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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

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,



Chairman  
Eagle Forum

cc: Members of the House Judiciary Committee