House for 1 minute and to revise and extend his remarks.)

Mr. AL GREEN of Texas. Madam Speaker, I want to thank Congressman CHRISTOPHER SMITH of New Jersey for leading a codel to the Philippines. I, along with Congressman TRENT FRANKS, were members of the codel. And I want people to know that there is still great work to be done for our friends in the Philippines.

This picture depicts some of the damage that we were able to see while we were there in Tacloban, which is a province in the Philippines. This is another picture that shows actual homes. This is a USAID sign. And these are places where people are actually dwelling at this time. The number one problem that they have right now is shelter.

I will also add that our military has done an outstanding job. I had an opportunity to meet with many of our military people who were there with heavy equipment, and I commend them for what they have done.

Finally, I would like to say this. We have a bill, H.R. 3602, which would accord people from the Philippines in the United States a temporary protective status. This would allow them to stay here, as opposed to going home where the income is less than $2 a day for more than 40 percent of the people.

My hope is that we can pass H.R. 3602. It does not give any pathway to citizenship. It will only allow them to send money back home while they are here working in the United States.

CONGRATULATING THE BATAVIA, ILLINOIS, HIGH SCHOOL FOOTBALL TEAM

(Mr. HULTGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HULTGREN. Madam Speaker, I rise to congratulate the Batavia High School Bulldogs for winning their first ever Illinois State football championship.

On Saturday, November 30, Batavia faced off against Richards High School, which shares the same nickname, in an epic battle of the Bulldogs. At NIU's Huskie Stadium in DeKalb, an estimated 12,000 Batavia fans roared as Micah Coffey, the quarterback, threw for two touchdowns and running back Anthony Scaccia ran for three more. Both teams fought hard, but Batavia prevailed, capping their virtually undefeated season with a 34–14 victory.

I commend Coach Dennis Piron and the entire Bulldogs team for the hard work that went into a strong 13–1 season and the IHSA Class 6A State championship. Go Bulldogs.

INNOVATION ACT

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3309 under consideration.

The SPEAKER pro tempore (Mr. HULTGREN). Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 429 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 3309.

The Chair appoints the gentlewoman from North Carolina (Ms. FOXX) to preside over the Committee of the Whole.

□ 0915

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 3309) to amend title 35, United States Code, and the Leahy-Smith America Invents Act to make improvements and technical corrections, and for other purposes, with Ms. FOXX in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Madam Chairman, I yield myself such time as I may consume.

Today, we are here to consider H.R. 3309, the Innovation Act. The enactment of this bill is something I consider central to U.S. competitiveness, job creation, and our Nation's future economic security. The bill takes meaningful steps to address the abusive practices that have damaged our patent system and resulted in significant economic harm to our Nation.

During the last Congress, we passed the America Invents Act. Many view the AIA as the most comprehensive overhaul to our patent system since the 1836 Patent Act. However, the AIA was, in many respects, a prospective bill. The problems that the Innovation Act will solve are more immediate and go to the heart of current abusive patent litigation practices.

This bill builds on our efforts over the past decade. It can be said that this bill is the product of years of work. We have worked with Members of both parties in both the Senate and the House, with stakeholders from all areas of our economy, and with the administration and the courts.

To ensure an open, deliberative, and thoughtful process, we held several hearings and issued two public discussion drafts in May and September of this year, which led to the formal introduction of the Innovation Act in October. I strongly believe that the Innovation Act takes the necessary steps to address abusive patent litigation.

Abusive patent litigation is a drag on our economy. Everyone from independent inventors to start-ups to mid- and large-sized businesses face this constant threat. The tens of billions of dollars spent on settlements and litigation expenses associated with abusive patent suits represent truly wasted capital—wasted capital that could have been used to create new jobs, fund R&D, and create new innovations and technologies that ''promote the progress of science and useful arts.''

And that is what innovation is really about, isn't it? If you are able to create something, invent something new and unique, then you should be allowed to sell your product, grow your business, hire more workers, and live the American Dream.

The Innovation Act puts forward reasonable policies that allow for more transparency and brings fundamental fairness to the patent system and the courts.

The Innovation Act is designed to deal with systemic issues surrounding abusive patent litigation as a whole, and includes a number of provisions designed to ameliorate this significant problem.

Within the past couple of years, we have seen an exponential increase in the use of weak or poorly granted patents against American businesses with the hopes of securing a quick payday. Many of these abusive practices are focused not just on larger companies but against small and medium-sized businesses as well. These suits target a settlement just under what it would cost for litigation, knowing that these businesses will want to avoid costly litigation and probably pay up. The patent system was never intended to be a playground for litigation extortion and frivolous claims.

The Innovation Act contains needed reforms to address the issues that businesses of all sizes and industries face from patent troll-type behavior, while keeping in mind several key principles, including targeting abusive behavior rather than specific entities, preserving valid patent enforcement tools, preserving patent rights, promoting invention by independents and small businesses, and strengthening the overall patent system.

Congress, the Federal courts, and the PTO must take the necessary steps to ensure that the patent system lives up to its constitutional underpinnings, and let me be clear about Congress' constitutional authority in this area. The Constitution grants Congress the power to create the Federal courts, and the Supreme Court has long recognized that the prescription of court procedure falls within the legislative function.

To that end, the Innovation Act includes heightened pleading standards and transparency provisions. Requiring parties to do a bit of due diligence up front before filing an infringement suit is just plain common sense. It not only reduces litigation expenses, but saves

the courts' time and resources. Greater transparency and information make our patent system stronger.

The Innovation Act also provides for more clarity surrounding initial discovery, case management, fee shifting, joinder, the common law doctrine of customer stays, and protecting IP licenses in bankruptcy. Further, the bill's provisions are designed to work hand-in-hand with the procedures and practices of the Judicial Conference, including the Rules Enabling Act and the courts, providing them with clear policy guidance while ensuring we are not predetermining outcomes and that the final rules and the implementation in the courts will be both deliberative and effective.

Today, we are taking a pivotal step toward eliminating the abuses of our patent system, discouraging frivolous patent litigation, and keeping laws up to date. The Innovation Act will help fuel the engine of American innovation and creativity, help create new jobs, and grow our economy.

I reserve the balance of my time.

Mr. CONYERS. Madam Chair, I yield myself such time as I may consume.

Of course, we are here to correct the problem of patent trolls. We are, unfortunately, faced with a measure, H.R. 3309, which goes well beyond the issue of trolls and would, unfortunately, weaken every single patent in America.

I say this for several reasons.

First, H.R. 3309 fails to respond to the single most important problem facing our patent system today—the continuing diversion of patent fees.

Nearly $150 million in badly needed user fees have been diverted in fiscal 2013. It is estimated that $1 billion in fees have been diverted in the last two decades. This cannot go on.

Next, the bill's heightened pleading requirements will deny legitimate inventors access to the court in several critical respects:

They will have an unfair impact against patent holders across the board;

They are drafted in a one-sided manner;

They will prolong litigation;

They are unnecessary because the courts are already addressing pleading standards.

The next thing I would bring to your attention is the bill's fee-shifting requirements will favor wealthy parties and chill meritorious claims.

I am not surprised that the other side would be advancing something like this, but it is shocking because the provision is drafted in an overly broad manner and will apply well beyond patent infringement actions.

The next thing that I would point out is that the bill's discovery limitations are counterproductive. Limiting discovery prior to holding hearings to construe patent claims and determine their scope will delay litigation and lead to even greater expenses for the parties.

Finally, H.R. 3309 mandates that the Federal judiciary adopt a series of new rules and judicial changes that will make it more difficult for inventors to protect their patent rights.

These changes are strongly opposed by the Judicial Conference of the United States, the principal policymaking body that Congress established to administer our Federal court system.

I have spent my entire career on Judiciary to help foster an independent judiciary that can resolve disputes between parties on a fair and dispassionate basis based on an evenhanded set of rules. There is little doubt that the Federal judiciary, as evidenced by its exceedingly deliberative rulemaking process, is in a far better position than the entire Congress to set the proper rules for their own courtrooms on these matters.

By unbalancing the patent system, we send a signal to inventors—the very people doing the research and developing the cures that benefit us all every day—that their inventions are not worthy of full legal protection. This means that the next cure for cancer or technological breakthrough may be stymied and perhaps never come, or they will be developed abroad rather than in the United States.

We can and should respond to the problem of patent trolls in a direct, but fair and targeted, manner; but we must not do so in a way that punishes our innovators and inhibits innovation.

Madam Chair, I reserve the balance of my time.

Mr. GOODLATTE. Madam Chairman, it is now my pleasure to yield 1 minute to the gentleman from North Carolina (Mr. HOLDING), a distinguished member of the Judiciary Committee.

Mr. HOLDING. Madam Chairman, I rise in support of H.R. 3309, the Innovation Act, because it is crucial to preserving the integrity of our Nation's innovators and creators.

One of the constitutional responsibilities of Congress is to ''promote the progress of science and useful arts.'' This legislation does just that by deterring abuse of our patent litigation system.

As a United States Attorney, I saw how patent trolls abuse our patent litigation system by acquiring patents that they have no intention of using for anything other than their own monetary gain. Patent trolls sue companies for allegedly infringing on patents they had no business acquiring in the first place.

The Innovation Act, which I am proud to cosponsor, makes it more difficult for patent trolls to form a case. It also aligns fee shifting in patent cases, which discourages frivolous cases.

Madam Chairman, there is a lot of opportunity for job creation in the technology sector. The Innovation Acts is essential to protecting these technology companies from fraud and abuse.

I want to thank Chairman GOODLATTE for his leadership on this issue.

Mr. CONYERS. Madam Chair, I yield 3 minutes to the gentleman from Kentucky (Mr. MASSIE).

Mr. MASSIE. Madam Chair, I want to briefly tell you about a young boy who grew up in modest surroundings in rural Kentucky.

Although he had no money, he was inspired to invent. So he collected junk to build his inventions—broken clocks, radios, vacuum cleaners. Who knows, maybe one day he could assemble this junk into an invention that would allow him to pull himself out of his humdrum environment.

He was inspired to invent by stories of Edison, Ford, and Tesla. In the seventh grade, he invented this robot arm that you see here, which won him a prize at the science fair. He even invented a flower pot that would water itself for his grandmother.

He went on to college, where he met other inventors, inspired, again, not just by creativity but by the fact that they can make an honest living by improving the lives of others.

One of his inventor friends invented a robot that vacuums floors for millions of people now. This boy went on to invent a touch interface for computers, obtain 29 patents, raise venture capital, and create dozen of jobs.

His story is only possible in America, where our robust intellectual property system and judicial system work together to protect the property rights of inventors.

□ 0930

Knowing this and relying on this, many inventors dedicate their entire lives to inventing things that will improve and extend the lives of others.

Today's patent reform bill is a serious threat to American inventors. That is why inventors are urging us not to pass this bill today. It will extinguish creativity and invention in America.

Recklessly weakening the patent system, as this bill does, will deprive inventors of income and a livelihood. They will pursue other careers. As the role models for young inventors quietly fade into history, fewer young students will pursue invention. A decade from now, Congress will further lament the lack of interest among the next generation in science, engineering, technology, and math, arrogantly unaware that it was Congress that killed that interest today with this bill, should it pass.

How do I know this boy's story so well? How can I anticipate the unintended consequences of this bill? I am the boy in this picture, and that was my story.

It would be shameful and wrong to kick out the ladder from our next generation of inventors, as this bill would do; but if my story doesn't compel you, please listen to the words of Dean Kamen. Pick your favorite inventor in history—Tesla, Edison—and Dean Kamen is that inventor of our time. Perhaps you know him as the inventor of the Segway, but he has invented a

dialysis machine, an insulin pump, and a self-balancing wheelchair. These inventions have improved the lives of millions of people all over the world.

Here is what Mr. Kamen has to say about this very legislation:

> Adding uncertainty and cost to getting and maintaining patents will be the largest single cause of the decline of innovation and, therefore, of the economy in this country that I've seen in my lifetime.

Mr. Kamen doesn't just invent. He inspires the next generation to invent with his America FIRST Robotics Competition that millions of students have participated in. He inspires the next generation to invent with his robotics contest.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. Madam Chair, I yield the gentleman an additional half minute.

Mr. MASSIE. I am scheduled to speak at two of these robotic contests in Kentucky this weekend, not to inspire these kids to be politicians, but to inspire them to be inventors. Should this bill pass, should we kick the ladder out from our young inventors, it is going to be hard for me to face them Saturday.

I urge my colleagues to listen to the inventors of America, who are pleading to them to oppose this bill.

Mr. GOODLATTE. Madam Chairman, I am pleased to yield 1 minute to the gentleman from Texas (Mr. FARENTHOLD), who is a distinguished member of the Judiciary Committee.

Mr. FARENTHOLD. Thank you very much.

Madam Chairman, the patent system is a vital part of our national identity. It stimulates American ingenuity, and it enhances our global competitiveness stance.

Traditionally, patent holders have asserted their patents against those who produce infringing technologies, but in recent years, abusive patent litigation—patent trolling—has ballooned as companies have emerged solely to buy questionable and vaguely defined patents and to assert them against thousands of end users in the hope of extracting licensing fees. Right now, the patent trolls are going after hotels and restaurants. It is the reason you don't have Wi-Fi in more restaurants.

Guess what? This is legalized extortion, and H.R. 3309 will significantly curb this problem. Though I have some problems with section 9(c) in the PTO's ability to apply the broadest reasonable interpretation claim construction standard in post grant reviews, this bill is a delicate compromise between competing interests.

I hope we can deal with the 9(c) problem in the future, but overall, this is a great bill. I am not going to let the perfect get in the way of the doable. I hope my colleagues who have minor objections to the bill don't do the same. We have got to stop this abusive patent trolling litigation, and this bill will do it. I urge my colleagues to support it.

Mr. CONYERS. Madam Chair, I am pleased now to yield 2 minutes to the gentleman from New York, JERRY NADLER, a senior member of the Judiciary Committee.

Mr. NADLER. I thank the gentleman for yielding.

Madam Chairperson, I rise in reluctant support of this bill, the Innovation Act.

The bill addresses the issue of patent trolls suing large companies, small businesses, and retailers over vague patents and using the cost of litigation as a weapon of extortion to secure settlement fees. The bill is real; the problem is real; and addressing it is important.

The bill proposes to address the problem by providing end user defendants the ability to switch the suit to the manufacturer when confronted with patent trolls; it increases the transparency of patents and of the companies that own them; and it asks the judicial conference to review and amend certain discovery rules. These are reasonable changes to the current law which will help reduce the burden of patent trolls on our economy.

Unfortunately, the bill does not deal with the problem of the diversion of user fees from the Patent Office. Unfortunately also, the authors of the bill have grafted the Republican agenda of so-called ''tort reform'' onto the bill. These provisions may severely limit the ability of real inventors and of those with meritorious patent claims to obtain justice in our courts. They are deeply troubling and ought to be addressed by amendments to the bill now and improvements to the bill when it is taken up by the Senate.

The most troubling provision is the ''loser pays'' provision. I oppose ''loser pays'' provisions in general and in this context as well. The reason is one of fairness. I don't believe that only large corporations or the wealthiest members of society should have access to justice. Already, the threat of the enormous cost of litigation may act to prevent individuals from pursuing even the most meritorious civil liability claims. For most individuals and small businesses, the financial risk of having to pay the other side's costs and legal fees as well is one too great to bear no matter how valid the claim.

It is simply not fair to unnecessarily punish individuals with serious and meritorious claims for seeking justice. Keep in mind, a person or a business can have a legally legitimate dispute regarding fact and law and, yet, can still ultimately lose the case. They shouldn't be unduly punished for trying to protect their interests in court. Furthermore, we don't want to create a situation in which experienced corporate defendants with enormous resources and expert legal talent can bully injured plaintiffs into unfair settlements due to the risks associated with losing a potentially successful case.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. I yield the gentleman an additional half minute.

Mr. NADLER. Thank you.

I have other concerns as well when it comes to some of the bill's modifications to the pleadings standards, but we must deal with the real problem of patent trolls exploiting the current legal system for illegitimate purposes. We must disrupt the business model of the patent troll. We must prevent the extortion of small businesses across America.

I will support the bill today, but I want to encourage our friends in the Senate to do a better job in balancing the competing interests. I urge them, in particular, to insist on their version of the bill and to not allow the House's ''loser pays'' provision into the final bill that we vote on in the conference report.

Mr. GOODLATTE. Madam Chairman, at this time, it is my pleasure to yield 2 minutes to the gentlewoman from Washington State (Ms. DELBENE), a distinguished member of the Judiciary Committee.

Ms. DELBENE. Thank you, Mr. Chair.

Madam Chairman, from the Judiciary Committee's examination of abusive patent litigation this year, it is clear that there is a need for legislative action. This issue has harmed companies large and small, from big tech companies to small retailers, restaurants and credit unions, and in recent years, even our public transit agencies have been targeted by these so-called ''patent trolls.''

In my home State of Washington, King County Metro was hit with a lawsuit in 2011 from ArrivalStar, a company that claimed infringement of a patent that was so broad that it could potentially cover any system that tracks a vehicle. With this lawsuit, King County's innovative bus tracking technology and a popular mobile application called ''OneBusAway,'' which relies on Metro's data, was threatened. Even if there were a strong case to be made for challenging the patent's validity, fighting a suit like this can run into the millions of dollars, all at taxpayer expense. So King County had to settle with ArrivalStar, costing taxpayers $80,000.

King County was not alone. At least 11 transit systems settled with ArrivalStar in response to lawsuits over bus tracking systems rather than undertake expensive and time-consuming litigation.

This kind of litigation abuse does a disservice to the U.S. patent system and to our innovation economy. In the case of ArrivalStar, it harmed taxpayers in King County and many other agencies across the country.

Because of the widespread impact of abusive litigation like this, there is broad support across industry and among public interest groups for measures that reduce the financial incentive for bad actors to bring predatory patent suits, measures such as: curbing the excessive costs of litigation and

discovery abuse, making patent cases more efficient, and requiring plaintiffs to be precise in their claims of infringement. The Innovation Act would do all of these things, and it does so by targeting abusive behaviors rather than singling out any particular type of patent holder or business model.

I am pleased to support this bill today, but I also believe we must continue to make improvements to the bill as it moves forward in the legislative process. I will also be supporting several amendments on the floor today, and I will continue to work with my colleagues in both Chambers to get legislation passed that strikes the right balance in protecting and strengthening our patent system.

Mr. CONYERS. Madam Chair, I am pleased to yield 1½ minutes to the gentleman from Vermont (Mr. WELCH).

Mr. WELCH. Madam Chair, patent trolls are not about protecting patents. They are about trolling for easy money at the expense of hardworking people. Patent trolling is a total and complete abuse of the patent system and is a total rip-off of hardworking people. Worst of all, it is a complete abuse of good people who are trying to do good things in their communities. Let me give you a couple of examples.

In Vermont, MyWebGrocer is a Web-based company—innovative—located in Winooski, Vermont, with over 180 employees. They have experienced six patent troll attacks. One of the trolls claimed to have a patent—and get this—on surfing the Web with a mobile device. This was a stickup.

Another completely outrageous example is of a Vermont nonprofit. It assists individuals with developmental disabilities. This nonprofit was targeted by a patent troll that was demanding payment for a supposed infringement on scanning technology. Can you imagine what it is like for a small nonprofit, doing good work, to get a letter that is essentially a stickup? That is what it is.

What these businesses and nonprofits then have to decide is: Do they pay the bounty or do they fight?

This legislation is definitely needed so that our nonprofits and our small businesses can get on with the good work they are doing without the threat of abusive patent trolling.

Mr. GOODLATTE. Madam Chairman, at this time, it is my pleasure to yield 1 minute to the gentleman from Pennsylvania (Mr. MARINO), the vice chairman of the Courts, Intellectual Property, and the Internet Subcommittee.

Mr. MARINO. Thank you, Mr. Chairman.

Madam Chairman, I rise in support of H.R. 3309, the Innovation Act.

Each day, all across the United States, small businesses and entrepreneurs are receiving abusive letters that insist the recipient has somehow violated a patent. He or she is left with the option of complying with the letter's demands, such as by sending a check for $50,000—and all will be forgotten—or taking it to court, which could cost millions of dollars and put these businesses out of business. In 2011, patent trolls cost the American economy $29 billion.

I want to skip the notes and go right to commonsense legislation. This is what it is:

A veteran from Afghanistan came in to see me. He saved his money that he had earned while protecting this country. He has got a little laptop that has communications with his printer, and a troll is suing him, saying he violated the patent. My computer at home talks to my printer, and my kids' computer at home talks to my printer, so we must be violating some patent of some sort.

This is abusive legislation. It is putting our small business entrepreneurs out of business. I urge my colleagues to support this.

Mr. CONYERS. Madam Chair, I reserve the balance of my time.

Mr. GOODLATTE. Madam Chairman, may I ask how much time is remaining on both sides?

The CHAIR. The gentleman from Virginia has 20 minutes remaining, and the gentleman from Michigan has 18 minutes remaining.

Mr. GOODLATTE. At this time, Madam Chairman, it is my pleasure to yield 2 minutes to the gentleman from California (Mr. CÁRDENAS).

Mr. CÁRDENAS. Madam Chair, I rise today in support of the bipartisan Innovation Act, which makes important reforms to the U.S. patent system in order to curb abusive litigation.

I have heard from businesses of all sizes and from all industries in my district about the added burden faced by too many companies at the hands of patent assertion entities, or patent trolls. Resources should be better spent on business expansion, on job creation, on the development of new tools or services, or on improved infrastructure instead of being used to pay settlements or even unnecessary licenses. The enactment of the Innovation Act would go a long way towards solving this problem.

We must support American innovation, job creation and economic growth. I urge my colleagues to vote ''yes'' on H.R. 3309, the Innovation Act. As a former small business owner myself, one of the things that can hinder job growth in any small business or in any community is unnecessary and frivolous lawsuits.

□ 0945

Mr. CONYERS. Madam Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Madam Chairman, at this time, it is my pleasure to yield 1 minute to the gentleman from New York (Mr. JEFFRIES), a distinguished member of the Judiciary Committee.

Mr. JEFFRIES. I thank the chairman for his stewardship and the ranking member for his legitimate expressions of concern.

Madam Chairman, this bill is a work in progress, but it is a meaningful step in the right direction as it relates to dealing with a patent troll problem that is adversely impacting small businesses, start-up companies, tech entrepreneurs, innovators, and inventors in New York City and all across the country.

In our judicial system, we must ensure that outcome is determined on the basis of the merits of a claim and not the high cost of litigation in the patent context. When the latter occurs, innovation is hurt.

We must also jealously guard the ability of legitimate patent-holders to vindicate their rights in court. With respect to that concern, there is still significant work to be done in the Senate, particularly as it relates to section 285. But notwithstanding that concern, this bill, the Innovation Act, represents a solid foundation upon which to address the patent troll dynamic, which almost everyone in this Chamber agrees is a significant problem.

For that reason, I urge my colleagues to vote ''yes.''

Mr. CONYERS. Madam Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Madam Chairman, we have certainly heard a lot about trolls, haven't we? Maybe we should understand exactly how that word came to be used in this debate.

Top executives from one of the huge electronics mega-companies, these international corporations, were sitting around one day. One of them happened to tell me about the conversation they had, which is, How do we demonize the small inventor who is coming at us because we are infringing on his patents? How do we do that? We can't attack the small inventor because people know that is where the progress of the United States comes from, is our independent inventors. We can villainize the lawyers who represent those small inventors.

They went around the room, and this executive tells me about this conversation: Well, what should we call them? What is a sinister, evil sound that can get away from the fact that we don't have our own arguments and our arguments against this don't stand up; that we are really attacking the little guy's ability to prevent us from stealing his patent? What word can we use that can get people so they won't see that? Let's call them ''trolls.''

Well, the guy who was talking to me, who was in the conversation, he was an executive from one of these multi-national corporations, he said, Well, I suggested patent pirates, but trolls sounded so much more sinister.

That is what we hear today. Every time you hear the word ''troll,'' what you are hearing is a manipulation of this debate by some very special interest, powerful interest, who wants to steal from the independent inventor. Everything in this bill that we are talking about trolls actually impacts on America's independent inventors in a dramatic way.

This is the greatest attack, the biggest attack, on the independent inventor in the 25 years that I have been a Member of Congress. The fact is, these big multi-national corporations are infringers. Every one of the big corporations behind this bill that is trying to have us ram this through the Congress has been found guilty of multiple infringements against small inventors. So they are going to get us—oh, no. We are going to pass rules in the name of stopping the trolls, which are really going to undercut the small inventor in this country. This is a disaster. This is the anti-innovation bill. This is the let's kowtow to these multi-national electronic corporations like Google, that have poured lots of campaign donations into this issue on Capitol Hill in the last few years. No, let's watch out for the little guy.

What we have are the Philo Farnsworths or the Edisons, the people who actually came up with the changes that have made America secure, made us prosperous, made our people competitive with cheap labor overseas because we have got the technology. Let's make sure that we don't smash this generation's Edisons and Philo Farnsworths.

I oppose this bill.

Mr. GOODLATTE. Madam Chairman, I yield myself 30 seconds to affirm what we have said from the outset: this bill is designed for the little guy, both the innovator, the inventor, and the end-user small business that are getting subjected to these trolling attacks.

No innovator, no inventor, no one who brings a lawsuit to perfect their claim should fear this legislation unless their claim has no reasonable basis in law or fact. It is only then that they would be disadvantaged. In fact, most of the provisions in this bill are designed to lower the cost of litigation.

The big guys can pay all they need to for litigation. The little guys can't afford to. By lowering the cost of litigation, we are going to create greater opportunity, both for the innovators to pursue their good claims and for the little guys on the receiving end who get these outrageous demand letters on the other side who are having to pay outrageous costs or simply pay money.

At this time, Madam Chairman, I am pleased to yield 2 minutes to the gentleman from California (Mr. ISSA), a distinguished member of the Judiciary Committee.

Mr. ISSA. Madam Chairman, my colleague from California a few moments ago spoke eloquently on behalf of the small inventor, but he didn't speak for me, and I am a small inventor.

When I patented my first product, all I had were a couple of employees and an idea. I presented a product that I really wanted to make to a company that I thought would buy it, and then I raced down to protect my rights and succeeded. Ultimately, I was paid.

I know very well what you do if you assert patent infringement if you want to prevail. You look at the competitor's product; you take some due diligence. All this legislation is trying to do, and do well, is to put some teeth into what my colleague from California disparaged: the trolls who will simply surf the Internet and send out litigation alleging patent infringement with products they have never looked at, understood, nor do they know if they fall under their patent.

I have received damages under the rule 11 sanction. I know what it takes to share a completely frivolous case. I have prosecuted my own patents against infringers. I know what you should do before you assert to somebody ''patent infringement.''

This bill does one thing very well. It puts a little bit of teeth finally back into what the trolls use as a tool: file a lawsuit and collect an amount of money because people don't want to spend it on litigation.

Just for once I would like us to understand this is not sponsored by the big guys. In fact, the little guy starting a company, who gets a letter or a suit from a troll, is the person that this will protect. I know this firsthand from more than three decades of being an inventor.

Mr. Chairman, I thank you for your leadership on this issue.

Mr. CONYERS. Madam Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Georgia (Mr. JOHNSON).

Mr. JOHNSON of Georgia. Madam Chairman, I think it is time this morning to reveal a little bit of truth.

We have had reports of trolls just running through the marketplace of America. Trolls—you know those, the ones that hang out under bridges and scare you when you were a child. A troll is just something that is, oh boy, it is to be avoided. So all patent plaintiffs bringing actions to protect their patents, we are now calling them trolls. That is not true; that is not accurate. In fact, it is very inaccurate.

Only 5 percent of the patent cases that are filed in the courts of this country could be considered done in bad faith. So you could call those plaintiffs, I suppose, patent trolls. But 5 percent of the litigation does not equate to ''we are being overrun by patent trolls.'' That is just not correct.

There is a problem with abusive litigation. So how do you get at that? How do you—without closing the courthouse door on plaintiffs seeking to assert their rights to their patents, and those plaintiffs tend to be small entities, mom-and-pop inventors back in the garage or down in the basement, some 28-year-old ex-Harvard junior who dropped out and comes up with the next thing that explodes in the technology field—how do we protect those folks who are trying to honestly protect their patents?

I submit that H.R. 3309 goes way beyond what is necessary. It also has some constitutional implications. The Rules Enabling Act was passed by Congress back in 1934. That Rules Enabling Act was a very wise and considered piece of legislation. It recognized the fact that Federal Courts would be better off, and the Federal body of law would be better off, if we leave it to the Federal Courts to determine their rules of procedure.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. I yield an additional minute to the gentleman from Georgia.

Mr. JOHNSON of Georgia. So prior to 1934, there was something called the ''conformity principle,'' which held that Federal Court procedures should be in accordance with the States wherein those Federal Courts sat; but that proved to be unworkable, so the rules enabling clause went into effect. Since then, we have left it to the Federal judiciary, through the Judicial Conference, to promulgate rules of procedure in both civil and criminal cases, and it has worked well.

Now we have section 6 of this ''patent troll act'' that imposes upon our judicial rules of procedure. These rules have not been recommended by the Judicial Conference. In fact, the Judicial Conference, led by Chief Justice Roberts, is opposed to this change. Therefore, I think on constitutional grounds this should be defeated.

Mr. GOODLATTE. Madam Chairman, at this time, it is my pleasure to yield 3 minutes to the gentleman from Nebraska (Mr. TERRY) for the purpose of engaging in a colloquy with the gentleman from Utah (Mr. CHAFFETZ) and myself.

Mr. TERRY. Madam Chairman, I rise for the purpose of entering into a colloquy with my friend from Utah joining with me.

Chairman GOODLATTE, I want to thank you for your attention to the very serious problem of patent assertion entities, otherwise known as ''patent trolls'' here today.

On November 14, the House Energy and Commerce Committee held a hearing entitled: ''The Impact of Patent Assertion Entities on Innovation and the Economy.'' We heard from a variety of witnesses from industries including the food, hospitality, and tech, all of whom had been targeted by vague, unfair, and deceptive patent troll demand letters.

That hearing revealed significant economic harm to Main Street businesses in the economy caused by such patent troll demand letters. These entities engage in abusive practices that often target small businesses because they don't have the resources to fight back.

At the markup for the Innovation Act, Mr. CHAFFETZ offered an amendment that resulted in a sense of Congress in the bill before us today. That sentence says:

> It is an abuse of the patent system and against public policy for a party to send out a purposely evasive demand letter to end-users alleging patent infringement.

□ 1000

As chairman of the House Energy and Commerce Committee, Subcommittee

on Commerce, Manufacturing, and Trade with jurisdiction over these type of consumer abuses, I join with your sentiments. We understand that time is of the essence.

I yield to the gentleman from Utah (Mr. CHAFFETZ) at this point.

Mr. CHAFFETZ. I thank Chairman TERRY for his good leadership and work on this, and certainly Chairman GOODLATTE for bringing this bill; and knowing that you, Mr. TERRY, are working on a bill that I am going to wholeheartedly support.

Madam Chairman, we have received support for this approach from many business groups, including the National Retail Federation, the National Restaurant Association, the App Developers Alliance, the Direct Marketing Association, the American Association of Advertising Agencies, the Association of National Advertisers, the Food Marketing Institute, the Mobile Marketing Association, the National Association of Convenience Stores, the National Grocers Association, the American Hotel and Lodging Association, just to name a few. These represent hundreds of thousands of businesses and millions of employees across the country.

It would be my hope that the House would expeditiously take up any demand letter legislation reported out of the House Energy and Commerce Committee under your leadership. I support it.

Mr. TERRY. To that end, the Energy and Commerce subcommittee intends to proceed through regular order, as soon as it is practicable, to examine both the problem of vague patent demand letters and potential solutions the Federal Trade Commission could implement. We took another step just recently in a hearing with our FTC commissioners this week on the patent trolls demand letter issues.

Mr. GOODLATTE. Madam Chairman, I thank the gentleman from Nebraska and the Energy and Commerce Committee for their good work on this issue. He has my commitment to work on this important issue, and we must continue to work to rein in the abuses of these demand letters.

I also look forward to working with Mr. CHAFFETZ and Chairman UPTON of the Energy and Commerce Committee, and I know that we can produce a good product to further address this issue within that committee's jurisdiction.

Mr. CONYERS. Madam Chair, I yield 30 seconds to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. So we keep hearing that this is about trolls. And we just heard about a problem that is being described, and it is a big problem, where you have got people coming into a retailer and suggesting that they were going to sue them for using a piece of technology that the retailer is not really fully aware of. Okay, how is taking away the rights of every American inventor through judicial review of what the Patent Office has done to accept or reject his patent, how does that affect the trolls? It affects the so-called trolls not at all. But I tell you what it does, it means that we have taken away a right of every inventor.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. I yield an additional 30 seconds to the gentleman.

Mr. ROHRABACHER. What we are doing is taking away the right of every independent inventor, a right that he has had since 1836, to say that if a government official in the Patent Office is doing something illegal to deny him his patent, this small inventor has a right, has a right to go to the judges and get a court action on it. What does that have to do with trolls? That is in this bill.

We are taking away the rights of little guys, small inventors, in the name of getting the trolls, and we are making it impossible for small inventors to go after the big infringers, these multinational corporations which tell these guys, Screw off; you can't challenge us in the courts anyway.

Mr. CONYERS. Madam Chair, I reserve the balance of my time.

Mr. GOODLATTE. Madam Chair, I yield myself 30 seconds to respond.

The very provision the gentleman from California references, section 145, is used by these very patent trolls to bypass the process. That is why, working in conjunction with the America Invents Act that has already been passed and this legislation, we will have an effective tool for those legitimate inventors, and we will stop the trolls from getting out from under the bridge.

I yield 1 minute to the gentleman from Texas (Mr. POE), a distinguished member of the Judiciary Committee.

Mr. POE of Texas. I thank the chairman for yielding.

Not all lawsuits in the patent business are done by trolls, but some are, and these are obvious frivolous lawsuits on their face. The first time it appears in the system is when that small business owner gets that demand letter in the mail, and it is nothing more than legalized extortion where the letter basically says, You will settle for $10,000 or we will sue you and it will cost you more money to defend yourself; settle. What small business owners do, they are faced with that, many of them settle or they go out of business.

That is what this legislation tries to prevent, the extortion racket in the patent infringement business, and it is done by some people that we call trolls. This legislation protects the small business owner. It gets the troll, the frivolous lawsuit folks out of the extortion racket early on in the system. That is why this piece of legislation is good for small business, and that is why it is good for the patent industry.

And that's just the way it is.

Mr. CONYERS. Madam Chair, I am pleased to yield 2½ minutes to the gentlelady from California (Ms. LOFGREN).

Ms. LOFGREN. Madam Chair, I thank Mr. CONYERS and Chairman GOODLATTE. I am glad we are here today addressing these issues of abusive lawsuits in the patent system.

As has been mentioned by others, we do have a problem, it is widely agreed to, among patent assertion entities, sometimes called patent trolls. These lawsuits, these abusive lawsuits that are brought, can easily cost $2 million to $10 million apiece, and that is why, when a meritless lawsuit is threatened, it is easy to extort a smaller payment to make it go away, and that is what we are trying to deal with here.

This is a big issue for small businesses. Professor Colleen Chien of Santa Clara University, now with the White House, did a study and found that more than half of these suits were against companies with less than $10 million in annual revenue.

And that is why this bill, it is not a perfect bill, but why this bill has such broad support. It is genuinely a bipartisan bill. I am a cosponsor of this bill, along with the Congresswoman ANNA ESHOO, MIKE HONDA, PETER DEFAZIO, JARED HUFFMAN, and many others. At a time when the country is saying, ''Can't you just work together?'' we have. Reasonable people can differ, which is why we have this debate here today. We have 40 members in the House Judiciary Committee. Only five members voted against reporting this bill out. That is remarkable.

The White House has just issued a very strong statement of administrative policy. They support this bill. So at a time when too often we are seen as the battling Bickersons, we have support across the aisle with the White House to do this.

What does the bill do? It deals with pleading requirements. Oftentimes, these patent assertion entities will allege infringing, but they don't, with any particularity, say what is being infringed.

It does a change in attorneys' fees that matches the existing rule in copyright. I oppose fee shifting in civil litigation generally, but the Congress has, on many occasions, narrowly cast fee shifting to deal with specific problems. This would join that. I would note that the shifts would not occur unless the party's position is unreasonably justified. The court is not to allow this shift if the party has a reasonable case in fact or law or, as my colleague, Mr. JEFFRIES, had added, a severe economic harm.

I would note that this is supported from start-ups to big companies.

STARTUP INVESTORS NATIONWIDE SUPPORT BROAD PATENT REFORM

DEAR CONGRESS: Each year, we invest hundreds of millions of dollars in software and information technology businesses and emerging mobile technologies. Together with other investors, we commit more than $1 billion annually in angel and venture capital that ensures continuing growth of young, high-tech companies employing 1.4 million people. Collectively, we have invested in companies such as Netflix, Twitter, Facebook, Dropbox, Palantir, Kickstarter, and countless other technologies that power

American businesses everywhere. We are the fuel in America's startup economy engine.

We write to urge comprehensive legislation to address the troubling growth and success of the patent troll business model. Young, innovative companies are increasingly threatened and targeted by patent troll lawsuits. In fact, the majority of companies targeted by patent trolls have less than $10 million in revenue. And while big companies paid the lion's share of the $29 billion of direct costs resulting from patent troll activities in 2011, the costs borne by small companies are a proportionately larger share of their revenues.

As a result, Congress and the Administration are considering multiple reform proposals. None alone will fix the problem, but together they will make a substantial dent in what one famous troll recently called ''a new industry.''

Successful legislation should make it harder to be a patent troll, and easier for targeted businesses to protect and defend themselves. Legislation should:

Make it easier to efficiently review patents at the Patent Office, as an alternative to litigation. Increase transparency by requiring patent trolls to specify, in complaints and demand letters, which patent and what claims are infringed, and specifically how the offending product or technology infringes.

Limit the scope of expensive litigation discovery.

Require patent trolls to pay legal fees and other costs incurred by prevailing defendants.

Protect end users of technology [e.g., wi-fi, printers and scanners, and APIs) from being liable for infringements by technology providers.

Our Founders did not intend to incentivize patent trolling in the Constitution—nor did Congress intend the Patent Act to promote this industry. Comprehensive legislation to reduce abusive patent litigation will make the patent troll business model less attractive, and will protect software, mobile and information technology entrepreneurs. In turn, our digital economy will continue to grow and so will our national economy.

The undersigned:

Gil Bickel, St. Louis Arch Angels, St. Louis, MO; David Bradbury, Vermont Center for Emerging Technologies, Burlington, VT; Glen Bressner, Originate Ventures, Bethlehem, PA; Brad Burnham, Union Square Ventures, New York, NY; Jeff Bussgang, Flybridge Capital, Boston, MA; Steve Case, Revolution Capital Washington, DC; Jeff Clavier, SoftTechVC, Palo Alto, CA; Ron Conway, SV Angel, San Francisco, CA; Mark Cuban, Investor in over 70 startups, Dallas TX; Peter Esperago, Cultivation Capital, St. Louis, MO.

Brad Feld, Foundry Group, Boulder, CO; Nicole Glaros, Techstars, Boulder, CO and New York, NY; David Gold, Access Venture Partners, Westminster, CO; Greg Gottesman, Madrona Venture Group Seattle, WA; Paul Graham, Y Combinator, Mountain View, CA; Bill Gurley, Benchmark Capital, Menlo Park, CA; Reid Hoffman; Greylock Partners, Menlo Park, CA; Kirk Holland, Access Venture Partners, Westminster, CO; Len Jordan, Madrona Venture Group, Seattle, WA; Scott Levine, iSelect Fund, Clayton, MO.

