Protect Inventors
Preserve Innovation

Leadership needed to undo attacks on patent rights

By Rep. Jim Jordan and Joshua D. Wright

Intellectual property rights are fundamental to the type of economic growth, competition and innovation that our economy requires to thrive and to increase the standard of living for all. Strong IP rights — and patents in particular — are critical to the success of ideas and products. This is true whether they come from the individual inventor in his garage or the largest company competing in the global marketplace.

Yet, the Obama administration's antitrust agencies are attacking patent rights at a time when the stakes for the American economy are the highest. President Obama's Federal Trade Commission (FTC) and Department of Justice (DOJ) have been leading a coordinated and sustained effort to devalue patents. This threatens the incentives for innovation and entrepreneurship that drive economic growth.

Today's anti-patent efforts threaten to unravel a Clinton-era bipartisan and sound economic approach to establishing when antitrust laws should place limits on patents and when they should not. It also undermines the credibility of the United States when it fights other countries, especially those in Asia, for the intellectual property rights of American businesses.

The attack on patent rights is fueled in part by academics. Professors and researchers have begun to argue — without evidence — that strong property rights hinder economic growth. These academics claim that antitrust agencies and courts should place greater limits on patents because of the fear of so-called "patent holdup" — the threat of exercising one's property right by blocking infringers in court in order to extract higher licensing rates. Because of this, some call for special antitrust rules to apply to business relationships involving patents.

If patent holdup were a widespread issue, then strengthening antitrust laws might be warranted. But the evidence shows it only happens occasionally. And existing contract and patent laws already govern it when it happens. There is no need to put antitrust laws on steroids when existing laws are adequate.

The Obama administration's FTC and DOJ have continuously assaulted patent rights — even threatening to sue patent holders who try to enforce their property rights in a court of law. These threats discourage innovators and prevent patent holders from protecting their rights. Even worse, by devaluing patent rights, these new antitrust limits will likely weaken the incentive for American firms to innovate, to license and commercialize their ideas, and to bring inventions to consumers.

The stakes are high, not just in the United States but globally. There is a disturbing trend among nations around the world to use antitrust laws to devalue IP rights. This trend includes the increasing use of antitrust measures to defend nationalist goals instead of competition and consumers. For example, last year, China's antitrust authorities flexed their muscle by imposing a near-billion-dollar antitrust fine against a leading U.S. developer of wireless communications technologies for its patent-licensing practices. Since then, several countries have followed suit, announcing their intentions to adopt or impose antitrust rules that would diminish the value of patents essential to interoperability standards, such as the 3G and 4G standards critical to innovation in wireless markets.

The United States can and should play an important role to curtail this trend. In the 1990s, the U.S. FTC and DOJ took the lead in renouncing anti-innovation policies in favor of a more analytical approach that rejected special antitrust rules and presumptions against intellectual property. That leadership is required once again to undo the Obama administration's policies devaluing IP rights in the United States. We need to defend IP rights at home if we wish to speak credibly about their importance in China, Korea, Taiwan and around the globe.

If the United States is to once again take its place as the global leader in antitrust policy that protects consumers and innovation — rather than coddles national champions and special interests — it must return to embracing intellectual property rights. We must have the courage to carry that message proudly and without equivocation to antitrust agencies around the world. Now more than ever, they need to hear it.

Jim Jordan is the Republican U.S. representative for Ohio's 4th Congressional District. Professor Joshua D. Wright is a former commissioner with the Federal Trade Commission. He is executive director of the Global Antitrust Institute at George Mason University School of Law.

Fight 'wealth shamers' with enlightenment, inspiration

By Michelle Malkin

When I first thought of writing "Who Built That," I must admit I was still in Angry Cable TV Lady mode.

In 2010, Vice President Joe Biden had boasted that "every single great idea that has marked the 21st century, the 20th century and the 19th century has required government vision and government incentive." Yes, he really did say "every." My poor family heard me rant about this for weeks.

That same year, President Obama opined that the proper role of private entrepreneurs was to fulfill "the core responsibilities of the financial system to help grow our economy" — as opposed to fulfilling their own happiness, pursuing their own personal and professional ambitions or providing for their own families. Next, Obama argued that "at a certain point, you have made enough money." Then, in the fall of 2012, Republicans got their electoral butts kicked. How could this happen after Obama got caught on the campaign trail openly denigrating American entrepreneurs? Let me remind you of what he said: "If you've got a business — you didn't build that. Somebody else made that happen."...

