

## **Letters and Statements from Groups Opposed to H.R. 9**

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National Venture Capital Association (NVCA) Letter to Goodlatte and Conyers – 6/10/15

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Alliance of U.S. Startups and Inventors for Jobs (USIJ) Letter to Goodlatte and Conyers – 6/10/15

**For Immediate Release**

June 25, 2015

# **Joint Statement from AAU, APLU, BIO, IA, MDMA, NSBA, NVCA, PhRMA, SBTC and USIJ on H.R. 9**

**WASHINGTON D.C.** - The Association of American Universities (AAU), the Association of Public & Land-Grant Universities (APLU), the Biotechnology Industry Organization (BIO), the Innovation Alliance (IA), the Medical Device Manufacturers Association (MDMA), the National Small Business Association (NSBA), the National Venture Capital Association (NVCA), the Pharmaceutical Research and Manufacturers of America (PhRMA), the Small Business Technology Council (SBTC) and the Alliance of U.S. Startups and Inventors for Jobs (USIJ) released the following joint statement on H.R. 9, the Innovation Act, which could be considered on the House floor as soon as the week of July 6:

"Together, our organizations represent a broad coalition of universities, inventors, manufacturing, technology and life science companies, small businesses, venture capitalists and startup communities. We stand united in our continued opposition to H.R. 9, the Innovation Act, as it is currently drafted. The bill needs significant work and should not be considered for floor action in the House of Representatives in its current form. As drafted, H.R. 9 would dramatically weaken intellectual property rights and undermine a patent system that is vital to incentivizing innovation and job creation in our country. The bill also fails to adequately address abusive practices against legitimate patent owners. We urge House members to meaningfully revise H.R. 9 to target abuses of patent trolls without damaging our nation's entire innovation ecosystem."

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## **Association of American Universities**

The Association of American Universities (AAU) is an association of 60 U.S. and two Canadian public and private research universities. It focuses on issues such as funding for research, research policy issues, and graduate and undergraduate education. AAU member universities are on the leading edge of innovation, scholarship, and solutions that contribute to the nation's economy, security, and wellbeing. AAU's 60 U.S. universities award nearly one-half of all U.S. doctoral degrees and 55 percent of those in STEM fields.

## **Association of Public & Land-Grant Universities**

APLU is a research, policy, and advocacy organization dedicated to strengthening and advancing the work of public universities in the U.S., Canada, and Mexico. With a membership of 238 public research universities, land-grant institutions, state university systems, and affiliated organizations, APLU's agenda is built on the three pillars of increasing degree completion and academic success, advancing scientific research, and expanding engagement.

## **Biotechnology Industry Organization**

BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products. Corporate members range from entrepreneurial companies developing a first product to

Fortune 500 multinationals. We also represent state and regional biotech associations, service providers to the industry, and academic centers. Our members help foster a healthy economy by creating good-paying, biotechnology jobs.

### **Innovation Alliance**

The Innovation Alliance represents innovators, patent owners and stakeholders from a diverse range of industries that believe in the critical importance of maintaining a strong patent system that supports innovative enterprises of all sizes. Innovation Alliance members can be found in large and small communities across the country, helping to fuel the innovation pipeline and drive the 21st century economy.

### **Medical Device Manufacturers Association**

The Medical Device Manufacturers Association (MDMA) is a national trade association based in Washington, DC providing educational and advocacy assistance to innovative and entrepreneurial medical technology companies. Since 1992, MDMA has been the voice for smaller companies, playing a proactive role in helping to shape policies that impact the medical device innovator. MDMA's mission is to promote public health and improve patient care through the advocacy of innovative, research-driven medical device technology.

### **National Small Business Association**

Celebrating its 75th Anniversary in 2012, NSBA continues to advocate on behalf of America's entrepreneurs. A staunchly nonpartisan organization, NSBA's 65,000 members represent every state and every industry in the U.S. We are proud to be the nation's first small-business advocacy organization. NSBA is a uniquely member-driven organization, led by small-business owners from across the country who are extremely active in small-business issues locally, regionally and nationally. NSBA serves as an umbrella group for various local, state and regional small-business groups with whom we are proud to be affiliated and working toward one common small-business goal.

### **National Venture Capital Association**

Venture capitalists are committed to funding America's most innovative entrepreneurs, working closely with them to transform breakthrough ideas into emerging growth companies that drive U.S. job creation and economic growth. As the voice of the U.S. venture capital community, the National Venture Capital Association (NVCA) empowers its members and the entrepreneurs they fund by advocating for policies that encourage innovation and reward long-term investment. As the venture community's preeminent trade association, NVCA serves as the definitive resource for venture capital data and unites its nearly 400 members through a full range of professional services.

### **Pharmaceutical Research and Manufacturers of America**

PhRMA, the Pharmaceutical Research and Manufacturers of America, represents the country's leading biopharmaceutical researchers and biotechnology companies. Our members are committed to finding tomorrow's cures and treatments for some of the most serious diseases such as Cancer, Alzheimer's Disease, Cystic Fibrosis and Parkinson's. New medicines are an integral part of the healthcare system, providing doctors and their patients with safe and effective treatment options, extending and improving quality of life.

### **Small Business Technology Council**

The Small Business Technology Council is a non-partisan, non-profit industry association of companies dedicated to promoting the creation and growth of research-intensive, technology-based U.S. small business. SBTC advocates on behalf of the 6,100 currently involved Small Business Innovation Research award winners. SBIR winners have received about 120,000 US patents, win about 25% of America's R&D 100 awards, have produced 11 Nobel Prize winners, and have been involved in over 1800 M&A transactions.

## **Alliance of U.S. Startups and Inventors for Jobs**

The Alliance of U.S. Startups and Inventors for Jobs (USIJ) is a group of nearly 50 Silicon Valley-based inventive startups, inventors, investors and entrepreneurs. Collectively, we have launched dozens of companies in areas ranging from biotechnology to medical devices and wireless technology. We invent real things and create real companies. We also rely on the strength of the U.S. patent system to create these companies, breakthroughs and jobs.

### **Contacts:**

**Association of American Universities (AAU):** Barry Toiv, 202-408-7500, [barry.toiv@aau.edu](mailto:barry.toiv@aau.edu)

**Association of Public & Land-Grant Universities (APLU):** Jeff Lieberman, 202-478-6073, [jlieberson@aplu.org](mailto:jlieberson@aplu.org)

**Biotechnology Industry Organization (BIO):** George Goodno, 202-962-6660, [ggoodno@bio.org](mailto:ggoodno@bio.org)

**Innovation Alliance (IA):** Jaime Horn, 202-827-7859, [jaime@blueenginemedias.com](mailto:jaime@blueenginemedias.com)

**Medical Device Manufacturers Association (MDMA):** Brendan Benner, 202-354-7172, [bbenner@medicaldevices.org](mailto:bbenner@medicaldevices.org)

**National Small Business Association (NSBA):** Molly Brogan Day, 202-552-2904, [mday@nsba.biz](mailto:mday@nsba.biz)

**National Venture Capital Association (NVCA):** Ben Veghte, 202-864-5923, [bveghte@nvca.org](mailto:bveghte@nvca.org)

**Pharmaceutical Research and Manufacturers of America (PhRMA):** Mark Grayson, 202-835-3465, [mgrayson@phrma.org](mailto:mgrayson@phrma.org)

**Small Business Technology Council (SBTC):** Robert Schmidt, 216-374-7237, [rschmidt@clevemed.com](mailto:rschmidt@clevemed.com)