John Lilly, Greylock Partners, Menlo Park, CA; Trevor Loy, Flywheel Ventures, Albuquerque and Sante Fe, NM; Chris Marks, High Country Venture, Boulder, CO; Dan Marriott, Stripes Group, New York, NY; Matt McCall, Pritzker Venture Capital Group, Chicago, IL and Los Angeles, CA; Jim McKelvey, Cultivation Capital, St. Louis; Andrew McLaughlin, BetaWorks, New York, NY; Josh Mendelsohn, Hangar, San Francisco, CA; Jason Mendelsohn, Foundry Group, Boulder, CO; Michael Neril, Webb Investment Network, San Francisco, CA.

Charlie O'Donnell, Brooklyn Bridge Ventures, New York, NY; Alexis Ohanian, Angel Investor, New York, NY; Bijan Sabet, Spark Capital, Boston, MA; Devin Talbott, Enlightenment Capital, Washington, DC; Brett Topche, MentorTech Ventures, Philadelphia, PA; Jorge M. Torres, Silas Capital, New York, NY; Hunter Walk, Homebrew, San Francisco, CA; David Weekly, Startup Founder and Angel Investor, Palo Alto, CA; Fred Wilson, Union Square Ventures, New York, NY.

PROFESSORS' LETTER IN SUPPORT OF PATENT REFORM LEGISLATION

TO MEMBERS OF THE UNITED STATES CONGRESS: We, the undersigned, are 61 professors from 26 states and the District of Columbia who teach and write about intellectual property law and policy. We write to you today to express our support for ongoing efforts to pass patent reform legislation that, we believe, will improve our nation's patent system and accelerate the pace of innovation in our country.

As a group we hold a diversity of views on the ideal structure and scope of our nation's intellectual property laws. Despite our differences, we all share concern that an increasing number of patent owners are taking advantage of weaknesses in the system to exploit their rights in ways that on net deter, rather than encourage, the development of new technology.

Several trends, each unmistakable and well supported by empirical evidence, fuel our concern. First, the cost of defending against patent infringement allegations is high and rising. The American Intellectual Property Law Association estimates that the median cost of litigating a moderately-sized patent suit is now $2.6 million, an amount that has increased over 70% since 2001. These and other surveys suggest that the expense of defending even a low-stakes patent suit will generally exceed $600,000. Moreover, the bulk of these expenses are incurred during the discovery phase of litigation, before the party accused of infringement has an opportunity to test the merits of the claims made against it in front of a judge or jury.

The magnitude and front-loaded nature of patent litigation expenses creates an opportunity for abuse. Patentholders can file suit and quickly impose large discovery costs on their opponents regardless of the validity of their patent rights and the merits of their infringement allegations. Companies accused of infringement, thus, have a strong incentive to fold and settle patent suits early, even when they believe the claims against them are meritless.

Historically, this problem has largely been a self-correcting one. In suits between product-producing technology companies, the party accused of infringement can file a counterclaim and impose a roughly equal amount of discovery costs on the plaintiff. The costs, though high, are symmetrical and, as a result, tend to encourage technology companies to compete in the marketplace with their products and prices, rather than in the courtroom with their patents.

In recent years, however, a second trend—the rise of ''patent assertion entities'' (PAEs)—has disrupted this delicate balance, making the high cost of patent litigation even more problematic. PAEs are businesses that do not make or sell products, but rather specialize in enforcing patent rights. Because PAEs do not make or sell any products of their own, they cannot be countersued for infringement. As a result, PAEs can use the high cost of patent litigation to their advantage. They can sue, threaten to impose large discovery costs that overwhelmingly fall on the accused infringer, and thereby extract settlements from their targets that primarily reflect a desire to avoid the cost of fighting, rather than the chance and consequences of actually losing the suit.

To be sure, PAEs can in theory play a beneficial role in the market for innovation and some undoubtedly do. However, empirical evidence strongly suggests that many PAEs have a net negative impact on innovation. Technology companies—which, themselves, are innovators—spend tens of billions of dollars every year litigating and settling lawsuits filed by PAEs, funds that these tech companies might otherwise spend on additional research and design. Surveys also reveal that a large percentage of these suits settle for less than the cost of fighting, and multiple empirical studies conclude that PAEs lose about nine out of every ten times when their claims are actually adjudicated on their merits before a judge or jury.

The impact of these suits is made more troubling by the fact that PAE activity appears to be on the rise. Empirical studies suggest that at least 40%, and perhaps as high as 59% or more, of all companies sued for patent infringement in recent years were sued by PAEs. PAE suits were relatively rare more than a decade ago, and they remain relatively rare today elsewhere in the world.

More worrisome than these bare statistics is the fact that PAEs are increasingly targeting not large tech firms, but rather small business well outside the tech sector. Studies suggest that the majority of companies targeted by PAEs in recent years earn less than $10 million in annual revenue.

When PAEs target the numerous small companies downstream in the supply chain, rather than large technology manufacturers upstream, they benefit in two ways. First, for every product manufacturer, there may be dozens or hundreds of retailers who sell the product, and hundreds or thousands of customers who purchase and use the technology. Patent law allows patent owners to sue makers, sellers, or users. Suing sellers or users means more individual targets; some PAEs have sued hundreds of individual companies. And, more targets means more lawyers, more case filings, more discovery, and thus more litigation costs overall to induce a larger total settlement amount.

Second, compared to large manufacturers, small companies like retailers are less familiar with patent law, are less familiar with the accused technology, have smaller litigation budgets, and thus are more likely to settle instead of fight. In fact, many small businesses fear patent litigation to such an extent that they are willing to pay to settle vague infringement allegations made in lawyers' letters sent from unknown companies. Like spammers, some patent owners have indiscriminately sent thousands of demand letters to small businesses, with little or no intent of actually filing suit but instead with hopes that at least a few will pay to avoid the risk.

This egregious practice in particular, but also all abusive patent enforcement to some extent, thrives due to a lack of reliable information about patent rights. Brazen patent owners have been known to assert patents they actually do not own or, conversely, to go to great lengths to hide the fact that they actually do own patents being used in abusive ways. Some patent owners have also sought double recovery by accusing companies selling or using products made by manufacturers that already paid to license the asserted patent. Still others have threatened or initiated litigation without first disclosing any specific information about how, if at all, their targets arguably infringe the asserted patents.

In short, high litigation costs and a widespread lack of transparency in the patent system together make abusive patent enforcement a common occurrence both in and outside the technology sector. As a result, billions of dollars that might otherwise be used to hire and retain employees, to improve existing products, and to launch new products are, instead, diverted to socially wasteful litigation.

Accordingly, we believe that the U.S. patent system would benefit from at least the following six reforms, which together will help reduce the cost of patent litigation and expose abusive practices without degrading inventors' ability to protect genuine, valuable innovations:

1. To discourage weak claims of patent infringement brought at least in part for nuisance value, we recommend an increase in the frequency of attorneys' fee awards to accused patent infringers who choose to fight, rather than settle, and ultimately defeat the infringement allegations levelled against them.

2. To reduce the size and front-loaded nature of patent litigation costs, we recommend limitations on the scope of discovery in patent cases prior to the issuance of a claim construction order, particularly with respect to the discovery of electronic materials like software source code, emails, and other electronic communications.

3. To further protect innocent retailers and end-users that are particularly vulnerable to litigation cost hold-up, we recommend that courts begin to stay suits filed against parties that simply sell or use allegedly infringing technology until after the conclusion of parallel litigation between the patentee and the technology's manufacturer.

4. To facilitate the early adjudication of patent infringement suits, we recommend that patentees be required to plead their infringement allegations with greater specificity.

And finally, to increase transparency and confidence in the market for patent licensing, we recommend:

5. that patentees be required to disclose and keep up-to-date the identity of parties with an ownership stake or other direct financial interest in their patent rights, and

6. that Congress consider additional legislation designed to deter fraudulent, misleading, or otherwise abusive patent licensing demands made outside of court.

In closing, we also wish to stress that as scholars and researchers we have no direct financial stake in the outcome of legislative efforts to reform our patent laws. We do not write on behalf of any specific industry or trade association. Rather, we are motivated solely by our own convictions informed by years of study and research that the above proposals will on net advance the best interests of our country as a whole. We urge you to enact them.

Sincerely,

Professor John R. Allison, The University of Texas at Austin, McCombs School of Business; Professor Clark D. Asay, Penn State University Dickinson School of Law (visiting); Professor Jonathan Askin, Brooklyn Law School; Professor Gaia Bernstein, Seton Hall University School of Law; Professor James E. Bessen, Boston University School of Law; Professor Jeremy W. Bock, The University of Memphis Cecil C. Humphreys School of Law; Professor Annemarie Bridy, University of Idaho College of Law; Professor Irene Calboli, Marquette University Law School; Professor Michael A. Carrier, Rutgers School of Law, Camden; Professor Bernard Chao, University of Denver Sturm College of Law.

Professor Andrew Chin, University of North Carolina School of Law; Professor Ralph D. Clifford, University of Massachusetts School of Law; Professor Jorge L. Contreras, American University Washington College of Law; Professor Rebecca Curtin, Suffolk University Law School; Professor Samuel F. Ernst, Chapman University Dale E. Fowler School of Law; Professor Robin Feldman, University of California Hastings College of the Law; Professor William T. Gallagher, Golden Gate University School of Law; Professor Jon M. Garon, Northern Kentucky University Chase College of Law; Professor Shubha Ghosh, University of Wisconsin Law School; Professor Eric Goldman, Santa Clara University School of Law.

Professor Leah Chan Grinvald, Suffolk University Law School; Professor Debora J. Halbert, University of Hawaii at Manoa Department of Political Science; Professor Bronwyn H. Hall, University of California Berkeley Department of Economics; Professor Yaniv Heled, Georgia State University College of Law; Professor Christian Helmers, Santa Clara University Leavey School of Business; Professor Sapna Kumar, University of Houston Law Center; Professor Mary LaFrance, University of Nevada Las Vegas; William S. Boyd School of Law; Professor Peter Lee, University of California Davis School of Law; Professor Mark A. Lemley, Stanford Law School; Professor Yvette Joy Liebesman, Saint Louis University School of Law.

Professor Lee Ann W. Lockridge, Louisiana State University Paul M. Hebert Law Center; Professor Brian J. Love, Santa Clara University School of Law; Professor Glynn S. Lunney, Jr., Tulane University School of Law; Professor Phil Malone, Stanford Law School; Professor Mark P. McKenna, Notre Dame Law School; Professor Michael J. Meurer, Boston University School of Law; Professor Joseph Scott Miller, University of Georgia Law School; Professor Fiona M. Scott Morton, Yale University School of Management; Professor Lateef Mtima, Howard University School of Law; Professor Ira Steven Nathenson, St. Thomas University School of Law.

Professor Laura Lee Norris, Santa Clara University School of Law; Professor Tyler T. Ochoa, Santa Clara University School of Law; Professor Sean A. Pager, Michigan State University College of Law; Professor Cheryl B. Preston, Brigham Young University J. Reuben Clark Law School; Professor Jorge R. Roig, Charleston School of Law; Professor Jacob H. Rooksby, Duquesne University School of Law; Professor Brian Rowe, Seattle University School of Law & University of Washington Information School; Professor Matthew Sag, Loyola University of Chicago School of Law; Professor Pamela Samuelson, University of California Berkeley School of Law; Professor Jason Schultz, New York University School of Law.

Professor Christopher B. Seaman, Washington and Lee University School of Law; Professor Carl Shapiro, University of California Berkeley Haas School of Business; Professor Lea Shaver, Indiana University Robert H. McKinney School of Law; Professor Jessica Silbey, Suffolk University Law School; Professor Christopher Jon Sprigman, New York University School of Law; Professor Madhavi Sunder, University of California Davis School of Law; Professor Toshiko Takenaka, University of Washington School of Law; Professor Sarah Tran, Southern Methodist University Dedman School of Law; Professor Catherine Tucker, Massachusetts Institute of Technology Sloan School of Management; Professor Jennifer M. Urban, University of California Berkeley School of Law; Professor Samson Vermont, Charlotte School of Law (visiting).

Mr. GOODLATTE. Madam Chair, it is my pleasure to yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a distinguished member of the Judiciary Committee.

Mr. CHABOT. Madam Chair, I want to recognize and appreciate the leadership of the gentleman from Virginia (Mr. GOODLATTE) for pushing this bill forward. It is very important for our country.

Our patent system is complex, and in our litigious society, it is unfortunate that some bad actors are using that complexity to take advantage of our small businesses. Young, innovative companies are increasingly threatened and targeted by patent troll lawsuits, and the majority of companies targeted by patent trolls have less than $10 million in revenue. They target these small companies because the companies typically don't have the resources to fight back. So small businesses have a choice: Do they settle with a patent troll or do they go out of business and people lose jobs? That is the choice that small businesses and start-ups are forced to make—pay off a patent troll or shut their doors.

The Innovation Act levels the playing field for small businesses and start-ups. It brings transparency to the patent process and helps protect one of our founding constitutional principles: protect property and promote innovation.

These trolls do not create products. They do not create jobs. They create headaches, and at a significant cost to our economy. It was $80 billion in 2011 alone—$80 billion.

It is said that sunlight is the best disinfectant. This bill provides sunlight that effectively sanitizes the shadowy abuse of patent litigation. Madam Chair, the Innovation Act is a good first step in protecting our small businesses and entrepreneurs from this type of abuse. I urge my colleagues to support the bill.

Mr. CONYERS. Madam Chair, I am pleased now to yield 3 minutes the gentlelady from Texas (Ms. SHEILA JACKSON LEE), an effective member of the Judiciary Committee.

Ms. JACKSON LEE. Madam Chair, I thank the gentleman from Michigan for his leadership, and I likewise thank the chairman for his leadership.

The discourse in debate on the floor of the House is not evidencing the unity, the unanimity that members of the House Judiciary Committee and, I venture to say, of this body have with respect to innovation and competition and the idea of protecting our small inventors. And so I would offer myself and many others as a champion for this concept that we are greatest when we are protecting and coddling and growing the inventive mind of America and our small inventors.

The Innovation Act has a wonderful name, and I congratulate Chairman GOODLATTE for his interest and commitment to this process. We have always worked in a collaborative and bipartisan manner on the Judiciary Committee as it relates to intellectual property and competition.

Today, however, our disagreement, if you will, is not on the underlying concept but on a very crucial process that is not in keeping with the mind-set of the Founding Fathers. I imagine that patent law got intimately engaged in the constitutional process because of a young man by the name of Benjamin Franklin, an inventor. He foresaw a great America and the need to be able to encourage those in garages and maybe by candlelight looking to change the landscape of the lives of those who live in that country and now have lived and do live in the greatest Nation in the world.

And so the question is, on H.R. 3309, for all of our friends that are making their decisions, whether or not this is a bill before its time and whether or not this question that we have before us, this bill, truly stops the trolls, as this advertisement that was not placed by me but put in the newspaper to suggest that the trolls may not be the ugly beast, but it may be the way this bill, H.R. 3309, is written.

Because, in fact, the small guy does pay. In fact, the small inventor is not protected. In fact, the pleadings are difficult. In fact, the early days of Madame C.J. Walker, who invented hair lotion for black women; or Frederick McKinley Jones, who invented the automatic refrigeration system for long-haul trucks; or Lewis Latimer, who invented less expensive and more efficient, long-lasting light bulbs; or maybe even the early days of giant companies that are now known to live in places like Silicon Valley, from Yahoo to Google, that started in the earliest moments of their beginning, small, maybe in a Harvard dorm room, or someone else's dorm room, I think the question becomes: Are these individuals protected?

□ 1015

According to the research that we have done, small investors are not protected.

I would just say, Madam Chair, that I would ask for more time; and if we want to do some work, let's pass H.R. 15, comprehensive immigration reform, because that is ready to pass.

Mr. GOODLATTE. Madam Chairman, it is now my very sincere pleasure to yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO), the lead Democratic cosponsor of this legislation who came to me with his ideas at the beginning of this Congress and has worked with me throughout this Congress on this legislation.

Mr. DEFAZIO. Madam Chairwoman, I thank the chairman for his tremendous efforts on this. I believe this is an improvement over the SHIELD Act, which JASON CHAFFETZ and I authored a couple of years ago.

Here is the thing: we have got a nationwide protection racket going on here. It is a little more sophisticated than the gang that says, Hey, we are going to smash the windows of your store unless you pay us 50 bucks a week.

What you have here are hugely sophisticated, well-funded patent assertion entities across America; and they did file 62 percent of the patent litigation, not 5 percent, as we heard earlier asserted by one of my colleagues. The payoff here is that if you pay us $50,000, we won't drag you through endless court proceedings that will cost you $1 million or more. All they have to do is assert something very vague, such as we own this patent and you are infringing on it. That is it. That is all they have to assert.

It is up to the small business to figure out what that infringement is, which means they have to hire attorneys, they have to go through discovery, which is an incredibly lengthy and expensive process. I found out about this in my district while visiting a small software firm with less than 100 people that was about to launch a new product, and the owner told me it is going to be delayed because I had to hire new employees to launch this product, but I have got a shadow over the business right now. I said, What is that? The owner said he had been sued over a patent troll. They are claiming that this very simple, common thing that is part of their software is their patent and they must pay them $200,000 to make them go away. He said, I can't do an expansion and $200,000.

His company can't be named because these patent trolls are so aggressive. When NPR ran a story about this—and one company was featured with an egregious story of one of these patent trolls, one of these blackmailers. They went public, and then they immediately got a pile of new assertions on them by patent trolls. The patent trolls have lots of attorneys, lots of money. It is a very lucrative extortion racket to go out and do this.

Some companies will fight. EMC out of Massachusetts fought. The claims were totally specious, but they fought. This is what it takes. They had to go to this one district in Texas where all these cases are heard. They had to go to one hotel and rent it for their team. The electricity wasn't adequate. They didn't have broadband. They had to install all that so they could be there and defend themselves because no one goes there to defend themselves against these patent trolls. It is too expensive. They just pay the bribes.

They went there, and it cost them over $2 million. The jury was out less than 10 minutes because it was a totally specious claim. Most things don't go that far because most people have to pay because they can't afford the disruption or the litigation; or other times after they are halfway through paying for the litigation, the patent assertion entities drop their false claims.

Some people are saying we are closing the courthouse door, we are barring litigation here. In fact, the standard is no reasonable basis in law and fact. Universities and innovators don't bring those kinds of suits. Patent trolls do.

Stop the patent trolls.

Mr. CONYERS. Madam Chair, I reserve the balance of my time.

Mr. GOODLATTE. Madam Chair, may I inquire as to how much time is remaining on each side.

The CHAIR. The gentleman from Virginia has 5½ minutes remaining, and the gentleman from Michigan has 4½ minutes remaining.

Mr. GOODLATTE. Madam Chair, it is now my pleasure to yield 1½ minutes to the gentleman from Colorado (Mr. POLIS).

Mr. POLIS. Madam Chairwoman, I thank the gentleman from Virginia.

When we look at the cost, not just of litigation, but of companies having to consult with lawyers at times because of completely frivolous letters that they get that are vague with regard to what the abuses are, the damage is not only to the company that receives the message; the damage is to all consumers. The extra price is simply passed along to all of us who use goods and services in a digital economy. This bill makes an important step forward for bringing our patent process into the 21st century, taking into account digital innovation.

There is a long way to go. When our patent system was first put together for mechanical innovation, for which it still works, people didn't even know what software or biological innovation was. We have come a long way. I think we have learned a lot over that time. One thing we have learned is that we need to fine-tune how software and digital innovation interact with our intellectual property protections.

This bill takes an important step in this direction. While it doesn't wholly fix our patent system, it will undeniably deter abusive patent suits that are brought by patent entities and trolls that raise prices for consumers, destroy jobs, are particularly onerous on start-up businesses and entrepreneurs, and have essentially a tax across our entire economy on innovation and job growth.

I strongly encourage my colleagues to support this bill, and I appreciate the good work of Representative GOODLATTE and Representative LOFGREN in bringing this bill to us on the floor today.

Mr. CONYERS. Madam Chairwoman, we are ready to close on this side, and I reserve the balance of my time.

Mr. GOODLATTE. Madam Chairwoman, it is my pleasure to yield 1 additional minute to the gentleman from Utah (Mr. CHAFFETZ).

Mr. CHAFFETZ. Madam Chairwoman, I thank Chairman GOODLATTE, and I thank Members on both sides of the aisle for working on this. In the 112th Congress, I worked closely with Congressman DEFAZIO on the SHIELD Act, but a much better bill is before us today.

I want people to understand the gravity of the problem and who is also being attacked. I find this fascinating. Fifty-five percent of troll suits involve companies with annual revenues of $10

million or less. Yes, the Microsofts and the Oracles and the really big companies out there are going to be in constant flux and in points of litigation, but it is really these small companies that are getting bombarded.

In fact, if you look since 2005, there are literally four times as many troll suits going through the patent system right now than there were in 2005. They are being extorted. This helps solve it. This is why I am so enthusiastic in supporting this bill.

I appreciate the bipartisan support on this. It does solve a very real problem. The majority of the problem is for companies with annual revenues of less than $10 million.

Mr. CONYERS. Madam Chairwoman, I continue to reserve the balance of my time.

Mr. GOODLATTE. Madam Chairwoman, I am pleased to yield an additional 30 seconds to the gentleman from Pennsylvania (Mr. MARINO), the vice chair of the Intellectual Property Subcommittee.

Mr. MARINO. Madam Chairwoman, I have been involved in working on patent reform since I was elected and took office here in 2011. This is not new. We have been working on this legislation if not for several months, at least several weeks where it has been up on the Internet for people to see and for our colleagues to read. I am tired of hearing here in Congress we need more time and more time to do something. If businesses operated the way Congress did, they would be out of business.

Finally, this is a quintessential example of us getting off our duff and doing something in a reasonable amount of time that is going to help small business owners. As we stand here and speak, more and more are being put out of business because of trolls.

Mr. CONYERS. Madam Chairwoman, how much time remains?

The CHAIR. The gentleman from Michigan has 4½ minutes remaining.

Mr. CONYERS. Madam Chairwoman, I am pleased now to yield such time as he may consume to the gentleman from North Carolina (Mr. WATT), a senior member of the committee who has worked on this assiduously for a number of years.

Mr. WATT. Madam Chairwoman, I thank the gentleman for yielding.

I am pained to be here today in opposition to this bill. I stood shoulder to shoulder with the chair of our full committee 2 years ago in patent reform after working almost 6 years to find consensus on a patent bill that moved our Nation forward.

We are here this time a maximum of 6 months into the process, and we haven't done our due diligence because we have heard all morning people coming to the floor and saying this is a work in progress. I thought the place we did works in progress was in our committee system.

Here we are on the floor with a bill that everybody is bragging about it being a work in progress. The result of that is that the work will be done on this bill by the United States Senate. They will write this bill. We won't write it because we didn't take the time to do what we should have done in the Judiciary Committee to refine this bill.

I stood shoulder to shoulder with the former director of the Patent and Trademark Office 2 years ago, David Kappos, and this is what he says in an op-ed piece today:

> Our news is peppered these days with reports of ''patent trolls,'' dark, ugly creatures shaking down innocent companies based on absurd claims of patent infringement. Congress should quickly pass legislation to curtail this abusive behavior. However, some are using the need to address the patent troll issue as cover to unnecessarily weaken our Nation's patent laws. If passed in this current form, the focus of legislative discussions would undermine U.S. innovation and job creation.

That is what the former director of the Patent and Trademark Office says because we haven't done what we should have done.

We set out to solve a problem dealing with patent trolls, and there is an argument about whether that is 5 percent, 20 percent. The GAO says it is a maximum of 20 percent, regardless of where these statistics are coming from. We are imposing a burden on 100 percent of the people in the patent litigation system to deal with a problem that at most is 20 percent of the litigation in our system. Everybody is going to pay the price of this bill if it goes forward in its current form. That is the problem I have with this. We have a problem.

Patent trolls are a problem, but you can't define what a patent troll is; and in order to deal with patent trolls, we are imposing a burden on the other people in the litigation system who are not patent trolls. That is unfair. We are imposing a burden on small innovators because they will fear that they will lose a lawsuit and end up paying exorbitant costs of the people who they litigated against, even though their claim was a legitimate claim; and they will spend extra money to litigate about whether they should have to pay the cost. Millions of dollars will be spent litigating about whether the fees should be shifted or not, and that is not the way we have done this in our American system.

The problem is we haven't done anything in this bill—and you have heard it discussed in the debate up to this point—about the real problem here, which is people who are writing demands on little people out in the stream of commerce. That is before they ever get to litigation. This bill says nothing about demand letters.

□ 1030

We are going to concede that, we say, to the Commerce Committee.

Well, what is this bill going to do? It is going to encourage a burden on everybody in the litigation system as we try to deal with a 20 percent problem or a 5 percent problem, at most.

Mr. GOODLATTE. Madam Chairman, I yield myself the balance of my time.

In closing, Madam Chairman, I want to thank my fellow Judiciary colleagues and their staffs who have devoted much time, energy, and intellect to this project. We have worked together for the common goal of comprehensive patent litigation reform for the past decade.

While some of us still have differences over individual items, I want these Members to know that I appreciate their contributions to the project and I value their friendship.

I also want to particularly thank Representatives HOWARD COBLE, ZOE LOFGREN, and PETER DEFAZIO for serving as lead sponsors of this legislation and, most particularly, Congresswoman LOFGREN, who worked so hard with us in the markup process in the Judiciary Committee.

In the Senate, we have worked closely with Senators LEAHY, GRASSLEY, CORNYN, HATCH, LEE, and others. I want to thank them and their staffs for their contributions to this effort.

Furthermore, I would like to thank the White House and the U.S. Patent and Trademark Office for working collaboratively with us and providing important technical assistance.

I also want to thank both my full committee and IP subcommittee staff for all of their hard work on this important legislation, and most particularly, Vishal Amin, counsel to the subcommittee.

This bill is something I consider central to U.S. competitiveness, job creation, and our Nation's future economic security. The Innovation Act is the product of much negotiation and compromise. This bill builds on our efforts over the past decade. It can be said that this bill is the product of years of work. We have worked with Members of both parties in both the Senate and the House, with stakeholders from all areas of our economy, and with the administration and the courts.

To ensure an open, deliberative, and thoughtful process, we held several hearings and issued two public discussion drafts in May and September of this year, which led to the formal introduction of the Innovation Act in October.

The Innovation Act takes meaningful steps to address the abusive practices that have damaged our patent system and resulted in significant economic harm to our Nation. This bill will help grow America's innovation economy.

Madam Chairman, I urge my colleagues to support H.R. 3309, and I yield back the balance of my time.

[Inventors listed on nearly 200 patents call on Congress to pass legislation to fix the patent troll problem, Nov. 19, 2013]

PATENT HOLDERS URGE COMPREHENSIVE PATENT REFORM

SAN FRANCISCO.—Fifty inventors, technologists and entrepreneurs joined Engine

Advocacy and the Electronic Frontier Foundation (EFF) today in requesting that Congress immediately pass meaningful patent reform legislation to curb the growing patent troll problem.

The signatories are collectively listed as inventors on nearly 200 patents, many of which cover software inventions. They expressed support for patent reform. Congress is currently pursuing several approaches that have the potential to curb the chilling effect on innovation posed by trolls and improve patent quality.

''Broad, vague patents covering software-type inventions—some of which we ourselves are listed as inventors on—are a malfunctioning component of America's inventive machinery,'' the inventors write.

''This is particularly the case when those patents end up in the hands of non-practicing patent trolls.'' The inventors believe that ''software patents are doing more harm than good,'' and they urge Congress to pass legislation that would curb patent troll abuses, which pose an immediate threat to innovation and the promise of technology.

''It's time to force these trolls to take responsibility for the damage they cause with their dangerous claims,'' said inventor Derek Parham, who helped organize the letter. ''We need legislation that will put a stop to the patent troll business model once and for all.''

In addition to Derek, many prominent engineers and entrepreneurs signed the letter, including Twitter cofounder Evan Williams; Facebook co-founder Dustin Moskovitz; former Principal Engineer at Qualcomm Ranganathan Krishnan; and Quantcast's co-founder Paul Sutter.

''The time for meaningful reform is now,'' said Julie Samuels, EFF Senior Staff Attorney and the Mark Cuban Chair to Eliminate Stupid Patents. ''We hope Congress will hear these engineers and inventors and so many others and pass legislation that ends the patent troll problem once and for all.''

For the full open letter: https://www.eff.org/documentinventorslettersupportpatentreform

Contacts:

Julie Samuels, Staff Attorney and The Mark Cuban Chair to Eliminate Stupid Patents, Electronic Frontier Foundation.

Eva Arevuo; Engine.

[Nov. 18, 2013]

We, the undersigned, are a group of inventors, technologists and entrepreneurs. Many of us have founded technology businesses; we have invented many of the protocols, systems and devices that make the Internet work, and we are collectively listed as the inventors on over 150 patents.

We write to you today about the U.S. patent system. That system is broken. Based on our experiences building and deploying new digital technologies, we believe that software patents are doing more harm than good. Perhaps it is time to reexamine the idea, dating from the 1980s. that government-issued monopolies on algorithms, protocols and data structures are the best way to promote the advancement of computer science.

But that will be a complex task, and one we don't expect to happen quickly. Unfortunately, aspects of the problem have become so acute they must be addressed immediately.

Broad, vague patents covering software-type inventions—some of which we ourselves are listed as inventors on—are a malfunctioning component of America's inventive machinery. This is particularly the case when those patents end up in the hands of non-practicing patent trolls.

These non-practicing entities do not make or sell anything. Their exploitation of patents as a tool for extortion is undermining America's technological progress; patent trolls are collecting taxes on innovation by extracting billions of dollars in dubious licensing fees, and wasting the time and management resources of creative businesses. Many of us would have achieved much less in our careers if the trolling problem had been as dire in past decades as it is now.

Some legislative proposals under current consideration would fix the trolling problem. These include: requiring that patent lawsuits actually explain which patents are infringed by which aspects of a defendant's technology, and how; making clear who really owns the patent at issue; allowing courts to shift fees to winning parties, making it rational for those threatened with an egregious patent suit to actually fight against the threat rather than paying what amounts to protection money; ensuring that those who purchase common, off-the-shelf technologies are shielded if they are sued for using them; and increasing opportunities for streamlined patent review at the patent office.

While subduing the trolling threat, these proposed changes will not fix the software patent problem completely. Congress should consider ways to stop these patents from interfering with open standards and open source software; from being claimed on problems, rather than solutions; and from being drafted so obscurely that they teach us nothing and cannot be searched. Congress needs to examine the very question of whether their net impact is positive.

But for now, we urge you to implement simple and urgently necessary reforms. We believe in the promise of technology and the power of creation to increase access to information, to create jobs, and to make the world a better place. Please do not let patent trolls continue to frustrate that purpose.

The undersigned:

Ranganathan Krishnan—30 patents; Former Principal Engineer at Qualcomm; led the software team building the aircraft modems that now power GoGo in-flight Wi-Fi; Data center architect for Zoho Corporation; Startup founder.

Paul Sutter—26 patents, 22 applications; Co-founder of Quantcast.

Dr. Neil Hunt—14 patents; Chief Product Officer at Netflix.

Justin Rosenstein—13 patents, 23 applications; Founder of Asana; Former Engineering Lead at Facebook.

Dustin Moskovitz—2 patents; Co-Founder of Facebook and Asana.

Ev Williams—Entrepreneur, CEO of the Obvious Corporation, co-founder of Odeo, Blogger, Twitter, and Medium.

David S.H. Rosenthal—24 patents; Founder of the LOCKSS program, aimed at long-term preservation of web published materials.

Frederick Baker—15 patents, 52 RFCs; Former chair of IETF [the standards body of Internet tech); member to FCC TAC, BITAG and other bodies that advise the U.S. government on technology.

John H. Howard—10 patents; Researcher at MIT, University of Texas, IBM, Carnegie Mellon, MERL, and Distinguished Engineer at Sun Microsystems.

Jon Callas—7 patents, 4 RFCs; Cryptographer, technologist, entrepreneur; Co-founder of PGP Corporation, Silent Circle and others.

Igor Kofman—6 patents, 7 applications; Co-founder of Hackpad Inc., a company that develops next generation online collaboration tools; Former Engineer at YouTube/Google and Microsoft.

Barbara Simons—5 patents; Fellow and Former President at Association for Computing Machinery.

Joshua Bloch—4 patents, 4 applications; Former Chief Java Architect at Google and Distinguished Engineer at Sun Microsystems; Led the design and implementation of numerous Java platform features.

Rick Adams—3 patents; Founder of UUNET Technologies, the first commercial Internet provider.

Brandon Ballinger—2 patents, 10 applications; Co-founder of Sift Science, a company that helps fight fraud through machine-learning; Former software engineer at Google.

Andrew Conway—1 patent, 2 applications; Founder & CEO of Silicon Genetics, a bioinformatics company (now part of Agilent); First to control a helicopter entirely by GPS (and thus win 1995 AUVS contest).

Derek Parham—1 patent, 2 applications; Creator of Google Apps for Businesses; Entrepreneur, investor, and advisor.

James Gettys—1 patent, 1 application, 2 RFCs; Editor of the HTTP/1.1 specification that underlies the World Wide Web; Co-author of the X Window System.

Harry Hochheiser—1 patent, 1 application; Professor of Biomedical Informatics at UPitt.

Ian Lance Taylor—1 patent, 1 application; Senior Staff Software Engineer at Google, Co-founder of Zembu Labs, and long time open source contributor.

Vincent C. Jones, PhD, PE—1 patent; 40 years of designing and building computer networks; published author in the field of computer networking.

Jim Fruchterman—1 patent; CEO of Benetech, a nonprofit tech company; former rocket scientist and co-founder of Calera Recognition Systems and RAF Technology, Inc.

Todd Huffman—company holds 1 Patent; CEO of 3Scan, utilizes a novel serial sectioning technique, KESM (Knife Edge Scanning Microscope) to create 3D models of large volume tissue samples.

Anselm Levskaya—1 application; Founder of Cambrian Genomics, a company developing a new technology pipeline to produce fully synthetic DNA at a fraction of the cost of current approaches.

Lorrie Cranor—1 application: Professor of Computer Science, Engineering, and Public Policy at Carnegie Mellon; Director of CyLab Usable Privacy and Security Laboratory.

Mark Kohler—3 RFCs; Implemented the IPv6 tunneling protocols RFC 2893, RFC 2473, and RFC 3056 for HP–UX and other Unix operating systems.

John Vittal—3 RFCs; Creator of the first integrated email program (MSG) and the initial ''killer application'' on the ARPAnet/Internet; Developed email standards still in use today.

Dan McDonald—3 RFCs; IPsec and IPv6 pioneer, former project lead for Solaris/OpenSolaris IPsec, Current Illumos RTI advocate, and Principal Software Engineer for Nexenta Systems; Co-author of RFCs 1751, 2367, 5879.

Russell Nelson—3 RFCs; Ran the Clarkson (later Crynwr) Packet Driver Collection.

John Gilmore—1 RFC; Programmer, entrepreneur (Sun Microsystems, Cygnus Solutions); Free software author, maintainer, and co-creator (GOB, GNU Tar, Binutils, GNU Radio, Gnash, OpenBTS); protocol designer (RFC 951, BOOTP, which you use whenever you connect to Ethernet or WiFi); Angel investor, philanthropist.

Stephen Wolff—Builder of NSFNET as a successor to ARPANET and for its transition to carrying commercial traffic, enabling the Internet as we know it today; Internet Hall of Fame Inductee—2013.

Frode Hernes—VP of TV Product Management and former VP of Product Development at Opera Software; Contributor to ISO/

CCITT and IETF standards within email directories and security; Board member of the HbbTV Association; Currently active in the spacifications for the TV industry.

Dan Lang—VP, Intellectual Property at Cisco Systems.

Jaan Tallin—Founding Engineer of Skype; Refused to sign patents while at Skype.

Megan Klimen—Co-founder of 3Scan.

Matthew Goodman—Co-founder of 3Scan.

Kodi Daniel—Co-founder of 3Scan.

Mikki Barry—Co-founder of InterCon Systems Corporation, the first commercial Internet applications company on the Mac platform; Intellectual Property and IT Attorney.

Jim DeLeskie—Founder and CM, Heimdall Networks, previously Chief Architect Tata Communications/Teleglobe; Sr. Engineer internetMCI and contributor to IEEE and IETF working groups.

Brandon Ross—Designer and builder of operating service provider networks such as MindSpring, NetRail, Internap and Comast; Member of the North American Network Operators Group (NANOG), the Internet Engineering Task Force (IETF); Founder of Network Utility Force.

Benjamin C. Pierce—Professor of Computer and Information Science at University of Pennsylvania; Fellow of the ACM; Lead developer of Unison, a widely used open-source file synchronization tool; Author.

David Snigler—Led several successful projects as part of the Emerging Technologies group at the University of Massachusetts; Responsible for the design of systems used for research and administration throughout the UMass system.

Dylan Morris—Co-founder and VP of Strategy of Integrated Plasmonics, a technology startup in San Francisco operating at the intersection of semiconductors, biotechnology, and digital health.

Robb Walters—Founder, CEO, President, Board Director, Integrated Plasmonics.

Andrew Binstock—Editor in Chief of Dr. Dobb's; founded iText Software Corp.; previously in charge of Global Technology Forecasts at PricewaterhouseCoopers; programmer.

Mary Shaw—Educator and researcher in software engineering; ACM SIGSOFT Outstanding Research Award for work in software architecture; Fellow of the Institute for Electrical and Electronic Engineers, the Association for Computing Machinery, and the American Association for the Advancement of Science.

Ernest E. [Lee] Keet—President of Vanguard Atlantic Ltd., Former Chair, Intellectual Property Section, Software Industry Association, ADAPSO; Board member and lead investor in high tech startups.

The above have collectively contributed to the invention of the following technologies:

Patents:

4460974 Electronic computer with access to keyboard status information (Jones).

4531185 Centralized synchronization of clocks (Simons).

4584643 Decentralized synchronization of clocks (Simons).

4603380 DASD cache block staging (Howard).

4706081 Method and apparatus for bridging local area networks (Baker).

4809265 Method and apparatus for interfacing to a local area network (Baker).

4916605 Fast write operations (Howard).

5073933 X window security system (Rosenthal).

5127098 Method and apparatus for the context switching of devices (Rosenthal).

5187786 Method for apparatus for implementing a class hierarchy of objects in a hierarchical file system (Rosenthal).

5432824 Credit/rate-based system for controlling traffic in a digital communication network (Howard).

5442708 Computer network encryption/decryption device (Adams).

5444782 Computer network encryption/decryption device (Adams).

5470223 Microprocessor controlled fuel and ignition control for a fuel burning device (Fruchterman).

5600834 Method and apparatus for reconciling different versions of a file (Howard).

5619658 Method and apparatus for trapping unimplemented operations in input/output devices (Rosenthal).

5623692 Architecture for providing input/output operations in a computer system (Rosenthal).

5638535 Method and apparatus for providing flow control with lying for input/output operations in a computer system (Rosenthal).

5640456 Computer network encryption/decryption device (Adams).

5640591 Method and apparatus for naming input/output devices in a computer system (Rosenthal).

5652793 Method and apparatus for authenticating the use of software (Rosenthal).

5659750 Apparatus for context switching of input/output devices in response to commands from unprivileged application programs (Rosenthal).

5685011 Apparatus for handling failures to provide a safe address translation in an improved input/output architecture for a computer system (Rosenthal).

5696990 Method and apparatus for providing improved flow control for input/output operations in a computer system having a FIFO circuit and an overflow storage area (Rosenthal).

