

**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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