**Alliance of U.S. Startups and Inventors for Jobs (USIJ):** Chris Israel, 202-327-8100, [israel@acg-consultants.com](http://israel@acg-consultants.com)

**For Immediate Release**

June 10, 2015

# **Joint Statement from AAU, APLU, IA, MDMA, NVCA, and USIJ on House Judiciary Committee Markup of H.R. 9**

**WASHINGTON D.C.** - The Association of American Universities (AAU), the Association of Public & Land-Grant Universities (APLU), the Innovation Alliance (IA), the Medical Device Manufacturers Association (MDMA), the National Venture Capital Association (NVCA), and the Alliance of U.S. Startups and Inventors for Jobs (USIJ) released the following joint statement on the House Judiciary Committee markup of H.R. 9, the Innovation Act:

“As representatives of a broad coalition of universities, inventors, manufacturing technology and life science companies, venture capitalists and startup communities, we must express our continued opposition to H.R. 9, the Innovation Act, as it is currently drafted. Although we welcome some of the changes made in the latest version, these changes do not go nearly far enough. Overall, H.R. 9 would still dramatically weaken intellectual property rights, harm U.S. competitiveness and undermine a patent system that has been critical to incentivizing innovation and job creation in our country for more than 200 years. We urge the House Judiciary Committee to reject H.R. 9 in its current form.”

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## **Association of American Universities**

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entrepreneurial medical technology companies. Since 1992, MDMA has been the voice for smaller companies, playing a proactive role in helping to shape policies that impact the medical device innovator. MDMA's mission is to promote public health and improve patient care through the advocacy of innovative, research-driven medical device technology.

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**Association of American Universities (AAU):** Barry Toiv, 202-408-7500, [barry.toiv@aau.edu](mailto:barry.toiv@aau.edu)

**Association of Public & Land-Grant Universities (APLU):** Jeff Lieberman, 202-478-6073, [jlieberson@aplu.org](mailto:jlieberson@aplu.org)

**Innovation Alliance (IA):** Kat Maramba, 202-412-9144, [kathrina@blueenginemedia.com](mailto:kathrina@blueenginemedia.com)

**Medical Device Manufacturers Association (MDMA):** Brendan Benner, 202-354-7172, [bbenner@medicaldevices.org](mailto:bbenner@medicaldevices.org)

**National Venture Capital Association (NVCA):** Ben Veghte, 202-864-5923, [bveghte@nvca.org](mailto:bveghte@nvca.org)

**Alliance of U.S. Startups and Inventors for Jobs (USIJ):** Chris Israel, 202-327-8100, [israel@acg-consultants.com](mailto:israel@acg-consultants.com)

*AAU Association of American Universities*  
*APLU Association of Public and Land-grant Universities*  
*ACE American Council on Education*  
*AUTM Association of University Technology Managers*  
*AAMC Association of American Medical Colleges*  
*COGR Council on Governmental Relations*

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**HIGHER EDUCATION ASSOCIATION STATEMENT ON  
SCHEDULED HOUSE JUDICIARY COMMITTEE MARKUP OF INNOVATION ACT (H.R. 9)**

June 10, 2015

*Washington, DC -- The Association of American Universities, Association of Public and Land-grant Universities, Association of American Medical Colleges, American Council on Education, Association of University Technology Managers, and Council on Governmental Relations today issued the following statement on the Innovation Act (H.R. 9) and the Manager's Amendment, scheduled to be considered by the House Judiciary Committee on June 11.*

As associations that represent more than 2,000 colleges and universities and professionals engaged in academic technology transfer, we express our continued serious concerns about the Innovation Act (H.R. 9), the proposed Manager's Amendment, and the process by which the legislation has been developed. We unfortunately must oppose the legislation and the substitute amendment.

We strongly support reducing abusive patent litigation practices, and prefer the direction of the Senate PATENT Act (S. 1137). H.R. 9 is not targeted to address the small minority of patent holders that are abusing the system. Rather the bill would weaken the entire patent system. H.R. 9 would make it far more difficult, risky, and costly for all patent holders to defend their rights in good faith, and thus seriously undermine the ability of universities to engage in technology transfer, the process by which universities make their research discoveries available to private sector enterprises for development into products. This process helps create innovations that drive our economy, enhance public health, and improve quality of life.

There is much at stake. In 2013 alone, U.S. universities were issued more than 5,200 patents and research performed at universities led to the formation of 818 new start-up companies. University research has resulted in the CAT scan and MRI, many commonly used vaccines, GPS, barcodes, Doppler radar, web browsers and the Internet itself. Patent legislation should enhance technology transfer, not discourage it.

We are greatly discouraged that the Manager's Amendment does not include any meaningful changes to the bill's mandatory and presumptive fee shifting provision. And while we continue to review the changes made by the Manager's Amendment to the involuntary joinder provision, the language does not appear to provide sufficient protection to universities, research foundations, and their faculty, staff, and student inventors.

H.R. 9's fee shifting provision would substantially increase the financial risks associated with patent enforcement and consequently discourage universities and other patent holders lacking extensive litigation resources from legitimately defending their intellectual property. This amplified risk

would deter potential licensees and venture capitalists from investing in university patents, reducing the number of research discoveries that advance to the marketplace.

With respect to joinder, we appreciate the sponsors' consideration of language that would appropriately limit the reach of the provisions. However, while the PATENT Act (S. 1137), approved last week by the Senate Judiciary Committee, appropriately shields higher education institutions, university research foundations, and university inventors from joinder, H.R. 9 does not appear to provide a clear explicit safe harbor. The limitations in H.R. 9 that follow the provision for "technology transfer organizations" could strip the provision of any real meaning. We hope the intent of the language is to fully protect the higher education community and thus are eager to work with Congress to address the gaps.

Unfortunately, the university community was not consulted during the crafting of either H.R. 9 or the Manager's Amendment, which has led to a bill with provisions specific to universities that don't correspond to how universities and the technology transfer process function. We urge the House of Representatives to consider a more balanced approach, particularly with respect to the fee shifting and recovery of fees/joinder provisions that are of such critical importance to universities and the innovation ecosystem. We hope to work collaboratively and productively to achieve our shared goals of curbing patent troll abuses while preserving the balance and health of our patent system.

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CONTACTS: Barry Toiv, AAU, [barry.toiv@aau.edu](mailto:barry.toiv@aau.edu) Jeff Lieberman, APLU, [jlieberson@aplu.org](mailto:jlieberson@aplu.org)



## Heritage Action Opposes House Patent Bill (H.R. 9)

JULY 20, 2015

**Washington** — The America Invents Act of 2011 radically altered America’s patent law, and the impact of those changes and subsequent Supreme Court rulings continue to play out. Nonetheless, some in Congress want to move another round of sweeping reforms aimed primarily at “patent trolls.” Heritage Action opposes the Innovation Act (H.R. 9) and released the following statement from chief executive officer Michael A. Needham:

*“Patent rights are delicate and complicated, but the strength of the American patent is a critical component of economic growth. 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. Heritage Action opposes H.R. 9. The bill should not come to the floor.”*

# The American Conservative Union

June 10, 2015

Dear Representative:

The American Conservative Union ordinarily does not announce in advance the votes that will be used in our Annual Ratings of Congress. These ratings are meant to reflect where each member of Congress stood in a given year on fundamental conservative principles. We make exceptions on issues of overwhelming importance in safeguarding those principles.

**Safeguarding property rights, including intellectual property, as outlined in the U.S. Constitution is one such issue. H.R. 9, the Innovation Act, will be included in the ratings for 2015.**

We strongly believe, as did the Founders of our country, that a free society stands on the three pillars of Life, Liberty and Property. H.R. 9, as currently written, is a direct assault on the third pillar, property. It would fundamentally weaken a patent system that is the envy of the world and made the United States the cradle of technology for over 200 years.