5721947 Apparatus adapted to be joined between the system I/O bus and I/O devices which translates addresses furnished directly by an application program (Rosenthal).

5732087 ATM local area network switch with dual queues (Howard).

5740406 Method and apparatus for providing fifo buffer input to an input/output device used in a computer system (Rosenthal).

5740464 Architecture for providing input/output operations in a computer system (Rosenthal).

5745477 Traffic shaping and ABR flow control (Howard).

5751951 Network interface (Howard).

5758182 DMA controller translates virtual I/O device address received directly from application program command to physical I/O device address of I/O device on device bus (Rosenthal).

5764861 Apparatus and method for controlling context of input/output devices in a computer system (Rosenthal).

5805930 System for FIFO informing the availability of stages to store commands which include data and virtual address sent directly from application programs (Rosenthal).

5887174 System, method, and program product for instruction scheduling in the presence of hardware lookahead accomplished by the rescheduling of idle slots (Simons).

5887190 System for determining from a command storing in a storage circuit an application program which has initiated the command to determine an input/output device address (Rosenthal).

5909595 Method of controlling I/O routing by setting connecting context for utilizing I/O processing elements within a computer system to produce multimedia effects (Rosenthal).

5918050 Apparatus accessed at a physical I/O address for address and data translation and for context switching of I/O devices in response to commands from application programs (Rosenthal).

5924126 Method and apparatus for providing address translations for input/output operations in a computer system (Rosenthal).

6023738 Method and apparatus for accelerating the transfer of graphical images (Rosenthal).

6044222 System, method, and program product for loop instruction scheduling hardware lookahead (Simons).

6065071 Method and apparatus for trapping unimplemented operations in input/output devices (Rosenthal).

6081854 System for providing fast transfers to input/output device by assuring commands from only one application program reside in FIFO (Rosenthal).

6098079 File version reconciliation using hash codes (Howard).

6292938 Retargeting optimized code by matching tree patterns in directed acyclic graphs (Simons).

6336186 Cryptographic system and methodology for creating and managing crypto policy on certificate servers (Callas).

6513032 Search and navigation system and method using category intersection pre-computation (Sutter).

6584450 Method and apparatus for renting items (Hunt).

6594260 Content routing (Baker).

6629198 Data storage system and method employing a write-ahead hash log (Howard).

6738437 Symbol recovery from an oversampled hard-decision binary stream (Krishnan).

6742044 Distributed network traffic load balancing technique implemented without gateway router (Baker).

6744572 System and method for imaging an object (3Scan).

6775231. Dynamic weighted resource sharing (Baker).

6789125 Distributed network traffic load balancing technique implemented without gateway router (Baker).

6801811 Software-directed, energy-aware control of display (Gettys).

6820261 Inheritable thread-local storage (Bloch).

6839895 Method of, system for, and computer program product for providing efficient utilization of memory hierarchy through code restructuring (Simons).

6915282 Autonomous data mining (Conway).

6928062 Uplink pilot and signaling transmission in wireless communication systems (Krishnan).

7013458 Method and apparatus for associating metadata attributes with program elements (Bloch).

7024381 Approach for renting items to customers (Hunt).

7039001 Channel estimation for OFDM communication systems (Krishnan).

7042857 Uplink pilot and signaling transmission in wireless communication systems (Krishnan).

7062562 Methods and apparatus for content server selection (Baker).

7080138 Methods and apparatus for content server selection (Baker).

7095790 Transmission schemes for multi-antenna communication systems utilizing multi-carrier modulation (Krishnan).

7098815 Method and apparatus for efficient compression (Rosenthal).

7159237 Method and system for dynamic network intrusion monitoring, detection and response (Callas).

7171657 Method and apparatus for importing static members of a class (Bloch).

7263687 Object-oriented enumerated type facility (Bloch).

7292826 System and method for reducing rake finger processing (Krishnan).

7359728 Modified power control for reduction of system power consumption (Krishnan).

7383439 Apparatus and method for facilitating encryption and decryption operations over an email server using an unsupported protocol (Callas).

7401159 Distributed network traffic load balancing technique implemented without gateway router (Baker).
7403910 Approach for estimating user ratings of items (Hunt).
7408914 Time-hopping systems and techniques for wireless communications (Krishnan).
7437558 Method and system for verifying identification of an electronic mail message (Baker).
7447481 System and method for reducing rake finger processing (Krishnan).
7450963 Low power dual processor architecture for multi mode devices (Krishnan).
7463576 Channel estimation for OFDM communication systems (Krishnan).
7493133 Power control in ad-hoc wireless networks (Krishnan).
7515595 Network using encoded transmissions and forwarding (Krishnan).
7515924 Method and module for operating independently of a remote terminal if an incoming pilot signal is not detected within a time period and enabling a pilot signal transmission (Krishnan).
7519371 Multi-hop communications in a wireless network (Krishnan).
7529780 Conflict management during data object synchronization between client and server (Rosenstein).
7536641 Web page authoring tool for structured documents (Rosenstein).
7542471 Method of determining path maximum transmission unit (Sutter).
7546252 Approach for managing rental items across a plurality of distribution locations (Hunt).
7551620 Protecting data integrity in an enhanced network connection (Sutter).
7593943 Method and system for synchronizing multiple user revisions to a shared object (Kofman).
7606326 Transmission schemes for multi-antenna communication systems utilizing multi-carrier modulation (Krishnan).
7616638 Wavefront detection and disambiguation of acknowledgments (Sutter).
7617127 Approach for estimating user ratings of items (Hunt).
7630305 TCP selective acknowledgements for communicating delivered and missed data packets (Sutter).
7631252 Distributed processing when editing an image in a browser (Rosenstein).
7631253 Selective image editing in a browser (Rosenstein).
7631323 Method of sharing an item rental account (Hunt).
7634715 Effects applied to images in a browser (Rosenstein).
7640427 System and method for secure electronic communication in a partially keyless environment (Callas).
7650387 Method and system for managing storage on a shared storage space (Baker).
7656799 Flow control system architecture (Sutter).
7657037 Apparatus and method for identity-based encryption within a conventional public-key infrastructure (Callas).
7664140 Early termination of low data rate traffic in a wireless network (Krishnan).
7698453 Early generation of acknowledgements for flow control (Sutter).
7730213 Object-based storage device with improved reliability and fast crash recovery (Howard).
7840648 Web-page authoring tool for automatic enrollment in advertising program (Rosenstein).
7843938 QoS optimization with compression (Sutter).
7852799 Network using randomized time division duplexing (Krishnan).
7864770 Routing messages in a zero-information nested virtual private network (Baker).
786772 Protecting data integrity in an enhanced network connection (Sutter).
789561 Method and system for dynamic network intrusion monitoring, detection and response (Callas).
7907898 Asynchronous inter-piconet routing (Krishnan).
7912457 Methods and apparatus for creation and transport of multimedia content flows (Krishnan).
7953000 Mechanism to improve preemption behavior of resource reservations (Baker).
7953794 Method and system for transitioning between synchronous and asynchronous communication modes (Kofman).
7958529 Method of sharing an item rental account (Hunt).
7969876 Method of determining path maximum transmission unit (Sutter).
7978710 Synchronous inter-piconet routing (Krishnan).
8004973 Virtual inline configuration for a network device (Sutter).
8015067 Deleted account handling for hosted services (Parham).
8019351 Multi-hop communications in a wireless network (Krishnan).
8024652 Techniques to associate information between application programs (Kofman).
8028024 System and method of instant messaging between wireless devices (Krishnan).
8050271 Protecting data integrity in an enhanced network connection (Sutter).
8077632 Automatic LAN/WAN port detection (Sutter).
8086524 Systems and methods for transaction processing and balance transfer processing (Sutter).
8150919 Method and system for transitioning between synchronous and asynchronous communication modes (Kofman).
8155444 Image text to character information conversion (Kofman).
8156554 Method and system for verifying identification of an electronic mail message (Baker).
8161368 Distributed processing when editing an image in a browser (Rosenstein).
8176120 Web-page authoring tool for automatic enrollment in advertising program (Rosenstein).
8208972 Low power dual processor architecture for multi mode devices (Krishnan).
8230318 Selective image editing in a browser (Rosenstein).
8233392 Transaction boundary detection for reduction in timeout penalties (Sutter).
8238241 Automatic detection and window virtualization for flow control (Sutter).
8245123 Effects applied to images in a browser (Rosenstein).
8245277 Universally usable human-interaction proof (Hochheiser).
8259729 Wavefront detection and disambiguation of acknowledgements (Sutter).
8271338 Approach for estimating user ratings of items (Hunt).
8310928 Flow control system architecture (Sutter).
8311981 Conflict management during data object synchronization between client and server (Rosenstein).
8315977 Data synchronization between a data center environment and a cloud computing environment (Hunt).
8320244 Reservation based MAC protocol (Krishnan).
8351985 Low power dual processor architecture for multi mode devices (Krishnan).
8365235 Trick play of streaming media (Hunt).
8369361 Early termination of low data rate traffic in a wireless network (Krishnan).
8386601 Detecting and reporting on consumption rate changes (Sutter).
8386621 Parallel streaming (Hunt).
8411560 TCP selection acknowledgements for communicating delivered and missing data packets (Sutter).
8417476 Dynamic randomized controlled testing with consumer electronics devices (Hunt).
8433814 Digital content distribution system and method (Hunt).
8438280 Detecting and reporting on consumption rate changes (Sutter).
8443056 Client-server signaling in content distribution networks (Hunt).
8448057 Audience segment selection (Sutter).
8462630 Early generation of acknowledgements for flow control (Sutter).
8464237 Method and apparatus for optimizing compilation of a computer program (Taylor).
872930 Methods and apparatus for creation and transport of multimedia content flows (Krishnan).
8478590 Word-level correction .of speech input (Ballinger).
8489135 Network topology formation (Krishnan).
8489889 Method and apparatus for restricting access to encrypted data (Callas).
8493955 Interference mitigation mechanism to enable spatial reuse in UWB networks (Krishnan).
8494852 Word-level correction of speech input (Ballinger).
8504905 Audience segment selection (Sutter).
8553699 Wavefront detection and disambiguation of acknowledgements (Sutter).
8554832 Server side user interface simulation (Moskovitz, Rosenstein).
8566353 Web-based system for collaborative generation of interactive videos (Kofman).
8572477 Web-based incremental computing (Moskovitz, Rosenstein).
Applications:
20020065919 Peer-to-peer caching network for user data (Taylor).
20040049763 Method and apparatus for importing static members of a class (Bloch).
20040049764 Object-oriented enumerated type facility (Bloch).
20040049766 Method and apparatus for associating metadata attributes with program elements (Bloch).
20050005024 Method of determining path maximum transmission unit (Sutter).
20050058131 Wavefront detection and disambiguation of acknowledgments (Sutter).
20050060426 Early generation of acknowledgements for flow control (Sutter).
20050063302 Automatic detection and window virtualization for flow control (Sutter).
20050063303 TCP selective acknowledgements for communicating delivered and missed data packets (Sutter).
20050063307 Flow control system architecture (Sutter).
20050074007 Transaction boundary detection for reduction in timeout penalties (Sutter).
20050120329 Method and apparatus for supporting typesafe software design (Bloch).
20050222779 Detecting recessive diseases in inbred populations (Conway).
20060159029 Automatic LAN/WAN port detection (Sutter).
20060161516 Method and system for synchronizing multiple user revisions to a shared object (Kofman).
20060161585 Method and system for transitioning between synchronous and asynchronous communication modes (Kofman).
20060248442 Web page authoring tool for structured documents (Rosenstein).
20070031886 Detecting recessive diseases in inbred populations (Conway).
20070198662 Deleted account handling for hosted services (Parham).

20070198938 Account administration for hosted services (Parham).
20070245310 Message catalogs for remote modules (Rosenstein).
20070248090 Virtual inline configuration for a network device (Sutter).
20070260979 Distributed processing when editing an image in a browser (Rosenstein).
20070285428 Self-refreshing display controller for a display device in a computational unit (Gettys).
20080086741 Audience commonality and measurement (Sutter).
20080170785 Converting Text (Kofman).
20080225057 Selective image editing in a browser (Rosenstein).
20080225058 Effects applied to images in a browser (Rosenstein).
20080256113 Techniques to associate information between application programs (Kofman).
20080256114 Techniques to display associated information between application programs (Kofman).
20080270761 Techniques to generate event contexts for recurring events (Kofman).
20090083442 Tracking Identifier Synchronization (Sutter).
20090119167 Social Advertisements and Other Informational Messages on a Social Networking Website, and Advertising Model for Same (Rosenstein).
20090182589 Communicating Information in a Social Networking Website About Activities from Another Domain (Rosenstein).
20090201828 Method of determining path maximum transmission unit (Sutter).
20090216815 Conflict Management During Data Object Synchronization Between Client and Server (Rosenstein).
20090235158 Web Page Authoring Tool for Structured Documents (Rosenstein).
20100036779 User-controllable learning of policies (Cranor).
20100046372 Wavefront Detection and Disambiguation of Acknowledgements (Sutter).
20100050040 Tcp selection acknowledgements for communicating delivered and missing data packets (Sutter).
20100095350 Universally usable human-interaction proof (Hochheiser).
20100103819 Flow control system architecture (Sutter).
20100110092 Distributed processing when editing an image in a browser (Rosenstein).
20100110104 Effects applied to images in a browser (Rosenstein).
20100111406 Selective image editing in a browser (Rosenstein).
20100232294 Early generation of acknowledgements for flow control (Sutter).
20100309922 Protecting data integrity in an enhanced network connection (Sutter).
20110029388 Social Advertisements and Other Informational Messages on a Social Networking Website, and Advertising Model for Same (Rosenstein).
20110055314 Page rendering for dynamic web pages (Rosenstein).
20110153324 Language Model Selection for Speech-to-Text Conversion (Ballinger).
20110153325 Multi-Modal Input on an Electronic Device (Ballinger).
20110161080 Speech to Text Conversion (Ballinger).
20110161081 Speech Recognition Language Models (Ballinger).
20110161178 Web-Page Authoring Tool for Automatic Enrollment in Advertising Program (Rosenstein).
20110166851 Word-Level Correction of Speech Input (Ballinger).
20110225242 Method and system for transitioning between synchronous and asynchronous communication modes (Kofman).
20120022853 Multi-Modal Input on an Electronic Device (Ballinger).
20120022866 Language Model Selection for Speech-to-Text Conversion (Ballinger).
20120022867 Speech to Text Conversion (Ballinger).
20120022868 Word-Level Correction of Speech Input (Ballinger).
20120022873 Speech Recognition Language Models (Ballinger).
20120093156 Virtual inline configuration for a network device (Sutter).
20120095836 Social Advertisements Based on Actions on an External System (Rosenstein).
20120101898 Presenting personalized social content on a web page of an external system (Rosenstein).
20120109757 Sponsored stories and news stories within a newsfeed of a social networking system (Rosenstein).
20120203847 Sponsored Stories and News Stories within a Newsfeed of a Social Networking System (Rosenstein).
20120204096 Presenting Personalized Social Content on a Web Page of an External System (Rosenstein).
20120327772 Wavefront detection and disambiguation of acknowledgements (Sutter).
20130003553 Automatic detection and window virtualization for flow control (Sutter).
20130124612 Conflict Management During Data Object Synchronization Between Client and Server (Rosenstein).
20130132222 Method and Apparatus Pertaining to Financial Investment Quantitative Analysis Signal Auctions (Sutter).
20130198008 Social Advertisements And Other Informational Messages On A Social Networking Website, And Advertising Model For Same (Rosenstein).
20130198024 Method and Apparatus Pertaining to the Aggregation and Parsing of Behavioral-Event Content (Sutter).
20130204954 Communicating information in a social networking website about activities from another domain (Rosenstein).
20110207116 Spatio-Temporal Control of Proten Interactions Using Phytochromes (Levskaya).

Mr. HONDA. Mr. Chairman, I rise today in support of H.R. 3309, The Innovation Act, which will help to curtail the damage done by patent trolls to the American economy and consumers.

In recent years, patent trolls have had a significant negative impact on America's economy, with organizations from all walks of life being attacked and facing costly licensing fees, settlements, and even court battles. The direct impact of this has been estimated at roughly $29 billion per year.

It is important to realize that the impact of patent trolls is falling not just on big, wealthy companies, but on America's consumers. In one notable case, a patent troll has threatened nonprofit charities in Vermont and a community choir in Nebraska, asking for $1,000 per employee simply because the organizations use scanners. And another has demanded licensing fees from more than 8,000 businesses, including coffee houses and hotels, and ultimately sued hundreds of them—all because they provide wifi to their customers.

The impact of this on the consumer is significant. The expense associated with facing a patent troll leaves small businesses with a low profit margin already with the choice of either halting use of this service to its customers, or offsetting the cost by charging for use. When these small businesses are able to go to court, the trolls lose the cases over 85 percent of the time. But in our current system, most of them can't afford to do so.

What's more, the long-term impact is even more damaging for consumers. The cost of this type of litigation has risen to more than $29 billion per year, with each suit costing an estimated average of $5–10 million. These are funds that companies can't use to create jobs or innovate. By diverting resources to fighting trolls, Silicon Valley companies have less to spend on investment in new products, expansion to new areas, and improvement of services.

The Federal Trade Commission, which is charged with protecting consumers and policing unfair and deceptive acts, recently began an investigation of patent trolls. An investigation is a good step in the right direction, but legislation like H.R. 3309 is needed to truly combat patent trolls.

As a cosponsor of the bipartisan Innovation Act, I know this bill will take important steps to curb the abusive patent litigation we see today, in which trolls send vague demand letters about overbroad patents, don't clearly identify themselves, and deliberately run up discovery costs to pressure defendants to settle.

The bill will change the rules for patent lawsuits by requiring plaintiffs to identify who is really behind the suit, what patent is being asserted, and what the infringement claim is. This will allow the targets of patent suits to know who is accusing them of infringement and what exactly they are being accused of doing.

H.R. 3309 will also require judges to shift litigation costs and fees to a non-prevailing party in cases where the party's position was not reasonably justified, unless it would cause severe economic harm to the named inventor. This will make it easier for defendants to fight unjustified patent suits and deter illegitimate claims, while protecting legitimate inventors and preserving courts' discretion to not shift costs.

The bill will also require the Judicial Conference of the United States to make rules that would shift discovery costs, while leaving the details of the rulemaking are up the Judicial Conference. The rule should require parties to pay for their own discovery requests beyond the core documents needed to advance the suit, which aims to rein in broad discovery requests in patent suits that are unnecessary, unfair, and costly, and are often designed simply to intimidate the other party into a settlement. The bill would allow the courts to maintain discretion to modify the rules for good cause.

Another aspect of the bill will allow manufacturers and suppliers to intervene and stay lawsuits against customers and end users of a product that allegedly infringe patents, if both the manufacturer and customer agree. This will protect the coffee shop or hotel, which is accused of infringing a wifi patent because it uses a particular wireless router, by allowing the maker of the allegedly infringing product to step in and take responsibility for the case.

It is important to note that this bill does not diminish or devalue patent rights in the United States. It does not attempt to eliminate valid patent litigation; rather, it is aimed at abusive behaviors in the patent litigation system and seeks to put them to a stop. Its provisions for higher pleading standards and greater transparency will save the court's time and resources by making parties do their due diligence and provide information up front, before an infringement suit is filed. Greater transparency and information are a good thing, and will make the system stronger.

H.R. 3309 had broad bipartisan support in the Judiciary Committee, where it passed by a vote of 33–5, and it deserves our support. I look forward to working with my colleagues on both sides of the aisle in the House and the Senate to send a bill to the President that will bring an end to these abusive practices that are stifling American businesses and innovation.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today in support of H.R. 3309, the Innovation Act. I would like to applaud my colleagues for bringing this important issue to the floor today.

Throughout my tenure in Congress, I have long supported the principles for reforming patent litigation to prevent troll litigation. As Ranking Member of the House Committee on Science, Space and Technology I have long supported policy in order to prioritize investments that will advance our knowledge, create new industries and jobs, and give our children the grounding in science and technology they will need to succeed in a competitive world economy. During this time of economic need, I support H.R. 3309 which is integral to curbing frivolous and costly patent litigation that currently hinders our ability to innovate, create jobs and economic growth.

Many companies, from both the technology and non-technology sectors, have been the target of numerous, merit-less lawsuits from patent trolls. Since 2005, the number of defendants sued by patent trolls has quadrupled, activity that is estimated to have cost the U.S. economy $80 billion in 2011. And, what's even more startling is that in 2012 patent trolls sued more non-tech companies than tech companies. I am supportive of the Innovation Act of 2013 which takes a multi-faceted approach to end this abuse.

While I recognize there may be no single solution that addresses all complexities surrounding our nation's patent process, H.R. 3309 is a good faith bi-partisan first step towards addressing patent trolling. I am pleased that the Administration is also supportive of H.R. 3309. Moving forward, I would like to work with all sides on this issue to curb patent trolling. I would like to think that all of us in Congress agree that we must work to address the problem of patent trolls.

Ms. JACKSON LEE. Mr. Chairman, I rise to talk about innovation in America—the great job creator that I feel is being put in jeopardy by H.R. 3309, the Innovation Act.

H.R. 3309 is a bill before its time as the America Invents Act was signed into law barely two years ago. Many of the major provisions of this landmark legislation which many on the Judiciary Committee and in this body voted for have not even been put into practice.

It is well documented that our innovation ecosystem—founded on patents—drives economic growth and job creation in the United States. From the hustle and bustle of downtown Houston, Silicon Valley, Chicago, New York, and even here in Washington, D.C., Americans want to keep our cherished system as strong as possible. For the future of our economy, we cannot risk jeopardizing it.

And while the AIA was unquestionably pro-innovator legislation, its post-grant challenge provisions also unquestionably shifted the balance of rights toward implementers and away from patent holders. The only remaining question, brought on by the adolescence of the AIA, is—just how much has that balance shifted?

''Loser pays'', also commonly referred to as the British Rule, mandates that the losing side in a civil dispute pay the legal costs of the other side. Loser pays laws ensure that only the wealthiest members of society or large corporations can afford to undertake a civil action and also unnecessarily punishes individuals with serious and meritorious claims for seeking access to justice.

Loser pays policies fail to recognize that a person or a business can have a legally legitimate dispute regarding fact and law, and yet still ultimately lose the case. Loser pays policy sets a dangerous precedent and may prevent individuals from pursuing even the most meritorious civil liability claims.

For most individuals and small businesses, the financial risk of having to pay the other side's costs and legal fees is one too great to bear, no matter how valid the claim. It creates a situation where experienced corporate defendants with enormous resources and expert legal talent can bully injured plaintiffs into unfair settlements due to the risks associated with losing a potentially successful case.

If ''loser pays'' is implemented it could be a roadblock for people pursuing whistleblower, consumer mortgage, employment discrimination and other civil rights cases. The only losers under a ''loser pays'' system is the small business or individual plaintiff, or the innovator who is discouraged from pursuing her rights due to the chilling effect brought on by the onerous language in H.R. 3309.

This bill tries to discourage patent litigation abuse by patent assertion entities, better known as ''patent trolls''. Trolls use patents of questionable quality to pressure their targets into settlement for an amount that is lower than the legal fees to defend against a lawsuit. Trolls typically have no interest in moving the patented technology into the marketplace. Generally, the troll's target has had a product on the market for some time and the troll's patent covers the targeted product through exceedingly broad claims, often through a broad interpretation of vague claim terms.

In one common tactic, a troll will approach a target with a proposal to license patents with a one-time fee of $50k to $200k, where it might cost the target $15k to $50k for an initial legal opinion on validity and infringement, and it might cost the target $20k to $50k per month in legal fees in litigation proceedings (mainly driven by discovery and motions practice). So the one-time fee may sound appealing as a simple payoff to avoid legal fees that are comparable and inevitable.

In theory, one can discourage the patent troll business model by increasing patent quality, promoting stricter requirements on claim construction, and lowering the cost of litigation (by limiting discovery). Each of these purported remedies has a cost that may be worse than the alleged benefit. That is why it is critical that we carefully consider any and all legislation and policy which looks to improve.

At the outset of considering further changes to our patent system, we must recognize that the time constant of the patent system—the period between new patent application and court decision on a patent infringement claim—is very long. Therefore, the impact of Congress' very recent major change to our patent system has barely begun to be felt.

Moreover, in long time constant systems such as our patent system, over-correction, especially that which leaves scant time for due deliberation, is a major danger.

By the time we realize that an over-correction is apparent, it will be years after the system is badly damaged. If there were ever a case where caution is called for, this is it, and I say that because my constituents in Texas, and particularly in Houston, wanted change in the patent system, and surely every one of them was not satisfied with the Leahy-Smith Act but some changes we can live with.

I would hope that due caution would yield to a deliberative process that takes the time to reach out and listen to all stakeholders, including those who will not be the fastest ones off the mark, and I am sure that some of them exist in Texas. Many small innovators—today's Priceline.coms, Yahoo's, Google's, Facebook's, Eli Lilly's, Twitter's, akin to yesteryears Edisons—have not had time to make their views heard.

Others having various levels of dependence on strong IP rights are just now beginning to consider the prospect of further changes to our patent system. We need to allow these important stakeholders their time to participate.

I look forward to hearing from these witnesses but would hope that this Committee proceeds on any changes with due caution—because the ink on the America Invents Act is barely dry—and another patent bill is before us with changes that are fraught with difficulty for many in our innovation economy.

My amendment modifies the Manager's Amendment to ensure that small businesses that motivated this provision are protected and by expanding the amendment so that businesses with under $25 million are included—my hope is that it will garner the support.

Under my amendment, the customer stay provision a covered customer is one who is accused of infringing a patent or patents on a covered product or process, and is a small business that has revenue of $25 million or less.

I have modified this amendment from that offered in the Judiciary Committee markup in order to accommodate more businesses who feel they might benefit from the narrowed language while still maintaining the intended consequence of allowing for stays in proceedings. The expanded language might allow some businesses who are past the ''mom and pop'' growth phase but if this will provide medium-sized businesses from going bankrupt, or losing valuable revenues because of litigation, it is a useful expansion.

A number of the provisions in this bill may be well-intentioned, but they have undesirable consequences for the patent system as a whole.

They have the potential to undermine the enforceability of all patent rights, no matter how valuable the patent, and thus potentially incentivize infringement.

That is why I offered three amendments in the Judiciary Committee and three in the Rules Committee yesterday. My first amendment struck section 9(a) of H.R. 3309 which strikes Section 9(a) of the bill which repeals Section 145 of 35 U.S.C. Under this repeal, applicants would be gratuitously denied the fundamental right of de-novo judicial review of adverse patentability determinations by the Patent and Trademark Office when it refuses to consider certain evidence. This is a limiting provision and unfairly prevents a full adjudication of the rights of litigants. The importance of this 170-year-old protective provision is in its restraining effect on PTO's potential abuse of

discretion for all patent applicants—not just for those who would seek judicial review. I attempted to modify my amendment based on a meeting I had with Chief Judge Rader of the Federal Circuit, which hears all patent claims, and is the lodestar for patent litigation.

My second amendment which was made in order by the Rules Committee yesterday evening, modifies the Manager's Amendment to ensure that small businesses that motivated this provision are protected and by expanding the amendment so that businesses with under $25 million are included—my hope is that it will garner the support. Under my amendment, a covered customer is one who is accused of infringing a patent or patents on a covered product or process, and is a small business that has revenue of $25 million or less. I have modified this amendment from that offered in the Judiciary Committee markup in order to accommodate more businesses who feel they might benefit from the narrowed language while still maintaining the intended consequence of allowing for stays in proceedings. The expanded language might allow some businesses who are past the ''mom and pop'' growth phase but if this will provide medium-sized businesses from going bankrupt, or losing valuable revenues because of litigation, it is a useful expansion.

Also made-in-order by the Rules Committee is my third amendment which simply requires the PTO Director, in consultation with other relevant agencies, and interested parties, to conduct a study to examine the economic impact of the litigation reforms contained in the bill (sections 3, 4, and 5 of this Act) on the ability of individuals and small businesses owned by women, veterans, and minorities to assert, secure, and vindicate the constitutionally guaranteed exclusive right to inventions and discoveries by such individuals and small business. This amendment supplements and improves the bill, which requires PTO to conduct 4 studies and submit reports to Congress. The required studies are:

1. Study On Secondary Market Oversight For Patent Transactions To Promote Transparency And Ethical Business Practices.

2. Study On Patents Owned By The United States Government

3. Study On Patent Quality And Access To The Best Information During Examination

4. Study On Patent Small Claims Court

My last amendment was done with Ranking Member CONYERS of the Judiciary Committee, strikes Section 3(b) which requires that courts reward attorney's fees and expenses to the prevailing party. I remain convinced that this provision is onerous and prepares us for a slippery slope that leads to more and more restraints against plaintiffs in litigation.

This will have a chilling effect and deter litigation in areas which might lead to more harm being exacted on the public—particularly in areas such as civil rights, environmental protection, and business regulations.

Mr. Chairman, in the name of fairness to the little person—the Davids in the land of the Goliaths, commercially-speaking—and I ask my colleagues to slow the train down and exercise prudence and due caution before we vote on H.R. 3309.

We must act thoughtfully and with great caution as we pursue reforms to a system which took sixty years to change—and then in batting of a Congressional eyelash—look to significantly modify once again. I was here during the long road that led to the path that became Smith-Leahy, or the American Invents Act. That it took so long is somewhat perplexing; but even more interesting is that the bill had a Republican House and a Democratic Senate. Yet we came together in a collaborative fashion and made lemonade out of sixty years of lemons while in the midst of some of the most jarring partisanship we have seen in this great body. Yet H.R. 3309 has been cobbled together in a couple of months—this is no small, technical correction bill Mr. Chairman—it is comprehensive yet potentially pernicious legislation which should be slowed, if not stopped.

Ms. KAPTUR. Mr. Chairman, today I rise in opposition to H.R. 3309. This bill hurts innovation by small business and many American inventors with less than 5 patents. My amendment to exempt them from the strictures and inherent costs of this bill was not made in order. Issues with this bill:

Proponents of the bill claim that H.R. 3309 attempts to fix the issue with patent trolls. However, there is no evidence that patent trolls make up more than a very small percent of the civil suits brought in court—probably less than 5 percent.

The bill does however make it more difficult and for the vast majority of inventors and much more expensive for the ''little guy'' to sue for patent infringement. Small inventors simply cannot afford to defend themselves. Truly, this is un-American.

Fee shifting and ''loser pay'' rules ensure that only wealthy inventors and large business are able to protect their patents. Many small inventors and entrepreneurs simply cannot afford the cost of civil litigation and the potential cost of paying the legal fees for losing a lawsuit. Why throttle the most important source of innovation in our Nation?

Six national higher education associations including the Association of American Universities, Association of American Medical Universities, Association of Public and Land Grant Universities, and the American Bar Association and the Association of University Technology Managers oppose this bill. More than half of the U.S. economic growth since World War II is the result of technological innovation resulting from federally funded research. Universities are worried that this bill will hurt their ability to turn their federally funded research into the commercial sector because of how difficult it will be to defend their patents in court with the new fee shifting rules.

The American Association of Justice is ''deeply concerned with the continued inclusion of burdensome mandatory fee shifting, unfair limitations on discovery and impediments on the discretion of the courts.''

The bill should be sent back to committee. It should review in particular the development and improvement of rules of procedure and case management to address the concerns over abusive litigation practices so we can address the real issues with patent law without making unnecessary changes that hurt small business and individual inventors.

Mr. BLUMENAUER. Mr. Chairman, I support H.R. 3309, the Innovation Act, as a step in the right direction to address the growing and serious issue of abusive patent lawsuits or ''patent trolling.''

We need to be careful that certain provisions of this legislation do not have unintended consequences for legitimate patent holders, especially institutions of higher education. It is encouraging that the administration's support includes a commitment to help refine this legislation. I look forward to participating in that effort.

The Acting CHAIR (Mr. MASSIE). All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

In lieu of the amendment in the nature of a substitute recommended by the Committee on the Judiciary, printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 113–28. That amendment in the nature of a substitute shall be considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 3309

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Innovation Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Patent infringement actions.
Sec. 4. Transparency of patent ownership.
Sec. 5. Customer-suit exception.
Sec. 6. Procedures and practices to implement and recommendations to the Judicial Conference.
Sec. 7. Small business education, outreach, and information access.
Sec. 8. Studies on patent transactions, quality, and examination.
Sec. 9. Improvements and technical corrections to the Leahy-Smith America Invents Act.
Sec. 10. Effective date.

SEC. 2. DEFINITIONS.

In this Act:

(1) DIRECTOR.—The term ''Director'' means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

SEC. 3. PATENT INFRINGEMENT ACTIONS.

(a) PLEADING REQUIREMENTS.—

(1) AMENDMENT.—Chapter 29 of title 35, United States Code, is amended by inserting after section 281 the following:

''§281A. Pleading requirements for patent infringement actions

''(a) PLEADING REQUIREMENTS.—Except as provided in subsection (b), in a civil action in which a party asserts a claim for relief arising under any Act of Congress relating to patents, a party alleging infringement shall include in the initial complaint, counterclaim, or cross-claim for patent infringement, unless the information is not reasonably accessible to such party, the following:

''(1) An identification of each patent allegedly infringed.

''(2) An identification of each claim of each patent identified under paragraph (1) that is allegedly infringed.

''(3) For each claim identified under paragraph (2), an identification of each accused process, machine, manufacture, or composition of matter (referred to in this section as an 'accused instrumentality') alleged to infringe the claim.

''(4) For each accused instrumentality identified under paragraph (3), an identification with particularity, if known, of—

''(A) the name or model number of each accused instrumentality; or

''(B) if there is no name or model number, a description of each accused instrumentality.

''(5) For each accused instrumentality identified under paragraph (3), a clear and concise statement of—

''(A) where each element of each claim identified under paragraph (2) is found within the accused instrumentality; and

''(B) with detailed specificity, how each limitation of each claim identified under paragraph (2) is met by the accused instrumentality.

''(6) For each claim of indirect infringement, a description of the acts of the alleged indirect infringer that contribute to or are inducing the direct infringement.

''(7) A description of the authority of the party alleging infringement to assert each patent identified under paragraph (1) and of the grounds for the court's jurisdiction.

''(8) A clear and concise description of the principal business, if any, of the party alleging infringement.

''(9) A list of each complaint filed, of which the party alleging infringement has knowledge, that asserts or asserted any of the patents identified under paragraph (1).

''(10) For each patent identified under paragraph (1), whether a standard-setting body has specifically declared such patent to be essential, potentially essential, or having potential to become essential to that standard-setting body, and whether the United States Government or a foreign government has imposed specific licensing requirements with respect to such patent.

''(b) INFORMATION NOT READILY ACCESSIBLE.—If information required to be disclosed under subsection (a) is not readily accessible to a party, that information may instead be generally described, along with an explanation of why such undisclosed information was not readily accessible, and of any efforts made by such party to access such information.

''(c) CONFIDENTIAL INFORMATION.—A party required to disclose information described under subsection (a) may file, under seal, information believed to be confidential, with a motion setting forth good cause for such sealing. If such motion is denied by the court, the party may seek to file an amended complaint.

''(d) EXEMPTION.—A civil action that includes a claim for relief arising under section 271(e)(2) shall not be subject to the requirements of subsection (a).''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, is amended by inserting after the item relating to section 281 the following new item:

''281A. Pleading requirements for patent infringement actions.''.

(b) FEES AND OTHER EXPENSES.—

(1) AMENDMENT.—Section 285 of title 35, United States Code, is amended to read as follows:

''§ 285. Fees and other expenses

''(a) AWARD.—The court shall award, to a prevailing party, reasonable fees and other expenses incurred by that party in connection with a civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, unless the court finds that the position and conduct of the nonprevailing party or parties were reasonably justified in law and fact or that special circumstances (such as severe economic hardship to a named inventor) make an award unjust.

''(b) CERTIFICATION AND RECOVERY.—Upon motion of any party to the action, the court shall require another party to the action to certify whether or not the other party will be able to pay an award of fees and other expenses if such an award is made under subsection (a). If a nonprevailing party is unable to pay an award that is made against it under subsection (a), the court may make a party that has been joined under section 299(d) with respect to such party liable for the unsatisfied portion of the award.

''(c) COVENANT NOT TO SUE.—A party to a civil action that asserts a claim for relief arising under any Act of Congress relating to patents against another party, and that subsequently unilaterally extends to such other party a covenant not to sue for infringement with respect to the patent or patents at issue, shall be deemed to be a nonprevailing party (and the other party the prevailing party) for purposes of this section, unless the party asserting such claim would have been entitled, at the time that such covenant was extended, to voluntarily dismiss the action or claim without a court order under Rule 41 of the Federal Rules of Civil Procedure.''.

(2) CONFORMING AMENDMENT AND AMENDMENT.—

(A) CONFORMING AMENDMENT.—The item relating to section 285 of the table of sections for chapter 29 of title 35, United States Code, is amended to read as follows:

''285. Fees and other expenses.''.

(B) AMENDMENT.—Section 273 of title 35, United States Code, is amended by striking subsections (f) and (g).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to any action for which a complaint is filed on or after the first day of the 6-month period ending on that effective date.

(c) JOINDER OF INTERESTED PARTIES.—Section 299 of title 35, United States Code, is amended by adding at the end the following new subsection:

''(d) JOINDER OF INTERESTED PARTIES.—

''(1) JOINDER.—In a civil action arising under any Act of Congress relating to patents in which fees and other expenses have been awarded under section 285 to a prevailing party defending against an allegation of infringement of a patent claim, and in which the nonprevailing party alleging infringement is unable to pay the award of fees and other expenses, the court shall grant a motion by the prevailing party to join an interested party if such prevailing party shows that the nonprevailing party has no substantial interest in the subject matter at issue other than asserting such patent claim in litigation.

''(2) LIMITATION ON JOINDER.—

''(A) DISCRETIONARY DENIAL OF MOTION.—The court may deny a motion to join an interested party under paragraph (1) if—

''(i) the interested party is not subject to service of process; or

''(ii) joinder under paragraph (1) would deprive the court of subject matter jurisdiction or make venue improper.

''(B) REQUIRED DENIAL OF MOTION.—The court shall deny a motion to join an interested party under paragraph (1) if—

''(i) the interested party did not timely receive the notice required by paragraph (3); or

''(ii) within 30 days after receiving the notice required by paragraph (3), the interested party renounces, in writing and with notice to the court and the parties to the action, any ownership, right, or direct financial interest (as described in paragraph (4)) that the interested party has in the patent or patents at issue.

''(3) NOTICE REQUIREMENT.—An interested party may not be joined under paragraph (1) unless it has been provided actual notice, within 30 days after the date on which it has been identified in the initial disclosure provided under section 290(b), that it has been so identified and that such party may therefore be an interested party subject to joinder under this subsection. Such notice shall be provided by the party who subsequently moves to join the interested party under paragraph (1), and shall include language that—

''(A) identifies the action, the parties thereto, the patent or patents at issue, and the pleading or other paper that identified the party under section 290(b); and

''(B) informs the party that it may be joined in the action and made subject to paying an award of fees and other expenses under section 285(b) if—

''(i) fees and other expenses are awarded in the action against the party alleging infringement of the patent or patents at issue under section 285(a);

''(ii) the party alleging infringement is unable to pay the award of fees and other expenses;

''(iii) the party receiving notice under this paragraph is determined by the court to be an interested party; and

''(iv) the party receiving notice under this paragraph has not, within 30 days after receiving such notice, renounced in writing, and with notice to the court and the parties to the action, any ownership, right, or direct financial interest (as described in paragraph (4)) that the interested party has in the patent or patents at issue.

