otherwise dispose of that property as he or she sees fit. Some owners of farmland, for

Intellectual property is and should be no different in this regard. The fact that some patent owners do not themselves directly practice their invention, but instead license others to do so, often leads to the most efficient utilization of resources in our economy. The proponents of patent "reform" have not made a serious effort to



By Rep. Thomas Massie

At the Northern Kentucky Regional First Lego League Robotics tournament in December, I marveled at the imagination and creativity displayed by so many young people. In these students, I saw the spirit of ingenuity and a culture of invention that have been critical to our nation's economic success for over two centuries. I was reminded of the competitions I participated in as a young inventor, and of the American spirit of innovation that inspired me to obtain

Why Congress should resist tinkering with Founding Fathers' blueprint for patents

29 patents.

I often think about these young inventors when we debate so-called patent reform in Congress. About a year ago, the House of Representatives passed a bill called the Innovation Act. As a patent holder, I was deeply concerned about the consequences of this bill, which was rushed to the House floor without adequate debate. Fortunately, the bill did not pass the Senate.

The Innovation Act threatens American inventors, particularly individual inventors and those working at small businesses and startups. The bill attempts to "fix" a few isolated abuses of the patent system, but instead it sets forth a comprehensive overhaul of the legal framework

that compromises the rights of all legitimate inventors.

Perhaps the most troubling aspect of the Innovation Act is the "customer stay provision," which makes it easier for corporations to continue shipping products even if a court finds reason to believe those products contain stolen inventions. When deciding whether to pay a fair license fee to the rightful inventors, or whether to steal a patented idea and risk a lawsuit, it is the threat of lost revenue that keeps the big companies honest.

In Article 1, Section 8 of our Constitution, the Founding Fathers (some of whom were inventors themselves), gave Congress the authority to protect ideas. Inventors like myself rely on this protection as we create

products. Without the strong congressional protection mandated by our Constitution, inventors and the investors who back them will lose confidence that their work and ideas will be safeguarded. This loss of confidence will cause invention and investment to wither.

Our system of patent protection is what sets the United States apart from nations like China and India. In those countries, theft of intellectual property is rampant, statutory protections for intellectual property are weak or nonexistent, and courts are notoriously hostile to small inventors. If we water down our patent system and give up our competitive advantage, America will cease to be a global hub for innovation.

If Congress recklessly weakens our patent system by pushing through a bill similar to last year's Innovation Act, inventors' very livelihoods will be threatened. Inventors will stop inventing, and as the role models for young inventors quietly fade into history, fewer young students will pursue this rewarding career path. A decade from now, Congress will lament the lack of interest among our nation's youths in subjects like science, technology, engineering and mathematics, arrogantly unaware that Congress itself destroyed it.

.....
Thomas Massie is the Republican U.S. representative for Kentucky's 4th Congressional District.

Venture capitalists fear Innovation Act would chill economic investment, growth

By THE WASHINGTON TIMES

Some of the nation's powerful venture capitalists are also some of the biggest opponents of the proposed Innovation Act, seeing a real threat to a free market economy in the changes envisioned by the law.

The National Venture Capital Association put its concerns on record back in February, dispatching a respected intel-

legislation.

"Let me say frankly at the outset, we are concerned that H.R. 9, if enacted as written, will have a chilling effect on investment in patent-intensive companies, which in turn will have a depressing effect on innovation in general," Mr. Taylor testified. "At the very least, the legislation will make it far more difficult, risky and expensive for

years ago about legislation like the Innovation Act - abuses by so-called patent trolls who file frivolous lawsuits - have since been dealt with effectively through fixes implemented by the federal courts and the U.S. Patent & Trademark Office.

If lawmakers still feel it necessary to address possible abuses, he pleaded with them to narrowly focus on specific behaviors rather than a massive rewriting of patent protections.

"Innovation does not take place in a vacuum," Mr. Taylor argued. "It requires entrepreneurs willing to devote time and resources to pursue visions and new ideas. It requires investors willing to invest time and money in developing those innovative new ideas."

"Venture capitalists work closely with entrepreneurs and innovators to transform breakthrough ideas into emerging growth companies that drive U.S. job creation and economic

"Let me say frankly at the outset, we are concerned that H.R. 9, if enacted as written, will have a chilling effect on investment in patent-intensive companies, which in turn will have a depressing effect on innovation in general," Mr. Taylor testified.

lectual property lawyer to Congress to make its case against the bill, H.R. 9.

Robert P. Taylor, of RPT Legal Strategies, told the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet that venture capitalists rely on inventors - big and small - to drive the innovation that grows the economy. That cycle, he said, would be put at risk by the proposed

emerging companies to enforce their patents, which is an essential part of the patent right.

Mr. Taylor also warned that the law "will raise the cost and risk confronting smaller companies trying to defend against patent litigation brought by their larger, incumbent competitors."