We support efforts to rein in abuses of the system by so-called “patent trolls.” That is why we endorsed Congressman Burgess’ TROL Act that has passed the Energy and Commerce Committee and targets abusive demand letters.

**H.R. 9 is not about trolls. It’s about immunizing patent infringers so that the value of patents will be diminished and can then be bought cheaply. It is no wonder that Chinese telecommunications giant ZTE is now part of the alliance seeking to pass this bill as it will be so much easier for companies to sell Chinese knockoffs of American products if this bill passes.**

In casting his vote against the Senate version of this bill, Senator Ted Cruz said this: “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.”

We could not agree more. **Please vote “NO” on H.R. 9, the Innovation Act.**

Sincerely,

Dan Schneider  
Executive Director  
American Conservative Union

American Conservative Union 1331 H St. NW, Ste. 500 Washington, DC 20005 P: (202) 347-9388 F: (202) 347-9389  
ACU@conservative.org www.conservative.org Twitter.com/acuconservative Facebook.com/acuconservative

1201 Maryland Avenue, SW • Ste. 900 • Washington, D.C. • 20024 • 202-962-9200  
Web: [www.bio.org](http://www.bio.org) Blog: [www.biotech-now.org](http://www.biotech-now.org) Twitter: [@IAmBiotech](https://twitter.com/IAmBiotech)

**For Immediate Release**

**Contact:** [George Goodno](mailto:George.Goodno@bio.org)  
202-962-6660

**BIO Opposes H.R. 9, The Innovation Act**  
*So-called “Innovation” Act Bad for Biotechnology Innovation*

Washington, D.C. (June 11, 2015) – The Biotechnology Industry Organization (BIO) today expressed continuing opposition to [The Innovation Act](#) (H.R.9) as amended and reported by the House Judiciary Committee today, and believes that, without substantial changes, the bill will jeopardize America’s leadership in medical, agricultural and environmental innovation.

BIO consistently has urged Congress to proceed cautiously when addressing any changes to the patent system that could unduly shift the legal balance against legitimate patent owners. Despite some improvements to the bill, the latest version of the Innovation Act remains unacceptable in certain respects, and includes new provisions that require additional careful vetting for potentially negative unintended consequences for patent owners. BIO remains concerned that the bill would impose unreasonable challenges for innovative start-up and other small companies seeking to protect their intellectual property in a timely and efficient manner, and could chill the investment and collaboration that is so critical to the biotech innovation ecosystem.

BIO appreciates the inclusion of some important reforms to the *inter partes* review (IPR) system of patent challenges at the U.S. Patent & Trademark Office (PTO). However, these reforms do not sufficiently address the growing abuses of the IPR system, and BIO cannot support legislation that does not include more meaningful changes to the IPR system.

BIO will continue to oppose vigorously any legislative proposals that devalue the bedrock of American innovation – our patent system. BIO supports targeted reforms designed to reign in abusive patent enforcement practices, but any efforts to accomplish this must be done in a balanced way that preserves the patent-based incentives necessary to sustain our nation’s global leadership in biotechnology innovation, the creation of high-wage, high-value jobs throughout our country, and the ability to bring life-saving treatments and cures to market.

BIO is eager to continue a constructive dialogue with Representatives and Senators on both sides of the aisle to develop a legislative package that will curb abusive litigation and PTO challenges through a balanced approach that does not undermine the ability of patent owners to defend their inventions and businesses against infringement. However, until that balanced approach is accomplished, BIO urges Members of Congress to oppose the Innovation Act.

**About BIO**

BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products. BIO also produces the [BIO International Convention](#), the world's largest gathering of the biotechnology industry, along with industry-leading investor and partnering meetings held around the world. [BIOtechNOW](#) is BIO's blog chronicling "innovations transforming our world" and the BIO Newsletter is the organization's bi-weekly email newsletter. [Subscribe to the BIO Newsletter](#).

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**CONTACT:**

Will Zasadny  
Manager, Communications for CLSA  
619-961-8848  
[Wzasadny@CALifeSciences.org](mailto:Wzasadny@CALifeSciences.org)



**California's Life Sciences Sector Renews Opposition to H.R. 9, the So-Called "Innovation" Act**

*According to CLSA, without substantial changes, the legislation jeopardizes America's leadership in life sciences research, investment and innovation*

**SAN DIEGO** – June 12, 2015 – Today, the California Life Sciences Association (CLSA), the statewide public policy organization representing over 750 of California's leading life science innovators, voiced continued opposition to H.R. 9, the Innovation Act, as amended and reported by the House Judiciary Committee yesterday. "While we appreciate that the bill reported yesterday represents some improvement over earlier versions, these changes do not sufficiently address the significant concerns we and numerous others have raised with the measure," said Todd Gillenwater, CLSA's Executive Vice President of Advocacy & External Relations. "CLSA must therefore strongly urge members of our California congressional delegation to oppose the legislation."

Provisions of particular concern to life sciences innovators include effectively mandatory fee shifting for most patent litigation and joinder language under which parties such as universities, research institutes, investors, or start-up companies could be joined in litigation as unwilling co-plaintiffs, exposing them to the cost of the defendant's attorney fees and other litigation expenses.

While CLSA appreciates the attempts made to address abuses of the U.S. Patent and Trademark Office's (PTO) *inter partes* review processes (IPR), the proposed reforms in the measure are insufficient to address the fundamental problems and abuses within the IPR system. CLSA acknowledges and appreciates the interest and efforts of several members of the Committee, including California Reps. Mimi Walters (R-Laguna Niguel) and Scott Peters (D-San Diego), in expressing strong support for further reforms to curb ongoing abuses of the PTO's IPR process.

"Any patent litigation legislation must appropriately and carefully balance the need to correct abusive 'patent troll' practices with the reliance of a full spectrum of industries and sectors on a well-functioning U.S. patent system and the enforcement mechanisms it provides," added Gillenwater. "Unfortunately, H.R. 9 falls short of this goal and we respectfully oppose the bill as reported out of committee."

CLSA hopes to continue working with the bill's sponsors, our congressional delegation, and House Leadership to improve the legislation so that it is more supportive of our state's life sciences innovation ecosystem.

**About California Life Sciences Association (CLSA)** California Life Sciences Association (CLSA) is the leading voice for California's life sciences sector. We work closely with industry, government, academia and other stakeholders to shape public policy, drive business solutions and grow California's life sciences innovation ecosystem. CLSA serves over 750 biotechnology, pharmaceutical, medical device, and diagnostics companies, research universities and institutes, investors and service providers. CLSA was founded in 2015

when the Bay Area Bioscience Association (BayBio) and the California Healthcare Institute (CHI) merged to create the state's most influential life sciences advocacy and business leadership organization. Visit CLSA at [www.califesciences.org](http://www.califesciences.org), and follow us on Twitter @CALifeSciences, Facebook, Instagram, LinkedIn and YouTube.