''(4) INTERESTED PARTY DEFINED.—In this subsection, the term 'interested party' means a person, other than the party alleging infringement, that—

''(A) is an assignee of the patent or patents at issue;

''(B) has a right, including a contingent right, to enforce or sublicense the patent or patents at issue; or

''(C) has a direct financial interest in the patent or patents at issue, including the right to any part of an award of damages or any part of licensing revenue, except that a person with a direct financial interest does not include—

''(i) an attorney or law firm providing legal representation in the civil action described in paragraph (1) if the sole basis for the financial interest of the attorney or law firm in the patent or patents at issue arises from the attorney or law firm's receipt of compensation reasonably related to the provision of the legal representation; or

''(ii) a person whose sole financial interest in the patent or patents at issue is ownership of an equity interest in the party alleging infringement, unless such person also has the right or ability to influence, direct, or control the civil action.''.

(d) DISCOVERY LIMITS.—

(1) AMENDMENT.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 299A. Discovery in patent infringement action

''(a) DISCOVERY IN PATENT INFRINGEMENT ACTION.—Except as provided in subsection (b), in a civil action arising under any Act of Congress relating to patents, if the court determines that a ruling relating to the construction of terms used in a patent claim asserted in the complaint is required, discovery shall be limited, until such ruling is issued, to information necessary for the court to determine the meaning of the terms used in the patent claim, including any interpretation of those terms used to support the claim of infringement.

''(b) DISCRETION TO EXPAND SCOPE OF DISCOVERY.—

''(1) TIMELY RESOLUTION OF ACTIONS.—If, under any provision of Federal law (including the amendments made by the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417)), resolution within a specified period of time of a civil action arising under any Act of Congress relating to patents will necessarily affect the rights of a party with respect to the patent, the court shall permit discovery, in addition to the discovery authorized under subsection (a), before the ruling described in subsection (a) is issued as necessary to ensure timely resolution of the action.

''(2) RESOLUTION OF MOTIONS.—When necessary to resolve a motion properly raised by a

party before a ruling relating to the construction of terms described in subsection (a) is issued, the court may allow limited discovery in addition to the discovery authorized under subsection (a) as necessary to resolve the motion.

''(3) SPECIAL CIRCUMSTANCES.—In special circumstances that would make denial of discovery a manifest injustice, the court may permit discovery, in addition to the discovery authorized under subsection (a), as necessary to prevent the manifest injustice.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, is amended by adding at the end the following new item:

''299A. Discovery in patent infringement action.''.

(e) SENSE OF CONGRESS.—It is the sense of Congress that it is an abuse of the patent system and against public policy for a party to send out purposely evasive demand letters to end users alleging patent infringement. Demand letters sent should, at the least, include basic information about the patent in question, what is being infringed, and how it is being infringed. Any actions or litigation that stem from these types of purposely evasive demand letters to end users should be considered a fraudulent or deceptive practice and an exceptional circumstance when considering whether the litigation is abusive.

(f) DEMAND LETTERS.—Section 284 of title 35, United States Code, is amended—

(1) in the first undesignated paragraph, by striking ''Upon finding'' and inserting ''(a) IN GENERAL.—Upon finding'';

(2) in the second undesignated paragraph, by striking ''When the damages'' and inserting ''(b) ASSESSMENT BY COURT; TREBLE DAMAGES.—When the damages'';

(3) by inserting after subsection (b), as designated by paragraph (2) of this subsection, the following:

''(c) WILLFUL INFRINGEMENT.—A claimant seeking to establish willful infringement may not rely on evidence of pre-suit notification of infringement unless that notification identifies with particularity the asserted patent, identifies the product or process accused, and explains with particularity, to the extent possible following a reasonable investigation or inquiry, how the product or process infringes one or more claims of the patent.''; and

(4) in the last undesignated paragraph, by striking ''The court'' and inserting ''(d) EXPERT TESTIMONY.—The court''.

(g) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to any action for which a complaint is filed on or after that date.

SEC. 4. TRANSPARENCY OF PATENT OWNERSHIP.

(a) AMENDMENTS.—Section 290 of title 35, United States Code, is amended—

*(1) in the heading, by striking ''**suits**'' and inserting ''**suits; disclosure of interests**'';*

(2) by striking ''The clerks'' and inserting ''(a) NOTICE OF PATENT SUITS.—The clerks''; and

(3) by adding at the end the following new subsections:

''(b) INITIAL DISCLOSURE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), upon the filing of an initial complaint for patent infringement, the plaintiff shall disclose to the Patent and Trademark Office, the court, and each adverse party the identity of each of the following:

''(A) The assignee of the patent or patents at issue.

''(B) Any entity with a right to sublicense or enforce the patent or patents at issue.

''(C) Any entity, other than the plaintiff, that the plaintiff knows to have a financial interest in the patent or patents at issue or the plaintiff.

''(D) The ultimate parent entity of any assignee identified under subparagraph (A) and any entity identified under subparagraph (B) or (C).

''(2) EXEMPTION.—The requirements of paragraph (1) shall not apply with respect to a civil action filed under subsection (a) that includes a cause of action described under section 271(e)(2).

''(c) DISCLOSURE COMPLIANCE.—

''(1) PUBLICLY TRADED.—For purposes of subsection (b)(1)(C), if the financial interest is held by a corporation traded on a public stock exchange, an identification of the name of the corporation and the public exchange listing shall satisfy the disclosure requirement.

''(2) NOT PUBLICLY TRADED.—For purposes of subsection (b)(1)(C), if the financial interest is not held by a publicly traded corporation, the disclosure shall satisfy the disclosure requirement if the information identifies—

''(A) in the case of a partnership, the name of the partnership and the name and correspondence address of each partner or other entity that holds more than a 5-percent share of that partnership;

''(B) in the case of a corporation, the name of the corporation, the location of incorporation, the address of the principal place of business, and the name of each officer of the corporation; and

''(C) for each individual, the name and correspondence address of that individual.

''(d) ONGOING DUTY OF DISCLOSURE TO THE PATENT AND TRADEMARK OFFICE.—

''(1) IN GENERAL.—A plaintiff required to submit information under subsection (b) or a subsequent owner of the patent or patents at issue shall, not later than 90 days after any change in the assignee of the patent or patents at issue or an entity described under subparagraph (B) or (D) of subsection (b)(1), submit to the Patent and Trademark Office the updated identification of such assignee or entity.

''(2) FAILURE TO COMPLY.—With respect to a patent for which the requirement of paragraph (1) has not been met—

''(A) the plaintiff or subsequent owner shall not be entitled to recover reasonable fees and other expenses under section 285 or increased damages under section 284 with respect to infringing activities taking place during any period of noncompliance with paragraph (1), unless the denial of such damages or fees would be manifestly unjust; and

''(B) the court shall award to a prevailing party accused of infringement reasonable fees and other expenses under section 285 that are incurred to discover the updated assignee or entity described under paragraph (1), unless such sanctions would be unjust.

''(e) DEFINITIONS.—In this section:

''(1) FINANCIAL INTEREST.—The term 'financial interest'—

''(A) means—

''(i) with regard to a patent or patents, the right of a person to receive proceeds related to the assertion of the patent or patents, including a fixed or variable portion of such proceeds; and

''(ii) with regard to the plaintiff, direct or indirect ownership or control by a person of more than 5 percent of such plaintiff; and

''(B) does not mean—

''(i) ownership of shares or other interests in a mutual or common investment fund, unless the owner of such interest participates in the management of such fund; or

''(ii) the proprietary interest of a policyholder in a mutual insurance company or of a depositor in a mutual savings association, or a similar proprietary interest, unless the outcome of the proceeding could substantially affect the value of such interest.

''(2) PROCEEDING.—The term 'proceeding' means all stages of a civil action, including pretrial and trial proceedings and appellate review.

''(3) ULTIMATE PARENT ENTITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'ultimate parent entity' has the meaning given such term in section 801.1(a)(3) of title 16, Code of Federal Regulations, or any successor regulation.

''(B) MODIFICATION OF DEFINITION.—The Director may modify the definition of 'ultimate parent entity' by regulation.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The item relating to section 290 in the table of sections for chapter 29 of title 35, United States Code, is amended to read as follows:

''290. Notice of patent suits; disclosure of interests.''.

(c) REGULATIONS.—The Director may promulgate such regulations as are necessary to establish a registration fee in an amount sufficient to recover the estimated costs of administering subsections (b) through (e) of section 290 of title 35, United States Code, as added by subsection (a), to facilitate the collection and maintenance of the information required by such subsections, and to ensure the timely disclosure of such information to the public.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the expiration of the 6-month period beginning on the date of the enactment of this Act and shall apply to any action for which a complaint is filed on or after such effective date.

SEC. 5. CUSTOMER-SUIT EXCEPTION.

(a) AMENDMENT.—Section 296 of title 35, United States Code, is amended to read as follows:

''§ 296. Stay of action against customer

''(a) STAY OF ACTION AGAINST CUSTOMER.—Except as provided in subsection (d), in any civil action arising under any Act of Congress relating to patents, the court shall grant a motion to stay at least the portion of the action against a covered customer related to infringement of a patent involving a covered product or process if the following requirements are met:

''(1) The covered manufacturer and the covered customer consent in writing to the stay.

''(2) The covered manufacturer is a party to the action or to a separate action involving the same patent or patents related to the same covered product or process.

''(3) The covered customer agrees to be bound by any issues that the covered customer has in common with the covered manufacturer and are finally decided as to the covered manufacturer in an action described in paragraph (2).

''(4) The motion is filed after the first pleading in the action but not later than the later of—

''(A) the 120th day after the date on which the first pleading in the action is served that specifically identifies the covered product or process as a basis for the covered customer's alleged infringement of the patent and that specifically identifies how the covered product or process is alleged to infringe the patent; or

''(B) the date on which the first scheduling order in the case is entered.

''(b) APPLICABILITY OF STAY.—A stay issued under subsection (a) shall apply only to the patents, products, systems, or components accused of infringement in the action.

''(c) LIFT OF STAY.—

''(1) IN GENERAL.—A stay entered under this section may be lifted upon grant of a motion based on a showing that—

''(A) the action involving the covered manufacturer will not resolve a major issue in suit against the covered customer; or

''(B) the stay unreasonably prejudices and would be manifestly unjust to the party seeking to lift the stay.

''(2) SEPARATE MANUFACTURER ACTION INVOLVED.—In the case of a stay entered based on the participation of the covered manufacturer in a separate action involving the same patent or patents related to the same covered product or process, a motion under this subsection may only be made if the court in such separate action determines the showing required under paragraph (1) has been met.

''(d) EXEMPTION.—This section shall not apply to an action that includes a cause of action described under section 271(e)(2).

''(e) CONSENT JUDGMENT.—If, following the grant of a motion to stay under this section, the covered manufacturer seeks or consents to entry

of a consent judgment relating to one or more of the common issues that gave rise to the stay, or declines to prosecute through appeal a final decision as to one or more of the common issues that gave rise to the stay, the court may, upon grant of a motion, determine that such consent judgment or unappealed final decision shall not be binding on the covered customer with respect to one or more of such common issues based on a showing that such an outcome would unreasonably prejudice and be manifestly unjust to the covered customer in light of the circumstances of the case.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of a court to grant any stay, expand any stay granted under this section, or grant any motion to intervene, if otherwise permitted by law.

''(g) DEFINITIONS.—In this section:

''(1) COVERED CUSTOMER.—The term 'covered customer' means a party accused of infringing a patent or patents in dispute based on a covered product or process.

''(2) COVERED MANUFACTURER.—The term 'covered manufacturer' means a person that manufactures or supplies, or causes the manufacture or supply of, a covered product or process or a relevant part thereof.

''(3) COVERED PRODUCT OR PROCESS.—The term 'covered product or process' means a product, process, system, service, component, material, or apparatus, or relevant part thereof, that—

''(A) is alleged to infringe the patent or patents in dispute; or

''(B) implements a process alleged to infringe the patent or patents in dispute.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, is amended by striking the item relating to section 296 and inserting the following:

''296. Stay of action against customer.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to any action for which a complaint is filed on or after the first day of the 30-day period that ends on that date.

SEC. 6. PROCEDURES AND PRACTICES TO IMPLEMENT RECOMMENDATIONS OF THE JUDICIAL CONFERENCE.

(a) JUDICIAL CONFERENCE RULES AND PROCEDURES ON DISCOVERY BURDENS AND COSTS.—

(1) RULES AND PROCEDURES.—The Judicial Conference of the United States, using existing resources, shall develop rules and procedures to implement the issues and proposals described in paragraph (2) to address the asymmetries in discovery burdens and costs in any civil action arising under any Act of Congress relating to patents. Such rules and procedures shall include how and when payment for document discovery in addition to the discovery of core documentary evidence is to occur, and what information must be presented to demonstrate financial capacity before permitting document discovery in addition to the discovery of core documentary evidence.

(2) RULES AND PROCEDURES TO BE CONSIDERED.—The rules and procedures required under paragraph (1) should address each of the following issues and proposals:

(A) DISCOVERY OF CORE DOCUMENTARY EVIDENCE.—Whether and to what extent each party to the action is entitled to receive core documentary evidence and shall be responsible for the costs of producing core documentary evidence within the possession or control of each such party, and whether and to what extent each party to the action may seek nondocumentary discovery as otherwise provided in the Federal Rules of Civil Procedure.

(B) ELECTRONIC COMMUNICATION.—If the parties determine that the discovery of electronic communication is appropriate, whether such discovery shall occur after the parties have exchanged initial disclosures and core documentary evidence and whether such discovery shall be in accordance with the following:

(i) Any request for the production of electronic communication shall be specific and may not be a general request for the production of information relating to a product or business.

(ii) Each request shall identify the custodian of the information requested, the search terms, and a time frame. The parties shall cooperate to identify the proper custodians, the proper search terms, and the proper time frame.

(iii) A party may not submit production requests to more than 5 custodians, unless the parties jointly agree to modify the number of production requests without leave of the court.

(iv) The court may consider contested requests for up to 5 additional custodians per producing party, upon a showing of a distinct need based on the size, complexity, and issues of the case.

(v) If a party requests the discovery of electronic communication for additional custodians beyond the limits agreed to by the parties or granted by the court, the requesting party shall bear all reasonable costs caused by such additional discovery.

(C) ADDITIONAL DOCUMENT DISCOVERY.—Whether the following should apply:

(i) IN GENERAL.—Each party to the action may seek any additional document discovery otherwise permitted under the Federal Rules of Civil Procedure, if such party bears the reasonable costs, including reasonable attorney's fees, of the additional document discovery.

(ii) REQUIREMENTS FOR ADDITIONAL DOCUMENT DISCOVERY.—Unless the parties mutually agree otherwise, no party may be permitted additional document discovery unless such a party posts a bond, or provides other security, in an amount sufficient to cover the expected costs of such additional document discovery, or makes a showing to the court that such party has the financial capacity to pay the costs of such additional document discovery.

(iii) LIMITS ON ADDITIONAL DOCUMENT DISCOVERY.—A court, upon motion, may determine that a request for additional document discovery is excessive, irrelevant, or otherwise abusive and may set limits on such additional document discovery.

(iv) GOOD CAUSE MODIFICATION.—A court, upon motion and for good cause shown, may modify the requirements of subparagraphs (A) and (B) and any definition under paragraph (3). Not later than 30 days after the pretrial conference under Rule 16 of the Federal Rules of Civil Procedure, the parties shall jointly submit any proposed modifications of the requirements of subparagraphs (A) and (B) and any definition under paragraph (3), unless the parties do not agree, in which case each party shall submit any proposed modification of such party and a summary of the disagreement over the modification.

(v) COMPUTER CODE.—A court, upon motion and for good cause shown, may determine that computer code should be included in the discovery of core documentary evidence. The discovery of computer code shall occur after the parties have exchanged initial disclosures and other core documentary evidence.

(D) DISCOVERY SEQUENCE AND SCOPE.—Whether the parties shall discuss and address in the written report filed pursuant to Rule 26(f) of the Federal Rules of Civil Procedure the views and proposals of each party on the following:

(i) When the discovery of core documentary evidence should be completed.

(ii) Whether additional document discovery will be sought under subparagraph (C).

(iii) Any issues about infringement, invalidity, or damages that, if resolved before the additional discovery described in subparagraph (C) commences, might simplify or streamline the case, including the identification of any terms or phrases relating to any patent claim at issue to be construed by the court and whether the early construction of any of those terms or phrases would be helpful.

(3) DEFINITIONS.—In this subsection:

(A) CORE DOCUMENTARY EVIDENCE.—The term ''core documentary evidence''—

(i) includes—

(I) documents relating to the conception of, reduction to practice of, and application for, the patent or patents at issue;

(II) documents sufficient to show the technical operation of the product or process identified in the complaint as infringing the patent or patents at issue;

(III) documents relating to potentially invalidating prior art;

(IV) documents relating to any licensing of, or other transfer of rights to, the patent or patents at issue before the date on which the complaint is filed;

(V) documents sufficient to show profit attributable to the claimed invention of the patent or patents at issue;

(VI) documents relating to any knowledge by the accused infringer of the patent or patents at issue before the date on which the complaint is filed;

(VII) documents relating to any knowledge by the patentee of infringement of the patent or patents at issue before the date on which the complaint is filed;

(VIII) documents relating to any licensing term or pricing commitment to which the patent or patents may be subject through any agency or standard-setting body; and

(IX) documents sufficient to show any marking or other notice provided of the patent or patents at issue; and

(ii) does not include computer code, except as specified in paragraph (2)(C)(v).

(B) ELECTRONIC COMMUNICATION.—The term ''electronic communication'' means any form of electronic communication, including email, text message, or instant message.

(4) IMPLEMENTATION BY THE DISTRICT COURTS.—Not later than 6 months after the date on which the Judicial Conference has developed the rules and procedures required by this subsection, each United States district court and the United States Court of Federal Claims shall revise the applicable local rules for such court to implement such rules and procedures.

(5) AUTHORITY FOR JUDICIAL CONFERENCE TO REVIEW AND MODIFY.—

(A) STUDY OF EFFICACY OF RULES AND PROCEDURES.—The Judicial Conference shall study the efficacy of the rules and procedures required by this subsection during the 4-year period beginning on the date on which such rules and procedures by the district courts and the United States Court of Federal Claims are first implemented. The Judicial Conference may modify such rules and procedures following such 4-year period.

(B) INITIAL MODIFICATIONS.—Before the expiration of the 4-year period described in subparagraph (A), the Judicial Conference may modify the requirements under this subsection—

(i) by designating categories of ''core documentary evidence'', in addition to those designated under paragraph (3)(A), as the Judicial Conference determines to be appropriate and necessary; and

(ii) as otherwise necessary to prevent a manifest injustice, the imposition of a requirement the costs of which clearly outweigh its benefits, or a result that could not reasonably have been intended by the Congress.

(b) JUDICIAL CONFERENCE PATENT CASE MANAGEMENT.—The Judicial Conference of the United States, using existing resources, shall develop case management procedures to be implemented by the United States district courts and the United States Court of Federal Claims for any civil action arising under any Act of Congress relating to patents, including initial disclosure and early case management conference practices that—

(1) will identify any potential dispositive issues of the case; and

(2) focus on early summary judgment motions when resolution of issues may lead to expedited disposition of the case.

(c) REVISION OF FORM FOR PATENT INFRINGEMENT.—

(1) ELIMINATION OF FORM.—The Supreme Court, using existing resources, shall eliminate Form 18 in the Appendix to the Federal Rules of Civil Procedure (relating to Complaint for Patent Infringement), effective on the date of the enactment of this Act.

(2) REVISED FORM.—The Supreme Court may prescribe a new form or forms setting out model allegations of patent infringement that, at a minimum, notify accused infringers of the asserted claim or claims, the products or services accused of infringement, and the plaintiff's theory for how each accused product or service meets each limitation of each asserted claim. The Judicial Conference should exercise the authority under section 2073 of title 28, United States Code, to make recommendations with respect to such new form or forms.

(d) PROTECTION OF INTELLECTUAL-PROPERTY LICENSES IN BANKRUPTCY.—

(1) IN GENERAL.—Section 1520(a) of title 11, United States Code, is amended—

(A) in paragraph (3), by striking ''; and'' and inserting a semicolon;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by inserting at the end the following new paragraph:

''(5) section 365(n) applies to intellectual property of which the debtor is a licensor or which the debtor has transferred.''.

(2) TRADEMARKS.—

(A) IN GENERAL.—Section 101(35A) of title 11, United States Code, is amended—

(i) in subparagraph (E), by striking ''or'';

(ii) in subparagraph (F), by striking ''title 17;'' and inserting ''title 17; or''; and

(iii) by adding after subparagraph (F) the following new subparagraph:

''(G) a trademark, service mark, or trade name, as those terms are defined in section 45 of the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946') (15 U.S.C. 1127);''.

(B) CONFORMING AMENDMENT.—Section 365(n)(2) of title 11, United States Code, is amended—

(i) in subparagraph (B)—

(I) by striking ''royalty payments'' and inserting ''royalty or other payments''; and

(II) by striking ''and'' after the semicolon;

(ii) in subparagraph (C), by striking the period at the end of clause (ii) and inserting ''; and''; and

(iii) by adding at the end the following new subparagraph:

''(D) in the case of a trademark, service mark, or trade name, the trustee shall not be relieved of a contractual obligation to monitor and control the quality of a licensed product or service.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to any case that is pending on, or for which a petition or complaint is filed on or after, such date of enactment.

SEC. 7. SMALL BUSINESS EDUCATION, OUTREACH, AND INFORMATION ACCESS.

(a) SMALL BUSINESS EDUCATION AND OUTREACH.—

(1) RESOURCES FOR SMALL BUSINESS.—Using existing resources, the Director shall develop educational resources for small businesses to address concerns arising from patent infringement.

(2) SMALL BUSINESS PATENT OMBUDSMAN.—The Patent Ombudsman Program established under section 28 of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 339; 35 U.S.C. 2 note) shall coordinate with the existing small business outreach programs of the Office, and the relevant offices at the Small Business Administration and the Minority Business Development Agency, to provide education and awareness on abusive patent litigation practices. The Director may give special consideration to the unique needs of small firms owned by disabled veterans, service-disabled veterans, women, and minority entrepreneurs in planning and executing the outreach efforts by the Office.

(b) IMPROVING INFORMATION TRANSPARENCY FOR SMALL BUSINESS AND THE UNITED STATES PATENT AND TRADEMARK OFFICE USERS.—

(1) WEB SITE.—Using existing resources, the Director shall create a user-friendly section on the official Web site of the Office to notify the public when a patent case is brought in Federal court and, with respect to each patent at issue in such case, the Director shall include—

(A) information disclosed under subsections (b) and (d) of section 290 of title 35, United States Code, as added by section 4(a) of this Act; and

(B) any other information the Director determines to be relevant.

(2) FORMAT.—In order to promote accessibility for the public, the information described in paragraph (1) shall be searchable by patent number, patent art area, and entity.

SEC. 8. STUDIES ON PATENT TRANSACTIONS, QUALITY, AND EXAMINATION.

(a) STUDY ON SECONDARY MARKET OVERSIGHT FOR PATENT TRANSACTIONS TO PROMOTE TRANSPARENCY AND ETHICAL BUSINESS PRACTICES.—

(1) STUDY REQUIRED.—The Director, in consultation with the Secretary of Commerce, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the heads of other relevant agencies, and interested parties, shall, using existing resources of the Office, conduct a study—

(A) to develop legislative recommendations to ensure greater transparency and accountability in patent transactions occurring on the secondary market;

(B) to examine the economic impact that the patent secondary market has on the United States;

(C) to examine licensing and other oversight requirements that may be placed on the patent secondary market, including on the participants in such markets, to ensure that the market is a level playing field and that brokers in the market have the requisite expertise and adhere to ethical business practices; and

(D) to examine the requirements placed on other markets.

(2) REPORT ON STUDY.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the findings and recommendations of the Director from the study required under paragraph (1).

(b) STUDY ON PATENTS OWNED BY THE UNITED STATES GOVERNMENT.—

(1) STUDY REQUIRED.—The Director, in consultation with the heads of relevant agencies and interested parties, shall, using existing resources of the Office, conduct a study on patents owned by the United States Government that—

(A) examines how such patents are licensed and sold, and any litigation relating to the licensing or sale of such patents;

(B) provides legislative and administrative recommendations on whether there should be restrictions placed on patents acquired from the United States Government;

(C) examines whether or not each relevant agency maintains adequate records on the patents owned by such agency, specifically whether such agency addresses licensing, assignment, and Government grants for technology related to such patents; and

(D) provides recommendations to ensure that each relevant agency has an adequate point of contact that is responsible for managing the patent portfolio of the agency.

(2) REPORT ON STUDY.—Not later than 6 months after the date of the enactment of this Act, the Director shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings and recommendations of the Director from the study required under paragraph (1).

(c) STUDY ON PATENT QUALITY AND ACCESS TO THE BEST INFORMATION DURING EXAMINATION.—

(1) GAO STUDY.—The Comptroller General of the United States shall conduct a study on patent examination at the Office and the technologies available to improve examination and improve patent quality.

(2) CONTENTS OF THE STUDY.—The study required under paragraph (1) shall include the following:

(A) An examination of patent quality at the Office.

(B) An examination of ways to improve patent quality, specifically through technology, that shall include examining best practices at foreign patent offices and the use of existing off-the-shelf technologies to improve patent examination.

(C) A description of how patents are classified.

(D) An examination of procedures in place to prevent double patenting through filing by applicants in multiple art areas.

(E) An examination of the types of off-the-shelf prior art databases and search software used by foreign patent offices and governments, particularly in Europe and Asia, and whether those databases and search tools could be used by the Office to improve patent examination.

(F) An examination of any other areas the Comptroller General determines to be relevant.

(3) REPORT ON STUDY.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings and recommendations from the study required by this subsection, including recommendations for any changes to laws and regulations that will improve the examination of patent applications and patent quality.

(d) STUDY ON PATENT SMALL CLAIMS COURT.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Director of the Administrative Office of the United States Courts, in consultation with the Director of the Federal Judicial Center and the United States Patent and Trademark Office, shall, using existing resources, conduct a study to examine the idea of developing a pilot program for patent small claims courts in certain judicial districts within the existing patent pilot program mandated by Public Law 111–349.

(B) CONTENTS OF STUDY.—The study under subparagraph (A) shall examine—

(i) the number of and qualifications for judges that could serve on such small claims courts;

(ii) how such small claims courts would be designated and the necessary criteria for such designation;

(iii) the costs that would be incurred for establishing, maintaining, and operating such a pilot program; and

(iv) the steps that would be taken to ensure that the courts in the pilot program are not misused for abusive patent litigation.

(2) REPORT ON STUDY.—Not later than 1 year after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the findings and recommendations of the Director of the Administrative Office from the study required under paragraph (1).

(e) STUDY ON DEMAND LETTERS.—

(1) STUDY.—The Director, in consultation with the heads of other appropriate agencies, shall conduct a study of the prevalence of the practice of sending patent demand letters in bad faith and the extent to which that practice may, through fraudulent or deceptive practices, impose a negative impact on the marketplace.

(2) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act,

the Director shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the findings and recommendations of the Director from the study required under paragraph (1).

(3) PATENT DEMAND LETTER DEFINED.—In this subsection, the term ''patent demand letter'' means a written communication relating to a patent that states or indicates, directly or indirectly, that the recipient or anyone affiliated with the recipient is or may be infringing the patent.

(f) STUDY ON BUSINESS METHOD PATENT QUALITY.—

(1) GAO STUDY.—The Comptroller General of the United States shall conduct a study on the volume and nature of litigation involving business method patents.

(2) CONTENTS OF STUDY.—The study required under paragraph (1) shall focus on examining the quality of business method patents asserted in suits alleging patent infringement, and may include an examination of any other areas that the Comptroller General determines to be relevant.

(3) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings and recommendations from the study required by this subsection, including recommendations for any changes to laws or regulations that the Comptroller General considers appropriate on the basis of the study.

SEC. 9. IMPROVEMENTS AND TECHNICAL CORRECTIONS TO THE LEAHY-SMITH AMERICA INVENTS ACT.

(a) REPEAL OF CIVIL ACTION TO OBTAIN A PATENT.—

(1) REPEAL.—Section 145 of title 35, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) FEDERAL CIRCUIT JURISDICTION.—Section 1295(a)(4) of title 28, United States Code, is amended—

(i) in subparagraph (A), by striking ''except that an applicant or a party'' and all that follows through the end of the subparagraph and inserting the following: ''except that a party to a derivation proceeding may also have remedy by civil action under section 146 of title 35; an appeal under this subparagraph of a decision of the Board with respect to a derivation proceeding shall waive the right of such party to proceed under section 146 of title 35;''; and

(ii) in subparagraph (C), by striking ''section 145, 146, or'' and inserting ''section 146 or''.

(B) FEDERAL CIRCUIT APPEAL.—Section 141(a) of title 35, United States Code, is amended—

(i) by striking ''may appeal the Board's decision to'' and inserting ''may appeal the Board's decision only to''; and

(ii) by striking the second sentence.

(C) ADJUSTMENT OF PATENT TERM.—Section 154(b)(1)(A)(iii) of title 35, United States Code, is amended by striking ''section 141, 145, or 146'' and inserting ''section 141 or 146''.

(D) CLERICAL AMENDMENT.—The table of sections for chapter 13 of title 35, United States Code, is amended by repealing the item relating to section 145.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and apply to any proceeding in which a decision is made by the Patent Trial and Appeal Board on or after such date of enactment.

(b) POST-GRANT REVIEW AMENDMENT.—Section 325(e)(2) of title 35, United States Code is amended by striking ''or reasonably could have raised''.

(c) USE OF DISTRICT-COURT CLAIM CONSTRUCTION IN POST-GRANT AND INTER PARTES REVIEWS.—

(1) INTER PARTES REVIEW.—Section 316(a) of title 35, United States Code, is amended—

(A) in paragraph (12), by striking ''; and'' and inserting a semicolon;

(B) in paragraph (13), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new paragraph:

''(14) providing that for all purposes under this chapter—

''(A) each claim of a patent shall be construed as such claim would be in a civil action to invalidate a patent under section 282(b), including construing each claim of the patent in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent; and

''(B) if a court has previously construed the claim or a claim term in a civil action in which the patent owner was a party, the Office shall consider such claim construction.''.

(2) POST-GRANT REVIEW.—Section 326(a) of title 35, United States Code, is amended—

(A) in paragraph (11), by striking ''; and'' and inserting a semicolon;

(B) in paragraph (12), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new paragraph:

''(13) providing that for all purposes under this chapter—

''(A) each claim of a patent shall be construed as such claim would be in a civil action to invalidate a patent under section 282(b), including construing each claim of the patent in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent; and

''(B) if a court has previously construed the claim or a claim term in a civil action in which the patent owner was a party, the Office shall consider such claim construction.''.

(3) TECHNICAL AND CONFORMING AMENDMENT.—Section 18(a)(1)(A) of the Leahy-Smith America Invents Act (Public Law 112–29; 126 Stat. 329; 35 U.S.C. 321 note) is amended by striking ''Section 321(c)'' and inserting ''Sections 321(c) and 326(a)(13)''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act, and shall apply to any proceeding under chapter 31 or 32 of title 35, United States Code, as the case may be, for which the petition for review is filed on or after such effective date.

(d) CODIFICATION OF THE DOUBLE-PATENTING DOCTRINE FOR FIRST-INVENTOR-TO-FILE PATENTS.—

(1) AMENDMENT.—Chapter 10 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 106. Prior art in cases of double patenting

''A claimed invention of a patent issued under section 151 (referred to as the 'first patent') that is not prior art to a claimed invention of another patent (referred to as the 'second patent') shall be considered prior art to the claimed invention of the second patent for the purpose of determining the nonobviousness of the claimed invention of the second patent under section 103 if—

''(1) the claimed invention of the first patent was effectively filed under section 102(d) on or before the effective filing date of the claimed invention of the second patent;

''(2) either—

''(A) the first patent and second patent name the same inventor; or

''(B) the claimed invention of the first patent would constitute prior art to the claimed invention of the second patent under section 102(a)(2) if an exception under section 102(b)(2) were deemed to be inapplicable and the claimed invention of the first patent was, or were deemed to be, effectively filed under section 102(d) before the effective filing date of the claimed invention of the second patent; and

''(3) the patentee of the second patent has not disclaimed the rights to enforce the second patent independently from, and beyond the statutory term of, the first patent.''.

(2) REGULATIONS.—The Director shall promulgate regulations setting forth the form and content of any disclaimer required for a patent to be issued in compliance with section 106 of title 35, United States Code, as added by paragraph (1). Such regulations shall apply to any disclaimer filed after a patent has issued. A disclaimer, when filed, shall be considered for the purpose of determining the validity of the patent under section 106 of title 35, United States Code.

(3) CONFORMING AMENDMENT.—The table of sections for chapter 10 of title 35, United States Code, is amended by adding at the end the following new item:

''106. Prior art in cases of double patenting.''.

(4) EXCLUSIVE RULE.—A patent subject to section 106 of title 35, United States Code, as added by paragraph (1), shall not be held invalid on any nonstatutory, double-patenting ground.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to a patent or patent application only if both the first and second patents described in section 106 of title 35, United States Code, as added by paragraph (1), are patents or patent applications that are described in section 3(n)(1) of the Leahy-Smith America Invents Act (35 U.S.C. 100 note).

(e) PTO PATENT REVIEWS.—

(1) CLARIFICATION.—

(A) SCOPE OF PRIOR ART.—Section 18(a)(1)(C)(i) of the Leahy-Smith America Invents Act (35 U.S.C. 321 note) is amended by striking ''section 102(a)'' and inserting ''subsection (a) or (e) of section 102''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act and shall apply to any proceeding pending on, or filed on or after, such date of enactment.

(2) AUTHORITY TO WAIVE FEE.—Subject to available resources, the Director may waive payment of a filing fee for a transitional proceeding described under section 18(a) of the Leahy-Smith America Invents Act (35 U.S.C. 321 note).

(f) CLARIFICATION OF LIMITS ON PATENT TERM ADJUSTMENT.—

(1) AMENDMENTS.—Section 154(b)(1)(B) of title 35, United States Code, is amended—

(A) in the matter preceding clause (i), by striking ''not including—'' and inserting ''the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued, not including—'';

(B) in clause (i), by striking ''consumed by continued examination of the application requested by the applicant'' and inserting ''consumed after continued examination of the application is requested by the applicant'';

(C) in clause (iii), by striking the comma at the end and inserting a period; and

(D) by striking the matter following clause (iii).

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and apply to any patent application or patent that is pending on, or filed on or after, such date of enactment.

(g) CLARIFICATION OF JURISDICTION.—

(1) IN GENERAL.—The Federal interest in preventing inconsistent final judicial determinations as to the legal force or effect of the claims in a patent presents a substantial Federal issue that is important to the Federal system as a whole.

(2) APPLICABILITY.—Paragraph (1)—

(A) shall apply to all cases filed on or after, or pending on, the date of the enactment of this Act; and

(B) shall not apply to a case in which a Federal court has issued a ruling on whether the case or a claim arises under any Act of Congress relating to patents or plant variety protection before the date of the enactment of this Act.

(h) PATENT PILOT PROGRAM IN CERTAIN DISTRICT COURTS DURATION.—

(1) DURATION.—Section 1(c) of Public Law 111–349 (124 Stat. 3674; 28 U.S.C. 137 note) is amended to read as follows:

''(c) DURATION.—The program established under subsection (a) shall be maintained using existing resources, and shall terminate 20 years after the end of the 6-month period described in subsection (b).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(i) TECHNICAL CORRECTIONS.—

(1) NOVELTY.—

(A) AMENDMENT.—Section 102(b)(1)(A) of title 35, United States Code, is amended by striking ''the inventor or joint inventor or by another'' and inserting ''the inventor or a joint inventor or another''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the amendment made by section 3(b)(1) of the Leahy-Smith America Invents Act (Public Law 112–29).

(2) INVENTOR'S OATH OR DECLARATION.—

(A) AMENDMENT.—The second sentence of section 115(a) of title 35, United States Code, is amended—

(i) by striking ''Except as otherwise provided'' and inserting ''Except for an application filed under section 118 or as otherwise provided''; and

(ii) by striking ''shall execute'' and inserting ''may be required by the Director to execute''.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall be effective as if included in the amendment made by section 4(a)(1) of the Leahy-Smith America Invents Act (Public Law 112–29).

(3) ASSIGNEE FILERS.—

(A) BENEFIT OF EARLIER FILING DATE; RIGHT OF PRIORITY.—Section 119(e)(1) of title 35, United States Code, is amended, in the first sentence, by striking ''by an inventor or inventors named'' and inserting ''that names the inventor or a joint inventor''.

(B) BENEFIT OF EARLIER FILING DATE IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended, in the first sentence, by striking ''names an inventor or joint inventor'' and inserting ''names the inventor or a joint inventor''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on the date of the enactment of this Act and shall apply to any patent application, and any patent issuing from such application, that is filed on or after September 16, 2012.

(4) DERIVED PATENTS.—

(A) AMENDMENT.—Section 291(b) of title 35, United States Code, is amended by striking ''or joint inventor'' and inserting ''or a joint inventor''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the amendment made by section 3(h)(1) of the Leahy-Smith America Invents Act (Public Law No. 112–29).

(5) SPECIFICATION.—Notwithstanding section 4(e) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 297), the amendments made by subsections (c) and (d) of section 4 of such Act shall apply to any proceeding or matter that is pending on, or filed on or after, the date of the enactment of this Act.

(6) TIME LIMIT FOR COMMENCING MISCONDUCT PROCEEDINGS.—

(A) AMENDMENT.—The fourth sentence of section 32 of title 35, United States Code, is amended by striking ''1 year'' and inserting ''2 years''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect on the date of the enactment of this Act and shall apply to any action in which the Office files a complaint on or after such date of enactment.

(7) PATENT OWNER RESPONSE.—

(A) CONDUCT OF INTER PARTES REVIEW.—Paragraph (8) of section 316(a) of title 35, United States Code, is amended by striking ''the petition under section 313'' and inserting ''the petition under section 311''.

(B) CONDUCT OF POST-GRANT REVIEW.—Paragraph (8) of section 326(a) of title 35, United States Code, is amended by striking ''the petition under section 323'' and inserting ''the petition under section 321''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on the date of the enactment of this Act.

(8) INTERNATIONAL APPLICATIONS.—

(A) AMENDMENTS.—Section 202(b) of the Patent Law Treaties Implementation Act of 2012 (Public Law 112–211; 126 Stat. 1536) is amended—

(i) by striking paragraph (7); and

(ii) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall be effective as if included in title II of the Patent Law Treaties Implementation Act of 2012 (Public Law 112–21).

SEC. 10. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of the enactment of this Act, and shall apply to any patent issued, or any action filed, on or after that date.

The Acting CHAIR. No amendment to that amendment in the nature of a substitute shall be in order except those printed in part A of House Report 113–283. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to demand for a division of the question.

AMENDMENT NO. 1 OFFERED BY MR. GOODLATTE

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in part A of House Report 113–283.

Mr. GOODLATTE. Mr. Chairman, I have an amendment at the desk made in order under the rule.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 12, line 3, strike ''subsection (b)'' and insert ''subsections (b) and (c)''.

Page 12, strike lines 14 through 25 and insert the following:

''(1) TIMELY RESOLUTION OF ACTIONS.—In the case of an action under any provision of Federal law (including an action that includes a claim for relief arising under section 271(e)), for which resolution within a specified period of time of a civil action arising under any Act of Congress relating to patents will necessarily affect the rights of a party with respect to the patent, the court shall permit discovery, in addition to the discovery authorized under subsection (a), before the ruling described in subsection (a) is issued as necessary to ensure timely resolution of the action.''.