This government-built-that version of America is anathema to how our Founding Fathers envisioned, pioneered, practiced and enshrined the "progress of science and useful arts" in Article I, Section 8, Clause 8, of the Constitution. They understood that the ability of brilliant, ambitious individuals to reap private rewards for inventions and improvements benefited the public good. From colonial times through the 19th century Age of Progress, our political leaders and judiciary supported the most generous protections for entrepreneurial patent holders. Mainstream culture celebrated rags-to-riches capitalists.

"Profit," however, is now treated as a profanity in today's class-warfare-poisoned discourse. Those who seek financial enrichment for the fruits of their labor and creativity are cast as greedy villains, selfish barons and rapacious beasts — and so are the wealthy investors who support them. During the 2012 U.S. presidential campaign, candidates and operatives in both political parties derided private equity and venture capitalism as "vulture capitalism." President Obama routinely indicted "millionaires and billionaires" as public enemies (before jetting off to raise money from them in Hollywood and Manhattan). ...

Class-warfare attacks continue to proliferate in Washington and Hollywood — even as private venture capital has grown from "the pilot light of American industry" to its "roaring glass furnace," as San Francisco financier Thomas Perkins put it. These "vultures" are visionaries whose private funds have nurtured job-creating powerhouses — including many cutting-edge companies in the knowledge industry used by "progressive" propagandists to disseminate their anticapitalist message to the masses.

ILLUSTRATION BY **GREG GROESCH**

Apple, Intel and Microsoft? Venture capital helped fund that. ...

Private venture-financed firms are the center of the nation's most innovative sectors: biotechnology, computer services, industrial services and semiconductor industries. In fact, America's much-maligned venture capitalists "create whole new industries and seed fledgling companies that later dominate those industries." From San Francisco venture capitalist Tom Perkins's $100,000 investment in a few biochemists came Genentech — the multibillion-dollar biotech giant that produced blockbuster, life-saving drugs including Herceptin (breast cancer); Rituxin (non-Hodgkins lymphoma and rheumatoid arthritis); and Avastin (for several types of cancer). ...

Plenty of general-interest books have been written about U.S. inventions and inventors. But few of these history lessons emphasize the unique ingredients that created our country's fertile climate for technological progress and entrepreneurship. Foremost among these are profit motive, intellectual property rights, individual risk-taking, venture capital, our unique patent system, and an unwavering belief in American exceptionalism. My mission for this book, which I wrote for my kids and yours, is to fight the wealth shamers with enlightenment and inspiration. "Who Built That" is a treasury of stories about my favorite American heroes of the 1 percent. They got rich, made other people richer, and made the world a safer, brighter, more comfortable and happier place to live. My personal obsession has always been with the mundane things we take for granted. That's why I picked the makers of ordinary, everyday items that make modern life modern — toilet paper, the bottle cap, glass bottles, the disposable razor, root beer, wire rope, the alternating current (AC) motor, airconditioning, and durable flashlights.

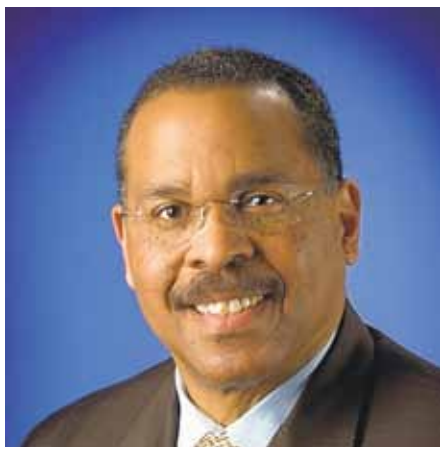
I call the heroes of "Who Built That" "tinkerpreneurs." These underappreciated inventors and innovators of mundane things changed the world by successfully commercializing their ideas and creating products, companies, jobs and untold opportunities that endure today. They enlisted some of the nation's very first venture capitalists — private profit-seekers, not government funders — to help them succeed. They secured patents, met payroll, made lots of money, and bettered the lives of their countrymen while bettering their own. These tireless capitalists devoted their lives to improving their designs and products. They were self-made and largely self-taught. ...

No federal Department of Innovation is responsible for the tinkerpreneurs' success. No Ten-Point White House Action Plan for Progress can lay claim to the boundless synergies of these profit-earning capitalists. Here is the marvel we take for granted: The concentric circles of American innovation in the free marketplace are infinite. This miracle repeats itself millions of times a day through the voluntary interactions, exchanges and business partnerships of creative Americans and their clients, customers, and consumers. I'll show you how just a small handful of tinkerpreneurs profoundly revolutionized and improved every aspect of our lives — from the bathroom to the kitchen to the office, to the food and drinks we consume, and the medicines and medical devices that prolong our lives.

After delving into the stories of these awe-inspiring American makers and risk-takers, I know, dear readers, that you will agree: We owe them, not the other way around. ...