**Contact:**

Will Zasadny

Manager, Communications for CLSA

[Wzasadny@califesciences.org](mailto:Wzasadny@califesciences.org)

619-961-8848

# **21C – The Coalition for 21<sup>st</sup> Century Patent Reform**

## **Protecting Innovation to Enhance American Competitiveness**

[www.patentsmatter.com](http://www.patentsmatter.com)

**For Immediate Release**  
June 12, 2015

**Contact: Brian Walsh**  
(202) 280-2007

### **21C Opposes H.R. 9, the Innovation Act, After Yesterday's Markup Tilted the Balance Against All Patent Owners**

(Washington, DC) -- The Coalition for 21st Century Patent Reform ("21C") today made the following statement regarding the House Judiciary Committee's markup of H.R. 9, the Innovation Act, yesterday. Please attribute below to Kevin Rhodes, Chairman of the 21C Coalition and Chief Intellectual Property Counsel of 3M Company:

"21C has made it clear that comprehensive reform legislation is needed to address abuses of America's patent system, and that meaningful patent reform must include sensible litigation reforms and effective measures that restore basic fairness to patent validity reviews in the U.S. Patent and Trademark Office (PTO). While we appreciate the improvements to the Innovation Act added in the Managers' Amendment to H.R. 9, this bill took a major step backward yesterday when it was further amended in the Committee markup. As reported, the bill upsets carefully crafted compromises on a number of issues and will have the unintended consequence of making it more difficult, costly and uncertain for all American innovators and manufacturers to prevent patent infringers from threatening their business investments.

"For example, the amended bill permits a stay of discovery in patent cases based on motions filed a full three months after the case begins, which is a recipe for delay, gamesmanship and abuse. Moreover, the competitive harm exception to this stay of discovery, which was intended to ensure that such stays would not harm legitimate patent owners seeking to stop infringement of their rights by unscrupulous competitors, was rendered effectively meaningless by an amendment that requires a preliminary injunction be granted before discovery may proceed.

"Likewise, amendments to the newly-added venue provision go well beyond what is needed to ensure that cases are brought in judicial districts with a substantial connection to the alleged infringement and will threaten the ability of legitimate patent owners to seek relief from infringement in their home districts. Indeed, the venue provision now jeopardizes the rights of U.S. patent owners with enormous R&D and manufacturing expenditures in the U.S. from suing in the jurisdiction of their own headquarters, even when the infringer has conducted infringing activity in that jurisdiction.

"And regrettably, the bill still falls short in terms of meaningful reforms to the procedures used by the PTO in conducting Inter Partes Review (IPR) and Post-Grant Review (PGR) proceedings.

Additional provisions are still needed to provide greater fairness to all parties in PGR and IPR proceedings and to protect patent owners from duplicative, costly and unnecessary validity challenges.

“It remains our sincere hope that as the legislative process moves forward, 21C can continue a constructive dialogue with Members and staff to develop a legislative package that will both: (1) curb abusive patent litigation practices in a manner that does not undermine the ability of all patent owners to defend their inventions and businesses against infringement; and (2) restore balance and fairness in PTO patent validity reviews for patent owners and patent challengers alike. However, as reported yesterday, the Innovation Act does neither.

“Accordingly, we urge that H.R. 9 as reported by the House Judiciary Committee not be brought to the House Floor unless and until a greater consensus among stakeholders in the patent system is achieved by fashioning a better balanced and fair set of reforms.

The Coalition for 21<sup>st</sup> Century Patent Reform has more than 40 members from 18 diverse industry sectors and includes many of the nation’s leading manufacturers and researchers. The coalition’s steering committee includes 3M, Bristol-Myers Squibb, Caterpillar, ExxonMobil, General Electric, Procter & Gamble, Johnson & Johnson, and Eli Lilly. For more information, visit <http://www.patentsmatter.com>

# EAGLE FORUM

LEADING THE PRO-FAMILY MOVEMENT SINCE 1972

June 10, 2015

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

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

Dear Chairman Goodlatte and Ranking Member Conyers:

Eagle Forum writes to express our continued strong opposition to H.R. 9, the “Innovation Act.” Eagle Forum’s principled interest based on fidelity to America’s founding principles includes strong private property rights. Unfortunately, this legislation ravages a fundamental property right.

We appreciate recent efforts to curb some of the more far-reaching aspects of the legislation. However, this bill still weakens American patents, patent rights, and the ability of inventors — particularly small inventors — to secure their constitutionally grounded private property right in their discoveries.

This legislation makes the pursuit of patent litigation significantly more daunting, uncertain, and expensive than it already is for patent owners. Innovators will find themselves severely disadvantaged in pursuing patent litigation — the only means by which patent property rights can be enforced — during legal proceedings, by devaluing their intellectual property, and from potentially facing breathtaking costs.

The additional risks and uncertainties caused by H.R. 9 add to the challenges all inventors face to raise investment capital, while infringers and incumbent players can game the system, both in the courts and at the Patent Office. The cumulative effect of this legislation runs counter to the constitutional “exclusive right” to one’s intellectual property. This will cripple the nation’s economic benefits from patents (jobs, wealth creation, etc.) that the Founders intended by the “promot[ion] of science and useful arts.” If the Founders incentivized innovation through the strongest possible property right, then certainly they intended patent owners to be able to defend their IP.

Excessively detailed requirements in pleadings, pre-discovery; having to pay for the infringing party's discovery costs; mandatory disclosure of competitively sensitive information, including interested parties; serial stays in the discovery process when (dilatatory?) motions are filed; an overly broad definition of a "customer" that protects patent-infringing major companies as if they were mom-and-pop corner stores; and other provisions stack the patent litigation deck against patent owners. These provisions add extensive extra risks and uncertainty for the patent owner and investors, while patent infringers may freely continue appropriating the patent owner's invention.

The customer stay provision effectively devalues patents by shielding not just independent shop owners, but most parties in the stream of commerce, including major corporations. The stays invite abuse by infringers, who may continue to appropriate someone else's IP while postponing a judgment, dragging out the process while the 22 patent term runs. H.R. 9 ensures that patent infringers enjoy a combination of means to entangle inventors in proceedings and run up innovators' legal costs, while draining their rightful earnings from what the Founders intended as their exclusive property interest. This is happening today in inter partes and other postgrant review forums, where abuses and aggressive antipatent rulings proliferate.

The aggressive fee-shifting and joinder provisions only add to patent owners' financial risks. These provisions also entangle those associated with a patent that happens to lose in court. The significant costs likely to be at issue will lead to a search for "deep pockets." Patent owners, business partners, investors, and others become liable to pay a prevailing infringer's legal costs, under H.R. 9's de facto, one-sided loser-pays scheme. This will bankrupt many inventors, discourage investors, and disrupt the roughly 1,000 commercial spinoffs each year from university-based research because each tech transferral requires an entrepreneur who assumes the risks.

Eagle Forum supports solving the plight of small retailers that receive demand letters. To address this practice in a narrow, targeted manner, we support the TROL Act. However, H.R. 9 goes well beyond the grievances of such small business end users.

Sen. Ted Cruz, who voted against H.R. 9's Senate counterpart, S. 1137, said: "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." Similarly, Sen. David Vitter observed: "[The Founders] felt so strongly about that [fundamental intellectual property right] they put it in the Constitution. I think some aspects of this bill really weaken that property right and make it difficult for smaller entities, in particular, to protect that fundamental property right, which may be the entirety of what their business is about." Eagle Forum agrees completely with these conservatives and calls on House Judiciary Committee members to heed their warnings against undermining IP rights.

Regrettably, Eagle Forum must oppose the "Innovation Act" and we urge Judiciary Committee members to vote against H.R. 9. Taken provision by provision or as a whole, this legislation

puts innovators at risk and advantages infringers. It takes away the ability to defend one's intellectual property and recoup equitable damages from those who infringe one's patents. Please shelve H.R. 9 and, instead, take a much more targeted, less ambitious, more balanced approach.