Mr. Taylor told the committee that the initial concerns that prompted discussion a few

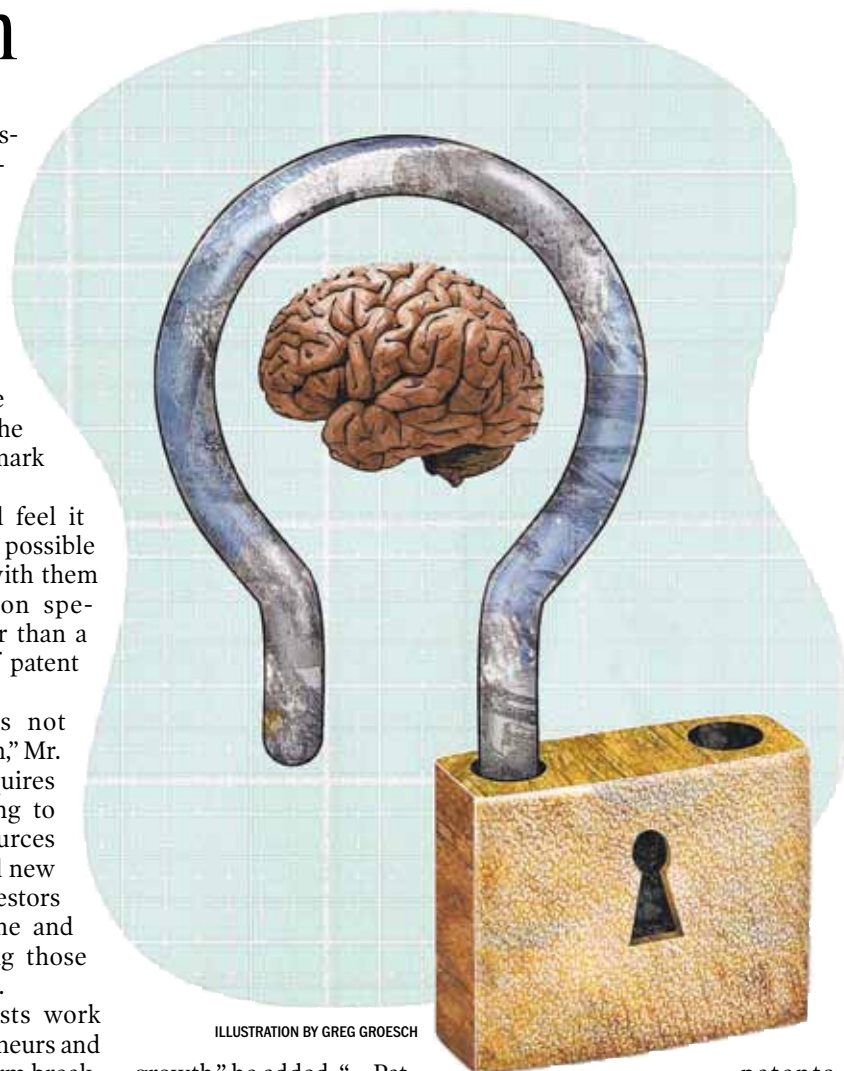


ILLUSTRATION BY GREG GROESCH

growth," he added. "....Patents are critical to innovation in many industries and a company's ability to enforce its

patents at reasonable expense and risk is an essential element of such rights."

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers:

As economists and law professors who conduct research in patent law and policy, we write to express our deep concerns with the many flawed, unreliable, or incomplete studies about the American patent system that have been provided to members of Congress. Unfortunately, much of the information surrounding the patent policy discussion, and in particular the discussion of so-called “patent trolls,” is either inaccurate or does not support the conclusions for which it is cited.

As Congress considers legislation to address abusive patent litigation, we believe it is imperative that your decisions be informed by reliable data that accurately reflect the real-world performance of the U.S. patent system. The claim that patent trolls bring the majority of patent lawsuits is profoundly incorrect. Recent studies further indicate that new patent infringement filings were down in 2014, with a significant decline in non-practicing entity (NPE) case filings. Unfortunately, these facts have gone largely unnoticed. Instead, unreliable studies with highly exaggerated claims regarding patent trolls have stolen the spotlight after being heavily promoted by well-organized proponents of sweeping patent legislation.

Indeed, the bulk of the studies relied upon by advocates of broad patent legislation are infected by fundamental mistakes. For example, the claim that patent trolls cost U.S. businesses \$29 billion a year in direct costs has been roundly criticized. Studies cited for the proposition that NPE litigation is harmful to startup firms, that it reduces R&D, and that it reduces venture capital investment are likewise deeply flawed. In the Appendix, we point to a body of research that calls into question many of these claims and provides some explanation as to the limitations of other studies.