Michelle Malkin is the author of "Who Built That: Awe-Inspiring Stories of American Tinkerpreneurs." Excerpts from her book are shared here.

Stay true to America's historic, 'exceptional' patent protections



By Ken Blackwell

The onset of a presidential election (despite much of the noise and silliness) does make you understand the seriousness of the choices we face and especially, the special place that America holds in the world. As I and many other conservatives have argued before, our candidates and our leaders need to focus on American exceptionalism and make clear that we will continue to pursue the policies that set us apart from much of the world.

Throughout our history, one of those has clearly been American innovation.

Since our founding, America has led the world in ideas and inventions that make our lives better and easier, that heal people, and that create wealth and prosperity. This is no accident. It is largely because the framers enshrined patent protections in our Constitution — and extended the idea of property rights to ideas and not just physical property.

This established the U.S. as a nation that encourages and nourishes innovation: If you have an idea, you can own that idea and benefit from it — that is what gives people the incentive to take risks and provides assurances for those willing to invest in those ideas. That's how property rights work — physical and intellectual property. It is one of the concepts that separates us from nations like China and India.

Unfortunately, there are always attempts by some to roll back or weaken property rights of all kinds, including patent rights.

In recent years, there have been members of Congress — on both sides of the aisle — who have been pushing so-called patent reform that would overhaul the entire system. Following the paths of other giant reforms (Obamacare, Dodd-Frank), they supposedly address a specific problem by imposing a solution that changes the whole system for everyone else. We've all seen the unintended consequences that come along with those big government fixes.

In this case, the supporters of legislation (like the Innovation Act in the House and the PATENT Act in the Senate) claim they want to fix the issue of abusive litigation and "patent trolls." But rather than address those specific issues, the bills weaken patent rights across the board.

I'm as concerned about litigation abuse as anyone, but when a patent holder's property rights are infringed, they have only one recourse and that is through the courts. Any broad weakening of that ability reduces or removes the incentive to invent — and makes it harder to find investors for those inventions.

Some conservative supporters have tried to argue that patent reform is a form of tort reform and a way to weaken trial lawyers. That's plain wrong. This issue is about property rights, not tort reform. Despite the claims of supporters (and a few highly publicized cases), patent-litigation rates remain low, and the proposed legislation does nothing to address some of the practices its advocates claim to be concerned about.

It's important to note that Congress passed a patent-reform bill just a few years ago. In addition, there have been a number of court decisions and administrative moves by the courts that address many of the issues that have been raised. These changes have already given judges the ability to shift costs to the individuals bringing frivolous suits and raising the bar to bring such lawsuits. Why pass sweeping legislation when we have yet to fully understand the impact of recent court rulings on our patent system?

While a few voices have claimed conservative support for these bills, the broader conservative movement understands what is at stake. A few months ago, the, Conservative Action Project, a coalition of conservative grass-roots leaders I am a member of, released a "Memo for the Movement" stating our unequivocal opposition to any legislation that would undermine intellectual-property rights and destroy the strong patent protections that make America envied by the world.

President Reagan's Attorney General Edwin Meese and leaders of Club for Growth, Eagle Forum, Heritage Action, ForAmerica, Tea Party Patriots, Senate Conservatives Fund, among many others, have declared opposition to this legislation and urged Congress to not rush into reforms that would harm our economy and undermine our constitutional rights.

Conservatives understand the need to embrace American exceptionalism and the constitutional principles that have allowed us to lead the world in innovation and growth. Now is not the time to turn our backs on those fundamental principles. China, India and the rest of the world should see our IP and patents policies as the model — it shouldn't be the other way around.

Ken Blackwell, former Secretary of State in Ohio, is the Senior Fellow for Family Empowerment at the Family Research Council. He serves on the board of directors of the Club for Growth and the National Taxpayers Union.

Focus on real, not imaginary, problems

By David Keene
THE WASHINGTON TIMES

Congressional committee chairmen are a pretty turf-conscious bunch and don't like it when their work meets resistance from outside their own committee.

Virginia's Bob Goodlatte, chairman of the House Judiciary Committee, fits this mold, as he tends to dismiss those who question his committee's motives or wisdom. This is a hard-headed quality that makes him an effective congressional leader, but can prove troublesome and incredibly frustrating to outsiders who raise questions about legislation originating in his committee.

In 2013, Mr. Goodlatte's committee drafted and — with committee Democrats and Republicans — sent a bill to the full House that was designed to deal with what are called patent trolls. Patent trolls are quasi-fraudulent shell companies organized to buy up patents that might arguably cover products developed by others — but with the intent of suing them for patent infringement or forcing them to settle to avoid court.