Faithfully,

Phyllis Schlafly

Chairman  
Eagle Forum

cc: Members of the House Judiciary Committee



10 June 2015

The Honorable Bob Goodlatte, Chairman  
House Judiciary Committee  
US House of Representatives  
Washington, DC 20515

The Honorable John Conyers, Ranking Member  
House Judiciary Committee  
US House of Representatives  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

IEEE--USA, as an advocate for the engineers and scientists who built America's economy, the strongest in the world, we continue to have reservations about current legislative proposals to reform US patent law. While we support the stated goal of H.R.9, the innovation Act, curbing abusive litigation, H.R.9 as introduced will have a significant negative impact on Americans' ability to continue unsurpassed innovation. IEEE's U.S. membership exceeds 200,000 U.S. engineers and entrepreneurs in all 50 states, all of whom depend on a patent system that encourages investment and enables legitimate actors to assert their patent rights.

Both H.R.9 and the Senate's patent bill, S.1137 (the *PATENT Act*), weaken American patents and the ability of *all* innovators to secure constitutionally guaranteed rights to their inventions. Sponsors and proponents of these bills claim they are designed to curb abusive tactics in patent litigation. However, neither bill limits its effects to only bad actors. Instead, both bills are overly broad, and burdensome to all litigants—notably independent inventors, startups, entrepreneurs, and small businesses which seek to assert their patent rights.

Patents protect the most---constricted point in the innovation pipeline—investment in early---stage ideas. Usually, initial concepts are cheap. However, turning concepts into useful products, pharmaceuticals, and other practical benefits, is very expensive. Innovators and businesses invest in proof---of---concept testing, identifying the best chemical compound or technique out of a large number of possibilities, prototype---to---product engineering, debugging, ruggedizing and reliability engineering, testing, regulatory approval, building a production facility, building distribution and sales channels, and/or marketing to develop demand. All of these activities need to be funded before the first sale occurs.

Investors—whether venture capital investment, or senior corporate management—will invest only where there is a convincing showing of sustainable competitive advantage. Especially for the most disruptive ideas, where profitability is years in the future, investors need assurance that the risks carry a reward, and that investment will generate a return. Nobody wants to invest in “the next big thing” if someone else will run off with the profits. For many inventions, in all fields of technology, patents are crucial to reassure investors that the business—if successful—will be profitable, that the original innovator will be able to maintain

those profits, and grow the initial idea and investment into jobs. Without that reassurance, the initial investment never comes, and ideas die.

IEEE---USA is concerned that the collateral damage inflicted by S.1137 and H.R. on all patents will harm American productivity, job creation, and economic growth, far more than they limit the actions of bad actors. Specifically, IEEE---USA:

- Opposes “heightened pleading requirements.” In no other area of civil litigation must a party plead with this kind of particularity. For example, in an employment discrimination case, the initial complaint need not set forth the names of every individual involved in every “hostile environment” incident, or plead specific facts relating to the employer’s intent. Further, in many patent cases, the infringer intentionally hides facts necessary to show infringement, for example, by encrypting data. The Supreme Court recently withdrew Form 18, putting patent cases on even footing with every other area of civil litigation, thereby achieving the stated goals of the legislation.
- Opposes any fee---shifting proposal that is not bilateral and equally applicable to plaintiffs and defendants. IEEE---USA also opposes any fee---shifting proposal that creates any presumption of award of fees, or that would have the practical effect of requiring pre---suit bonding for a typical low---capitalization startup company.
- Opposes the “customer stay” provision. The Senate’s section---by---section discussion of S.1137 suggests that the provision is limited to end---users. If H.R. 9 aligned with this discussion, it might be a plausible solution to a real problem. However, the current bill text creates an exemption for many points in a distribution chain and makes enforcement essentially impossible for some classes of infringing exports.
- Supports provisions that put *Inter partes* reviews, business methods reviews, and post---grant reviews on equal footing with district court reviews of patent validity. The standards for claim interpretation and evidentiary burden should be the same to eliminate forum shopping.
- Opposes any provision that creates carve---outs based on either technology or class of entity. The Law should discriminate against disfavored behavior and must neither favor nor disfavor by class of entity. For example, IEEE---USA members often start companies as spinouts from universities, but the companies themselves no longer fit the carve---outs in favor of universities. Similarly, our members need fair patent protection in other countries. Thus, we oppose language that would set a model in US patent law for similar discriminatory patent laws in other countries.

We ask that Congress not diminish the value of intellectual property and disincentivize investment in the ideas of future inventors and innovators. We urge you to consider more tempered proposals that carefully and specifically target bad behaviors. IEEE---USA joins many other pro---innovation organizations in enthusiastically supporting the Senate’s STRONG Act, and the House’s TROL Act. These bills focus specifically on the behavior that clearly distinguishes “trolls” and other bad actors from legitimate patent holders. Abusive demand letters are the lynchpin of the entire troll business model. Enacting carefully targeted fixes provides time to carefully evaluate further targeted measures that may be needed.

We thank you for your attention to these important matters. If we can be of any assistance, or if you have any questions, please do not hesitate to contact Erica Wissolik at (202) 530---8347 or [e.wissolik@ieee.org](mailto:e.wissolik@ieee.org).

Sincerely,

A handwritten signature in blue ink that reads "James A. Jefferies". The signature is written in a cursive style with a blue ink color.

James A. Jefferies  
2015 President, IEEE--USA

CC: Members of the House Judiciary Committee

**IEEE-USA** | 2001 L Street, N.W., Suite 700, Washington, D.C. 20036-4928 USA  
Office: +1 202 785 0017 | Fax: +1 202 785 0835 | E-mail: [ieeeusa@ieee.org](mailto:ieeeusa@ieee.org) | Web:  
<http://www.ieeeusa.org>



June 10, 2015

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

The Honorable John Conyers  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The Innovation Alliance appreciates the efforts of the House Judiciary Committee to draft a patent bill intended to address abusive behavior without harming patent holders. We welcome changes in the H.R. 9 Manager's Amendment that address innovators' concerns over the critical issues of customer stay, heightened pleadings, and the post-grant and *inter partes* review procedures. While the Manager's Amendment makes improvements to these areas over the previous version of H.R. 9, even as amended, these provisions place an undue burden on the enforcement rights of legitimate patent owners. The Innovation Alliance must continue to oppose the revised H.R. 9 but believes the direction and nature of the changes contained in the Manager's Amendment are a positive sign that our remaining concerns can be addressed.

The Innovation Alliance believes that some additional edits that would marginally diminish the benefits of the legislation to its supporters, but significantly address the needs of the bills critics, are within reach. Improvements to customer stay, pleading, and IPR will result in a bill that will make significant changes to patent litigation without incurring the broad opposition that has existed to date.

In particular, the customer stay provision as drafted is so broad that it invites abuse. This provision has the laudable goal of protecting innocent customers from litigation for their use of infringing products. The Committee's summary expressly states that the stay should be "available only to those at the end of the supply chain." The language of the Manager's Amendment, however, would make a stay of litigation available to many more entities than just innocent end users, including companies in the Fortune 10 and beyond, shielding from suit the entities who often profit most from the infringement. The Innovation Alliance believes modest changes to the customer stay provision will go a long way toward addressing these issues.

The pleadings section similarly remains overly broad and burdensome, especially for small startups and individual inventors. This provision will have the unintended consequence of imposing massive costs and delays in patent cases, for the defendants it is intended to help as well as for the plaintiffs it targets. Not only will inventors and startups be forced to plead a highly onerous amount of facts, once a complaint meets the standards – most likely after several iterations of amended pleadings – a defendant will be forced to answer each and every paragraph of that complaint. This will be especially difficult where a small business is defending a patent lawsuit by a sophisticated plaintiff with a long and detailed complaint. Requiring heightened pleading on "at least one" infringing claim, as USPTO Director Michelle Lee advocated in her April 15, 2015 testimony before this Committee, would avoid these problems while still providing greater notice to defendants.