Page 13, insert after line 13 the following:

''(4) ACTIONS SEEKING RELIEF BASED ON COMPETITIVE HARM.—The limitation on discovery provided under subsection (a) shall not apply to an action seeking a preliminary injunction to redress harm arising from the use, sale, or offer for sale of any allegedly infringing instrumentality that competes with a product sold or offered for sale, or a process used in manufacture, by a party alleging infringement.

''(c) EXCLUSION FROM DISCOVERY LIMITATION.—The parties may voluntarily consent to be excluded, in whole or in part, from the limitation on discovery provided under subsection (a) if at least one plaintiff and one defendant enter into a signed stipulation, to be filed with and signed by the court. With regard to any discovery excluded from the requirements of subsection (a) under the signed stipulation, with respect to such parties, such discovery shall proceed according to the Federal Rules of Civil Procedure.''.

Page 35, strike line 16 and all that follows through page 36, line 3, and insert the following:

(1) IN GENERAL.—Section 1522 of title 11, United States Code, is amended by adding at the end the following:

''(e) Section 365(n) shall apply to cases under this chapter. If the foreign representative rejects or repudiates a contract under which the debtor is a licensor of intellectual property, the licensee under such contract shall be entitled to make the election and exercise the rights described in section 365(n).''.

Page 38, line 1, strike ''OMBUDSMAN'' and insert ''OUTREACH''.

Page 38, strike line 2 and all that follows through ''programs'' on line 6 and insert ''The existing small business patent outreach programs''.

Page 38, lines 8 and 9, strike ''to provide'' and insert ''shall provide''.

Page 40, line 13, strike ''1 year'' and insert ''18 months''.

Page 41, lines 20 and 21, strike ''6 months'' and insert ''1 year''.

Page 42, line 6, strike ''shall conduct a study'' and insert ''shall, using existing resources, conduct a study''.

Page 43, lines 9 and 10, strike ''6 months'' and insert ''1 year''.

Page 44, line 3, strike ''courts'' and insert ''procedures''.

Page 44, strike lines 8 through 13 and insert the following:

(i) the necessary criteria for using small claims procedures;

Page 44, line 14, strike ''(iii)'' and insert ''(ii)''.

Page 44, line 17, strike ''(iv)'' and insert ''(iii)''.

Page 44, line 18, strike ''courts'' and insert ''procedures used''.

Page 45, lines 7 and 8, strike ''shall conduct a study'' and insert ''shall, using existing resources, conduct a study''.

Page 46, line 4, strike ''shall conduct a study'' and insert ''shall, using existing resources, conduct a study''.

Page 46, lines 13 and 14, strike ''6 months'' and insert ''1 year''.

Page 52, line 5, strike ''name the same inventor'' and insert ''name the same individual or individuals as the inventor''.

Page 53, line 11, after ''double-patenting ground'' insert ''based on a patent described in section 3(n)(1) of the Leahy-Smith America Invents Act (35 U.S.C. 100 note)''.

Page 53, lines 13-14, after ''shall take effect'' insert ''upon the expiration of the 1-year period beginning''.

Page 55, line 10, strike ''or patent''.

Page 57, strike lines 4 through 13 and insert the following:

(A) AMENDMENT.—The second sentence of section 115(a) of title 35, United States Code, is amended by striking ''shall execute'' and inserting ''may be required to execute''.

Page 57, line 14, strike ''amendments'' and insert ''amendment''.

Page 59, lines 9 and 10, strike ''2 years'' and insert ''18 months''.

The Acting CHAIR. Pursuant to House Resolution 429, the gentleman from Virginia (Mr. GOODLATTE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

The manager's amendment was developed based on discussions with a cross-range of industry stakeholders, the input of Members from the House and Senate, the courts, and the administration, including the U.S. Patent and Trademark Office.

My amendment consists of technical edits and a few modifications that improve the bill. The manager's amendment includes clarifications and edits to the limitations on discovery prior to a Markman or a claim construction hearing. They ensure that the provision works effectively and can be complied with, providing additional discretion for the courts to ensure the provision does not result in reverse gamesmanship.

The amendment also makes clarifications to the bankruptcy provisions so that they work properly, ensuring that U.S. law is followed and not foreign law. Further, it includes modifications to the deadlines for various studies to provide the agencies enough time to prepare and develop their reports. The manager's amendment makes additional clarifications and modifications that, on the whole, make necessary and positive improvements to our patent system.

The Innovation Act targets abusive patent litigation, protects the patent system, increases transparency, prevents extortion, and provides greater clarity.

Mr. Chairman, I urge my colleagues to support the amendment, and I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I rise in opposition to the manager's amendment.

The Acting CHAIR. The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Just simply put, I must oppose the manager's amendment because it does not significantly alter the underlying bill, which will be making sweeping and unnecessary changes to patent litigation and encroach upon the independence of the Federal Judiciary.

Section 6(d) does not address the substantive deficiencies in the bill. 6(d), by mandating U.S. law, applies in determining the rights of intellectual property licensees, directly contravenes the important principles that pertain to Chapter 15 of the Bankruptcy Code, which deals with transnational bankruptcies.

Congress intended that Chapter 15 not mandate any one country's substantive law should control, but Section 6(d) does exactly this and may encourage other countries to opt out of the cooperative insolvency system that is integral to Chapter 15.

So this, in short, is failing to address another flawed revision to the Bankruptcy Code, and Section 6(d) imposes an impossible affirmative duty on a bankrupt licensor to monitor and control the quality of the license, product, or service, even if there is no money to pay for this.

Please vote against this manager's amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

It is unusual for a party in opposition to oppose a manager's amendment because they don't disagree with the provisions in the amendment but, rather, say that they don't make enough changes. So, even though it is acknowledged that this improves the bill, that still causes opposition.

But I want to address what the gentleman says he wants in the manager's amendment. Section 365(n) of title XI prevents a bankruptcy trustee from terminating licenses to patents and other intellectual property of the debtor. When Congress enacted Section 365(n) in 1989, it recognized that allowing patent and other IP licenses to be revoked in bankruptcy would be extremely disruptive to the economy and damaging both to patent owners and to licensing manufacturers.

Manufacturers often invest billions of dollars in reliance on their right to practice a technology pursuant to a license. Allowing the license to be eliminated in bankruptcy would create commercial uncertainty and would undermine manufacturing investment.

In recent years, some bankruptcy trustees have tried to subvert the protections of section 365(n) for U.S. intellectual property by filing bankruptcy in a foreign country and demanding that U.S. courts extend comity to termination of licenses to U.S. intellectual property in the foreign proceeding.

The provision that the gentleman wants would eliminate important provisions that would eliminate—the underlying bill provisions eliminate this uncertainty and would guarantee that licenses to U.S. patents and other IP will always be protected in U.S. courts. The gentleman wants something that would undermine that.

Failing to include this provision, a manufacturer deciding where to build a new fabrication plant would face a powerful incentive to invest his resources in a foreign country that protects IP licenses instead of in the United States. The gentleman's provision that he would like to see in the manager's amendment would encourage offshoring of U.S. manufacturing.

So I strongly support the language in the manager's amendment and object to the suggestion that his provision that is not in this amendment, which we will also address later in the amendment debate, would enhance the manager's amendment. It would not. It would have the opposite effect. I strongly urge my colleagues to support the manager's amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself 15 seconds, before I yield to Mr. WATT, merely to let you know that the National Bankruptcy Conference is opposed to this amendment and has set forth in a very detailed draft their reasons for that.

NATIONAL BANKRUPTCY CONFERENCE,
Washington, DC, November 15, 2013.

Re H.R. 3309 (Innovation Act).

Hon. JOHN CONYERS, Jr.,
Ranking Member, House Judiciary Committee, House of Representatives, Washington, DC.

DEAR CHAIRMAN, RANKING MEMBER, AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE: I am writing to you in my capacity as Chair of the Committee on Legislation of the National Bankruptcy Conference (NBC or Conference). The NBC is a voluntary, nonpartisan, not-for-profit organization composed of about 60 of the nation's leading bankruptcy judges, professors and practitioners; it has provided advice to Congress on bankruptcy-related legislation for over 75 years. The Conference takes substantive policy positions on issues. It also provides technical advice on bankruptcy legislation without regard to its policy positions so that, to the extent possible, such legislation will achieve the objectives intended by its supporters.

The Innovation Act, which is primarily focused on patent litigation reform, contains an amendment to section 1520 of chapter 15 of the Bankruptcy Code that the Conference opposes in its present form. The proposed amendment appears in SEC. 6. PROCEDURES AND PRACTICES TO IMPLEMENT AND RECOMMENDATIONS TO THE JUDICIAL CONFERENCE and provides as follows:

(d) PROTECTION OF INTELLECTUAL-PROPERTY LICENSES IN BANKRUPTCY.—

(1) IN GENERAL.—Section 1520(a) of title 11, United States Code, is amended—

(A) in paragraph (3), by striking ''; and'' and inserting a semicolon;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by inserting at the end the following new paragraph:

''(5) section 365(n) applies to intellectual property of which the debtor is a licensor or which the debtor has transferred.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to any action for which a complaint is pending on, or filed on or after, such date of enactment.

Chapter 15 of the Bankruptcy Code, included in the 2005 amendments to the Code with large bipartisan majorities, is designed to achieve worldwide cooperation in the liquidation or reorganization of a multinational company in order to preserve value for creditors and other stakeholders, especially employees. Its fundamental structure is ''universalist'' in that it requires that each country recognize a foreign main proceeding in the debtor's home country as the leader in the worldwide effort and that it cooperate with that jurisdiction to achieve the best results for all concerned. Among other advantages, this approach permits the sale of whole divisions with assets and operations in several nations as a single piece, which almost always will yield a higher price. It is also essential to reorganization of a global business.

Chapter 15 incorporated the UNCITRAL Model Law on Cross-Border Insolvency ''to

encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases.'' While the Model Law required modifications to fit into the existing judicial and legislative scheme, chapter 15 followed the exhortation of UNCITRAL: ''Therefore, in order to achieve a satisfactory degree of harmonization and certainty, it is recommended that States [countries] make as few changes as possible in incorporating the model law into their legal systems.'' The proposed amendment to section 1520 violates the purpose of chapter 15 to further international cooperation and, to that end, the guidance of UNCITRAL to minimize modifications to the Model Law.

Adding a provision to chapter 15 that deals with a special situation violates the principle of uniformity that makes the Model Law a valuable mechanism for greater legal certainty for trade and investment. This is true even if one believes that, as a matter of public policy, the special situation should always be decided applying U.S. law. By such a unilateral, non-uniform amendment, the United States invites other countries to modify their versions of the Model Law in ways that may be detrimental to United States parties in foreign proceedings. The situation addressed by the proposed amendment is already before the courts and the tools to address the situation are already within chapter 15. The courts can deal with the issue appropriately and predictably without opening the door to other countries to reciprocate with their own deviations from the Model Law.

Section 1520, Effects of recognition of a foreign main proceeding, provides automatic relief on recognition of a foreign main proceeding. It implements Article 20 of the Model Law by incorporating sections of the Bankruptcy Code that are consistent with the purpose of Article 20. Both Article 20 and section 1520 operate automatically upon recognition of a foreign main proceeding and impose ''effects'' that ''are necessary to allow steps to be taken to organize an orderly and fair cross-border insolvency proceeding. . .'' The fundamental effects necessary for an orderly and fair cross-border insolvency are (a) a stay of actions against or concerning the debtor or its assets, rights, obligations or liabilities, including a stay of execution against the debtor's assets and (b) a stay of the debtor's transfer, encumbrance or disposition of assets. Section 1520 imposes the stay by incorporating the automatic stay of section 362 (but limited to the debtor and its assets within the territorial jurisdiction of the United States) and the transfer restrictions of sections 549, 363 and 552.

The Innovation Act would introduce into section 1520 a section of the Bankruptcy Code, section 365(n), that has nothing to do with allowing ''steps to be taken to organize an orderly and fair cross-border insolvency proceeding.'' This would be a blow to the goals of uniformity and harmonization embodied in the Model Law and chapter 15. Instead of a provision that affects all parties with an interest in a foreign proceeding, that effectively preserves the status quo and (potentially) going concern value and that does not intrude on the foreign proceeding, section 365(n) is not concerned with preservation of the status quo and affects the rights of a subset of licensees of intellectual property in the event that their license agreement is rejected or otherwise subjected to nonperformance in a foreign main bankruptcy case of a debtor who is their licensor. It may impose U.S. law on the foreign proceeding whether or not U.S. law should apply to a particular license. If the legislation is adopted, it should, at the very least, be limited to licenses that are within the territorial jurisdiction of the United States.

Automatically applying section 365(n) upon recognition of a foreign main proceeding would ignore the territorial limits of chapter 15 to property within the territorial jurisdiction of the United States, since license grants by the foreign debtor may not be governed by U.S. law or may not even involve U.S. intellectual property. There should be a choice of law analysis performed before section 365(n) is applied in a chapter 15 case. Section 365(n) would then be applied in appropriate situations on an appropriate showing under section 1522(a) and (b). Applying it automatically, without considering whether U.S. law should apply to the license in question and without the safeguards of sections 1521 and 1522 would be detrimental to the goals of the Model Law and chapter 15. Rather than enhancing a cross-border insolvency proceeding, automatic application of section 365(n) would likely deter foreign representatives from seeking recognition to obtain necessary assistance for the foreign proceeding if a condition to recognition were entanglement in the possible briar patch of licensee rights under U.S. bankruptcy law.

The genesis of section 6(d) of the Innovation Act is likely the case of In re Qimonda AG, 462 B.R. 165 (Bankr. E.D. Va. 2011). There, on the petition of the administrator appointed in Qimonda's German main proceeding, the bankruptcy court entered an order recognizing the foreign main proceeding and, on the same date, entered a Supplemental Order under section 1521 that applied several sections of the Bankruptcy Code, including section 365, to the chapter 15 case. Upon realizing that section 365(n) interfered with his rights under the German insolvency code to ''elect non-performance'' of contracts, the administrator sought modification of the Supplemental Order. Licensees of U.S. patents, who would lose the protection of section 365(n) if section 365 no longer applied, objected. The Bankruptcy Court, on remand from the district court, found, under the facts and circumstances of that case, that there was a fundamental U.S. policy favoring innovation and that eliminating section 365(n) protection would be manifestly contrary to that policy. The court also ruled that the requested relief should be denied on the alternative section 1522 ground that the interests of the licensees would not be ''sufficiently protected'' if the requested relief were granted. The Qimonda decision was certified for direct appeal to the Fourth Circuit. The Fourth Circuit heard argument on September 17, 2013 but has not ruled.

Rather than passing legislation that would pre-empt the ruling of the Fourth Circuit and conflict with the purpose of the Model Law and chapter 15, Congress should reject this amendment. As noted, relief is already available to licensees in appropriate circumstances under section 1522 if a foreign representative seeks to deprive them of their rights under U.S. law. Applying section 365(n) to all foreign main proceedings would implicate licenses that are not within the territorial jurisdiction of the United States and would be inconsistent with the ancillary nature of a chapter 15 case, to provide assistance to the main case in another country where the debtor has the center of its main interests.

If the debtor's property is sliced into national bits, the cooperative approach of chapter 15 and the Model Law is seriously handicapped. The proposed amendment does just that as to intellectual property. Intellectual property is itself subject to a worldwide system of recognition and enforcement, which will be shattered for companies emerging from reorganization, creating a host of difficult questions and serious uncertainty about these crucial property rights. We believe the United States would make a mistake by going it alone and by failing to let the courts develop the key issues under the existing statute.

Sincerely,

SALLY S. NEELY,
Chair, Legislation Committee of the National Bankruptcy Conference.

Mr. Chairman, I yield the balance of our time to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT. I thank the gentleman for yielding time.

Mr. Chairman, I want to rise not so much in opposition to the manager's amendment, but in opposition to the bill and so that we can try to make sure that people understand what it is that they are voting on.

We set out to solve a problem of patent trolls, and that term has become a convenient shorthand to refer to a class of plaintiffs who engage in abusive litigation tactics against deep-pocketed alleged infringers as well as individual inventors and small companies.

I certainly recognize, as I have in my previous statement, that there are entities that exploit the litigation system to gain leverage against businesses, large and small, that represent a vital part of our economy, and I would like for Congress actually to deal with that issue in a meaningful way.

Unfortunately, this bill adopts an extreme, unbalanced approach to address those abuses. The term ''patent troll'' simply has no concrete contours in application, making it nearly impossible to craft legislation specifically targeted to a category of entities or particular business models.

And because not only patent trolls initiate litigation to enforce patent rights, legislation aimed at patent litigation system must not erect unfair barriers that deter legitimate, meritorious claims of infringement, nor should this bill be treated as if it will apply only in the troublesome jurisdictions in which these abuses are taking place.

This bill has broad application across our entire patent ecosystem. The bill suffers from a rushed process and responds to only a part of the constituency in the patent ecosystem. What is most regretful and regrettable to me is that, I believe that with thoughtful, inclusive deliberation, the goals of the bill could be achieved if we would simply take the time to do it.

The Acting CHAIR. The time of the gentleman has expired.

Madam Chair, I rise in opposition to H.R. 3309. The term "patent troll" has become convenient shorthand to refer to a class of plaintiffs who engage in abusive litigation tactics against deep-pocketed alleged infringers as well as individual inventors and small companies. I recognize that there are entities that exploit the litigation system to gain leverage against businesses large and small that represent a vital part of our economy. And I'd like

this Congress to find meaningful ways to arrest this behavior. Unfortunately, H.R. 3309, the ''Innovation Act,'' adopts an extreme, unbalanced approach to address these abuses.

The term ''patent troll'' simply has no concrete contours in application making it nearly impossible to craft legislation specifically targeting a category of entities or particular business model. And, because not only ''patent trolls'' initiate litigation to enforce patent rights, legislation aimed at the patent litigation system must not erect unfair barriers that deter legitimate, meritorious claims of infringement. Nor should it be treated as if it will apply only to the most troublesome jurisdictions in which such abuses are purportedly tolerated.

This bill suffers from a rushed and insular process that responds to only one constituency of the patent litigation system and has resulted in a skewed product with inadequate public debate.

What is most regretful and regrettable to me is that I believe that with thoughtful, inclusive deliberation, the goals of this bill are achievable. The product before us, however, is destined to produce unintended, but foreseeable, adverse consequences. I will identify three:

First, with its illogical presumption that this legislation will apply only to ''patent trolls'' who sue pristine, non-infringing defendants, this bill creates perverse incentives that will invite further litigation abuse. I have now been a member of IP 21 years and a practicing lawyer 22 years, and I can tell you with absolute certainty that legal gamesmanship is not the exclusive domain of plaintiffs or even ''patent trolls.'' By imposing lop-sided, disproportionate obligations on one side of the litigation equation, this bill creates nefarious incentives on the other. I can guarantee you that if this bill passes in its present form, there will be a subsequent lobbying effort to curtail abuses by bad faith defendants who may engage in dilatory tactics, swamp plaintiffs with data dumps in response to reasonable discovery requests, and otherwise drive up the costs of litigation.

Second, another predictable, and I hope, unintended consequence of this bill is that it may saddle legitimate patent owners with exorbitant and duplicative fee awards due to sloppy drafting. Section 3(b) of the bill mandates that a judge award fees to the prevailing party under certain circumstances. Presumably the award will consist of reasonable costs and attorneys' fees incurred to litigate the entire case. However, section 4 likewise mandates an award of fees to a prevailing party when the non-prevailing plaintiff failed to comply with the transparency obligations under the bill. This additional award is punitive and duplicative, and I hope a mistake. And the escape hatches do not provide comfort. Courts and legal commentators are loath to permit an exception to become the rule. Instead, ''special circumstances'' or awards unless ''unjust'' are strictly applied to circumstances that are unique to the case and unusual in occurrence.

Finally, and perhaps most invidious is the foreseeable possibility that this bill may become the victim of its own success. In the effort to discourage the litigation by increasing the risks and obligations of ''patent trolls'', the bill may very well succeed in driving the trolls out of the courtrooms. But it may also result in the most nefarious and persistent of the trolls retreating to an even more aggressive use of demand letters which this bill does nothing to prevent. The end result will be that only legitimate patent owner will be subject to the onerous litigation reforms, while the unsophisticated individual or small inventor will face the very extortion this bill claims to address.

This is a bad bill and I hope that my colleagues will vote to protect innovation by voting against this bill.

Mr. GOODLATTE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the provision that the gentleman from Michigan complains of is supported by the Intellectual Property Owners Association, the 21st Century Coalition, which is a group of manufacturers, the Semiconductor Industry Association. They very strongly support the provision in the bill that is enhanced in the manager's amendment because, otherwise, we would be allowing a foreign trustee, a foreign bankruptcy trustee to liquidate licenses and create great uncertainty in the free market. That is definitely not what is intended by this legislation, and it would create a giant loophole that would create incentives to locate businesses, manufacturing businesses outside the United States rather than inside the United States. The language is very definitely needed, and I urge my colleagues to support the manager's amendment.

Mr. Chairman, I yield back the balance of my time.

□ 1045

The Acting CHAIR. The question is on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Virginia will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. WATT

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in part A of House Report 113–283.

Mr. WATT. Mr. Chairman, I have an amendment at the desk which was made in order under the rule.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 5, insert the following after line 23 and redesignate succeeding subsections, and references thereto, accordingly:

''(b) REDUCTION OR DENIAL OF AWARDS.—The court, in its discretion, may reduce the amount to be awarded under subsection (a), or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

The Acting CHAIR. Pursuant to House Resolution 429, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, upon introduction of this bill, the chairman released a statement that section 3(b) of the bill, ''aligns fee shifting in patent cases with the standard that is used for awarding fees against the United States under the Equal Access to Justice Act.''

Unfortunately, the fee-shifting provision in this bill, even as amended, cherry-picks the most burdensome requirements from the Equal Access to Justice Act that mandate that judges award fees against the loser unless they prove that their position was reasonably justified.

The bill was amended at the last minute of the markup presumably to relax the burden on the nonprevailing party to escape the requirement to pay the fees of the adverse party. I actually supported the amendment during markup relying on that presumption. Since then, however, it has become apparent both based on the committee report and independent research that the amendment to change the ''substantially justified'' standard to a ''reasonably justified'' standard is practically meaningless.

As summarized in the CRS report that I will submit for the record, the Senate Judiciary Committee in the 96th Congress ''considered and rejected an amendment to the Equal Access to Justice Act that would have changed the pertinent language from 'substantially justified' to 'reasonably justified.'" Subsequently, the Supreme Court in Pierce v. Underwood held that ''substantially justified'' actually means reasonable.

This troubling development highlights the pitfalls to considering legislative language in haste. It also makes my amendment all the more important to a balanced and unbiased fee-shifting mechanism.

The American rule, that each party to litigation bears their own cost and attorney's fees, is the bedrock of the civil justice system. I generally oppose litigation that erodes this rule because I believe it provides open access to our courts to anyone who has a grievance.

The departure from the American rule as enacted in the Equal Access to Justice Act was far more complex than the provision extracted and incorporated in this bill. For example, the Equal Access to Justice Act prescribes a fee cap of $125 per hour that is not in this bill. It also prohibits, with a couple of exceptions, fee awards to attorneys whose net worth exceeds $2 million, to businesses with a net worth in excess of $7 million or more than 500 employees. This limitation also did not find its way into this provision in the bill.

My amendment seeks to amend H.R. 3309 with yet another feature of the Equal Access to Justice Act that is not in the Innovation Act, which is the provision that gives a judge the flexibility to deny or reduce an award that would be required if the nonprevailing

party could not establish that their position, as we now know, was reasonable.

This amendment injects balance into this regime that represents a departure from the American rule. A judge should be able to assess the behavior of all the parties; otherwise, a wealthy party that is not concerned if they are imposed with the costs and fees of their adversary may engage in behavior intended to deplete the resources of the poorer opposing party. The threshold for authorizing fee-shifting, I think, should be sufficiently stringent so that the exception doesn't become the rule, but it should not be so stringent that it becomes meaningless.

Whether that is the case in Octane Fitness v. Icon Health Fitness is the question before the Supreme Court. In Octane Fitness, the Court will consider whether the two-part test of the Federal Circuit that provides that a case be ''objectively baseless'' and brought in ''subjective bad faith'' to qualify a prevailing party for fees is too high.

Although I think the Court will adjust the formula downward for identifying cases in which fee-shifting may be appropriate, we are clearly not deferring to the Court's docket. I think my amendment is the preferred and necessary approach.

And with that, I reserve the balance of my time.

III. THE EQUAL ACCESS TO JUSTICE ACT

Awards of attorneys' fees against the United States were barred at common law not only because of the American rule, but also because of the doctrine of sovereign immunity, under which the United States may not be sued, nor its funds expended, without its consent. ''Congress alone has the power to waive or qualify that immunity,'' and it did so, with respect to awards of attorneys' fees, with the Equal Access to Justice Act (EAJA) in 1980. Prior to enactment of EAJA, the common law exceptions to the American rule were inapplicable against the United States. Even statutory exceptions to the American rule were inapplicable against the United States unless they specifically authorized fee awards against the United States.

EAJA allows awards of attorneys' fees against the United States in two broad situations. The first, codified at 28 U.S.C. §2412(b), makes the United States liable for the prevailing party's attorneys' fees to the same extent that any other party would be under the common law and statutory exceptions to the American rule, including the statutory exceptions that do not specifically authorize fee awards against the United States. This provision, unlike the rest of EAJA, contains no limitations on the assets or number of employees of parties eligible to recover fees, and no maximum hourly rate for fee awards.

The second broad situation in which EAJA authorizes fee awards against the United States is codified at 5 U.S.C. §504 and 28 U.S.C. §2412(d). These sections provide that, in specified agency adjudications and in all civil actions (except tort actions and tax cases) brought by or against the United States, the United States shall be liable for the attorneys' fees of prevailing parties, unless it proves that its position was substantially justified or that special circumstances make an award unjust.

This second portion of EAJA contains two limitations on fee awards that are not found in §2412(b). First, it prescribes a fee cap unless the court or agency determines that a special factor justifies a higher fee. (Most fee statutes authorize awards of ''reasonable'' fees, with the court determining the amount.) The cap was originally $75 per hour, but P.L. 104–121, 231–233, increased it to $125 per hour for cases commenced on or after the date of its enactment, which was March 29, 1996. Second, this portion of EAJA does not allow (with two exceptions) fees to be awarded to individuals whose net worth exceeds $2 million, or to businesses or organizations, including units of local government, with a net worth exceeding $7 million or more than 500 employees. This portion of EAJA sunset, by the terms of the original Act, on October 1, 1984. In 1985, EAJA was reenacted, retroactive to October 1, 1984, and made permanent.

P.L. 104–121, in addition to raising the cap under EAJA to $125 per hour, added the following provision to 28 U.S.C. §2412(d), and a corresponding one to 5 U.S.C. §504 applicable to adversary adjudications:

''If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States [other than a recitation of the maximum statutory penalty] is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.''

This provision thus authorizes fee awards in favor of losing parties and in that respect is unique in the law of attorneys' fees.

In *Pierce* v. *Underwood*, 487 U.S. 552 (1988), the Supreme Court decided three issues concerning EAJA: (1) the applicable standard of appellate review, (2) the meaning of ''substantially justified,'' and (3) the ''special factors'' that allow a court to award more than $75 per hour.

(1) Standard of Review. Pierce v. Underwood addressed the standard that a federal court of appeals applies in reviewing a decision of a federal district court under EAJA. Either party may appeal a district court's decision under EAJA, and, as the Supreme Court explained:

''For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable de novo), questions of fact (reviewable for clear error), and matters of discretion (reviewable for ''abuse of discretion'').''

487 U.S. at 558.

The Supreme Court found that EAJA did not provide a clear prescription as to the appropriate standard of review (unlike, for example, 42 U.S.C. §1988(b), which provides that ''the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee''). The Court, therefore, for a variety of reasons, held that the ''abuse of discretion'' standard was most appropriate for appeals of EAJA court decisions.

Awards of attorneys' fees under EAJA at the agency level may be appealed to a court only by the prevailing party, not by the United States. The statute, at 5 U.S.C. §504(c)(2), provides:

''The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.''

Prior to the 1985 amendments to EAJA, this provision stated that the court could modify an agency decision only if it found ''an abuse of discretion.'' It was intended that the new standard—''unsupported by substantial evidence''—permit ''a broader scope of review . . . consistent with the normal scope of judicial review of agency actions.

(2) ''substantially justified.'' The United States may avoid liability for attorneys'' fees under EAJA by proving that its position ''was substantially justified or that special circumstances make an award unjust.'' 5 U.S.C. §504(a)(1), 28 U.S.C. §2412(d). The legislative history of the original EAJA stated that ''Nile test of whether the Government position is substantially justified is essentially one of reasonableness in law and fact.'' Twelve of the thirteen federal circuits subsequently interpreted ''substantially justified'' to mean reasonable. See, *Pierce* v. *Underwood*, 487 U.S. at 565–566. The U.S. Court of Appeals for the District of Columbia was the exception. It reasoned:

''The Senate Judiciary Committee considered and rejected an amendment to the bill that would have changed the pertinent language from ''substantially justified'' to ''reasonably justified.'' S. Rept. 96–253 [96th Cong., 1st sess.] at 8. That refusal suggests that the test should, in fact, be slightly more stringent than ''one of reasonableness.''

According to this view, the government's position may be reasonable, yet fail to be substantially justified, making it easier to recover fees under the substantially justified standard than under a reasonableness standard. The 1985 amendments to EAJA did not alter the text of the substantially justified language, but an accompanying committee report expressed support for the D.C. Circuit's interpretation:

''Several courts have held correctly that ''substantial justification'' means more than merely reasonable. Because in 1980 Congress rejected a standard of ''reasonably justified'' in favor of ''substantially justified,'' the test must be more than just reasonableness.''

The Supreme Court in Pierce v. Underwood held that substantially justified means reasonable. The Court found that a ''more than mere reasonableness'' test would be ''out of accord with prior usage'' and ''unadministerable.'' ''Between the test of reasonableness,'' the Court wrote, ''and a test such as 'clearly and convincingly justified' . . . there is simply no accepted stopping-place, no ledge that can hold the anchor for steady and consistent judicial behavior.'' 487 U.S. at 568. The Court found that the 1985 committee report was not controlling because it was neither ''(1) an authoritative interpretation of what the 1980 statute meant, or (2) an authoritative expression of what the 1985 Congress intended.'' Id. at 566.

(3) Exceeding $75 (now $125) per hour. EAJA provides that fees ''shall be based upon prevailing market rates for the kind and quality of the services furnished,'' but ''shall not be awarded in excess of $75 [$125 for cases commenced on or after March 29, 1996] per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.'' 28 U.S.C. §2412(d)(2)(A)(ii). (The same cap applies in agency proceedings; see, 5 U.S.C. §504(b)(1)(A)). The Court in Pierce v. Underwood held:

''If ''the limited availability of qualified attorneys for the proceedings involved'' meant merely that lawyers skilled and experienced enough to try the case are in short

supply, it would effectively eliminate the $75 cap—since the ''prevailing market rates for the kind and quality of the services furnished'' are obviously determined by the relative supply and quality of services . . .. We think it refers to attorneys having some distinctive knowledge or specialized skill needful for the litigation in question—as opposed to an extraordinary level of the general lawyerly knowledge and ability useful in all litigation. Examples of the former would be an identifiable practice specialty such as patent law, or knowledge of foreign law or language.

487 U.S. at 571–572.

As for other ''special factors,'' the Court wrote:

''For the same reason of the need to preserve the intended effectiveness of the $75 cap, we think the other ''special factors'' envisioned by the exception must be such as are not of broad and general application. We need not specify what they might be. . . .''

Id. at 573.

The Court, however, specified some items which are not special factors for purposes of exceeding the $75 per hour cap: ''the novelty and difficulty of issues,'' ''the undesirability of the case,'' ''the work and ability of counsel,'' ''the results obtained,'' ''customary fees and awards in other cases,'' and ''the contingent nature of the fee.'' All these ''are factors applicable to a broad spectrum of litigation; they are little more than routine reasons why market rates are what they are.'' Id.

In Commissioner, Immigration and Naturalization Service v. Jean, 496 U.S. 154 (1990), the Supreme Court held that, under EAJA, a prevailing party may recover attorneys' fees for services rendered in seeking a fee award without regard to whether the position of the United States was substantially justified. If the prevailing party is entitled to fees in the main action, then he is automatically entitled to fees for the time spent seeking fees. To hold otherwise could ''spawn a 'Kafkaesque judicial nightmare' of infinite litigation for the last round of litigation over fees.'' Id. at 163.

In Scarborough v. Principi, 541 U.S. 401 (2004), the Supreme Court addressed EAJA's requirement that fee applications be filed ''within thirty days of final judgment in the action,'' and ''allege that the position of the United States was not substantially justified.'' 28 U.S.C. §2412(d)(1)(B). The Court held that, when a fee application is filed within 30 days, but fails to allege that the position of the United States was not substantially justified, the application may be amended to remedy the oversight, even after the 30 days have elapsed.

In Richlin Security Service Co. v. Chertoff, 128 S. Ct. 2007, 2019 (2008), the Supreme Court held that, under EAJA, ''a prevailing party . . . may recover its paralegal fees from the Government at prevailing market rates.'' The lower court, which the Supreme Court reversed, had held that the prevailing party could recover fees for paralegal services only at their cost to the party's attorney.

SOURCE OF FEES PAID BY THE GOVERNMENT

Both agency-awarded and court-awarded fees are ''paid by the agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.'' 5 U.S.C. §504(d), 28 U.S.C. §2412(d)(4). Fee awards under 28 U.S.C. 2412(b) are presumably paid from the source that pays damages awarded under the statute that authorizes fee awards.

FORMERLY REQUIRED ANNUAL REPORTS TO CONGRESS

With respect to agency-awarded fees, the EAJA provides, ''The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section.'' 5 U.S.C. §504(e). This provision remains on the books, but it has no effect because the Administrative Conference of the United States has not been functioning since 1996.

With respect to court-awarded fees, the EAJA formerly provided, ''The Attorney General shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection.'' 28 U.S.C. §2412(d)(5). This provision was repealed by P.L. 104–66, 1091(b)(1995).

Mr. GOODLATTE. Madam Chair, I rise in opposition to the amendment.

The CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Madam Chairman, this amendment includes language that we believe is already implicit in the Innovation Act's fee-shifting provision section 3.

The gentleman's amendment adds language that allows a judge to reduce an award in certain circumstances. This amendment is redundant with the provisions in the bill and does not appear to add anything new but, rather, adds extraneous language that simply adds clutter to the section.

The Judiciary Committee considered and rejected this amendment during its markup of the bill. The fee-shifting language in the bill is a carefully crafted compromise that we negotiated on a bipartisan basis in the committee. Mr. JEFFRIES offered an amendment at the committee that was adopted and included in the bill that modified the fee-shifting language. With that amendment, all but five committee Democrats joined with all voting Republicans of the committee and reported the bill by a vote of 33–5. This amendment upsets that balance and should be rejected.

Mr. WATT. Will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from North Carolina.

Mr. WATT. I am wondering, if you think this is redundant and extraneous rather than contrary to the intent, why wouldn't we just accept the amendment and keep going?

Mr. GOODLATTE. I believe it is both, and it causes confusion in the legislation, and, therefore, I oppose the amendment.

I reserve the balance of my time.

Mr. WATT. Madam Chair, I yield such time as she may consume to the gentlelady from Washington State (Ms. DELBENE).

Ms. DELBENE. I rise in support of this amendment.

Madam Chair, as an entrepreneur and businesswoman, I know how hard it is to get a business off the ground. We know that small businesses are on the receiving end of frivolous litigation, and it is critical that we work to pass legislation to disincentivize such abusive behavior while also ensuring that we do not adversely affect the small inventors and start-ups who need to protect their IP and have access to the courts for their legitimate claims.

Many folks have had concerns. I think it is important that we continue to work together to address these issues.

During Judiciary Committee consideration we heard concerns about this issue from diverse stakeholders who rely on a strong patent system, from the National Venture Capital Association to the American Association for Justice.

I support the underlying bill, but I also believe that we can continue to work towards a more balanced change to the current fee shifting standard as the bill advances in the legislative process.

For this reason, I support the Ranking Member's amendment and look forward to continuing to work with my colleagues to improve the bill.

Mr. GOODLATTE. Madam Chairman, I yield such time as she may consume to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. I thank the gentleman for yielding.

Madam Chair, I am afraid I must oppose my colleague's amendment. I believe that the amendment would basically gut core elements of the Innovation Act protections for small business and leave small businesses exposed.

We have discussed the fee-shifting issue, so I want to focus on two other issues: the discovery cost-shifting and the heightened pleading provisions that I think are very important in the bill.

First, on pleading requirements, patent assertion entities often sue and do not reveal what patent the defendant is allegedly infringing or how, and that is why the Innovation Act requires greater particularity in pleading. The bill's requirement includes information that the plaintiffs should already have on hand, but the bill specifically provides an exception for information that is not reasonably accessible to the plaintiff. The amendment would eliminate that provision.

Relative to discovery, one of the ways that patent entities bully defendants is by driving up the cost of litigation through broad discovery requests. Section 3 of the bill directs the court to limit discovery until claim construction occurs in the routine Markman hearing. That gives defendants a break from costly discovery requests until it is more clear what the claims against them are.

Now the bill also says the court shall—that is mandatory—shall require discovery beyond that related to claim construction if it is necessary to ensure a timely resolution of the action. The bill provides the court with discretion to permit discovery to prevent manifest injustice.

I believe that the bill before us is a very important element of protecting against abusive litigation, and the amendment would do damage to it.

And finally, I would just associate myself with the chairman's comments on fee-shifting.

Mr. GOODLATTE. Madam Chairman, I reiterate my opposition to the amendment and yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Chair announced that the noes appeared to have it.

Mr. WATT. Madam Chair, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. POLIS

The CHAIR. It is now in order to consider amendment No. 3 printed in part A of House Report 113–283.

Mr. POLIS. Madam Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 14, line 20, insert after ''accused,'' the following: ''identifies the ultimate parent entity of the claimant,''.

The CHAIR. Pursuant to House Resolution 429, the gentleman from Colorado (Mr. POLIS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Colorado.

Mr. POLIS. Madam Chair, I am thankful for Chairman GOODLATTE and his staff and the committee for their work on this bill and increasing demand letter transparency in both the committee mark and working with us on the floor to incorporate a bipartisan amendment that we were able to work on with Representatives CONNOLLY, CHAFFETZ, and MARINO that builds upon the language in the bill.

Very simply, our amendment would ensure that trolls can no longer hide behind shell companies to conceal their true identity from demand letter recipients. Our amendment is a step in the right direction in providing businesses and entrepreneurs the tools to better assess the validity of demand letters.

I do have a comprehensive bill, along with Representatives MARINO and DEUTCH, that moves further in that direction that we introduced 2 weeks ago, and our bill would clarify that the FTC has the authority to go after patent trolls.

As we move to enhance the value of demand letter transparency, I am pleased that Energy and Commerce Subcommittee Chairman TERRY, a few minutes ago, expressed the intent of the committee to further examine this issue. And this amendment is an important step in the right direction.

I urge my colleagues to support the Polis-Connolly-Chaffetz-Marino amendment and reserve the balance of my time.

Mr. ROHRABACHER. Madam Chair, I rise in opposition to the amendment.

The CHAIR. The gentleman from California is recognized for 5 minutes.

Mr. ROHRABACHER. Madam Chair, let us remember, as we go through this debate, that it is the contention of those who oppose this legislation that this legislation has a more dramatic negative impact on the independent inventor who is seeking justice from the multinational corporations who infringe a great deal upon these little guys, and we are cutting off the little guys' ability to protect their patent by making it much more difficult, number one, to have a patent.