Patent trolls were and continue to be a problem, and the bill, a good-faith attempt to deal with it dubbed the Innovation Act, breezed through the House. But it ran into trouble in the Senate, as critics began questioning its possible unintended consequences.

Support for the bill had originally been bipartisan and, as it turned out, so was the late-developing opposition.

Chairman Goodlatte doesn't give up easily, however. The bill has been reintroduced, but with few substantive changes and no apparent attempt to deal with problems raised by critics of the earlier version.

Many of those critical of the bill three years ago hoped the new version would solve some of those problems, and they are redoubling their opposition because it has not done so.

Mr. Goodlatte insists, of course, that there was nothing wrong with what his committee put together then and sees no reason for change now. The Judiciary Committee in July of last year reported out the new bill by a 24-8 margin. Mr. Goodlatte expects it to once again breeze through the House, and hopes this time it will win the Senate support it needs to become law.

That may not happen.

Critics claim with some legitimacy that the patent-troll problem he set out to solve several years ago is being solved without the bill and without altering the entire patent system. The number of trolls has been dropping steadily over the last few years, while U.S. inventors are filing for more patents than ever — and by the time the bill becomes law (if it ever does), the problem it was originally supposed to have solved may have vanished into the mists of time.

Sometimes the market and existing law settle problems while Congress dreams up solutions worse than the problems and then dithers. Moreover, the sort of sweeping reforms that so many critics in the legal community, inventors and innovative companies, universities and researchers question in the Goodlatte measure often prove problematic, and simply create new headaches while attempting to alleviate old ones.

The fear among critics of the bill is that in the name of reform, it would weaken the patent system, disadvantage small inventors, and play into the hands of large companies like Google that would dearly like to game the system for their own advantage. They are huge supporters of the sort of overall reform envisioned by the authors of the Innovation Act and its Senate counterpart, the Protecting American Talent and Entrepreneurship Act of 2015 or PATENT Act.

Chairman Goodlatte and his committee should focus on real rather than imaginary problems.

Conservative Action Project

The Conservative Action Project, founded by former Attorney General Edwin Meese and chaired by the Honorable Becky Norton Dunlop, is designed to facilitate conservative leaders working together on behalf of common goals. Participants include the CEOs of over 100 organizations representing all major elements of the conservative movement — economic, social and national security.

Memo for the Movement

Patent Protections

August 21, 2015
Washington, DC

Conservatives Must Stand up for Our Constitutionally Protected Patent Rights and Reject Another Washington "Fix"

Our Founding Fathers recognized the importance of Intellectual Property by writing patent protections into the Constitution — Article 1, Section 8. They understood that the right to own your ideas was important to economic liberty. As a result of this tradition, and a long history of defending those rights, the U.S. has led the world in invention and innovation.

Strong patent protections have set the United States apart from nations like China and India, among others, and have been critical to the creation of wealth and jobs and to the U.S.'s role in the world.

For that reason, Conservatives should be wary when elected officials start talking about reforming the patent system. Certainly, some targeted changes may be warranted on occasion, but, as we have seen time and again, the leadership in Washington thinks every problem, large or small, needs a "comprehensive" reform and overhaul. Obamacare and Dodd-Frank are just a couple of examples.

Recently proposed legislation in the House — the Innovation Act — and in the Senate — the PATENT Act — fall into this category. These bills are sweeping legislative overhauls that will undermine many of the current protections of our patent system, while claiming to address specific problems — like patent trolls.

As we have seen the proliferation of crony corruption throughout Washington, these bills are just the latest example. Many large and powerful tech companies — including Google — which have been supportive of the Obama agenda have lobbied aggressively for patent reform. The legislation would be great for their bottom line, as it could drive down the cost of acquiring patents for them. Unfortunately, it would do so at the cost of small inventors who don't have the same lobbying power. Most importantly, it would also help those companies at the expense of our cherished patent rights.

While the bill has had support from many Republicans in Congress, conservatives have begun to sound the alarm on this approach. Conservatives like Jim Jordan, Tom Massie and Dana Rohrbacher, among others, have spoken of their concerns. Sen. Ted Cruz is opposed to the PATENT Act, saying: "I think we need to be particularly solicitous of protecting inventors, protecting the little guy, protecting those who are asserting their rights protected by the United States Constitution to develop new innovations — and I fear that if we lean too far against the small patent holder, that in turn will hamper innovation in our economy."

In addition, Heritage Action, the Club for Growth, Eagle Form and the American Conservative Union have all declared their opposition to the House bill. Leading conservative legal experts like Chuck Cooper and C. Boyden Gray have written about these so-called reforms undermining our patent rights.