We also appreciate the Committee's work to address critical deficiencies in the *inter partes* review (IPR) procedure at the USPTO, including permitting patent owners to submit evidence in defense of their patents,

but the language in the Manager's Amendment unfortunately does not go far enough to curb abuse and profiteering in the IPR system.

We look forward to continuing to work with you, your staffs, and other patent stakeholders to further improve to H.R. 9 as it moves through the legislative process so that we can target abusive behavior while ensuring our patent system continues to incentivize innovation and job creation across the economy.

Sincerely,

Brian Pomper  
Executive Director  
The Innovation Alliance

**June 10, 2015**

## **MDMA Opposes House Patent Legislation That Would Thwart Innovation and Patient Care**

**Washington, D.C.** – Mark Leahey, President and CEO of the Medical Device Manufacturers Association (MDMA), issued the following statement today opposing H.R. 9, the “Innovation Act,” which will be marked-up in the House Judiciary Committee tomorrow:

**“MDMA has long supported balanced efforts to curb abusive patent practices, but even with the changes proposed under the new manager’s amendment, H.R. 9 remains overly broad and would harm medical technology innovation and stifle the development of cures for patients who need them the most.**

**“Reforms to the patent system must protect the intellectual property of inventors, not endanger it. Many provisions in H.R. 9 would severely weaken the ability of small companies and the innovators behind them to attract early stage investment for their inventions and defend them against infringement.**

**“Provisions that address fee-shifting and heightened pleadings, for example, would create insurmountable barriers for many of our nation’s most dynamic inventors as they bring new technologies into established markets.**

**“MDMA appreciates the efforts of the Judiciary Committee to address abusive practices in the patent system, but H.R. 9’s desire to address ‘patent trolls’ impacts a broad cross-section of the economy. If enacted in its current form, H.R. 9 would threaten America’s leadership position in medical technology innovation.**

**“MDMA remains committed to working with Congress on targeted efforts to improve the patent system, but we must not do so at the expense of innovators and inventors who are revolutionizing patient care and saving lives.”**

###

# National Small Business Association (NSBA)

May 18, 2015

The Honorable John Boehner, Speaker  
United States House of Representatives  
1011 Longworth House Office Building  
Washington, DC 20515

The Honorable Nancy Pelosi, Minority Leader  
United States House of Representatives  
233 Cannon House Office Building  
Washington, DC 20515

Dear Speaker Boehner and Minority Leader Pelosi:

While the National Small Business Association (NSBA) supports reasonable efforts to protect small businesses from unnecessary patent infringement actions, we urge you to oppose the *Innovation Act* (H.R. 9) due to the massive burdens it will place on small, innovative businesses and independent inventors.

Patent protections are particularly important for small businesses, which operate on much smaller margins and often rely more heavily on their intellectual property for revenue than large firms. According to the U.S. Small Business Administration, small businesses produce 16 times more patents per employee than large patenting firms, which has a direct correlation with job growth. Unfortunately, input from small inventors and their calls for restraint on various patenting bills have been all but ignored throughout this process.

H.R. 9 includes a number of provisions that NSBA cannot support, including:

- Fee-shifting language, or so-called “loser pays” requirements which would, in addition to requiring courts to award attorneys’ fees and costs to the winning party, make personally liable any investors or licensees of the patent should the plaintiff not prevail. This would require the patent holder to certify their ability to pay these costs under a losing circumstance, all of which would greatly deter any small patent-holder from legal patent protection due to massive litigation costs;
- Changes to the post-grant review process which would allow for a greatly drawn-out process forcing the patent holder to burn through valuable resources;
- A provision to mandate the joinder of “interested parties” which would require the disclosure and potential liability of “interested parties” to the patent which will greatly stymie investment and remove any semblance of competitive confidentiality;
- A discovery stay which would limit discovery and even further stack the deck against the inventor trying to protect his or her patent by requiring the plaintiff to produce substantially more information and requiring small companies to post a bond to get the additional discovery they need;
- Heightened pleading standards essentially requiring the inventor trying to protect her patent essentially prove her case before filing a case; and
- Customer stay language, whereby a patent infringer’s customers could continue to sell a product that is in litigation – a huge incentive to foreign patent infringers.

These provisions, while helpful to the largest patenting companies, could decimate small patenting firms. Only a company with massive financial and legal resources would be able to protect its patents under this system. H.R. 9 would place an unnecessary burden on individual inventors and legitimate small- business patentees, making it more difficult for them to grow their companies and raise much-needed capital.

As is often the case, people far and wide are citing “small-business concerns” as justification for this bill. Speaking on behalf of the nation’s first small-business advocacy organization with 65,000 members across the country operating on a staunchly nonpartisan basis, I implore you to consider what actual small businesses want – and it is NOT H.R. 9. Rather, small businesses have rallied behind the *Targeting Rogue and Opaque Letters (TROL) Act of 2015* (H.R. 2045) which would improve the current patenting system and avoid many of the burdens associated with H.R. 9.

Contrary to proponents’ calls to curb patent trolls, H.R. 9 will instead curb innovation.

Sincerely,

Todd McCracken, President and CEO

Cc: Members of the House Judiciary Committee

***Celebrating 75 Years · 1937 - 2012***

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June 10, 2015

Representative Robert Goodlatte  
Chairman, House Judiciary Committee  
U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515

Representative John Conyers  
Ranking Member, House Judiciary Committee  
B-351 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

On behalf of the National Venture Capital Association (NVCA), I am writing to express our opposition to H.R. 9 as it is currently written. While we share the goal of deterring abusive patent litigation behavior, NVCA believes that H.R. 9 will create unintended consequences that will discourage investment in innovation and entrepreneurship. Because H.R. 9 increases the cost and risk of patent litigation, the bill will make it more difficult for any patent-reliant startup to defend their intellectual property. We urge the committee to moderate the bill in order to effectively target abusive behavior while protecting startups who rely on access to the patent system.

NVCA comprises some 400 venture capital firms spread throughout the country. Our members invest tens of billions of dollars annually in a variety of young companies, many of which are heavily reliant on the enforceability of their patents for survival. Conversely, legislation that impairs that ability will diminish the incentive to build and invest in new companies. It has been well documented that a disproportionate amount of the economic growth and job creation in the United States over the last several decades has come from the growth of young innovative companies.

Because H.R. 9 will make it harder for small businesses to defend their patents, this legislation will have a chilling effect on innovation and entrepreneurship in America.

NVCA continues to oppose the presumptive fee shifting standard in H.R. 9, and urges the committee to target fee shifting to abusive litigation behavior. The joinder provision must be further clarified in order to not imperil investors in startups. And the pleadings and discovery sections should be moderated to avoid creating unnecessary costs and delays in patent litigation.

NVCA appreciates several improvements made to the bill, in particular improvements to the joinder provision, but also to the pleadings, discovery and Inter Partes Review reforms. These changes are an improvement to the bill as introduced. We look forward to continuing to work with the sponsors in a good faith effort to craft a bill that meets our mutual objective of curbing abusive patent litigation behavior while avoiding significant unintended consequences.