□ 1100

How does that stop the trolls, by making it more difficult to have a patent? And it makes it more difficult to defend a patent, as we are seeing in this amendment. And how does that necessarily deal with the trolls?

So we now have put a huge burden that small, independent inventors don't have now when they are fighting Goliath. They are fighting these big corporations that routinely infringe and steal from the little guy; and as I have said openly in the beginning, this is the strategy set down by these big corporate interests to make trolls the issue and not patent rights the issue.

In this particular amendment, what we have added is a further burden on the part of the small inventor to protect his patent in the name of getting the trolls. We have notification required and confirmation of exactly who owns it.

What we have got here now in the current law, yes, small inventors can seek investors, can seek people to join them to help them take on the big guys. Now, all of those people who are trying to help the little guy are going to have to be public knowledge. That would have destroyed so many of the small inventors who have done so many great things for America because they know these corporate people who are infringing on the little guy, they seek vengeance on people who oppose their power grab on these little guys.

We don't need that. We need to know whether or not it is a valid patent claim. That is what we need to know—does someone have a valid patent claim. And if they do, let's not demonize these people who are helping the small inventor. Let's find out if this is a legitimate claim or not.

Unfortunately, this legislation and this amendment have nothing to do with whether or not we are determining a legitimate claim has been made or not made in a particular case, especially what we are talking about here. We do need to make sure these suits are not being filed. But what does that have to do with making sure that every small inventor in this country has to disclose all of the people who have invested in this company, et cetera?

Again, we have an example where the little guy is going to be emasculated by this law and what is being proposed. And the big guys: of course, this doesn't hurt them at all.

And, again, if the public is having trouble understanding that, let's figure out how does taking away the constitutional right of the small inventor to having a judicial review—a constitutional right that he has had since 1830—how does taking that away help in some way get controls under control? How does that do that?

This is a front. It is just like those businessmen that had that meeting that I described knew exactly what they were doing. They were creating a demon over here, the troll, in order to what? In order to gain changes in the system that will help these mega-corporations defeat the small inventor who is trying to sue them on infringement. That is what is behind this.

For 25 years, I have been sitting here in Congress fighting the battle with these same multinational corporations. This is just the most recent step towards this power grab in destroying the strong patent system that America has had—the patent system that protects the little guy—as compared to the patent systems in Europe and Japan, where the little guys are smothered and routinely have their patents stolen from them.

Let's be real here. Okay, we can talk patent troll, patent troll, patent troll; and then they put in place changes like this that dramatically damage small inventors and their rights to protect themselves against infringement.

I oppose the amendment, and I yield back the balance of my time.

Mr. POLIS. Madam Chair, I yield 30 seconds to the gentleman from Virginia (Mr. GOODLATTE), the chair of the committee.

Mr. GOODLATTE. I thank the gentleman for his amendment, and I support it.

Contrary to what the previous speaker said, this amendment does exactly that—it helps to determine more fairly and more quickly whether or not there is a valid patent claim. It requires parties sending demand letters who wish to pursue treble damages to disclose their ultimate parent entity.

This amendment improves the provision offered by Mr. CHAFFETZ and Mr. DEUTCH in committee, and I support its inclusion in the bill.

Mr. POLIS. Madam Chair, I would point out that very little of the arguments made by the gentleman from California were related to this particular amendment. Much of that was stuff that may have been loosely related to the overall bill.

I yield 1 minute to the gentleman from Virginia (Mr. CONNOLLY), the cosponsor of the amendment.

Mr. CONNOLLY. I thank my colleague, Mr. POLIS, for his leadership.

Madam Chair, I join with the distinguished chairman in support of this amendment. I am proud to be one of the coauthors.

I must say, contrary to what our dear friend from California just said, a lot of small investors have in fact endorsed this bill because it protects innovators

in the garage from being killed off by large litigation they cannot afford. And it is precisely the opposite of what was being asserted by our friend from California. That is why Application Developers Alliance, Engine, EFF, and others have in fact endorsed the bill.

I want to commend my friend, Mr. POLIS, for his leadership on this amendment, and I am glad to join my colleagues, Messrs. CHAFFETZ and MARINO, in offering it.

Businesses large and small are being inundated with demand letters that essentially amount to an extortion for money based on vague or even illegitimate claims that a patent has been infringed upon. Because the cost of litigation often runs into the millions of dollars, many businesses are forced to settle, which is sapping them of money that could otherwise be spent on innovation and hiring.

We know last year, for the first time ever, Apple and Google spent more on litigation than they did on R&D.

I urge the adoption of the amendment.

For example, Apple and Google recently reached a dubious milestone as both spent more on patent lawsuits and purchases than on R&D. The cost of payouts from frivolous suits brought by patent trolls drained $29 billion from the economy last year.

Our amendment would require claimants alleging patent infringements to disclose their parent entities, which will prevent patent trolls from hiding behind shell corporations. This will help weed out nuisance claims and preserve the rights of legitimate patent holders.

I urge my colleagues to support this common-sense, bipartisan amendment.

There is a list of industry supporters below. PhRMA will not oppose and AAJ is neutral. GOODLATTE has agreed to go on voice.

Supporting organizations: App Developers Alliance, American Hotel and Lodging Association, American Association of Advertising Agencies, American Bankers Association, Association of National Advertisers, Credit Union National Association, Direct Marketers Association, DISH Network, Electronic Frontier Foundation, Food Marketing Institute, Independent Community Bankers of America, International Franchise Association, Mobile Marketing Association, National Association of Convenience Stores, National Council of Chain Restaurants, National Grocers Association, National Restaurant Association, and National Retail Federation.

Mr. POLIS. I am happy to yield 1 minute to the gentleman from Utah (Mr. CHAFFETZ), a cosponsor of the amendment.

Mr. CHAFFETZ. Madam Chair, we do this in a very bipartisan way. I appreciate Mr. POLIS; Mr. CONNOLLY; my colleague, Mr. MARINO; and Chairman GOODLATTE.

This is simple. If you want to help the little guy, if you want to help protect the integrity of the system, you should be for transparency in the legal system.

This amendment simply builds upon something that is already in the bill by mandating that claimants seeking to bring willful infringement claims identify the ultimate parent entity in the demand letters they send to their targets.

It is about openness. It is about transparency. You should be able to face your accuser in the courts; and that is all that this does is make sure that we strengthen the openness and transparency of the system. We think that will improve the system. We do it in a very bipartisan way. That is going to help everybody in this process, especially the little guy.

Mr. POLIS. I am happy to yield 1 minute to the gentleman from Pennsylvania (Mr. MARINO), an original sponsor of the underlying bill that I introduced with him 2 weeks ago and a cosponsor of this amendment.

Mr. MARINO. Thank you, Mr. POLIS.

Madam Chair, I rise in support of the Polis-Chaffetz-Marino-Connolly amendment.

Trolls assert a claim in a letter with little or no specificity, and often it isn't clear who owns the patent being asserted or how the patent was even infringed. It is time the entity sending out these mass mailers does their due diligence, just as we expect in just about every other area of the law.

This amendment requires the entity sending the letter to include the person who holds the rights to the patent in order to later raise a claim that the opposing party received an adequate letter putting them on notice of their infringement.

Patent trolls have been playing a shell game and hiding who is actually holding the rights to the patent and often who is supplying the money to the litigation.

I fully support this amendment. This amendment will shine some much-needed light on this dark practice.

Mr. POLIS. Madam Chair, this amendment is important.

First, I like the way my colleague Mr. CHAFFETZ put it: the right to face your accuser in court is an important part of our justice system. There is a long way to go with regard to demand letter transparency, but this amendment is the first step.

I encourage my colleagues to support it, and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Colorado (Mr. POLIS).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. MASSIE

The CHAIR. It is now in order to consider amendment No. 4 printed in part A of House Report 113–283.

Mr. MASSIE. Madam Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike section 5, redesignate subsequent sections, and amend the table of contents accordingly.

The CHAIR. Pursuant to House Resolution 429, the gentleman from Kentucky (Mr. MASSIE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Kentucky.

Mr. MASSIE. Madam Chair, section 5 of this bill shares a common defect with the rest of this bill. Although well-intentioned, it will have bad effects on our patent law. In fact, it will affect legitimate patent-holders as much or worse than it would patent trolls.

Section 5 of H.R. 3309, the Innovation Act, is entitled, ''Customer-Suit Exemption.'' This section inserts a new provision into the patent code: section 296, Stay of Action Against the Customer.

The new section 296 would require a court to grant a motion to stay a patent infringement suit against certain ''covered customers.'' While well-intentioned, this section of the bill was not drafted in a careful and narrowly tailored way so as to achieve its purpose, which is to protect innocent customers, i.e., small retail customers involved in patent lawsuits.

Instead, the broad language of section 296 would likely insert more confusion into an already complicated patent infringement suit process and cause harmful unintended consequences.

For example, section 5's weakening of the right to sue downstream from the original manufacturer opens a new loophole for corporations to exploit—a huge loophole. It could allow a large computer corporation, for instance, to hide behind third-party chip manufacturers or third-party developers and thus continue to ship infringing products. The large computer corporation could thus construct a shadow shield against injunctions. The injunction tool is one of the most effective weapons in an individual, independent inventor's arsenal. We should not protect those in the supply chain who stand to benefit the most from stealing patents.

Patent experts oppose section 5 of H.R. 3309. My amendment would strike section 5 of H.R. 3309.

Let me tell you what David Kappos, former Under Secretary of Commerce and Director of the United States Patent and Trademark Office, said about this bill, particularly section 5, which my amendment seeks to strike:

I am most concerned about the covered customer stay provision which, as written, is significantly overbroad. While we all want to help relieve innocent retailers and coffee shops from being taken hostage in patent infringement suits, we should not open up the patent system to abuse by others who will take advantage of this provision to shift liability up or down the product creation and distribution chain to thwart legitimate innovators from enforcing their patent rights.

We should listen to the experts. This was the former Under Secretary of Commerce and Director of the United States Patent Office. He is telling us that this part of the bill is drafted overly broad and has unintended consequences.

I reserve the balance of my time.

Mr. GOODLATTE. Madam Chair, I rise in opposition to this amendment.

The CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Madam Chairman, I yield myself such time as I may consume.

This amendment strikes a key provision of the bill for retailers, restaurants, and grocery stores, among others. This provision is the product of years of discussion with stakeholders and the Patent Office.

This section codifies and provides for the enforcement of the common law doctrine that infringement suits against a customer, retailer, or user of an infringing product should be stayed in favor of an action against the manufacturer of the allegedly infringing product.

Customers and retailers typically are ill-suited to defend against an infringement suit. They often are not familiar with the inner workings of the product and usually have no reason to know whether or not the product infringes a valid patent. Suits against such parties are inherently coercive and have become a tactic employed by patent trolls.

□ 1115

As an infamous recent example, one troll has begun suing cafes, restaurants, and shops that provide wireless Internet access to their customers via routers that they bought off the shelf. These small shops have no idea how the routers work or why they infringe, and they have often paid as little as $40 for them. Now they are being sued for using allegedly infringing products and are being asked to pay thousands of dollars.

The troll could have sued the manufacturer but chose not to because the manufacturer would have vigorously defended against the suit. Coffee shops and other small businesses, however, are more likely to settle for a few thousand dollars rather than the hundreds of thousands it would cost to fight an infringement suit over technology that the coffee shop did not design or develop, and we see the same situation repeated over and over again.

Another troll has sued small businesses, charities, and others just because they use scanners and photocopiers. Again, the troll chose not to sue the manufacturer because the manufacturer understands the technology and would be able to defend against the suit. These types of lawsuits are a little more than a shakedown of small, medium, and large businesses that simply bought technology and are not the true sources of any infringement.

This provision is designed to stay actions against customers when the manufacturer, who is the true source of any infringement, is a party to a co-pending action. The provision effectively pushes infringement claims up the supply chain to the true source of infringement. The provision thereby prevents harassment and the abuse of customers when it is unnecessary for the plaintiff to sue customers.

Despite the Federal circuit precedent of recognizing the customer suit exception, district courts continue to deny stays of customer suits in a wide array of circumstances in which a stay would be appropriate. The stay under section 5 is voluntary. No stay would be entered unless the customer and manufacturer agreed that the manufacturer most appropriately bore the burden of defending against the infringement litigation.

This is a good provision. It is a key provision. It is an essential part of the bill to protect customers and retailers against abusive suits over technology that they did not design or develop. It is for these and many other reasons that I strongly oppose the amendment offered by the gentleman from Kentucky to strike section 5.

I would also point out that former Director Kappos, speaking pre-manager's amendment version of the bill, indicated a concern that has been addressed in the manager's amendment, and we made important improvements to this section in coordination with Senators LEAHY and LEE. I think that this provision in the bill is very good and that this amendment is not well-founded, and I oppose it.

I reserve the balance of my time.

Mr. MASSIE. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I thank you.

I want to applaud the gentleman from Kentucky (Mr. MASSIE). This is exactly what will improve this measure considerably.

Mr. Chair, the language currently in section 5 will not likely curb abusive patent litigation. It needs substantial revisions to be effective and to remove loopholes which allow manufacturers and others to avoid litigation. Striking section 5 of the bill will give patent stakeholders, retailers, and customers more time to improve the customer stay provision.

I support the gentleman's amendment.

Mr. GOODLATTE. Mr. Chairman, may I ask how much time is remaining on both sides.

The Acting CHAIR (Mr. YODER). The gentleman from Virginia has 1½ minutes remaining, and the gentleman from Kentucky has 1¼ minutes remaining.

The gentleman from Virginia has the right to close.

Mr. GOODLATTE. Mr. Chairman, at this time, it is my pleasure to yield 1 minute to the gentleman from North Carolina (Mr. COBLE), the chairman of the Courts, Intellectual Property, and the Internet Subcommittee.

Mr. COBLE. I thank the chairman for yielding.

Mr. Chairman, I support the Goodlatte bill, and I oppose the gentleman from Kentucky's amendment.

This is a commonsense provision that cures one of the patent troll abuses. These suits against customers target the wrong people. Patent owners should be suing the people who actually made the product, not the retailer who sold it or the customer who uses it.

How on Earth is the owner of a coffee shop supposed to know how a router works? I don't know how a router works. Why would we expect someone who didn't build it to defend a claim that it infringes?

For this reason, Max Bibo's deli in Wethersfield, Connecticut, supports this legislation. I am not sure any patent bill before the Congress has ever won the support of a delicatessen, but this one does. Chairman GOODLATTE's bill addresses it, so I support the bill, and I oppose the amendment.

Mr. MASSIE. Mr. Chairman, section 5 remains overly broad.

The former Director of the United States Patent and Trademark Office told me as early as yesterday that we are playing with fire with section 5. That is why I urge my colleagues to oppose section 5 and to support my amendment.

Only in Washington, D.C., would you see the kind of hubris that is displayed here. We portend that we are going to protect the innovators—the people who invent in this country—yet we are ignoring their pleas to protect their rights. In this very bill, we will take away their rights while maintaining that we are helping them.

If you must vote for this bill, please vote for this amendment. This amendment will improve the bill considerably.

I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, this amendment will considerably harm this bill and the hundreds of organizations and businesses that have supported this bill because they know how important it is that the common law customer stay be applied fairly in jurisdictions across the country.

Concerns have been voiced that an injunction could not be obtained because of this provision against a party that is the supplier of the infringing product. However, the bill expressly requires that all parties, both customers and manufacturers, agree to be bound by any issues decided in the suit against the manufacturer. In other words, if the patent is found valid and infringed, an injunction could also be obtained against any supplier of the product because of this requirement.

I believe that this amendment should be strongly opposed.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Kentucky (Mr. MASSIE).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. MASSIE. Mr. Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Kentucky will be postponed.

AMENDMENT NO. 5 OFFERED BY MS. JACKSON LEE

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in part A of House Report 113–283.

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 24, strike lines 7 through 10 and insert the following:

''(1) COVERED CUSTOMER.—The term 'covered customer' means a party that—

''(A) is accused of infringing a patent or patents in dispute based on a covered product or process; and

''(B) is a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632) that has an annual revenue of $25,000,000 or less.''.

The Acting CHAIR. Pursuant to House Resolution 429, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, I rise again to express my appreciation to Chairman GOODLATTE and to Ranking Member CONYERS.

This is an unusual posture for us to be in. Again, all of us are for innovation and love the name of the legislation, but are raising concerns that would be worked out or could be worked out with a slower process. Again, I refer to the Constitution and to the aging that went on with the constitutional leaders in Philadelphia who meticulously designed how this great government would work. I noted earlier that they focused on innovation, competition, and inventiveness.

My amendment builds on that of the gentleman from Kentucky (Mr. MASSIE), an inventor whom, I believe, we should listen to. He has chosen to strike the section dealing with small businesses or the covered customer issue, and mine narrowly focuses to hone in on helping small businesses. My point here on the floor of the House is that we cannot ignore that this bill skews the scales of justice against small investors.

When my good friend from Virginia was explaining it, it was already too complicated. My bill is simple. It expands or provides the covered customer to small businesses making $25 million or less. So we are looking for the balance and the compromise that pointedly goes toward small businesses. It modifies that they are protected and that their litigation costs are down.

Under my amendment, the definition of a ''covered customer'' is modified to be one who is accused of infringing a patent or patents on a covered product or process, and is a small business concern under section 3 that has revenue of $25 million or less.

It is well-documented that our innovation ecosystem, founded on patents, started with small businesses. This bill skews the justice system away from them. Why would we want to do so?

As the bill is currently drafted, the provision applies to all entities. Mom-and-pop shops at the end of the chain are, in essence, undermined. The legs have gone from underneath them. I know that all of us are committed to innovation, and I ask that the Jackson Lee amendment be accepted.

I reserve the balance of my time.

Mr. Chairman, I wish to thank the Rules Committee, particularly Chairman SESSIONS and Ranking Member SLAUGHTER, for making my amendment in order.

Let me also express my appreciation to Chairman GOODLATTE and Ranking Member CONYERS for their hard work on this legislation and for their shared commitment to ensuring that the American patent system remains the best in the world.

My amendment modifies the bill to ensure that small businesses are protected and by expanding the amendment from what was offered in the Judiciary Committee markup so that businesses with revenue under $25 million are included—my hope is that it will garner more support.

Under my amendment, the definition of a covered customer is modified to be one who is accused of infringing a patent or patents on a covered product or process, and is a small business concern under Section 3 of the Small Business Act that has revenue of $25 million or less.

I have modified this amendment from that offered in the Judiciary Committee markup in order to accommodate more businesses who feel they might benefit from the narrowed language while still maintaining the intended consequence of allowing for stays in proceedings. The expanded language might allow some businesses who are past the ''mom and pop'' growth phase but if this will provide medium-sized businesses from going bankrupt, or losing valuable revenues because of expensive patent litigation, it is a useful expansion.

It is well documented that our innovation ecosystem—founded on patents—drives economic growth and job creation in the United States. From the hustle and bustle of downtown Houston, Silicon Valley, Chicago, New York, and even here in Washington, D.C., Americans want to keep our cherished system as strong as possible. For the future of our economy, we cannot risk jeopardizing it.

Section 5 is no doubt the most overbroad proposal in this legislation. In the only Judiciary hearing none other than former Undersecretary of Commerce and USPTO Director David Kappos testified that the litigation stay provisions of H.R. 3309 would immunize from liability ALL parties and not just end users and retailers, provided they are located somewhere in a product channel downstream of the first component part maker. This grant of infringement immunity would include large commercial actors. such as manufacturers combining procured components into value-added completed devices, as well as those who assemble.

My amendment seeks to narrowly tailor the language in the bill so that it harms fewer inventors and legitimate patent licensing activity.

We must act thoughtfully and with great caution as we pursue reforms to a system which took sixty years to change—and then in the batting of a Congressional eyelash—look to significantly modify once again. I was here during the long road that led to the path that became Smith-Leahy, or the American Invents Act. That it took so long is somewhat perplexing but even more interesting is that the bill had a Republican House and a Democratic Senate. Yet we came together in a collaborative fashion and made lemonade out of sixty years of lemons while in the midst of some of the most jarring partisanship we have seen in this great body.

A number of the provisions in this bill may be well-intentioned, but they have undesirable consequences for the patent system as a whole.

They have the potential to undermine the enforceability of all patent rights, no matter how valuable the patent, and thus potentially incentivize infringement.

When patent rights are weakened, the incentive for investing in innovation is diminished. We must guard against that at all costs.

One such provision is the customer-suit exception. Though well-intentioned, this provision is overbroad. Former USPTO Director David Kappos said this himself when he testified before us recently.

As currently drafted, the provision applies to all entities in the chain of commerce of a good, not just the innocent 'mom and pop' shops at the end of the chain.

In fact, this provision is drafted so that it would protect the very companies that benefit the most from the sale of an infringing good.

And the provision would require a patent holder to prove indirect infringement—which requires a higher level of proof—as well as direct infringement. Taken together, these changes would result in significantly more litigation, not less.

My amendment modifies the Manager's Amendment to ensure that all of those small businesses that motivated this provision are protected.

Please support this amendment to protect innocent end users without jeopardizing the patent system as a whole and all of the benefits that it provides us.

And Mr. Chairman, I quote from the Federalist Papers No. 18: It happened but too often, according to Plutarch, that the deputies of the strongest cities awed and corrupted those of the weaker; and that judgment went in favor of the most powerful party. And that is what is the underlying theme of this amendment: protecting the small business which might grow into the bigger business. Jeff Bezos of Amazon.com drove a Ford truck to make some of his earlier deliveries—but now he could probably buy Ford.

In the name of fairness to the little person—the Davids in the land of the Goliaths, commercially-speaking—and I ask my colleagues to support the Jackson Lee Amendment.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to this amendment.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. I yield myself such time as I may consume.

Mr. Chairman, this amendment offers a reformulation of section 5 of the bill. The provision, however, is the product of years of discussions with stakeholders and the Patent Office. This amendment unduly restricts the protections offered by section 5 to customers.

The amendment has been presented as protecting small business, but the

underlying provision already applies to small businesses. What this amendment does is deny protection to larger grocery stores, charities, hospitals, universities, and restaurant chains that are sued on account of technology that they have purchased from others and did not design or develop.

This provision would prevent many customers from benefiting from the important protections of section 5. Customer suits against a party that neither manufactures nor develops the product, accused of infringement, are frequent tactics used by trolls because they know that most customers are not sophisticated in patent laws and, thus, are more vulnerable to extortion. This amendment would eliminate a tool the bill provides to customers to protect themselves from truly abusive patent litigation.

It is for these and many other reasons that I strongly oppose the amendment.

I reserve the balance of my time.

Ms. JACKSON LEE. Mr. Chair, what is the remaining time?

The Acting CHAIR. The gentlewoman from Texas has 2½ minutes remaining, and the gentleman from Virginia has 3¾ minutes remaining.

Ms. JACKSON LEE. Mr. Chair, I yield 1 minute to the distinguished gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I thank the gentlelady from Texas for her amendment. It is an important one because it limits the use of customer stay provisions to smaller businesses. This is very, very important.

Mr. Chair, this amendment would improve the customer stay provision by limiting the use of the provision to smaller businesses, those who most likely did not know they were infringing when they bought and used a modern scanner or a fax machine. They are most likely local mom-and-pop shops. So, in preventing larger businesses from using the customer stay provision to avoid litigation, this amendment will also help protect the ability of individual inventors and entrepreneurs to enforce their patent rights.

Please support the Jackson Lee amendment.

Mr. GOODLATTE. Mr. Chairman, at this time, I yield 1½ minutes to the gentleman from Pennsylvania (Mr. MARINO).

Mr. MARINO. I thank the chairman.

Mr. Chairman, I have had a rash of people in my office over the last couple of months from all sides of this issue, and there is no one who supports the intent of my colleague's across the aisle concerning small business, and there is an unintended consequence here that, I think, may be overlooked.

It is the fact that, certainly, those doing business with gross revenues coming in of $25 million or less are protected, as they should be and as it stands in our legislation at this point. However, this amendment could cause a problem in which anyone making over $25 million in gross revenues would not be protected. So why complicate the matter?

This amendment that my distinguished colleague wants to put in is not required because it is already addressed in the legislation that we have been going over for months and months and months. Therefore, I do not support her amendment, and I support the chairman's bill.

Ms. JACKSON LEE. Mr. Chairman, I think quite the contrary to my good friend from Pennsylvania, my legislation responds to the very individuals whom we are proclaiming we are interested in—the small inventors and businesses.

□ 1130

I would offer to say that the opposition to this whole scheme of this bill comes from the Association of American Universities, the Institute of Electrical and Electronics Engineers, and the Innovation Alliance. These are groups that understand there is a problem. These are typically smaller groups.

I would suggest that in the Federalist Papers No. 18 it says that we shall not tip the scales of justice to the big and the wealthy, but protect the weak. This particular amendment provides for protecting those making $25 million, not having them in the crosshairs of the pleading scheme that is in this bill, in the crosshairs of loser pays that is in this bill.

I would ask my colleagues to recognize that David Kappas has not retrenched from his position that this liability posture is too dangerous. As my good friend Mr. MASSIE indicated, he is striking the whole section. I am finding a balance.

With that, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, let's use a little common sense here. We have a provision in the common law called ''customer stay,'' which says that a customer can ask to join the manufacturer of the product that it is alleged is infringing because that manufacturer knows a lot more about how the product was manufactured, what licenses and patents were used to do that, and is best able to defend a claim by a patent troll or by a legitimate inventor that a claim is valid or not valid.

What the gentlewoman from Texas does is she says that any small business above $25 million—say the local hospital, the local university, the restaurant chain of, say, 15 or 20 restaurants, the same thing for a retail store, a grocery store chain—they can't avail themselves. So what happens? The patent troll knows that there are certain jurisdictions in this country where the court will not issue the customer stay, notwithstanding the long historic common law doctrine of customer stay.

What we simply say in this bill is that if the customer, regardless of the size, and the manufacturer, regardless of the size, both agree, then the customer stay provision will apply; the manufacturer can come in and defend the case. It is eminently fair to every party involved to get at the core of whether or not the patent is a good patent and a valid patent. And who knows best? The manufacturer.

So this provision in the bill is very important and this amendment is harmful to the interest of small businesses, and I urge my colleagues to oppose it.

I reserve the balance of my time.

Ms. JACKSON LEE. Mr. Chairman, the Club for Growth is opposed to this legislation. What this legislation does my amendment corrects. That is why I want to ensure that we slow this down and make sure that the people who are impacted positively are small inventors and small businesses.

This gives a gift to big guys, conglomerates, that can already hammer you down if you challenge their use of your invention. What this says is the small guys get protected. That means innovation and inventiveness is protected. My amendment is a right way to go. It is a good solid balance.

I ask my colleagues to support the Jackson Lee amendment, and I yield back the balance of my time.

I have modified this amendment from that offered in the Judiciary Committee markup in order to accommodate more businesses who feel they might benefit from the narrowed language while still maintaining the intended consequence of allowing for stays in proceedings. The expanded language might allow some businesses who are past the ''mom and pop'' growth phase but if this will provide medium-sized businesses from going bankrupt, or losing valuable revenues because of expensive patent litigation, it is a useful expansion.

It is well documented that our innovation ecosystem—founded on patents—drives economic growth and job creation in the United States. From the hustle and bustle of downtown Houston, Silicon Valley, Chicago, New York, and even here in Washington, DC, Americans want to keep our cherished system as strong as possible. For the future of our economy, we cannot risk jeopardizing it.

Section 5 is no doubt the most overbroad proposal in this legislation. In the only Judiciary hearing none other than former Undersecretary of Commerce and USPTO Director David Cappos testified that the litigation stay provisions of H.R. 3309 would immunize from liability ALL parties—and not just end users and retailers, provided they are located somewhere in a product channel downstream of the first component part maker. This grant of infringement immunity would include large commercial actors such as manufacturers combining procured components into value-added completed devices, as well as those who assemble.

It is well documented that our innovation ecosystem—founded on patents—drives economic growth and job creation in the United States. From the hustle and bustle of downtown Houston, Silicon Valley, Chicago, New York, and even here in Washington, DC, Americans want to keep our cherished system as strong as possible. For the future of our economy, we cannot risk jeopardizing it.

A number of the provisions in this bill may be well-intentioned, but they have undesirable consequences for the patent system as a whole.

They have the potential to undermine the enforceability of all patent rights, no matter how valuable the patent, and thus potentially incentivize infringement.

My amendment seeks to narrowly tailor the language in the bill so that it harms fewer inventors and legitimate patent licensing activity.

I would note the opposition of my colleague from Kentucky, Congressman THOMAS MASSIE, himself an inventor, and unlike most of us in this body—a holder of patents—whose amendment seeks to strike the entire Section 5 of the bill. My amendment seeks to find a happy medium while not allowing large business concerns who have unlimited resources and use the might of big law firms to take out smaller businesses.

Also my colleague Mr. ROHRABACHER, a long-time champion of small inventors and innovators has helped to spearhead a push urging leadership to delay this vote.

We must act thoughtfully and with great caution as we pursue reforms to a system which took sixty years to change—and then in the batting of a Congressional eyelash—look to significantly modify once again. I was here during the long road that led to the path that became Smith-Leahy, or the American Invents Act.

That it took so long is somewhat perplexing but even more interesting is that the bill had a Republican House and a Democratic Senate. Yet we came together in a collaborative fashion and made lemonade out of sixty years of lemons while in the midst of some of the most jarring partisanship we have seen in this great body.

Yet here we are this morning looking to pass a bill which has been essentially done in under two months.

Mr. GOODLATTE. Mr. Chairman, I would just say to the gentlewoman there is a wide array of organizations. We have 4 pages with hundreds of organizations, including Americans for Prosperity, Americans for Tax Reform, Public Knowledge. It crosses the spectrum.

Small business innovators like Engine Advocacy that the gentlewoman from California put in their statement, a lengthy statement, listing a whole host of companies that support this legislation. One of the key reasons they support it is because it protects small businesses, both the innovators and the people who are the recipients of these demand letters.

I oppose the amendment and urge my colleagues to join me in doing so.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON LEE).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas will be postponed.

AMENDMENT NO. 6 OFFERED BY MS. JACKSON LEE

The Acting CHAIR. It is now in order to consider amendment No. 6 printed in part A of House Report 113–283.

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 46, after line 22, insert the following:

(g) STUDY ON IMPACT OF LEGISLATION ON ABILITY OF INDIVIDUALS AND SMALL BUSINESSES TO PROTECT EXCLUSIVE RIGHTS TO INVENTIONS AND DISCOVERIES.—

(1) STUDY REQUIRED.—The Director, in consultation with the Secretary of Commerce, the Director of the Administrative Office of the United States Courts, the Director of the Federal Judicial Center, the heads of other relevant agencies, and interested parties, shall, using existing resources of the Office, conduct a study to examine the economic impact of sections 3, 4, and 5 of this Act, and any amendments made by such sections, on the ability of individuals and small businesses owned by women, veterans, and minorities to assert, secure, and vindicate the constitutionally guaranteed exclusive right to inventions and discoveries by such individuals and small business.

(2) REPORT ON STUDY.—Not later than 2 years after the date of the enactment of this Act, the Director shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings and recommendations of the Director from the study required under paragraph (1).

The Acting CHAIR. Pursuant to House Resolution 429, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, again, my hope is that we have the opportunity to continue to work to get where all of us would like to be.

My amendment is very simple. It requires the PTO director in consultation with other relevant agencies and interested parties to conduct a study to examine the economic impact of the litigation reform contained in the bill, sections 3, 4, and 5 of this act, on the ability of individuals and small businesses owned by women, veterans, and minorities to assert, secure, and vindicate the constitutionally guaranteed exclusive right to inventions and discoveries. In essence, I think it brings all of us together to be able to ensure that we promote this body politic of inventors, the people who built America.

This is, in essence, to follow in the constitutional mandate to promote the progress of science and useful arts by securing for limited times to authors and inventors an exclusive right to their respective writings and discoveries. In my earlier discussions I said the wise persons of the constitutional construct recognize the importance of inventiveness.

I have with me a chart that recognizes some of our great African American inventors: Madame C.J. Walker from Granville Woods invented a device that allowed for messages to be sent from moving trains and railway stations; Patricia Bath invented a method for removing eye cataracts. Great women inventors: Mary Anderson invented the windshield wipers. And our famous Hispanic inventors and others from other backgrounds: Pedro Flores, the first woman to manufacture the yo-yo. Our veterans are included in that. Many, many others throughout the Nation are included in this body of inventors.

With that, I ask my colleagues to support this amendment, and I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, although I am not opposed to the amendment, I ask unanimous consent to control the time in opposition to the amendment.

The Acting CHAIR. Without objection, the gentleman from Virginia is recognized for 5 minutes.

There was no objection.

Mr. GOODLATTE. Mr. Chairman, this amendment provides for a study that the USPTO would conduct to examine the impact of the changes in sections 3, 4, and 5 of the bill on individuals and small businesses owned by women, veterans, and minorities.

The Innovation Act will benefit all businesses, both large and small, regardless of who owns them, including women, veterans, and minorities. This bill has received strong support from independent inventors, small businesses, start-ups, manufacturers, retailers, Realtors, travel agents, hotels, and even a delicatessen.

By bringing transparency and curbing litigation abuses, the Innovation Act will reduce litigation costs for innovators and innovative companies from all across this great land. This will reduce the leverage patent litigation opportunists possess to extort money from legitimate businesses and individuals.

This bill not only lines up with our constitutional authority, but our constitutional duty and will help grow our economy, create jobs, and promote the engine of American ingenuity for decades to come.

Mr. CONYERS. Will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. CONYERS. I just want to associate myself with the gentleman's remarks and join in the support for the Jackson Lee amendment No. 6. It is a very important one.

Mr. GOODLATTE. I reserve the balance of my time.

Ms. JACKSON LEE. Mr. Chairman, let me thank both the chairman of the committee and the ranking member for their kind support of this amendment.

May I ask the Chair the amount of time remaining, please.

The Acting CHAIR. The gentlewoman from Texas has 3 minutes remaining. The gentleman from Virginia has 3¾ minutes remaining.

Ms. JACKSON LEE. Thank you very much.

Mr. Chairman, I insert in the RECORD the list of inventors that are just a small measure of those coming from a wide array of diversity.

Let me say that we are on the floor today because we do believe in innovation. We are on the floor today because we all believe in innovation. My amendment attests to that fact. Both the chairman and ranking member agree that we should look into those small inventors that have been the backbone of American society.

I would ask again that as we look at the full measure of this legislation, that we also will take that into consideration.

I am hoping that my amendment No. 6 will be supported. But in conclusion, I want to take note of the fact that the Jackson Lee amendment No. 5 will be voted on and Mr. MASSIE's amendment will be voted on. We hope that we will get a strong vote of support. But I would hope that whatever reflection those votes characterize, it in no way reflects on the issue which we are trying to bring forward. Members will vote and Members will not vote. We hope they will vote for our amendments.

But, really, what this is all about is to make sure that we do cover and protect that genius that lies across the landscape of America. Maybe a 5-year-old that is tinkering with Legos is an inventor who needs to be protected. That is the gist of what our discussion and debate is. That is why my amendment No. 6 was offered and No. 5.

I ask that this amendment be accepted by my colleagues, and I yield back the balance of my time.

Mr. Chairman, I wish to thank the Rules Committee, particularly Chairman Sessions and Ranking Member Slaughter, for making my amendment in order. Let me also express my appreciation to Chairman Goodlatte and Ranking Member Conyers for their hard work on this legislation and for their shared commitment to ensuring that the American patent system remains the best in the world.

The Jackson Lee Amendment simply requires the PTO Director, in consultation with other relevant agencies, and interested parties, to conduct a study to examine the economic impact of the litigation reforms contained in the bill (sections 3, 4, and 5 of this Act) on the ability of individuals and small businesses owned by women, veterans, and minorities to assert, secure, and vindicate the constitutionally guaranteed exclusive right to inventions and discoveries.

Mr. Chairman, while there may be conflicting views on both sides of the aisle regarding the wisdom or necessity of some of the legislative proposals contained in H.R. 3309, there is no disagreement in this House on the central importance of honoring the mandate of the Constitution to "Promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" (U.S. Const. Art. I, Sec. 8, clause 8.)

Mr. Chairman, the Founding Fathers understood that America's future and its security lay in its ability to transform itself from a rural and agrarian economy into a commercial and manufacturing powerhouse that produced the products and ideas and created the jobs that would give Americans the highest standard of living in the world. The patent system created by the Constitution's framers played an indispensable part in this transformation.

Mr. Chairman, it is critically important that whenever we consider legislation intended to improve or modernize our patent system that we do no harm to the individual inventors whose innovations fuel our economy.

We also must take that we not change the patent system in such a way that we discourage inventors from unleashing the creative energies that turn impossible dreams into practical and commercially viable products and American jobs.

Mr. Chairman, my amendment supplements and improves the bill, which already requires PTO to conduct 4 studies and submit reports to Congress. The required studies are:

1. Study On Secondary Market Oversight For Patent Transactions To Promote Transparency And Ethical Business Practices.
2. Study On Patents Owned By The United States Government
3. Study On Patent Quality And Access To The Best Information During Examination
4. Study On Patent Small Claims Court

What is missing from this list is a study on the impact of the changes wrought by the legislation on the very persons the American patent system was created to encourage and protect: individual innovators who take the risk to create, innovate, and invent the discoveries that change our world for the better. Inventors like Steve Jobs (Apple), Bill Gates (Microsoft), Henry Ford (Ford Motors), Thomas Edison (GE); Alexander Graham Bell (AT&T).

Mr. Chairman, H.R. 3309 contains many new and complex changes to the patent litigation system such as "loser pays," delayed and restricted discovery, and heightened pleading requirements imposed on inventors seeking to protect their constitutional right to their discoveries.

If these changes were found to impede their ability to protect their rights and thus discourage future innovators from inventing, would we not want to revisit the law and make the needed revisions?

The Jackson Lee Amendment simply directs that the impact of these new changes be studied and reported to Congress so that identified problems, if any, may be later corrected to ensure our patent system remains the best in the world.

I ask unanimous consent to append at the end of my remarks a list of some of the great advances created by American inventors of all backgrounds, races, and gender.

I urge my colleagues to support the Jackson Lee Amendment #8.

FAMOUS WOMEN INVENTORS OF THE MODERN ERA

Mary Anderson, Inventor of Windshield Wipers; Barbara Askins, Inventor of a New Film Developing Method Used by NASA; Patricia Billings, Invented Geobond®, first non-toxic workable replacement for asbestos; Marion Donovan, Inventor of Disposable Diapers; Bette Nesmith Graham, Inventor of Liquid Paper; Ruth Handler, Inventor of the Barbie Doll; Dr. Grace Murray Hopper, Invented COBOL Computer Language.

Mary Phelps Jacob, Inventor of the Modern Brassiere; Margaret Knight, Inventor of the Paper Bag Machine; Stephanie Kwolek, Inventor of Kevlar, the main ingredient in bullet-proof vests; Ann Moore, Inventor of Snugli® Baby Carrier; Lyda Newman, Inventor of a Synthetic Bristle Hair Brush; Patsy Sherman, Inventor of Scotchgard™ Stain Repellent; Ruth Wakefield, Inventor of the Chocolate Chip Cookie.