Congress just passed a patent reform in 2011 — the America Invents Act — and in recent years the Supreme Court has issued a number of rulings that are addressing some of the issues that supporters of reform claim to be concerned about. Changes already taking place have raised the bar for bringing suits and have made it easier for judges to shift costs to those who bring frivolous lawsuits. This is why Heritage Action correctly said in its statement on the Innovation Act: "Rushed reforms, especially in the aftermath of a massive overhaul, are likely to produce unintended consequences like the weakening of patent rights. The House should give the system time to adjust to the 2011 reforms before moving forward on another set of transformational reforms."

We call on Congress to take a step back on the rush to another Washington overhaul. Give the current reforms time to take effect and consider targeted and minimal reforms if necessary. The current approach, supported by the Obama administration and some Republican leaders in Congress, would do much more harm than good. It would undermine our cherished property rights, selectively benefit a few powerful companies and surrender our competitive advantage.

We will stand united against such rushed and ill-advised reforms, and continue to speak out to our allies and members about the importance of defending our patent system.

The Honorable Edwin Meese III
Former Attorney General
President Ronald Reagan

The Honorable Becky Norton Dunlop
Chairman, Conservative Action Project (CAP)
Former White House Advisor, President Ronald Reagan

The Honorable J. Kenneth Blackwell
Chairman
Constitutional Congress, Inc.

The Honorable T. Kenneth Cribb, Jr.
Former Domestic Advisor,
President Ronald Reagan

Mr. L. Brent Bozell III
Chairman
For America

David W. Preston
Executive Director
Oklahoma Wesleyan University Foundation

The Honorable David McIntosh
President
Club for Growth

Mr. William L. Walton
Vice President
Council for National Policy

Mr. Ed Corrigan
Former Executive Director
Senate Steering Committee

Mrs. Phyllis Schlafly
Founder, Chairman, and CEO,
Eagle Forum

The Honorable Ken Cuccinelli II
President, Senate Conservatives Fund
Registered Patent Attorney
Former Attorney General of Virginia

Nadine Maenza
Executive Director
Patriot Voices

David Y. Denholm
President
Public Service Research Council

Col. Francis X. De Luca USMCR (Ret.)
President
Civitas Institute (North Carolina)

Morton Blackwell
Chairman
The Weyrich Lunch

Bradley Mattes
President
Life Issues Institute

Ed Martin
President
Phyllis Schlafly's Eagle Forum

William W. Pascoe, III
Partner
Antietam Communications

Paul Caprio
Director
Family PAC Federal

Seton Motley
President
Less Government

Melissa Ortiz
Founder & Principal
Able Americans

Charles J. Cooper
Cooper & Kirk, PLLC

Ambassador Henry F. Cooper
Chairman, High Frontier
Former Director, Strategic Defense Initiative

James N. Clymer
Former National Chairman
Constitution Party National Committee

James C. Miller III
Former Director of OMB and Chairman of FTC
President Ronald Reagan

Jim Czirr
Executive Chairman
Galectin Therapeutics

Andresen Blom
Executive Director
Grassroot Hawaii Action

Rich Bott
President & CEO
Bott Radio Network

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

David Keene
Opinion Editor
The Washington Times

Linwood Bragan
Executive Director
CapStand Council for Policy and Ethics

EC Sykes
Managing Director
Aslan Capital Fund, LLC

Dick Patten
President
American Business Defense Council

Nancy Schulze
Founder, Congressional Wives Speakers
Co-Founder, American Prayer Initiative

Kevin Freeman
Founder
NSIC Institute

Dee Hodges
President
Maryland Taxpayers Association

Donna Hearne
CEO
The Constitutional Coalition

Susan W. Gore
President
Wyoming Liberty Group

Willes K. Lee
Vice President
National Federation of Republican Assemblies

Mrs. Susan A. Carleson
Chairman and CEO
American Civil Rights Union

Mr. Lewis K. Uhler
Founder and President
National Tax Limitation Committee

Jenny Beth Martin
Co-Founder and National Coordinator, Tea Party Patriots

State Rep. Mike Hill
Florida State Representative
District 2

Richard A. Viguerie
Chairman
ConservativeHQ.com

(All organizations listed for identification purposes only)

Protect intellectual property, protect the nation's economic health

By Maureen K. Ohlhausen and Dan Schneider

America faces an increasingly complex security environment. Afghanistan, Iraq and Syria pose immediate challenges, of course, but China's rise, Russian foreign policy, and inharmonious relations with countries like Iran and Venezuela raise larger questions. Fashioning a responsible national security agenda requires a multi-pronged approach.