Bobby Franklin

President & CEO

**FOR IMMEDIATE RELEASE**

**Contact:**

**Mark Grayson**

**(202) 835-3460**

[newsroom@phrma.org](mailto:newsroom@phrma.org)

**PhRMA Statement ON MARKUP OF H.R. 9, THE INNOVATION ACT**

**WASHINGTON, D.C. (June 11, 2015)** – Pharmaceutical Research and Manufacturers of America (PhRMA) Senior Vice President Robert Zirkelbach issued the following statement: The Pharmaceutical Research and Manufacturers of America (PhRMA) announced its opposition to H.R. 9, the Innovation Act, which was marked up and reported by the House Judiciary Committee earlier today.

“Unfortunately, the bill as approved fails to address the serious problems with the Inter Partes Review process (IPR) at the Patent and Trademark Office (PTO), which is a top priority of PhRMA and the entire biopharmaceutical industry. Allowing IPRs to interfere with the rules and processes established under the Drug Price Competition and Patent Term Restoration Act of 1984 (also known as Hatch-Waxman), and the Biologics Price Competition and Innovation Act of 2009 (BPCIA) will create significant unpredictability regarding patents, increase business uncertainty, and undermine incentives to invest in developing new treatments cures.”

“Hatch-Waxman has worked for 30 years, helping to promote generic competition and reduce prices for consumers, while also spurring biopharmaceutical innovation. When the IPR process was created in the America Invents Act, it was never intended to disrupt the carefully balanced litigation requirements established under Hatch-Waxman and BPCIA. However, that is precisely what is happening today, with IPRs being misused by hedge funds and other speculators to target biopharmaceutical patents. If this abuse is not addressed, the end result will be to discourage the investment needed to develop new treatments and cures for patients. That is why more than 90 patient advocacy organizations recently wrote to Congress noting the critical importance of passing legislation to address abuses at the PTO.

“PhRMA supports proposals to preserve the Hatch-Waxman and BPCIA processes by exempting biopharmaceutical patents that would already be covered under those laws from the IPR process. Such an approach would be consistent with other portions of H.R. 9, which already exempt Hatch-Waxman and BPCIA patent litigation from various litigation provisions included in the bill.”

“This approach would also prevent hedge funds and other speculators from abusing IPRs in the context of such biopharmaceutical patents. In contrast, H.R. 9 retains several

loopholes that will allow the abuse of IPRs to continue, to the benefit of investment bankers and at the expense of patients.

“PhRMA appreciates provisions included in the Manager’s amendment governing how patent litigation claims are pled in federal district court, and how discovery can proceed once a pleading is filed. In addition, the bill contains minimal improvements to the IPR process, including clarifying that patent challenges at the Patent Trial and Appeal Board (PTAB) will be evaluated using the *Phillips* claim construction standard. On balance, however, these changes are not enough to outweigh concerns about the failure to preserve Hatch-Waxman and BPCIA. Additionally, the bill now includes venue provisions that would unduly limit where patent holders can bring suits to enforce their rights, a change we do not support.

“PhRMA will continue to work with the Congressional leaders and other members of Congress to include IPR language to preserve the Hatch-Waxman and BPCIA processes in any patent reform legislation that will be taken up by the House this year.”

###

### **About PhRMA**

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country’s leading innovative biopharmaceutical research and biotechnology companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than \$600 billion in the search for new treatments and cures, including an estimated \$51.2 billion in 2014 alone.

### **Connect with PhRMA**

For information on how innovative medicines save lives, please visit:

[www.PhRMA.org](http://www.PhRMA.org)

[www.FromHopetoCures.org](http://www.FromHopetoCures.org)

[www.Facebook.com/PhRMA](https://www.facebook.com/PhRMA)

[www.Twitter.com/PhRMA](https://www.twitter.com/PhRMA)

# Alliance of U.S. Startups and Inventors for Jobs (USIJ)

June 10, 2015

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

The Honorable John Conyers  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

As you continue to assess necessary changes to H.R. 9, the Innovation Act, we remain concerned that the views and positions of inventive startups and entrepreneurs have not been taken into account or even fully solicited.

The Alliance of U.S. Startups and Inventors for Jobs (USIJ) is a diverse group of Silicon Valleybased inventors, entrepreneurs, venture capitalists, startup companies, incubators and research institutions.

The research and development that our companies and institutions do has led to numerous breakthrough technologies in fields including medical devices, drug products, clean tech, mobile technologies and cloud computing. We create real products, and real companies that continue to drive the U.S. economy, but it seems increasingly hard to be heard and included in the conversation. We believe the Innovation Act, including changes made as part of the Manager's Amendment under consideration, will have devastating consequences for our ecosystem, by wiping out the incentive to invest in fundamental inventions and small businesses.

Our entrepreneurs, venture capital members and incubators have – for many years – founded and financed dozens of companies that have created billions of dollars of value and thousands of jobs. We are indicative of the contributions that startups and small businesses make to the U.S. economy. In fact, **U.S. small businesses currently produce 16.5 times more patented inventions** per employee than large firms.

USIJ and the venture-backed start up community have consistently made our concerns with the Innovation Act clear, but the recently released Manager's amendment demonstrates that, unfortunately, our concerns have not been heard.

This is despite of the fact that USIJ working in collaboration with leaders in the venture capital community recently provided detailed recommendations to the Committee to address specific concerns that we continue to have.

Without specific reforms to sections of the Innovation Act dealing with fee shifting requirements, joinder provisions, pleading requirements and discovery stay, USIJ must continue

to strongly oppose the bill.

The Innovation Act will make the pleading and discovery processes much more complex, expensive, and risky for startups and small businesses that must enforce their patents. Furthermore, the bill carries fee shifting provisions that would also deter startups and small businesses from enforcing their patents and make investors reluctant to provide them capital.

Overall, the complex intertwining of various sweeping and related provisions in the Innovation Act work together to make patent litigation of any kind too expensive and risky for small companies and inventor entities to take on the large corporations pressing for the legislation. This would greatly increase the significant advantages large companies now have over the dynamic startups that create most of the new products and technology that fuels our economic growth. If you take away the ability of inventive startups to protect their intellectual property you will see fewer breakthroughs and you will stifle venture investment in fundamental invention of all kinds.

We believe that the Committee could easily and effectively address concerns regarding patent litigation abuse with a much more focused set of provisions such as directly addressing demand letters sent to retailers and retailer patent lawsuits.

We also believe that the Committee must do much more to address the disastrous unintended consequences that the USPTO's inter partes review (IPR) process is having. The IPR process has been expanded beyond Congressional intent to become a blunt force tool that is being used by large companies and hedge funds to undercut competitors and manipulate stock prices. Clearly, Congress can do more than the minor tweaks in the Manager's amendment. At a minimum, IPR petitioners should have some standing relative to the patent(s) they are challenging and the USPTO should use the same evidentiary standard to assess a petition under an IPR as is used in federal court.

We remain interested in meeting with you or your staff to discuss an approach to the stated patent litigation concerns in a way that does not weaken the patent system, benefit large companies at the great expense of smaller companies, or tilt the system against legitimate, inventive companies that must be able to efficiently and effectively protect their intellectual property in an increasingly competitive environment.

Patents and invention drive the U.S. economy. It is crucial that we consider the significant impact that any proposed changes will have on American inventors, investors and entrepreneurs.

