



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