One facet of American national security that has been largely overlooked is the issue of intellectual property policy. One might think that intellectual property issues are far removed from national security matters, but that is not the case. Our strength as a nation flows in large part from our economy. Our economy depends on technological progress and our ability to innovate. And our ability to innovate is linked directly to strong intellectual property rights. Thus, intellectual property and national security are two critical issues that are joined at the hip.

America became the world's superpower due to its unsurpassed economic growth — fueled in no small part by strong intellectual property rights. Our success reflects a deep-rooted conviction that property rights drive competition, invention and ingenuity. That principle appears in the U.S. Constitution (Article 1, Section 8, Clause 8) and reflects the views of our Founding Fathers. As Thomas Jefferson observed: "The true foundation of republican government is the equal right of every citizen in his person and property and in their management."

The United States has championed intellectual property rights on the world stage. The results of our innovation policies, centered on our strong patent system, speak for themselves. Today's global technology leaders include a laundry list of American companies: IBM, Microsoft, Google, General Electric, Apple, Intel, and the list goes on.

Despite the superlative record of U.S. innovation, a movement is underway to weaken intellectual property rights. Some commentators wish to abolish patents altogether. Such an outcome would wreak economic havoc. Companies won't spend money on research if others can promptly steal their hard-earned ideas. Although people and companies innovate for many reasons, intellectual property rights often spur research and development, and can be an essential cause of innovation. If the government took away property rights, innovation would grind to a halt in important segments of the economy. Fortunately, the patent abolitionists remain at the fringe of the debate.

Also worrisome are proposals to hinder patent owners from stopping infringement. A challenging environment for patent rights could be a harbinger of diminished U.S. competitiveness and innovation. While there are some problems with the patent system, we should proceed cautiously and consider the incentives driving those who champion the dilution of patent rights. Of course, firms advocate for policies that promote their interests. Net users of technology call for diluted intellectual property rights, while companies that depend on strong patent rights argue for the opposite position. Yes, some real problems afflict today's patent regime, but we should be wary of calls for aggressive limits on patent rights. We worry that some overreaching cries for change have gained traction because advocates couch their proposals as responses to real issues in the litigation system.

The proper response is incremental adjustment. Lawmakers engaged in patent reform should strive to limit abuses without compromising the incentives to invent that patents contribute to the economy. As they try to achieve that delicate balance, they should be mindful of patents' long-running contribution to America's world-class innovation platform.

It is also important to remember that the United States has been the flag-bearer in protecting inventors' rights. That approach has served America well. Our system of government — and its celebration of individual autonomy —has created the most important and innovative economy that the world has ever seen, and a model for others to emulate.

Many emerging countries are approaching a crossroads where they must decide whether and how to transition to a knowledge-based economy. To make that conversion, countries must encourage their domestic industries to invest in research and development. But firms will not do so absent robust intellectual property protection. Inevitably, governments will look to the United States. If they see an ever-more-innovative economy, which remains the envy of the world, then they may appreciate the importance of strong property rights. Yet, if we start to dilute our own intellectual property system, not only may our long-term economic growth suffer, but we would send the wrong message to emerging countries. A rejection of strong intellectual property rights in America would encourage wholesale disregard of U.S. proprietary rights overseas. Whether from the perspective of national security or innovation, such an outcome would be tragic indeed.

Maureen K. Ohlhausen is a commissioner of the Federal Trade Commission. Dan Schneider is the executive director of the American Conservative Union.

This commentary article appeared Dec. 1, 2015 in The Washington Times.

Patent bills: too broad, too soon, too heavy-handed

By Cheryl Wetzstein

Trouncing patent trolls and achieving tort reform.

These twin goals of a House patent-reform bill helped garner support from Republican conservatives, libertarians and Democrats — which is why it sped to a lopsided victory vote of 325-91 in late 2013. Companion bills on patent reform never cleared the Senate.

Patent-reform was reintroduced in 2015, and both H.R. 9, the Innovation Act, and S. 1137, the Protecting American Talent and Entrepreneurship (PATENT) Act, have cleared key committees in their chambers.

But this time, an array of vocal opponents — including independent inventors, investors and universities — have been working hard to explain to members, including conservatives, why neither patent trolls nor runaway lawsuits will be checked by these bills.

Instead, the proposals are too broad, too soon and too heavy-handed, the critics said.

"This is not tort reform, because patents are, in fact, property rights, and when you look at the types of changes to litigation practices that are being proposed, it weakens property rights," said Adam Mossoff, law professor at George Mason University School of Law.

Certainly, members of Congress, including conservatives and libertarians, heard things they liked when the bills were introduced, said Mr. Mossoff, the co-founder of the Center for the Protection of Intellectual Property at GMU.

What they didn't hear was that the legislation "radically revises all rules for enforcing and licensing patent rights in the marketplace and in the courts, and thereby devalues those rights by making it much harder to go after infringers and much harder to license your rights."