Sincerely,

Charles Giancarlo  
Chairman of the Board of Advisors  
The Alliance of U.S. Startups and Inventors for Jobs



June 10, 2015

The Honorable Bob Goodlatte  
Chairman, House Judiciary Committee  
2309 Rayburn House Office Building  
Washington, D.C. 20515

Subject: Opposition to the Manager's Amendment to H.R. 9, the Innovation Act

Dear Chairman Goodlatte:

The Small Business Technology Council (SBTC) is the nation's largest organization of small, technology-based companies in diverse fields. Our mission is to protect the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs to help grow the American economy, create jobs, and facilitate the public/private partnerships to develop the next generation of new technologies. SBTC is the largest organization representing SBIR/STTR award winners working across government agencies. SBTC serves as the Technology Council of the National Small Business Association. NSBA is a nonprofit small business organization that serves over 150,000 companies. For over 78 years, NSBA has provided small business advocacy, and was the founder of the "small business movement" in the United States.

On behalf of the 5,000 firms who participate in the [Small Business Innovation Research](#)<sup>i</sup> (SBIR) and [Small Business Technology Transfer](#)<sup>ii</sup> (STTR) programs. I am writing to oppose H.R. 9, the "Innovation Act," due to the adverse effect it will have on small inventing companies. We would like to add small business to the list of universities, venture capitalists, technology startups, small inventor entrepreneurs, conservatives, liberals, former patent commissioners, and Patent Court judges that oppose H.R. 9 and support the TROL Act.

Small Businesses employ 37% of scientists and engineers.<sup>iii</sup> SBIR firms have received about 121,000 patents,<sup>iv</sup> and small businesses create *16.5 times* more patents per employee than large firms.<sup>v</sup> And SBIR firms receive almost four times as many R&D 100 awards as the Fortune 500 companies,<sup>vi</sup> making SBIR firms the most innovative group in the nation.

While ostensibly aimed at curbing a small number of anecdotal instances of abusive patent litigation, the overbroad and sweeping proposed legislation in H.R. 9 will suppress patent rights of *all* patentees, and in particular, will hurt small high-tech, job-creating SBIR businesses, and the economy.<sup>vii</sup> Simply stated, patents are far more important to small businesses' survival than to large businesses. And licensed patents are the only way universities can commercialize their research.

SBTC has a number of concerns about the latest version of the bill. First and foremost is the inadequate representation of small inventing companies being allowed to testify and provide input. Rushing through a bill that will likely destroy the American innovation ecosystem is deleterious to the American economy and to job creation and only advances the interests of large monopolistic

companies. We believe that the Committee must hear from a broad range of affected parties prior to finalizing legislation presented to the full House.

There are a number of other issues such as the effect on serial entrepreneurs who do not necessarily have a “principal source of income or employment is employment with the party alleging infringement”. Since serial entrepreneurs start a number of companies, the proposed wording will not protect them. This will discourage those serial entrepreneurs who are the most significant job creators.

Also of great concern is the destruction of secondary markets for intellectual property. Why is intellectual property singled out as opposed to real property (for example people’s homes) and personal property (for example citizens’ automobiles)? No one would ever dream of destroying the ability to freely sell an American’s house or car when the owner desires to change. We don’t diminish the value of the real or personal property should when an American experiences financial distress and needs to sell their property. Only inventors and their investors are being singled out as heinous enough that they should have their property rights destroyed and not be able to avail themselves of corporate protection from their personal assets.

H.R. 9 shouts at inventors **“STOP INVENTING. STOP INVENTING!”** We do not believe that this is what America wants. We also have a number of other issues we would like to have the opportunity to discuss with the committee.

In contrast, the TROL Act avoids these negative consequences; hence, it has our strong support. And, we can support the STRONG Patent Act in the Senate. SBTC appreciates your desire to curb abusive patent litigation practices, but we must maintain and strengthen important patent-holder rights and protections. We also strongly support the state law pre-emption provision, which would apply the legislation’s standards uniformly in all 50 states.

Thank you for your efforts. Should you have any questions, please feel free to contact me at [rschmidt@CleveMed.com](mailto:rschmidt@CleveMed.com) or by phone at 216-374-7237.

Sincerely,



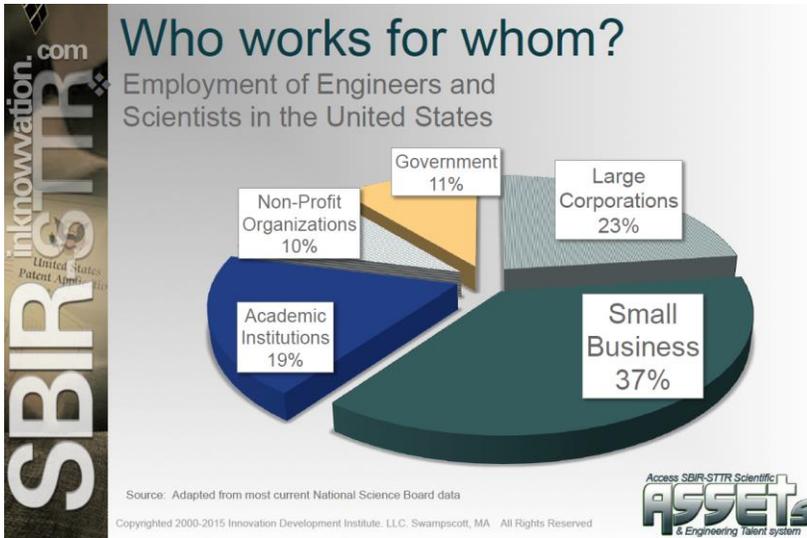
Small Business Technology Council  
Robert N. Schmidt, Co-Chair

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<sup>i</sup> <https://www.sba.gov/offices/headquarters/oca/resources/6827>

<sup>ii</sup> <https://www.sba.gov/offices/headquarters/oca/resources/6828>

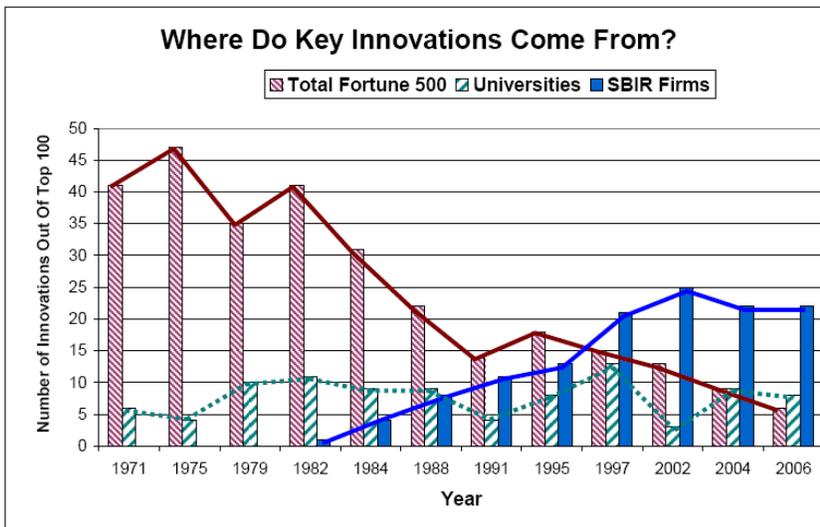
<sup>iii</sup> Source: Ann Eskesen of Innovation Development Corporation



iv [www.Inknowvation.com](http://www.Inknowvation.com)

v <https://www.sba.gov/sites/default/files/sbfaq.pdf>

vi [http://www.itif.org/files/Where\\_do\\_innovations\\_come\\_from.pdf](http://www.itif.org/files/Where_do_innovations_come_from.pdf)



SBIR firms receive about three to four times as many R&D 100 awards as Fortune 500 Companies, on a tiny fraction of the budget.

vii Patents are critical to the success of SBIR Program participants. The Innovation Act makes patents harder to get and to keep, which will likely retard some companies from commercializing, thus causing them to be removed from the program. This is another way the Innovation Act will decrease company success and employment in the US.