Those bent on attacking “trolls” have engendered an alarmist reaction that threatens to gut the patent system as it existed in the Twentieth Century, a period of tremendous innovation and economic growth. Indeed, award-winning economists have linked the two trends tightly together, and others have noted that it is exactly during periods of massive innovation that litigation rates have risen. We are not opposed to sensible, targeted reforms that consider the costs created by both plaintiffs and defendants in patent litigation. Yet, tinkering with the engine of innovation—the U.S. patent system—on the basis of flawed and incomplete evidence threatens to impede this country’s economic growth. Many of the wide-ranging changes to the patent system currently under consideration by Congress raise serious concerns in this regard.

That these proposed changes to the patent system have not been supported by rigorous studies is an understatement. We are very concerned that reliance on flawed data will lead to legislation that goes well beyond what is needed to curb abusive litigation practices, causing unintended negative consequences for inventors, small businesses, and emerging entrepreneurs. It is important to remember that inventors and startups rely on the patent system to protect their most valuable assets. Legislation that substantially raises the costs of patent enforcement for small businesses risks emboldening large infringers and disrupting our startup-based innovation economy. If reducing patent litigation comes at the price of reducing inventors’ ability to protect their patents, the costs to American innovation may well outweigh the benefits.

As David Kappos, the Director of the Patent Office from 2009 to 2013, stated in 2013 testimony before the House Judiciary Committee, “we are not tinkering with just any system here; we are reworking the greatest innovation engine the world has ever known, almost instantly after it has just been significantly overhauled” by the America Invents Act in 2011. “If there were ever a case where caution is called for, this is it.” As Congress addresses this important issue, we hope you will demand empirically sound data on the state of the American patent system.

Sincerely,

Michael Abramowicz
George Washington
University Law School

Martin J. Adelman
George Washington
University Law School

Andrew Beckerman-Rodau
Suffolk University Law School

David C. Berry
Western Michigan University
- Cooley Law School

Ralph D. Clifford
University of Massachusetts
School of Law

Christopher A. Cotropia
University of Richmond
School of Law

Gregory Dolin
University of Baltimore
School of Law

John Duffy
University of Virginia School of Law

Richard A. Epstein
New York University School of Law

Chris Frerking
University of New Hampshire
School of Law

Damien Geradin
EdgeLegal
George Mason University
School of Law

Richard S. Gruner
John Marshal Law School

Stephen Haber
Stanford University

Timothy R. Holbrook
Emory University School of Law

Chris Holman
UMKC School of Law

Ryan Holte
Southern Illinois University
School of Law

Gus Hurwitz
Nebraska College of Law

Jay P. Kesan
University of Illinois College of Law

B. Zorina Khan
Bowdoin College

Anne Layne-Farrar
Charles River Associates
Northwestern University
School of Law

Stephen M. Maurer
University of California at Berkeley
Goldman School of Public Policy

Damon C. Matteo
Fulcrum Strategy
Tsinghua University in Beijing

Michael Mazzeo
Northwestern University Kellogg
School of Management

Adam Mossoff
George Mason University
School of Law

Sean O'Connor
University of Washington
School of Law

Kristen Osenga
University of Richmond
School of Law

Jorge Padilla
Compass Lexecon

Lee Petherbridge
Loyola Law School, Los Angeles

Michael Risch
Villanova University School of Law

Mark Schultz
Southern Illinois University
School of Law

David L. Schwartz
IIT Chicago-Kent College of Law

Ted Sichelman
University of San Diego
School of Law

Brenda M. Simon
Thomas Jefferson School of Law

Matthew Laurence Spitzer
Northwestern University
School of Law

Daniel F. Spulber
Northwestern University Kellogg
School of Management

David J. Teece
University of California at Berkeley
Haas School of Business

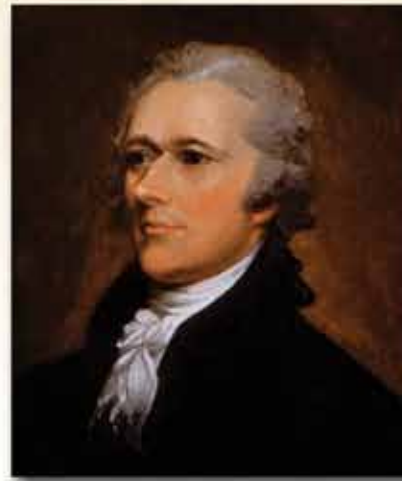
Shine Tu
West Virginia University
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R. Polk Wagner
University of Pennsylvania
Law School

Brian Wright
University of California at Berkeley

Christopher S. Yoo
University of Pennsylvania
Law School

WHY SECOND GUESS THE FOUNDING FATHERS?



Defeat The Innovation Act

The Federal Circuit Bar, more than 2,000 universities, scores of conservative groups and more than 400 venture capital firms can't be wrong. And the Founding Fathers certainly weren't. Let's not mess with the patent protections in the Constitution. Defeat the Innovation Act before it become a big government mess that crushes small inventors at the heart of America's innovation cycle.

Dana Rohrabacher
U.S. Representative