Such changes would "weaken" the "very valuable property rights that have been the driver of America's innovation economy for more than 200 years," Mr. Mossoff said.

Many House members are only now realizing that "they had voted for something that was really dramatic for the economy, and they had done it so quickly and without being provided with much information," said Charlie Sauer, founder and president of Entrepreneurs for Growth.

Yes, some people are sending egregious — and fraudulent — demand letters about patent infringement, said Mr. Sauer. But there aren't that many of those bad actors, and in any case, "we don't think [the legislation] stops that [practice]," he said. The bills are like "taking a sledgehammer to a mosquito."

» see **BILLS** | C7

Patent bill deemed 'ideal candidate' for House vote, but its fate still unclear

By Kellan Howell
THE WASHINGTON TIMES

A bill aimed at cracking down on "patent trolls" has stalled almost a year after it was reintroduced with fanfare by House Republicans after conservative groups, universities and businesses warned that the legislation will harm innovators.

Last February, Rep. Bob Goodlatte, Virginia Republican and chairman of the House Judiciary Committee, reintroduced the Innovation Act, which in late 2013 passed the House with a massive, bipartisan vote of 325-91. The bill then died in the Senate.

The latest bill, H.R. 9, passed the Judiciary committee in July by a 24-8 vote, and Mr. Goodlatte said passage of the Innovation Act "remains a priority" for his committee.

"The legislation is the product of much bipartisan work and I am proud that it was reported out of the Committee by an overwhelming vote and is supported by over 350 groups," Mr. Goodlatte told The Washington Times.

"The bipartisan nature of the bill makes it an ideal candidate for floor consideration this year," he added.

But critics say they have raised so many questions about the bill that it has prompted Republican lawmakers previously in favor of reform to pause — and critics are now highly skeptical that it will ever see the Senate floor, much less make it to the White House before the end of the Obama administration.

"Inventors, medical devices, biotechnology companies, universities, venture capitalists and conservatives, to name just a few, all oppose the House bill," said Brian Pomper, executive director of the Innovation Alliance, a coalition of research and development-based technology companies representing innovators, patent owners and industry stakeholders.

Given the objections, "it is hard to imagine why the leadership would want to bring the bill back to the floor this year," said Mr. Pomper.

The Innovation Act seeks to discourage "patent trolls" — shell companies that buy up vaguely worded patents with the intent of suing innovators for infringement by shifting legal costs to the losing party in a patent lawsuit.

The proposed law would attack these "trolls" by requiring the plaintiffs to identify the owner of a patent before a lawsuit is filed, and offer a reasonable explanation for filing the suit. It would also require courts to determine the validity of patent cases earlier in the process.

But opponents of the bill say Congress is overreaching to correct an isolated problem that could be solved within the court system.

"There are a thousand more sensible ways to do this than completely upending the system," said Richard A. Epstein, a respected law professor at New York University School of Law who has taught extensively on patent law.

"If you want to handle patent-litigation legislation, it would be better to handle it more generally with litigation rules rather than trying to completely wreck the system," Mr. Epstein said.

Critics also argue that lawmakers who still support the bill are not considering how the proposal could unintentionally weaken property rights for startups and small innovators.

In a Jan. 27 letter to Congress, members of several conservative groups, including the American Conservative Union, Eagle Forum, U.S. Business and Industry Council and US Inventor, argued that the bill's sponsors were trying to push it through the chamber by falsely labeling it a "tort reform" bill.

"The proponents wrongly call this 'tort reform.' It is not," the 25 group leaders wrote in the letter.

They argued the patent-reform bill makes the patent-litigation process "so one-sided — in favor of the infringer, or thief — that the intellectual- property owner has small prospect of ever attaining the real value of the invention."

Mr. Pomper said the same groups that opposed the original bill in 2013 are now speaking out about another argument that helped the Innovation Act make it as far as the Senate in the first place.

"There were some who worked hard to push a false narrative that the House bill that passed overwhelmingly in 2013 didn't move in the Senate in 2014 because the trial lawyers succeeded in getting [Senate Minority Leader] Harry Reid to stop it for them. That was simply never true. The truth is that the same broad coalition that opposes the House bill now opposed it then, and that kept the bill from moving in the Senate," said Mr. Pomper.

And data suggest that tort reform might not even be necessary to combat trolls.

A Lex Machina study found that patent-litigation rates have declined steadily, and are back to 2009 and 2010 levels.

In relation to the number of patents being granted — the number of new utility patents issued for inventions in the U.S. has increased by 62 percent in the last decade — patent litigation has remained at a steady level of less than 2 percent.