FAMOUS HISPANIC INVENTORS

Pedro Flores, First person to manufacture the yo-yo in the United States; Ellen Ochoa, Invented an optical analysis system. Also was first Hispanic astronaut; Luis Federico, Awarded Nobel Prize for discovery of sugar nucleotides and their role in the biosynthesis of carbohydrates; Carlos Finlay, Identified the mosquito as a carrier of the deadly yellow fever germ; Santiago Ramon y Cajal, Inventor who was awarded the Nobel Prize for his work on the structure of the nervous system; Luis Miramontes, Co-inventor of the contraceptive pill. Discovered procedure for synthesizing progestin norethindrone, the active ingredient in the birth control pill; Guillermo Gonzalez Camarena, Invented an early color television system; Felipe Vadillo, Invented method of predicting premature fetal membrane rupture in pregnant women; Juan Lozano, Invented the Rocket Belt, inspired by his fascination with jet packs.

TEN GREAT AFRICAN AMERICAN INVENTORS

Despite the hardships suffered through slavery, many African Americans have managed to become great inventors, scientists, and thinkers. This is a list of the ten greatest African American inventors.

Madame CJ Walker 1867–1919: Invented: Hair Lotion for black women—Madam Walker was an entrepreneur who built her empire developing hair products for black women. She was the first African-American woman millionaire.

Frederick McKinley Jones 1893–1961: Invented automatic refrigeration systems for long-haul trucks—Frederick McKinley is best known for inventing an automatic refrigeration system for long-haul trucks in 1935 (a roof-mounted cooling device).

Jan Ernst Matzeliger 1852–1889: Invented: Shoe lasting machinery—Jan Matzeliger was born in Paramaribo, Dutch Guiana in 1852. He immigrated to the United States at the age of 18. Jan Matzeliger helped revolutionize the shoe industry by developing a shoe lasting machine that would attach the sole to the shoe in one minute.

Norbert Rillieux 1806–1894: Invented: Sugar refining machinery—Norbert Rillieux was born on March 17, 1806 in New Orleans, Louisiana. Norbert was born a free man, although his mother was a slave. His father was a wealthy White engineer involved in the cotton industry. Rillieux invented the multiple-effect vacuum pan evaporator. This innovation, adopted in sugar refining, escalated production, reduced the price, and was responsible for transforming sugar into a household item.

George Edward Alcorn 1940: Invented: Imaging X-Ray Spectrometer—Physicist George Edward Alcorn, Jr. is best known for his development of the imaging x-ray spectrometer. An x-ray spectrometer assists scientists in identifying a material by producing an x-ray spectrum of it, allowing it to be examined visually. For this achievement he was recognized with the NASA/GSFC (Goddard Space Flight Center) Inventor of the Year Award.

Lewis Latimer 1848–1928: Invented: Long life lightbulb—Lewis Latimer was born in Chelsea, Massachusetts in 1848. He was the son of George and Rebecca Latimer, escaped slaves from Virginia. Latimer devised a way of encasing the filament within a cardboard envelope which prevented the carbon from breaking and thereby provided a much longer life to the bulb and hence made the

bulbs less expensive and more efficient. This enabled electric lighting to be installed within homes and throughout streets.

Granville Woods 1856–1910: Invented: A variation on the induction telegraph—Granville Woods was often referred to as the ''Black Thomas Edison.'' In 1887, Woods developed his most important invention—a device that allowed for messages to be sent from moving trains and railway stations. By allowing dispatchers to know the location of each train, it provided for greater safety and a decrease in railway accidents.

Patricia Bath 1942: Invented: A form of eye surgery using lasers—Dr. Patricia Bath, an ophthalmologist became the first African American woman doctor to receive a patent for a medical invention. The method she invention for removing cataract lenses, transformed eye surgery, using a laser device making the procedure more accurate. Another device invented by Dr. Bath was able to restore sight to people who had been blind for over 30 years.

Garrett Morgan 1877–1963: Invented: Gas mask, and a type of traffic light—Garrett Morgan invented the gas mask in 1914. On July 25, 1916, Garrett Morgan made national news for using his gas mask to rescue 32 men trapped during an explosion in an underground tunnel 250 feet beneath Lake Erie. The Morgan gas mask was later refined for use by U.S. Army during WWI. After witnessing a collision between an automobile and a horse-drawn carriage, Garrett Morgan invented the traffic signal.

Otis Boykin 1920–1982: Invented: Improved electrical resistor, and a control unit for pacemakers—Boykin's most famous invention was a control unit for the heart pacemaker. The device uses electrical impulses to maintain a regular heartbeat. Also invented more than 25 electronic devices, including an improved electrical resistor for computers, radios, televisions, and guided missiles.

Mr. GOODLATTE. Mr. Chairman, I thank the gentlewoman for her amendment and urge my colleagues to support the underlying bill.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON LEE).

The amendment was agreed to.

AMENDMENT NO. 7 OFFERED BY MR. ROHRABACHER

The Acting CHAIR. It is now in order to consider amendment No. 7 printed in part A of House Report 113–283.

Mr. ROHRABACHER. Mr. Chairman, I rise in support of my amendment.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 47, strike line 3 and all that follows through page 48, line 20, and redesignate succeeding subsections, and references thereto, accordingly.

The Acting CHAIR. Pursuant to House Resolution 429, the gentleman from California (Mr. ROHRABACHER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, I rise in support of my own amendment, which would remove section 9(a) from the Innovation Act.

My amendment would protect the American inventors from an incredible attack on their constitutional rights by eliminating from this bill the bill's elimination of the right for judicial review of the American inventors who feel that perhaps they were not treated legally by their applications to the patent system.

They have had a right since 1836 to a judicial review. This is a constitutional right that has been for a long time recognized. This bill eliminates that. Of course, we are out to get the troll. Everything is going to be aimed at getting the troll. How does eliminating the constitutional right of an independent inventor who doesn't have a lot of money but now he feels maybe he has been mistreated or maybe not legally treated by the patent office, up until now he has had the right, as every other American citizen, to their day in court; and instead, we are taking the little guy and eliminating his day in court if he feels that he has a legitimate legal claim that he was not treated legally through the patent system?

Why are we attacking the little guy? Well, we have to get to the trolls. We have got to make it much more difficult for a little guy to get a patent. We have got to make it much more difficult for a little guy to defend a patent against these mega-multinational corporations that routinely infringe on the small guy.

Now, we know we have heard about the wrongdoing of a certain percentage of inventors or people who own patents in this country. Let's get a patent. But this bill totally undermines and attacks the rights of people who are handling themselves correctly. It makes it more difficult for the independent inventor. Here we are taking away his constitutional rights.

By the way, let me just note I have heard Mr. GOODLATTE say that this in some way eliminates the regular process of the Patent Office. That is not the case, Mr. GOODLATTE. The Patent Office procedures are kept the same in this bill as they have been. The only thing that this bill changes, or that your bill seeks to change that my amendment would eliminate, is eliminating the right of these independent inventors to go to court and say they made an unconstitutionally legal decision on my patent.

I yield 1 minute to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. I thank the gentleman for yielding.

Mr. Chairman, while Mr. ROHRABACHER and I do not agree on the underlying bill, I do support his amendment.

The Innovation Act would repeal section 145, the right of a patent applicant to appeal an initial PTO determination in Federal court.

□ 1145

This is a long-standing provision of law, and while it is rarely used, and even less often successful, I do believe that it poses at least theoretically a hedge against misconduct in the Patent Office and, at a minimum, will help ensure that the PTO's initial determinations are as meticulous as inventors deserve.

I spoke in favor of this amendment and voted for it when it was offered in the Judiciary Committee, and I continue to support it. I urge my colleagues to vote in favor.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment and claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Chairman, I strongly oppose the gentleman's amendment to strike the bill's provisions regarding section 145. The bill's provisions are strongly supported by the Patent Office.

The amendment would strike one of the bill's most important reforms for preventing patent trolls from obtaining low-quality patents and bringing extortionate lawsuits. The bill's provisions are necessary because of the Supreme Court's recent decision in Kappos v. Hyatt which construed section 145 to allow an applicant to evade substantive patent examination in the Patent Office and to instead present his evidence of patentability for the first time in Federal district court. A district judge would then be required to make de novo findings of patentability.

Section 145 is outdated and unnecessary. Today, applicants have administrative routes for offering new evidence. Even after a board decision affirming the examiner's rejection, an applicant can file a continuation application and can introduce new evidence of patentability in that continuation.

Ever since 1836, the United States has required that all patent applications be reviewed by patent examiners with a scientific education, people who understand the technology that the patent covers. This helps to ensure that patents are not issued for inventions that are already in the public domain or that would be obvious to a person skilled in the technology.

Under the gentleman from California's amendment, however, an applicant could short-circuit the entire application process and present his evidence of patentability for the first time in district court. Now, I have known many district judges who are expert lawyers, but very few of them have degrees in biotechnology. Very few of them have degrees in electrical engineering; yet under this amendment, these judges would be making the initial determination whether, for example, a purported computer invention is novel and nonobvious and whether it has been properly enabled.

I would ask my colleagues, is there anyone here who believes the United States will issue higher-quality patents if the applications are never, never, never reviewed by an examiner with a

scientific background? Does anyone believe that we will have better semiconductor patents if they are never examined by an electrical engineer? Will we really have better drug patents if they are never reviewed by someone with a degree in chemistry?

I would submit that the gentleman's amendment is nothing more than a recipe book for patent trolls to obtain low-quality patents claiming technology that is already in widespread use.

Finally, we cannot ignore the evidence of who is actually using these section 145 actions. These lawsuits, which seek to obtain a patent without review by technically trained examiners, are heavily used by infamous patent trolls who are trying to obtain patents on computer technology from the 1980s and 1990s. These trolls are still pursuing patent applications that were filed before 1995 when patent terms ran 17 years from when the patent was issued. The most infamous user of section 145 still has hundreds of these applications pending and is trying to obtain patents on computer technology that literally predate Windows and Apple Macintosh. A vote for this amendment is nothing more than a vote to advance that patent troll agenda and allow abuse of the U.S. patent system. I strongly urge my colleagues to vote ''no'' on this amendment.

I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I yield 30 seconds to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I want to commend Mr. ROHRABACHER for what he is doing here. This is another little guy provision that deserves support because the Supreme Court has even recently affirmed the expansive breadth of evidence that a patent applicant may introduce in a section 145 proceeding. And so I am for keeping this provision in, and I am proud to add my support to the Rohrabacher amendment.

Mr. GOODLATTE. I reserve the balance of my time.

Mr. ROHRABACHER. I yield myself 30 seconds.

Well, the Supreme Court disagrees with what the chairman of our Judiciary Committee says. The Supreme Court has decided against the very argument that he gave. And the fact is, if someone in this country, an inventor, an independent inventor or anybody else thinks they have a claim that a government agency has not treated them in a constitutional and lawful manner, they have a right to take that before a court. This bill eliminates that constitutional right that our inventors have had since the 1830s. I am sorry, this again discloses the power grab behind this bill. I ask support for my amendment.

I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself the balance of my time.

I would just say to the gentleman, the Supreme Court doesn't disagree with my position. The Supreme Court is interpreting the current law on the books, a law which has been on the books for a long time, and is superseded by new provisions that have been added into the patent law that give inventors additional ways to have their patents reviewed if they are denied by the Patent Office. So the Supreme Court is interpreting the current law.

What this bill does is it changes the current law because it recognizes that, based on that decision, it enables patent trolls to do some of the most outrageous things and cripples the ability of the Patent Office to actually look at the patent in the form that the law intends, and that is by engineers and scientists, chemists, biologists, people who have training in the field and can identify whether something is indeed a novel idea or not. That is what the amendment would lop off.

The amendment would continue a pathway around the Patent Office that would allow patent trolls to get low-quality patents because they would not be properly examined and continue the problem that we face with patent trolls. So I strongly oppose the amendment.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. ROHRABACHER).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. ROHRABACHER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California will be postponed.

AMENDMENT NO. 8 OFFERED BY MR. CONYERS

The Acting CHAIR. It is now in order to consider amendment No. 8 printed in part A of House Report 113–283.

Mr. CONYERS. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Deceptive Patent Practices Reduction Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Transparency of patent ownership.
Sec. 4. Customer stay.
Sec. 5. Small business education, outreach, and information access.
Sec. 6. Codification of the double-patenting doctrine for first-inventor-to-file patents.
Sec. 7. Technical corrections to the Leahy-Smith America Invents Act.
Sec. 8. Reports.
Sec. 9. Effective date.

SEC. 2. DEFINITIONS.

In this Act:

(1) DIRECTOR.—The term ''Director'' means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

SEC. 3. TRANSPARENCY OF PATENT OWNERSHIP.

(a) JUDICIAL PROCEEDINGS.—

(1) IN GENERAL.—Section 281 of title 35, United States Code, is amended—

(A) by striking ''A patentee'' and inserting ''(a) IN GENERAL.—A patentee''; and

(B) by adding at the end the following:

''(b) INITIAL DISCLOSURE.—A patentee who has filed a civil action under subsection (a) is required to disclose to the court and to all adverse parties, any persons, associations of persons, firms, partnerships, corporations (including parent corporations), or other entities other than the patentee itself known by the patentee to have—

''(1) a financial interest (of any kind) in the subject matter in controversy or in a party to the proceeding; or

''(2) any other kind of interest that could be substantially affected by the outcome of the proceeding.

''(c) ENFORCEMENT.—The court may enforce the requirement under subsection (b) upon a motion by an opposing party or sua sponte.

''(d) DEFINITIONS.—For purposes of this section, the terms 'proceeding' and 'financial interest' have the meaning given those terms in section 455(d) of title 28.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 290 of title 35, United States Code, is amended in the first sentence by inserting after ''inventor,'' the following: ''any information that a patentee has publicly disclosed under section 281(b),''.

(b) PATENT AND TRADEMARK OFFICE PROCEEDINGS.—

(1) IN GENERAL.—Chapter 26 of title 35, United States Code, is amended by adding at the end the following:

''§ 263. Disclosure of information relating to patent ownership

''(a) DEFINITIONS.—In this section—

''(1) the term 'period of noncompliance' refers to a period of time during which the ultimate parent entity of an assignee of a patent has not been disclosed to the United States Patent and Trademark Office in accordance with this section; and

''(2) the term 'ultimate parent entity' has the meaning given the term in section 801.1(a)(3) of title 16, Code of Federal Regulations, or any successor regulation.

''(b) REQUIREMENT TO DISCLOSE ASSIGNMENT.—An assignment of all substantial rights in an issued patent that results in a change to the ultimate parent entity shall be recorded in the Patent and Trademark Office within 3 months of the assignment.

''(c) DISCLOSURE REQUIREMENTS.—A disclosure under subsection (b) shall include the name of the assignee and the ultimate parent entity of the assignee.

''(d) FAILURE TO COMPLY.—If a party required to make a disclosure under subsection (b) fails to comply with such requirement, in a civil action in which that party asserts a claim for infringement of the patent, that party may not recover increased damages under section 284 or attorney fees under section 285 with respect to infringing activities taking place during any period of noncompliance.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to any patent issued on or after the date of enactment of this Act.

(3) CONFORMING AMENDMENT.—The table of sections for chapter 26 of title 35, United States Code, is amended by adding at the end the following new item:

''263. Disclosure of information relating to patent ownership.''.

SEC. 4. CUSTOMER STAY.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following new section:

"§ 299A. Customer stay

''(a) DEFINITIONS.—In this section—

''(1) the term 'covered customer' means a party accused of infringing a patent or patents in dispute based on a covered product or process;

''(2) the term 'covered manufacturer' means a person who manufactures or supplies, or causes the manufacture or supply of, a covered product or process, or a relevant part thereof; and

''(3) the term 'covered product or process' means a component, product, process, system, service, method, or a relevant part thereof, that—

''(A) is alleged to infringe the patent or patents in dispute, or

''(B) implements a process alleged to infringe the patent or patents in dispute.

''(b) MOTION FOR STAY.—In a civil action in which a party asserts a claim for relief arising under any Act of Congress relating to patents (other than an action that includes a cause of action described in section 271(e) of this title), the court shall grant a motion to stay at least the portion of the action against a covered customer that relates to infringement of a patent involving a covered product or process if—

''(1) the covered manufacturer and the covered customer consent in writing to the stay;

''(2) the covered manufacturer is a party to the action or a separate action involving the same patent or patents relating to the same covered product or process;

''(3) the covered customer agrees to be bound under the principles of collateral estoppel by any issues finally decided as to the covered manufacturer in an action described in paragraph (2) that the covered customer has in common with the covered manufacturer; and

''(4) the motion is filed after the first pleading in the action but not later than the later of—

''(A) 120 days after service of the first pleading in the action that specifically identifies the covered product or process as a basis for the alleged infringement of the patent by the covered customer, and specifically identifies how the covered product or process is alleged to infringe the patent; or

''(B) the date on which the first scheduling order in the case is entered.

''(c) APPLICABILITY.—A stay issued under subsection (b) shall apply only to those asserted patents and products, systems, methods, or components accused of infringement in the action.

''(d) VACATING STAY.—

''(1) IN GENERAL.—A stay entered under this section may be vacated upon grant of a motion based on a showing that—

''(A) the action involving the covered manufacturer will not resolve a major issue in suit against the covered customer; or

''(B) the stay unreasonably prejudices or would be manifestly unjust to the party seeking to vacate the stay.

''(2) SEPARATE ACTIONS.—In the case of a stay entered under this section based on the participation of the covered manufacturer in a separate action described in subsection (b)(2), a motion under paragraph (1) may only be granted if the court in such separate action determines that the showing required under paragraph (1) has been made.

''(e) WAIVER OF ESTOPPEL EFFECT.—If, following the grant of a motion to stay under this section, the covered manufacturer in an action described in subsection (b)(2)—

''(1) seeks or consents to entry of a consent judgment involving one or more of the common issues that gave rise to the stay; or

''(2) fails to prosecute, to a final, non-appealable judgment, a final decision as to one or more of the common issues that gave rise to the stay,

the court may, upon motion, determine that such consent judgment or unappealed final decision shall not be binding on the covered customer with respect to one or more of such common issues based on a showing that such an outcome would unreasonably prejudice or be manifestly unjust to the covered customer in light of the circumstances of the case.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of a court to grant, expand, or modify any stay granted pursuant to this section, or grant any motion to intervene, if otherwise permitted by law.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, is amended by adding at the end the following new item:

''299A. Customer stay.''.

SEC. 5. SMALL BUSINESS EDUCATION, OUTREACH, AND INFORMATION ACCESS.

(a) SMALL BUSINESS EDUCATION AND OUTREACH.—

(1) RESOURCES FOR SMALL BUSINESS.—Using existing resources, the Director shall develop educational resources for small businesses to address concerns arising from patent infringement.

(2) SMALL BUSINESS PATENT OMBUDSMAN.—The Patent Ombudsman Program established under section 28 of the Leahy-Smith America Invents Act (35 U.S.C. 2 note) shall coordinate with the existing small business outreach programs of the Office to provide education and awareness on abusive patent litigation practices.

(b) IMPROVING INFORMATION TRANSPARENCY FOR SMALL BUSINESS AND THE UNITED STATES PATENT AND TRADEMARK OFFICE USERS.—

(1) WEB SITE.—Using existing resources, the Director shall create a user-friendly section on the official Web site of the Office to notify the public when a patent case is brought in Federal court and with respect to each patent at issue in such case, the Director shall include—

(A) information disclosed pursuant to section 290 of title 35, United States Code, as amended by section 4(a)(2) of this Act; and

(B) any information the Director determines to be relevant.

(2) FORMAT.—In order to promote accessibility for the public, the information described in paragraph (1) shall be searchable by patent number, patent art area, and entity.

SEC. 6. CODIFICATION OF THE DOUBLE-PATENTING DOCTRINE FOR FIRST-INVENTOR-TO-FILE PATENTS.

(a) AMENDMENT.—Chapter 10 of title 35, United States Code, is amended by adding at the end the following new section:

"§ 106. Prior art in cases of double patenting

''A claimed invention of a patent issued under section 151 (referred to in this section as the 'first patent') that is not prior art to a claimed invention of another patent (referred to in this section as the 'second patent') shall be considered prior art to the claimed invention of the second patent for the purpose of determining the nonobviousness of the claimed invention of the second patent under section 103 if—

''(1) the claimed invention of the first patent was effectively filed under section 102(d) on or before the effective filing date of the claimed invention of the second patent;

''(2) either—

''(A) the first patent and the second patent name the same inventor; or

''(B) the claimed invention of the first patent would constitute prior art to the claimed invention of the second patent under section 102(a)(2) if an exception under section 102(b)(2) were deemed to be inapplicable and the claimed invention of the first patent was, or were deemed to be, effectively filed under section 102(d) before the effective filing date of the claimed invention of the second patent; and

''(3) the patentee of the second patent has not disclaimed the rights to enforce the second patent independently from, and beyond the statutory term of, the first patent.''.

(b) REGULATIONS.—The Director shall promulgate regulations setting forth the form and content of any disclaimer required for a patent to be issued in compliance with section 106 of title 35, United States Code, as added by subsection (a). Such regulations shall apply to any disclaimer filed after a patent has issued. A disclaimer, when filed, shall be considered for the purpose of determining the validity of the patent under section 106 of title 35, United States Code.

(c) CONFORMING AMENDMENT.—The table of sections for chapter 10 of title 35, United States Code, is amended by adding at the end the following new item:

''106. Prior art in cases of double patenting.''.

(d) EXCLUSIVE RULE.—A patent subject to section 106 of title 35, United States Code, as added by subsection (a), shall not be held invalid on any nonstatutory, double-patenting ground.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to a patent or patent application only if both the first and second patents described in section 106 of title 35, United States Code, as added by subsection (a), are patents or patent applications that are described in section 3(n)(1) of the Leahy-Smith America Invents Act (35 U.S.C. 100 note).

SEC. 7. TECHNICAL CORRECTIONS TO THE LEAHY-SMITH AMERICA INVENTS ACT.

(a) TECHNICAL CORRECTIONS.—

(1) INVENTOR'S OATH OR DECLARATION.—

(A) AMENDMENT.—Section 115(g)(1) of title 35, United States Code, is amended—

(i) in the matter preceding subparagraph (A), by striking ''claims the benefit'' and inserting ''is entitled, as to each invention claimed in the application, to the benefit''; and

(ii) in subparagraph (A), by striking ''meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application'' and inserting the following: ''executed by or on behalf of the individual was filed in connection with the earlier-filed application and meets the requirements of this section as effective on the date such oath or declaration was filed''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the amendment made by section 4(a)(1) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 293).

(2) NOVELTY.—

(A) AMENDMENT.—Section 102(b)(1)(A) of title 35, United States Code, is amended by striking ''the inventor or joint inventor or by another'' and inserting ''the inventor or a joint inventor or another''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the amendment made by section 3(b)(1) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 285).

(3) ASSIGNEE FILERS.—

(A) BENEFIT OF EARLIER FILING DATE; RIGHT OF PRIORITY.—Section 119(e)(1) of title 35, United States Code, is amended, in the first sentence, by striking ''by an inventor or inventors named'' and inserting ''that names the inventor or a joint inventor''.

(B) BENEFIT OF EARLIER FILING DATE IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended, in the first sentence, by striking ''names an inventor or joint inventor'' and inserting ''names the inventor or a joint inventor''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on the date of the enactment of this Act and shall apply to any patent application, and any patent issuing from such application, that is filed on or after September 16, 2012.

(4) DERIVED PATENTS.—

(A) AMENDMENT.—Section 291(b) of title 35, United States Code, is amended by striking ''or joint inventor'' and inserting ''or a joint inventor''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the amendment made by section 3(h)(1) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 288).

(5) SPECIFICATION.—Notwithstanding section 4(e) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 297), the amendments made by subsections (c) and (d) of section 4 of such Act shall apply to any proceeding or matter, that is pending on, or filed on or after, the date of the enactment of this Act.

(6) PATENT OWNER RESPONSE.—

(A) CONDUCT OF INTER PARTES REVIEW.—Section 316(a)(8) of title 35, United States Code, is amended by striking ''the petition under section 313'' and inserting ''the petition under section 311''.

(B) CONDUCT OF POST-GRANT REVIEW.—Section 326(a)(8) of title 35, United States Code, is amended by striking ''the petition under section 323'' and inserting ''the petition under section 321''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on the date of the enactment of this Act.

(7) TIME LIMIT FOR COMMENCING MISCONDUCT PROCEEDINGS.—

(A) AMENDMENT.—The fourth sentence of section 32 of title 35, United States Code, is amended by striking ''1 year'' and inserting ''2 years''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to any action in which the Office files a complaint on or after the date of enactment of this Act.

(b) POST-GRANT REVIEW AMENDMENT.—Section 325(e)(2) of title 35, United States Code, is amended by striking ''or reasonably could have raised''.

(c) CLARIFICATION OF JURISDICTION.—Section 1338 of title 28, United States Code, is amended by adding at the end the following:

''(d) For purposes of this section, section 1454, and section 1295(a), a claim of legal malpractice that necessarily raises a disputed question of patent law shall be deemed to arise under an Act of Congress relating to patents.''.

SEC. 8. REPORTS.

(a) STUDY ON SECONDARY MARKET OVERSIGHT FOR PATENT TRANSACTIONS TO PROMOTE TRANSPARENCY AND ETHICAL BUSINESS PRACTICES.—

(1) STUDY REQUIRED.—The Director, in consultation with the Secretary of Commerce, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the heads of other relevant agencies, and interested parties, shall, using existing resources of the Office, conduct a study—

(A) to develop legislative recommendations to ensure greater transparency and accountability in patent transactions occurring on the secondary market;

(B) to examine the economic impact that the patent secondary market has on the United States;

(C) to examine licensing and other oversight requirements that may be placed on the patent secondary market, including on the participants in such markets, to ensure that the market is a level playing field and that brokers in the market have the requisite expertise and adhere to ethical business practices; and

(D) to examine the requirements placed on other markets.

(2) SUBMISSION OF STUDY.—Not later than 18 months after the date of the enactment of this Act, the Director shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the findings and recommendations of the Director from the study required under paragraph (1).

(b) STUDY ON PATENTS OWNED BY THE UNITED STATES GOVERNMENT.—

(1) STUDY REQUIRED.—The Director, in consultation with the heads of relevant agencies and interested parties, shall, using existing resources of the Office, conduct a study on patents owned by the United States Government that—

(A) examines how such patents are licensed and sold, with reference to any litigation relating to the licensing or sale of such patents;

(B) provides legislative and administrative recommendations on whether there should be restrictions placed on patents acquired from the United States Government;

(C) examines whether or not each relevant agency maintains adequate records on the patents owned by such agency, specifically whether such agency addresses licensing, assignment, and Government grants for technology related to such patents; and

(D) provides recommendations to ensure that each relevant agency has an adequate point of contact that is responsible for managing the patent portfolio of the agency.

(2) REPORT ON STUDY.—Not later than 9 months after the date of completion of the study required by subsection (a)(1), the Director shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings and recommendations of the Director from the study required under paragraph (1).

(c) STUDY ON PATENT QUALITY AND ACCESS TO THE BEST INFORMATION DURING EXAMINATION.—

(1) GAO STUDY.—The Comptroller General of the United States shall conduct a study on patent examination at the Office and the technologies available to improve examination and improve patent quality.

(2) CONTENTS OF THE STUDY.—The study required under paragraph (1) shall include the following:

(A) An examination of patent quality at the Office.

(B) An examination of ways to improve quality, specifically through technology, that shall include examining best practices at foreign patent offices and the use of existing off-the-shelf technologies to improve patent examination.

(C) A description of how patents are classified.

(D) An examination of procedures in place to prevent double patenting through filing by applicants in multiple art areas.

(E) An examination of the types of off-the-shelf prior art databases and search software used by foreign patent offices and governments, particularly in Europe and Asia, and whether those databases and search tools could be used by the Office to improve patent examination.

(F) An examination of any other areas the Comptroller General determines to be relevant.

(3) REPORT TO CONGRESS.—Not later than 6 months after the date of the completion of the study required by subsection (b)(1), the Comptroller General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings and recommendations from the study required by this subsection, including recommendations for any changes to laws and regulations that will improve the examination of patent applications and patent quality.

(d) STUDY ON PATENT SMALL CLAIMS COURT.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Director of the Administrative Office of the United States Courts, in consultation with the Director of the Federal Judicial Center, shall, using existing resources, conduct a study to examine the idea of developing a pilot program for patent small claims courts in certain judicial districts within the existing patent pilot program mandated by Public Law 111–349 (28 U.S.C. 137 note).

(B) CONTENTS OF STUDY.—The study conducted under subparagraph (A) shall examine—

(i) the number and qualifications for judges that could serve on the courts described in subparagraph (A);

(ii) how the courts described in subparagraph (A) would be designated and the necessary criteria;

(iii) the costs that would be incurred for establishing, maintaining and operating the pilot program described in subparagraph (A); and

(iv) the steps that would be taken to ensure that the pilot small claims courts are not misused for abusive patent litigation.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the findings and recommendations from the study required under paragraph (1).

(e) STUDY ON BAD-FAITH DEMAND LETTERS.—

(1) STUDY.—The Intellectual Property Enforcement Coordinator, in consultation with the Director, shall conduct a study of the practice by a person, in connection with the assertion of a United States patent, of sending written communications that state that the intended recipients or any affiliated persons of such recipients are infringing or have infringed the patent and bear liability or owe compensation to another, whereby—

(A) the communications falsely threaten that administrative or judicial relief will be sought if compensation is not paid or the infringement issue is not otherwise resolved;

(B) the assertions contained in the communications lack a reasonable basis in fact or law, including, for example, because—

(i) the person asserting the patent is not a person, or does not represent a person, with the current right to license the patent to, or to enforce the patent against, the intended recipients or any such affiliated persons; or

(ii) the communications seek compensation on account of activities undertaken after the patent has expired; or

(C) the content of the written communications is likely to materially mislead a reasonable recipient, including, for example, because the content fails to include such facts reasonably necessary to inform the recipient of—

(i) the identity of the person asserting a right to license the patent to, or enforce the patent against, the intended recipient or any affiliated person of the recipient;

(ii) the patent issued by the United States Patent and Trademark Office alleged to have been infringed; and

(iii) the reasons for the assertion that the patent may be or may have been infringed.

(2) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Intellectual Property Enforcement Coordinator shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the study conducted under paragraph (1), including recommendations for any changes to laws and regulations that will deter any abuses found in the practice described in paragraph (1).

SEC. 9. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of the enactment of this Act, and shall apply to any patent issued, or any action filed, on or after that date.

The Acting CHAIR. Pursuant to House Resolution 429, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, this substitute amendment is entitled the Conyers-Watt amendment, and I am very pleased to bring it to the attention of our colleagues at this time.

I am offering this substitute amendment because it will give the Members an opportunity to vote for language that will actually address the identifiable abuses in the patent system. These abuses include the inability to identify the real party in interest and filing abusive lawsuits against end users instead of manufacturers of product. These issues are addressed in a measured and balanced way in this substitute.

Unlike the reported bill, which makes one-sided changes in fee-shifting, discovery, and pleading requirements in all patent cases, not just cases involving trolls, my, our amendment, directly responds to the real problems without undermining the patent or legal system as a whole. That is what the thrust of our arguments have been throughout this debate.

Our amendment builds in large part on a patent reform bill introduced on the Senate side by Chairman LEAHY and which even the present administration and other stakeholders strongly support. The amendment does the following:

It promotes transparency of patent ownership by using a well-established standard utilized by many Federal courts to require plaintiffs to disclose entities with an interest in the patent;

It protects customers who are targeted in infringement suits by providing an option to stay the case against them while the manufacturer litigates the alleged infringement;

It directs the USPTO to develop educational resources for small businesses that are targeted in patent suits;

It helps innovators by ensuring that applicants do not abuse the patent system by simply filing variations on their patents to extend the length of the patent term.

Our amendment addresses the major concerns expressed by key stakeholders about abusive patent litigation. And Members on both sides of the aisle, and a broad range of patent stakeholders, are strongly opposed to H.R. 3309 because of its many deficiencies and unintended consequences.

So rather than promoting innovation and job growth, we fear that the underlying bill will have just the opposite effect. Our amendment corrects many of the bill's deficiencies in a responsive and measured approach without unbalancing the entire patent system.

I implore my colleagues very strongly to support this amendment.

I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment and seek the time in opposition.

The Acting CHAIR. The gentleman from Virginia is recognized for 10 minutes.

Mr. GOODLATTE. Mr. Chairman, I must strongly oppose this substitute amendment. It is quite simply a poison bill that is designed to kill the Innovation Act. Although the substitute cuts and pastes a few provisions from the current bill, it includes additional provisions that create serious problems and excludes whole sections of the Innovation Act that are vital for America's job creators and innovators.

This substitute does not even include all of the provisions of the Leahy-Lee bill. It omits provisions that are important to our Senate colleagues.

The amendment's transparency provision would require a patent owner to ''disclose to the court and all adverse parties any person known by the patentee to have a financial interest of any kind in a party to the proceeding.''

The bill then defines financial interest in the context of the judicial recusal provision in the law. Under this definition, ''financial interest'' means ''ownership of a legal or equitable interest however small.'' This would clearly appear to include ownership of a single share of stock in a company.

Moreover, this disclosure is required not just to be made with respect to the patentee but, by the terms of the bill, with respect to ''a party to the proceeding.'' This would mean that a patentee would have to disclose all known shareholders of even the defendant or any other party in the lawsuit. This is obviously an absurd requirement. I assume that the sponsors did not intend to require this, but this is what their language requires. Clearly, the substitute needs more work.

Indeed, the substitute's cosponsors have, themselves, admitted that the substitute needs more work and could have serious, unintended consequences.

This substitute's changes to the bill's pleading requirements would also allow patent trolls to hide their identity, denying defendants the right to know who is suing them.

This substitute denies the defendant the right to know what they are being sued on in the first place.

This substitute also denies the defendant the right to know why they are being dragged into Federal court.

This substitute enables patent trolls to create an elaborate web of shell companies that can engage in frivolous litigation, allowing the patent trolls to hide behind them.

This substitute would allow a patent troll to engage in abusive and extortionate patent litigation without any accountability for the costs imposed on defendants.

□ 1200

This substitute would allow trolls to engage in submarine patenting by delaying prosecution and unreasonably extending patent terms far beyond the 20-year term. This substitute would force U.S. courts to follow foreign law and terminate IP licenses for U.S. manufacturers. This substitute would also encourage courts to delay case dispositive motions and prolong litigation. This substitute also allows the issuance of low-quality patents by permitting them to issue without review by technically trained patent examiners. This substitute amendment is a poison pill that will kill any chance at meaningful patent reform in this Congress.

By contrast, the Innovation Act helps to address the issues that businesses of all sizes and industries face from patent troll-type behavior and aims to correct the current asymmetries surrounding abusive patent litigation. Our bill keeps in mind several key principles.

First, we are targeting abusive patent litigation behavior and not specific entities or attempting to eliminate valid patent litigation. When we use the term ''patent troll,'' it is as an adjective describing behavior rather than as a noun. Our goal is to prevent individuals from taking advantage of gaps in the system to engage in litigation extortion.

Second, our bill does not diminish or devalue patent rights. The patent system is integral to U.S. competitiveness, and we have ensured that our legislation strengthens the overall patent system, aligns with our international treaty obligations, and comports with the Constitution.

Third, this bill strikes the right balance of pushing for robust legal reform measures while protecting property rights, promoting invention by independent inventors and small businesses, and strengthening the overall patent system.

Supporters of this bill understand that if America's inventors are forced to waste time with frivolous litigation, they won't have time for innovation. We can no longer allow our economy and job creators to be held hostage to legal maneuvers and the judicial lottery.

American inventors have led the world for centuries in new innovations, from Benjamin Franklin and Thomas Edison to the Wright brothers and Henry Ford. But if we want to continue as leaders in the global economy, we must encourage the innovators of

today to develop the technologies of tomorrow.

This bill holds true to the Constitution, our Founders, and our promise to future generations that America will continue to lead the world as a fountain for discovery, innovation, and economic growth.

I stand in strong opposition to this substitute, and I urge my colleagues to support the underlying bill. Oppose the substitute.

I reserve the balance of my time.

Mr. CONYERS. Mr. Chair, I am pleased to yield 2 minutes to the gentleman from North Carolina (Mr. WATT), the cosponsor of this substitute amendment.

Mr. WATT. Mr. Chairman, I rise in support of the Conyers-Watt substitute because the substitute is a superior alternative.

The short title of our substitute is appropriately titled ''The Deceptive Patent Practices Reduction Act'' because it narrowly and specifically focuses on areas within our patent system where abuses can be curtailed without imposing onerous and disproportionate burdens on good-faith participants in the system; and in a number of cases, I believe the substitute will create efficiencies that will benefit all patent stakeholders.

Our substitute has three core provisions. First, we require patent holders who sue on a patent to provide transparency of ownership and other financial interests in the patent. This will expose those who seek to shield the true identity of the real party with the primary interests in asserting an infringement claim.

Second, our substitute reduces the burden on retailers, hotels, restaurants, and mom-and-pop shops that find themselves entangled in legal battles simply for using a product to make their businesses more attractive to their customers. I believe our customer stay provides a better baseline than the provision in the underlying bill, but I also recognize that it too requires further work.

Finally, I believe the study required under our substitute sets forth a clearer, more precise definition of demand letters that will avoid intrusions into legitimate business negotiations.

Perhaps more important is what the substitute does not do, namely, it does not disregard judicial independence in the courtroom or judicial prerogatives outside the courtroom to study, develop, and promulgate rules of procedure to govern trials and appeals in the courtroom. Our substitute also does not act with utter indifference to the collateral damage levied upon legitimate inventors and businesses that this bill will do.

Mr. GOODLATTE. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I am now pleased to yield 2 minutes to the gentleman from New York (Mr. NADLER), a senior member of the committee.

Mr. NADLER. Mr. Chairman, I thank the gentleman for yielding.

I rise to support the Conyers-Watt substitute. Unlike the underlying bill, the substitute takes effective steps to address the patent troll problem without including the unnecessary endangered so-called ''tort reform'' provisions.

The substitute, like the bill, includes provisions providing customer stay exceptions, raising awareness in the small business community as to their rights when confronted with patent trolls, and increasing transparency of patents in the companies that own them.

The substitute takes additional steps to address the problem. It includes a study of how to address bad-faith demand letters, which are scaring retailers and others into settling claims based on convenience as opposed to merit.

And very importantly, the substitute does not include the loser-pays provisions of the underlying bill. Loser-pays laws have a chilling effect on justice. They would deter legitimate patent owners with meritorious claims from pursuing justice.

In this country, the general rule is that each side in a legal proceeding pays its own attorney fees and costs. Most of the statutory exceptions that Congress has enacted have been geared towards encouraging private litigation to implement good public policy.

Awards of attorneys' fees are often designed to help to equalize disputes between private individual plaintiffs and corporate or government defendants. Thus, attorneys' fees provisions are most often found in civil rights, environmental protection, and consumer protection statutes.

The provision in this bill differs from other congressional exceptions in that it would require anyone who loses a patent claim to pay the attorneys' fees of even large corporate defendants. This is a giant deterrent to genuine inventors from filing good-faith suits to defend their valid patent claims.

Therefore, I urge the adoption of the Conyers-Watt substitute which would drop the loser-pays provisions from the underlying bill while still including the key reforms that are present in the underlying bill and in the Senate bill drafted by Senator LEAHY.

I urge adoption of the substitute.

Mr. GOODLATTE. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. LOFGREN), who has been a great person to work with on the Judiciary Committee and here on the floor of the House on this legislation.

Ms. LOFGREN. Mr. Chairman, I appreciate the time.

Earlier in the debate, I jumped ahead of myself and addressed the issue of pleadings and discovery costs during the Watt amendment about fee shifting. So I will focus on fee shifting now.

The provision in the bill is absolutely right on. I oppose the English rule generally, but we have created dozens of times instances where the losing party can pay—let me just read the language:

> The courts will shift the costs and fees to a non-prevailing party unless the party's position is reasonably justified in fact or law or the fee award would cause economic harm.