What the controversial bill does not do, according to critics, is protect innovators from being harassed by patent trolls who send out hundreds of demand letters threatening expensive litigation for patent infringement.

"We recognize that there are real problems out there — demand letters are a real problem and we want it solved," said Dan Schneider, executive director of the American Conservative Union.

"There are things that should be done, but not a single one of our recommendations was included in Chairman Goodlatte's final bill, which signaled to us that he's not actually looking to address the problems with his own legislation," he said.

Mr. Epstein echoed Mr. Schneider's disappointment in Mr. Goodlatte's willingness to make adjustments to the bill.

"The problem about Mr. Goodlatte is he's dense on this issue," Mr. Epstein said. "How can you possibly vote for a failed bill and never think once about the fact, 'maybe somebody on this very same complicated set of choices has thought of something which I, in my divine wisdom, have missed.' "

The Innovation Act "does nothing to address the real problems that exist, it does nothing to deal with demand letters — and it makes it harder to protect property," Mr. Schneider added.

In addition to conservative groups and inventors, many universities also oppose the bill because it would be detrimental to their research licenses.

Universities "can't manufacture anything, but they are very good at licensing things that are manufactured," Mr. Epstein said.

While the bill is not completely dead, it seems nearly impossible for it to travel any further in the legislative process, say the critics, who say they have been able to sway many lawmakers, especially Republicans, to reconsider their votes.

"I am most encouraged by the number of members of Congress [who] may have reluctantly voted for the initial bill in the previous Congress, but who are now stepping back and saying this thing is not ready for prime time; it has to be fact-checked so that we can solve the real problems and not cause additional harm," said Mr. Schneider.

BILLS

From page C6

Mr. Sauer's US Inventor is one of some 25 groups, including conservative stalwarts Eagle Forum, American Conservative Union and American Family Association, that recently wrote to Congress to spell out their "strong opposition" to the House and Senate patent-reform bills.

The patent bills would do "immense harm to American innovation," they wrote on Jan. 27. The bills would "undermine property rights, devalue intellectual property, disincentivize innovation and invention, diminish the extraordinary economic gains derived from strong IP backed by the Rule of Law, and reward the theft of IP," they wrote.

Richard A. Epstein, law professor at New York University School of Law and a renown expert on legal issues including property rights, said he believed excellent arguments were being made for why the proposed bills carried harmful consequences in areas such as legal discovery, disclosure information and rules of procedure.

Universities, for instance, wrote "extremely informative" letters to Congress about their objections, and have warned that the bills would "essentially require us to rethink and redo every agreement and every practice that we have," said Mr. Epstein.

As for the patent trolls, there are indeed people who "bring blunderbuss suits and [play] extraction games against the little guy," Mr. Epstein said.

"But there are so many things you can do [about them], short of revolutionizing the entire patent law," he said, listing judicial penalties in frivolous lawsuits, enforcement of state anti-fraud laws, and smarter use of court injunctions and damages while sorting out patent-infringement claims.

Even the timing of the current legislation is puzzling, Mr. Epstein noted: "We haven't even absorbed all the decisions that were made" in the America Invents Act, a major patent-reform law enacted in 2011.

The recent death of U.S. Supreme Court Associate Justice Antonin Scalia could impact the fate of many bills, including the patent proposals.

There are many stakeholders, including individual inventors, small businesses and start-ups, and those working in research and development, who are raising objections to the current bills, said Mr. Mossoff. These objections, plus the likelihood that the Senate Judiciary Committee will have its hands full regarding a Supreme Court nomination, could keep the patent issue at a standstill.

The inventors aren't taking any chances, though.

Noting that either bill could be called up at any time, "we're continually up on the Hill, talking about intellectual property, and inventors, and what it means to be in your basement or in your garage inventing," said Mr. Sauer.

Cheryl Wetzstein, formerly national news reporter at The Washington Times, is Special Sections Manager for TWT Media Group.

SWEEPING PATENT LEGISLATION: CHINA LOVES IT. INVENTORS FEAR IT. THE FOUNDERS WOULD HAVE HATED IT.

H.R.9 and S.1137 are both bad patent bills. Both treat small businesses, universities, inventors and researchers as "trolls." Both undermine American property rights set forth in Article 1 of the Constitution. And most harmfully, the bills could block patent holders from directly going after infringers who copy their inventions, making it virtually impossible to stop foreign knockoffs from China and elsewhere. Help keep our country's competitive edge intact.

TELL CONGRESS TO VOTE NO ON H.R.9 AND S.1137

THE AMERICAN CONSERVATIVE UNION

Eagle Forum

TEA PARTY PATRIOTS
PURSUE YOUR AMERICAN DREAM

PAID FOR BY THE ACU

conservative.org