The discretion is still with the judicial officer to avoid harm.

In terms of what should be in the bill, I mentioned at the outset that I don't believe this bill is perfect. If it were up to me, the bill would also exempt PTO user-fees from sequestration; it would clarify the scope of prior art and the grace period; it would allow the PTO to continue using its BRI standard in post-grant and inter partes review. I hope that the Senate will address those issues. Certainly, the amendment by Mr. WATT and Mr. CONYERS does not.

It pains me when I have to disagree with my ranking member, who I admire so very much, but I do disagree with this amendment. I think it will absolutely gut the bill. I intend to vote against it, and I hope that others join me.

Mr. CONYERS. Mr. Chairman, I yield 1½ minutes to the gentleman from Georgia (Mr. JOHNSON).

Mr. JOHNSON of Georgia. Mr. Chairman, I rise in support of the Conyers-Watt substitute amendment.

I must say that this has been a very spirited debate here today, but I would be remiss not to come back to speak on the issue of an inventor such as Danny Ross, a venture capitalist and an example of the type of person that this bill should protect.

Danny cofounded a tech company down in Atlanta that employed more than 100 people and reached more than half the Internet audience at its peak. He owns several patents based on great inventions and has got a start-up. He had the Patent Office review and affirm these patents. But not only were these strong patents, they were also sought after by several companies. Rather than pay Danny for his innovation and hard work, these companies refused to license his patent. This practice is common for large companies that would rather bully someone in court than license their patents.

We are an innovation economy. The drive to create and tinker is what motivates Americans to innovate. Those innovations should be rewarded, and those innovators should be rewarded for their labor and contribution to society. That is the whole point of the patent system; but if this bill becomes law, patent owners and inventors will be unable to enforce their patents without risking personal bankruptcy.

I have long supported reform and am a friend of the innovation economy, but today I call on my colleagues to support this amendment.

Mr. GOODLATTE. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania (Mr. MARINO), the vice chairman of the Courts, Intellectual Property and the Internet Subcommittee.

Mr. MARINO. Mr. Chairman, I oppose this substitute, and I will explain why I support the Goodlatte bill, H.R. 3309.

This bill has been methodically drafted with abundant openness and clarity. Among other parts of this bill, and there are many, two are extremely important that I see. One is that it protects small business owners, entrepreneurs, young men and women who could lose their business or could lose their idea, young men and women that may even be visiting the Capitol today.

I want to explain what a troll does. A troll doesn't primarily go after larger companies. They go after upstarts, they go after young people who are starting to make a profit after years of work. They send them a letter and say, Pay me X amount of dollars, $10,000, $20,000, $50,000, and I won't sue you. If I do sue you, we will go to court and you will probably go bankrupt because it is going to cost you that much. They are suing people based on using a phone, a scanner, and a copier which they purchased. They have no interest in the software; yet they are being sued for that.

This is good law. We have to get over the fact that the trolls are really taking advantage here. It is really going to cut the cost of litigation and get owners to the court on time.

Mr. CONYERS. Mr. Chairman, I am pleased to yield the balance of my time to the distinguished gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Chairman, we keep hearing about the trolls; and, yes, there is some problem with the trolls, and sometimes it hurts middle class people. But we can solve that problem without destroying the rights of our American independent inventors, and they are pleading with us, interest groups around the country are pleading with us not to go so fast.

I support the Conyers substitute, but I rise in opposition to this bill. Among those opposing or having expressed serious concern about this Innovation Act are the Association of American Universities, American Council on Education, Association of American Medical Colleges, Eagle Forum, Club for Growth, the American Bar Association, the Patent Office Professional Association, the American Intellectual Property Association, the National Association for Patent Practitioners, the Judicial Conference committee on rules and practices and procedures. Our judges are absolutely opposed to this, and yet we have this idea that we will just take away the rights of the little guy to have his day in court, that it doesn't make any difference. That is not what our judges say.

Mr. Chairman, I submit this list to be placed in the RECORD.

Please, let's not rush into a move that will destroy our independent inventors and our innovators in America.

DON'T BLOW UP THE BRIDGE TO INNOVATION TO KILL THE ''PATENT TROLL''

Oppose HR 3309, the Innovation Act, which will have numerous unintended consequences.

Some of the groups opposing, or concerned with, the Innovation Act: Association of American Universities; American Council on Education; Association of American Medical Colleges; Association of Public and Land-grant Universities; Association of University Technology Managers; California Healthcare Institute; Council on Government Relations; Eagle Forum; Club for Growth; American Bar Association (ABA); Patent Office Professional Association; Judicial Conference, Committee on Rules of Practice and Procedure; American Intellectual Property Association (AIPLA); Intellectual Property Owners Association IPO); National Association of Patent Practitioners (NAPP); University of California; National Venture Capital Association; Innovation Alliance; Coalition for 21st Century Patent Reform; Institute of Electrical and Electronics Engineers (IEEE).

Some concerns with the Innovation Act: creates more paperwork when an inventor files an infringement claim, increasing the costs to defend their rights; forces a patent holder who files a claim of infringement to maintain a new bureaucratic reporting requirement; and to pay new recordkeeping fees; eliminates the independent judicial review of patent applicants by striking Section 145 of Title 35. This is very important in order to keep the patent office honest. Striking this provision will leave the inventor with no independent recourse outside of the patent office. Dramatically increases the potential financial risks for filing an infringement lawsuit.

□ 1215

Mr. GOODLATTE. Mr. Chairman, I yield myself the balance of my time.

Yes, there is some problem with patent trolls, tens of billions of dollars a year in problems with patent trolls. Fifty-five percent of all the demand letters that are sent by these patent trolls go to small businesses.

There are serious problems that require real patent litigation reform, and I am proud that this bipartisan bill, supported by many Members on both sides of the aisle, supported by the administration, and supported by hundreds of organizations that are listed right here—come by the desk and you can see the huge list of organizations, conservatives, all across the political spectrum support this legislation.

American inventors have led the world for centuries. This bill holds true to the Constitution, our Founders, and our promise to future generations that America will continue to lead the world as a fountain for discovery, innovation, economic growth, and job creation.

I stand in strong opposition to this substitute amendment, and I urge my colleagues to vote for the underlying bill.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in part A of House Report 113–283 on which further proceedings were postponed, in the following order:

Amendment No. 1 by Mr. GOODLATTE of Virginia.

Amendment No. 2 by Mr. WATT of North Carolina.

Amendment No. 4 by Mr. MASSIE of Kentucky.

Amendment No. 5 by Ms. JACKSON LEE of Texas.

Amendment No. 7 by Mr. ROHRABACHER of California.

Amendment No. 8 by Mr. CONYERS of Michigan.

The Chair will reduce to 2 minutes the minimum time for any electronic vote after the first vote in this series.

AMENDMENT NO. 1 OFFERED BY MR. GOODLATTE

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 341, noes 73, not voting 17, as follows:

[Roll No. 623]

AYES—341

Aderholt	Carter	Doggett
Amash	Cassidy	Duckworth
Amodei	Castro (TX)	Duffy
Bachmann	Chabot	Duncan (SC)
Bachus	Chaffetz	Duncan (TN)
Barber	Chu	Ellmers
Barletta	Clarke	Engel
Barr	Clay	Enyart
Barrow (GA)	Cleaver	Eshoo
Barton	Clyburn	Esty
Bass	Coble	Farenthold
Beatty	Coffman	Farr
Benishek	Cohen	Fattah
Bentivolio	Cole	Fincher
Bera (CA)	Collins (GA)	Fitzpatrick
Bilirakis	Collins (NY)	Fleischmann
Bishop (UT)	Conaway	Fleming
Black	Connolly	Flores
Blackburn	Cook	Forbes
Blumenauer	Cooper	Fortenberry
Bonamici	Costa	Foster
Boustany	Cotton	Foxx
Brady (PA)	Courtney	Franks (AZ)
Brady (TX)	Cramer	Frelinghuysen
Bridenstine	Crenshaw	Gabbard
Brooks (AL)	Crowley	Gallego
Brooks (IN)	Cuellar	Garamendi
Broun (GA)	Daines	Garcia
Brown (FL)	Davis, Rodney	Gardner
Brownley (CA)	DeFazio	Garrett
Buchanan	DeGette	Gerlach
Bucshon	Delaney	Gibbs
Burgess	DelBene	Gibson
Bustos	Denham	Gohmert
Calvert	Dent	Goodlatte
Camp	DeSantis	Gosar
Cantor	DesJarlais	Gowdy
Capito	Deutch	Granger
Capps	Diaz-Balart	Graves (GA)
Cárdenas	Dingell	Graves (MO)

Green, Al
Green, Gene
Griffin (AR)
Griffith (VA)
Grimm
Guthrie
Gutiérrez
Hahn
Hall
Hanabusa
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Heck (NV)
Heck (WA)
Hensarling
Higgins
Himes
Hinojosa
Holding
Honda
Horsford
Hoyer
Hudson
Huelskamp
Huffman
Huizenga (MI)
Hultgren
Hunter
Hurt
Israel
Issa
Jeffries
Jenkins
Johnson (OH)
Johnson, Sam
Jordan
Kelly (IL)
Kelly (PA)
Kildee
Kilmer
Kind
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kirkpatrick
Kline
Kuster
Labrador
LaMalfa
Lamborn
Lance
Lankford
Larsen (WA)
Larson (CT)
Latham
Latta
Lee (CA)
Levin
Lipinski
LoBiondo
Lofgren
Long
Lowey
Lucas
Luetkemeyer
Luján, Ben Ray (NM)
Maffei
Maloney, Carolyn
Maloney, Sean
Marchant
Marino
Matheson
Matsui
McAllister
McCarthy (CA)
McCaul
McClintock
McCollum
McDermott
McGovern
McIntyre
McKeon
McKinley
Meadows
Meehan
Meeks
Meng
Messer
Mica
Michaud
Miller (FL)
Miller (MI)
Moran
Mullin
Mulvaney
Murphy (FL)
Murphy (PA)
Nadler
Neugebauer
Noem
Nugent
Nunes
Nunnelee
O'Rourke
Olson
Owens
Palazzo
Pallone
Pascrell
Pastor (AZ)
Paulsen
Pearce
Perlmutter
Perry
Peters (MI)
Peterson
Petri
Pittenger
Pitts
Poe (TX)
Polis
Pompeo
Price (GA)
Price (NC)
Quigley
Rahall
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross
Rothfus
Roybal-Allard
Royce
Ruiz
Runyan
Ruppersberger
Ryan (WI)
Salmon
Sánchez, Linda T.
Sanford
Scalise
Schiff
Schneider
Schock
Schrader
Schwartz
Schweikert
Scott (VA)
Scott, Austin
Sensenbrenner
Serrano
Sessions
Sherman
Shimkus
Shuster
Simpson
Sinema
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Stewart
Stivers
Stutzman
Swalwell (CA)
Takano
Terry
Thompson (CA)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Tonko
Turner
Upton
Valadao
Van Hollen
Veasey
Velázquez
Wagner
Walberg
Walden
Walorski
Walz
Wasserman Schultz
Watt
Waxman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Yoho
Young (AK)
Young (IN)

NOES—73

Andrews
Becerra
Bishop (NY)
Braley (IA)
Butterfield
Capuano
Carney
Carson (IN)
Cartwright
Castor (FL)
Cicilline
Conyers
Cummings
Davis (CA)
Davis, Danny
DeLauro
Edwards
Ellison
Frankel (FL)
Fudge
Grayson
Grijalva
Hastings (FL)
Holt
Jackson Lee
Johnson (GA)
Johnson, E. B.
Jones
Kaptur
Keating
Kennedy
Langevin
Lewis
Loebsack
Lowenthal
Lujan Grisham (NM)
Lummis
Lynch
Massie
McNerney
Miller, George
Moore
Napolitano
Neal
Negrete McLeod
Payne
Pelosi
Peters (CA)
Pingree (ME)
Pocan
Posey
Rangel
Richmond
Rohrabacher
Ryan (OH)
Sanchez, Loretta
Sarbanes
Schakowsky
Scott, David
Sewell (AL)
Shea-Porter
Slaughter
Speier
Stockman
Thompson (MS)
Tierney
Tsongas
Vargas
Vela
Visclosky
Waters
Wilson (FL)
Yarmuth

NOT VOTING—17

Bishop (GA)
Campbell
Crawford
Culberson
Doyle
Gingrey (GA)
Herrera Beutler
Joyce
McCarthy (NY)
McHenry
McMorris Rodgers
Miller, Gary
Nolan
Radel
Reed
Rush
Sires

□ 1241

Mr. JEFFRIES, Ms. WASSERMAN SCHULTZ, Messrs. REICHERT, BERA of California, HALL, ROKITA, GOSAR, HIGGINS, MEEKS, and AL GREEN of Texas changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 2 OFFERED BY MR. WATT

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. WATT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 199, noes 213, not voting 19, as follows:

[Roll No. 624]

AYES—199

Amash
Andrews
Barber
Barrow (GA)
Bass
Beatty
Becerra
Bera (CA)
Bishop (NY)
Bonamici
Brady (PA)
Braley (IA)
Bridenstine
Broun (GA)
Brown (FL)
Brownley (CA)
Bustos
Butterfield
Capps
Capuano
Carney
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu
Cicilline
Clarke
Cleaver
Clyburn
Cohen
Connolly
Conyers
Cooper
Cotton
Courtney
Cramer
Crowley
Cummings
Davis (CA)
Davis, Danny
DeGette
Delaney
DeLauro
DelBene
Deutch
Dingell
Doggett
Duckworth
Edwards
Ellison
Engel
Enyart
Esty
Farr
Fattah
Fitzpatrick
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Garcia
Gibson
Gosar
Grayson
Green, Al
Green, Gene
Griffith (VA)
Grijalva
Hahn
Hanabusa
Hastings (FL)
Heck (WA)
Higgins
Himes
Hinojosa
Holt
Horsford
Hoyer
Huelskamp
Huffman
Israel
Jackson Lee
Jeffries
Johnson (GA)
Johnson, E. B.
Jones
Kaptur
Keating
Kelly (IL)
Kennedy
Kildee
Kilmer
Kind
Kirkpatrick
Kuster
Lance
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis
Lipinski
Loebsack
Lowenthal
Lowey
Lujan Grisham (NM)
Luján, Ben Ray (NM)
Lynch
Maloney, Carolyn
Maloney, Sean
Massie
Matsui
McDermott
McGovern
McNerney
Meeks
Meng
Michaud
Miller (MI)
Moore
Moran
Murphy (FL)
Nadler
Napolitano
Neal
Negrete McLeod
O'Rourke
Owens
Pallone
Pascrell
Pastor (AZ)
Pelosi
Perlmutter
Peters (CA)
Peters (MI)
Petri
Pingree (ME)
Pocan
Posey
Quigley
Rahall
Rangel
Richmond
Rigell
Rohrabacher
Ross
Roybal-Allard
Ruiz
Ruppersberger
Ryan (OH)
Salmon
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schneider
Schrader
Schwartz
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Slaughter
Smith (WA)
Speier
Stockman
Swalwell (CA)
Takano
Terry
Thompson (MS)
Tierney
Titus
Tonko
Tsongas
Valadao
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Wagner
Walz
Wasserman Schultz
Waters
Watt
Waxman
Welch
Wilson (FL)
Yarmuth
Yoho

NOES—213

Aderholt
Amodei
Bachmann
Bachus
Barletta
Barr
Barton
Benishek
Bentivolio
Bilirakis
Bishop (UT)
Black
Blackburn
Blumenauer
Boustany
Brady (TX)
Brooks (AL)
Brooks (IN)
Buchanan
Bucshon
Burgess
Calvert
Camp
Cantor
Capito
Cárdenas
Carter
Cassidy
Chabot
Chaffetz
Coble
Coffman
Cole
Collins (GA)
Collins (NY)
Conaway
Cook
Costa
Crenshaw
Cuellar
Daines
Davis, Rodney
DeFazio
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Eshoo
Farenthold
Fincher
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gardner
Garrett
Gerlach
Gibbs
Gohmert
Goodlatte
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Grimm
Guthrie
Hall
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Heck (NV)
Hensarling
Holding
Honda
Hudson
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (OH)
Johnson, Sam
Jordan
Joyce
Kelly (PA)
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kline
Labrador
LaMalfa
Lamborn
Lankford
Latham
Latta
LoBiondo
Lofgren
Long
Lucas
Luetkemeyer
Lummis
Maffei
Marchant
Marino
Matheson
McAllister
McCarthy (CA)
McCaul
McClintock
McCollum
McHenry
McIntyre
McKeon
McKinley
Meadows
Meehan
Messer
Mica
Miller (FL)
Miller, George
Mullin
Mulvaney
Murphy (PA)
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Palazzo
Paulsen
Payne
Pearce
Perry
Peterson
Pittenger
Pitts
Poe (TX)
Polis
Pompeo
Price (GA)
Price (NC)
Reichert
Renacci
Ribble
Rice (SC)
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rokita
Rooney
Ros-Lehtinen
Roskam
Rothfus
Royce
Runyan
Ryan (WI)
Sanford
Scalise
Schock
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Southerland
Stewart
Stivers
Thompson (CA)
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner
Upton
Walberg
Walden
Walorski
Weber (TX)
Webster (FL)
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Young (AK)
Young (IN)

NOT VOTING—19

Bishop (GA)
Campbell
Clay
Crawford
Culberson
Doyle
Gingrey (GA)
Gutiérrez
Herrera Beutler
McCarthy (NY)
McMorris Rodgers
Miller, Gary
Nolan
Radel
Reed
Rush
Sires
Smith (MO)
Stutzman

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There is 1 minute remaining.

□ 1246

Mr. POE of Texas changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 4 OFFERED BY MR. MASSIE

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Kentucky (Mr. MASSIE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 119, noes 296, not voting 16, as follows:

[Roll No. 625]

AYES—119

Amash
Andrews
Bachmann
Barton
Beatty
Bentivolio
Bishop (NY)
Brady (PA)
Braley (IA)
Bridenstine
Brooks (AL)
Broun (GA)
Brown (FL)
Burgess
Capuano
Carson (IN)
Cartwright
Cicilline
Cleaver
Conyers
Cotton
Cramer
Davis (CA)
Davis, Danny
Davis, Rodney
DeLauro
Denham
Dent
Duncan (TN)
Engel
Fattah
Frankel (FL)
Fudge
Garamendi
Garrett
Gibson
Gosar
Grayson
Green, Al
Grijalva
Gutiérrez
Hanabusa
Harris
Hastings (FL)
Holt
Huelskamp
Hultgren
Jackson Lee
Johnson (GA)
Johnson, E. B.
Jones
Joyce
Kaptur
Keating
Kind
Lamborn
Lance
Langevin
Lee (CA)
Loebsack
Lowenthal
Lujan Grisham (NM)
Lummis
Marchant
Massie
Matsui
McDermott
McNerney
Messer
Mullin
Mulvaney
Napolitano
Paulsen
Payne
Perlmutter
Peters (CA)
Petri
Pingree (ME)
Pitts
Pocan
Posey
Rangel
Richmond
Rohrabacher
Rooney
Ross
Ryan (OH)
Salmon
Sánchez, Linda T.
Sanchez, Loretta
Sanford
Sarbanes
Schakowsky
Schweikert
Scott (VA)
Scott, David
Serrano
Shea-Porter
Slaughter
Smith (NE)
Speier
Stockman
Stutzman
Thompson (MS)
Tierney
Tonko
Tsongas
Valadao
Vargas
Vela
Visclosky
Waters
Watt
Weber (TX)
Westmoreland
Wilson (FL)
Wolf
Yarmuth
Yoho

NOES—296

Aderholt
Amodei
Bachus
Barber
Barletta
Barr
Barrow (GA)
Bass
Becerra
Benishek
Bera (CA)
Bilirakis
Bishop (UT)
Black
Blackburn
Blumenauer
Bonamici
Boustany
Brady (TX)
Brooks (IN)
Brownley (CA)
Buchanan
Bucshon
Bustos
Butterfield
Calvert
Camp
Cantor
Capito
Capps
Cárdenas
Carney
Carter
Cassidy
Castor (FL)
Castro (TX)
Chabot
Chaffetz
Chu
Clarke
Clay
Clyburn
Coble
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Conaway
Connolly
Cook
Cooper
Costa
Courtney
Crenshaw
Crowley
Cuellar
Cummings
Daines
DeFazio
DeGette
Delaney
DelBene
DeSantis
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Duckworth
Duffy
Duncan (SC)
Edwards
Ellison
Ellmers
Enyart
Eshoo
Esty
Farenthold
Farr
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foster
Foxx
Franks (AZ)
Frelinghuysen
Gabbard
Gallego
Garcia
Gardner
Gibbs
Gohmert
Goodlatte
Gowdy
Granger
Graves (GA)
Graves (MO)
Green, Gene
Griffin (AR)
Griffith (VA)
Grimm
Guthrie
Hahn
Hall
Hanna
Harper
Hartzler
Hastings (WA)
Heck (NV)
Heck (WA)
Hensarling
Higgins
Himes
Hinojosa
Holding
Honda
Horsford
Hoyer
Hudson
Huffman
Huizenga (MI)
Hunter
Hurt
Israel
Issa
Jeffries
Jenkins
Johnson (OH)
Johnson, Sam
Jordan
Kelly (IL)
Kelly (PA)
Kennedy
Kildee
Kilmer
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kirkpatrick
Kline
Kuster
Labrador
LaMalfa
Lankford
Larsen (WA)
Larson (CT)
Latham
Latta
Levin
Lewis
Lipinski
LoBiondo
Lofgren
Long
Lowey
Lucas
Luetkemeyer
Luján, Ben Ray (NM)
Lynch
Maffei
Maloney, Carolyn
Maloney, Sean
Marino
Matheson
McAllister
McCarthy (CA)
McCaul
McClintock
McCollum
McGovern
McHenry
McIntyre
McKeon
McKinley
Meadows
Meehan
Meeks
Meng
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, George
Moore
Moran
Murphy (FL)
Murphy (PA)
Nadler
Neal
Negrete McLeod
Neugebauer
Noem
Nugent
Nunes
Nunnelee
O'Rourke
Olson
Owens
Palazzo
Pallone
Pascrell
Pastor (AZ)
Pearce
Pelosi
Perry
Peters (MI)
Peterson
Pittenger
Poe (TX)
Polis
Pompeo
Price (GA)
Price (NC)
Quigley
Rahall
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rokita
Ros-Lehtinen
Roskam
Rothfus
Roybal-Allard
Royce
Ruiz
Runyan
Ruppersberger
Ryan (WI)
Scalise
Schiff
Schneider
Schock
Schrader
Schwartz
Scott, Austin
Sensenbrenner
Sessions
Sewell (AL)
Sherman
Shimkus
Shuster
Simpson
Sinema
Smith (MO)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Stewart
Stivers
Swalwell (CA)
Takano
Terry
Thompson (CA)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Turner
Upton
Van Hollen
Veasey
Velázquez
Wagner
Walberg
Walden
Walorski
Walz
Wasserman Schultz
Waxman
Webster (FL)
Welch
Wenstrup
Whitfield
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yoder
Young (AK)
Young (IN)

NOT VOTING—16

Bishop (GA)
Campbell
Crawford
Culberson
Doyle
Gerlach
Gingrey (GA)
Herrera Beutler
McCarthy (NY)
McMorris Rodgers
Miller, Gary
Nolan
Radel
Reed
Rush
Sires

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There is 1 minute remaining.

□ 1250

Messrs. PALLONE, VEASEY, and Ms. GABBARD changed their vote from ''aye'' to ''no.''

Ms. SPEIER changed her vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 5 OFFERED BY MS. JACKSON LEE

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from Texas (Ms. JACKSON LEE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 144, noes 266, not voting 21, as follows:

[Roll No. 626]

AYES—144

Andrews
Barrow (GA)
Bass
Beatty
Becerra
Bishop (NY)
Bonamici
Brady (PA)
Braley (IA)
Broun (GA)
Brown (FL)
Brownley (CA)
Bustos
Butterfield
Capps
Capuano
Carney
Carson (IN)
Cartwright
Castor (FL)
Cicilline
Clarke
Clay
Cleaver
Clyburn
Conyers
Cooper
Courtney
Crowley
Cuellar
Cummings
Davis (CA)
Davis, Danny
DeGette
DeLauro
Deutch
Duckworth
Duncan (TN)
Edwards
Ellison
Engel
Enyart
Esty
Fattah
Foster
Frankel (FL)
Fudge
Gabbard
Garamendi
Garcia
Gosar
Grayson
Green, Al
Green, Gene
Grijalva
Hahn
Hanabusa
Hastings (FL)
Heck (WA)
Himes
Holt
Horsford
Hoyer
Huelskamp
Jackson Lee
Jeffries
Johnson (GA)
Johnson, E. B.
Jones
Kaptur
Keating
Kelly (IL)
Kennedy
Kilmer
Kirkpatrick
Langevin
Larson (CT)
Lee (CA)
Lewis
Lipinski
Loebsack
Lowenthal
Lujan Grisham (NM)
Lynch
Massie
Matsui
McGovern
McIntyre
McNerney
Meeks
Moore
Murphy (FL)
Napolitano
Neal
Negrete McLeod
O'Rourke
Owens
Pallone
Pascrell
Payne
Perlmutter
Peters (CA)
Peters (MI)
Pingree (ME)
Pocan
Poe (TX)
Quigley
Rahall
Rangel
Richmond
Rohrabacher
Rothfus
Roybal-Allard
Ruppersberger
Ryan (OH)
Salmon
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schweikert
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter

Slaughter
Speier
Stockman
Thompson (MS)
Tierney
Tonko
Tsongas
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Waters
Watt
Wilson (FL)
Yarmuth

NOES—266

Aderholt
Amash
Bachmann
Bachus
Barber
Barletta
Barr
Barton
Benishek
Bentivolio
Bera (CA)
Bilirakis
Bishop (UT)
Black
Blackburn
Blumenauer
Boustany
Brady (TX)
Bridenstine
Brooks (AL)
Brooks (IN)
Buchanan
Bucshon
Burgess
Calvert
Camp
Cantor
Capito
Cárdenas
Carter
Cassidy
Castro (TX)
Chabot
Chaffetz
Chu
Coble
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Conaway
Connolly
Cook
Costa
Cotton
Cramer
Crenshaw
Daines
Davis, Rodney
DeFazio
Delaney
DelBene
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Dingell
Doggett
Duffy
Duncan (SC)
Ellmers
Eshoo
Farenthold
Farr
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallego
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gohmert
Goodlatte
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Griffith (VA)
Grimm
Guthrie
Hall
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Heck (NV)
Hensarling
Higgins
Hinojosa
Holding
Honda
Hudson
Huffman
Huizenga (MI)
Hultgren
Hunter
Hurt
Israel
Issa
Jenkins
Johnson (OH)
Johnson, Sam
Jordan
Joyce
Kelly (PA)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kline
Kuster
Labrador
LaMalfa
Lamborn
Lance
Lankford
Larsen (WA)
Latham
Latta
Levin
LoBiondo
Lofgren
Long
Lowey
Lucas
Luetkemeyer
Luján, Ben Ray (NM)
Lummis
Maffei
Maloney, Carolyn
Maloney, Sean
Marchant
Marino
Matheson
McAllister
McCarthy (CA)
McCaul
McClintock
McCollum
McDermott
McHenry
McKeon
McKinley
Meadows
Meehan
Meng
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, George
Moran
Mullin
Mulvaney
Murphy (PA)
Nadler
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Palazzo
Pastor (AZ)
Paulsen
Pearce
Pelosi
Perry
Peterson
Petri
Pittenger
Pitts
Polis
Pompeo
Posey
Price (GA)
Price (NC)
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ruiz
Runyan
Ryan (WI)
Sanford
Scalise
Schneider
Schock
Schrader
Schwartz
Scott, Austin
Sensenbrenner
Sessions
Sherman
Shimkus
Shuster
Simpson
Sinema
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Stewart
Stivers
Stutzman
Swalwell (CA)
Takano
Terry
Thompson (CA)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walorski
Wasserman Schultz
Waxman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)
Wittman
Wolf
Womack
Yoder
Yoho
Young (AK)
Young (IN)

NOT VOTING—21

Amodei
Bishop (GA)
Campbell
Crawford
Culberson
Doyle
Gingrey (GA)
Gutiérrez
Herrera Beutler
McCarthy (NY)
McMorris Rodgers
Messer
Miller, Gary
Nolan
Radel
Reed
Rokita
Rush
Sires
Walz
Woodall

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There is 1 minute remaining.

□ 1253

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 7 OFFERED BY MR. ROHRABACHER

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. ROHRABACHER) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 260, noes 156, not voting 15, as follows:

[Roll No. 627]

AYES—260

Andrews
Bachmann
Barber
Barr
Barrow (GA)
Barton
Bass
Beatty
Becerra
Bentivolio
Bera (CA)
Bishop (NY)
Black
Blumenauer
Bonamici
Brady (PA)
Braley (IA)
Brooks (AL)
Brooks (IN)
Broun (GA)
Brown (FL)
Brownley (CA)
Burgess
Bustos
Butterfield
Calvert
Capito
Capps
Capuano
Cárdenas
Carney
Carson (IN)
Cartwright
Castor (FL)
Chu
Cicilline
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cook
Cooper
Costa
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (CA)
Davis, Danny
Davis, Rodney
DeGette
Delaney
DeLauro
DelBene
Denham
Dent
DesJarlais
Dingell
Duckworth
Duffy
Duncan (SC)
Duncan (TN)
Edwards
Engel
Enyart
Eshoo
Esty
Farr
Fattah
Fincher
Fitzpatrick
Fleischmann
Fortenberry
Foster
Frankel (FL)
Frelinghuysen
Fudge
Gabbard
Garamendi
Garcia
Garrett
Gerlach
Gibbs
Gibson
Gohmert
Gosar
Graves (GA)
Graves (MO)
Grayson
Green, Al
Green, Gene
Grijalva
Grimm
Guthrie
Gutiérrez
Hahn
Hanabusa
Harper
Harris
Hastings (FL)
Heck (WA)
Higgins
Himes
Holt
Honda
Horsford
Hoyer
Huelskamp
Huffman
Hultgren
Hunter
Israel
Jackson Lee
Jeffries
Jenkins
Johnson (GA)
Johnson, E. B.
Jones
Joyce
Kaptur
Keating
Kelly (IL)
Kennedy
Kildee
Kilmer
Kind
Kinzinger (IL)
Kirkpatrick
Kuster
LaMalfa
Lance
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis
Lipinski
LoBiondo
Loebsack
Lofgren
Lowenthal
Lowey
Luetkemeyer
Lujan Grisham (NM)
Luján, Ben Ray (NM)
Lummis
Lynch
Maloney, Carolyn
Maloney, Sean
Marchant
Massie
Matsui
McClintock
McCollum
McGovern
McIntyre
McNerney
Meeks
Meng
Messer
Miller, George
Moore
Nadler
Napolitano
Neal
Noem
Nugent
Nunes
Pallone
Pascrell
Pastor (AZ)
Paulsen
Payne
Pelosi
Perlmutter
Peters (CA)
Peters (MI)
Peterson
Petri
Pingree (ME)
Pocan
Polis
Posey
Price (NC)
Quigley
Rahall
Rangel
Richmond
Roe (TN)
Rohrabacher
Rokita
Rooney
Ross
Roybal-Allard
Royce
Ruiz
Ryan (OH)
Ryan (WI)
Salmon
Sánchez, Linda T.
Sanchez, Loretta
Sanford
Sarbanes
Schakowsky
Schiff
Schneider
Schock
Schrader
Schwartz
Scott (VA)
Scott, David
Sensenbrenner
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Slaughter
Smith (NJ)
Smith (WA)
Speier
Stivers
Stockman
Stutzman
Takano
Terry
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Tonko
Tsongas
Turner
Valadao
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Wagner
Walorski
Walz
Waters
Watt
Waxman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westmoreland
Whitfield
Wilson (FL)
Wolf
Yarmuth
Yoder

NOES—156

Aderholt
Amash
Amodei
Bachus
Barletta
Benishek
Bilirakis
Bishop (UT)
Blackburn
Boustany
Brady (TX)
Bridenstine
Buchanan
Bucshon
Camp
Cantor
Carter
Cassidy
Castro (TX)
Chabot
Chaffetz
Coble
Coffman
Cole
Collins (GA)
Collins (NY)
Conaway
Connolly
Cotton
Crenshaw
Daines
DeFazio
DeSantis
Deutch
Diaz-Balart
Doggett
Ellison
Ellmers
Farenthold
Fleming
Flores
Forbes
Foxx
Franks (AZ)
Gallego
Gardner
Goodlatte
Gowdy
Granger
Griffin (AR)
Griffith (VA)
Hall
Hanna
Hartzler
Hastings (WA)
Heck (NV)
Hensarling
Hinojosa
Holding
Hudson
Huizenga (MI)
Hurt
Issa
Johnson (OH)
Johnson, Sam
Jordan
Kelly (PA)
King (IA)
King (NY)
Kingston
Kline
Labrador
Lamborn
Lankford
Latham
Latta
Long
Lucas
Maffei
Marino
Matheson
McAllister
McCarthy (CA)
McCaul
McDermott
McHenry
McKeon
McKinley
Meadows
Meehan
Mica
Michaud
Miller (FL)
Miller (MI)
Moran
Mullin
Mulvaney
Murphy (FL)
Murphy (PA)
Negrete McLeod
Neugebauer
Nunnelee
O'Rourke
Olson
Owens
Palazzo
Pearce
Perry
Pittenger
Pitts
Poe (TX)
Pompeo
Price (GA)
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roby
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Roskam
Rothfus
Runyan
Ruppersberger
Scalise
Schweikert
Scott, Austin
Sessions
Shimkus
Shuster
Simpson
Smith (MO)
Smith (NE)
Smith (TX)
Southerland
Stewart
Swalwell (CA)
Thompson (PA)
Thornberry
Tipton
Titus
Upton
Walberg
Walden
Wasserman Schultz
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yoho
Young (AK)
Young (IN)

NOT VOTING—15

Bishop (GA)
Campbell
Crawford
Culberson
Doyle
Gingrey (GA)
Herrera Beutler
McCarthy (NY)
McMorris Rodgers
Miller, Gary
Nolan
Radel
Reed
Rush
Sires

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There is 1 minute remaining.

□ 1257

Mr. POE of Texas changed his vote from ''aye'' to ''no.''

Ms. BROWN of Florida changed her vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. MEEHAN. Mr. Chairman, on amendments to the Innovation Act (H.R. 3309), I intended to vote "yes" on the Rohrabacher amendment (rollcall No. 627), but inadvertently voted "no."

AMENDMENT NO. 8 OFFERED BY MR. CONYERS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. CONYERS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 157, noes 258, not voting 16, as follows:

[Roll No. 628]

AYES—157

Andrews
Barrow (GA)
Bass
Beatty
Becerra
Bishop (NY)
Bonamici
Brady (PA)
Braley (IA)
Brown (FL)
Brownley (CA)
Bustos
Butterfield
Capuano
Carney
Carson (IN)
Cartwright
Castor (FL)
Chu
Cicilline
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Courtney
Crowley
Cummings
Davis (CA)
Davis, Danny
DeGette
DeLauro
Deutch
Doggett
Edwards
Ellison
Engel
Enyart
Esty
Farr
Fattah
Foster
Frankel (FL)
Fudge
Gabbard
Garamendi
Garcia
Grayson
Green, Al
Grijalva
Gutiérrez
Hahn
Hall
Hanabusa
Hastings (FL)
Heck (WA)
Higgins
Himes
Holt
Horsford
Hoyer
Israel
Jackson Lee
Jeffries
Johnson (GA)
Johnson, E. B.
Jones
Kaptur
Keating
Kelly (IL)
Kennedy
Kilmer
Kind
Kirkpatrick
Kuster
Langevin
Larson (CT)
Lee (CA)
Lewis
Lipinski
Loebsack
Lowenthal
Lujan Grisham (NM)
Luján, Ben Ray (NM)
Lummis
Lynch
Maffei
Maloney, Carolyn
Maloney, Sean
Matsui
McDermott
McGovern
McIntyre
McNerney
Meeks
Meng
Michaud
Miller, George
Moore
Murphy (FL)
Nadler
Napolitano
Negrete McLeod
Pallone
Pascrell
Pastor (AZ)
Payne
Pelosi
Perlmutter
Peters (CA)
Petri
Pingree (ME)
Pocan
Quigley
Rahall
Rangel
Richmond
Rohrabacher
Roybal-Allard
Ruppersberger
Ryan (OH)
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schneider
Schwartz
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Slaughter
Speier
Takano
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Tsongas
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watt
Waxman
Welch
Wilson (FL)
Yarmuth

NOES—258

Aderholt
Amash
Amodei
Bachmann
Bachus
Barber
Barletta
Barr
Barton
Benishek
Bentivolio
Bera (CA)
Bilirakis
Bishop (UT)
Black
Blackburn
Blumenauer
Boustany
Brady (TX)
Bridenstine
Brooks (AL)
Brooks (IN)
Broun (GA)
Buchanan
Bucshon
Burgess
Calvert
Camp
Cantor
Capito
Capps
Cárdenas
Carter
Cassidy
Castro (TX)
Chabot
Chaffetz
Coble
Coffman
Cole
Collins (GA)
Collins (NY)
Conaway
Connolly
Cook
Cooper
Costa
Cotton
Cramer
Crenshaw
Cuellar
Daines
Davis, Rodney
DeFazio
Delaney
DelBene
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Dingell
Duckworth
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Eshoo
Farenthold
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallego
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Green, Gene
Griffin (AR)
Griffith (VA)
Grimm
Guthrie
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Heck (NV)
Hensarling
Hinojosa
Holding
Honda
Hudson
Huelskamp
Huffman
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (OH)
Johnson, Sam
Jordan
Joyce
Kelly (PA)
Kildee
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kline
Labrador
LaMalfa
Lamborn
Lance
Lankford
Larsen (WA)
Latham
Latta
Levin
LoBiondo
Lofgren
Long
Lowey
Lucas
Luetkemeyer
Marchant
Marino
Massie
Matheson
McAllister
McCarthy (CA)
McCaul
McClintock
McCollum
McHenry
McKeon
McKinley
Meadows
Meehan
Messer
Mica
Miller (FL)
Miller (MI)
Moran
Mullin
Mulvaney
Murphy (PA)
Neal
Neugebauer
Noem
Nugent
Nunes
Nunnelee
O'Rourke
Olson
Owens
Palazzo
Paulsen
Pearce
Perry
Peters (MI)
Peterson
Pittenger
Pitts
Poe (TX)
Polis
Pompeo
Posey
Price (GA)
Price (NC)
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross
Rothfus
Royce
Ruiz
Runyan
Ryan (WI)
Salmon
Sánchez, Linda T.
Sanford
Scalise
Schock
Schrader
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Sinema
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Stewart
Stivers
Stockman
Stutzman
Swalwell (CA)
Terry
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walorski
Weber (TX)
Webster (FL)
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)
Wittman
Wolf
Womack
Yoder
Yoho
Young (AK)
Young (IN)

NOT VOTING—16

Bishop (GA)
Campbell
Crawford
Culberson
Doyle
Gingrey (GA)
Herrera Beutler
McCarthy (NY)
McMorris Rodgers
Miller, Gary
Nolan
Radel
Reed
Rush
Sires
Woodall

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There is 1 minute remaining.

□ 1301

So the amendment was rejected.

The result of the vote was announced as above recorded.

The Acting CHAIR (Mr. WOMACK). The question is on the amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The Acting CHAIR. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. YODER) having assumed the chair, Mr. WOMACK, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 3309) to amend title 35, United States Code, and the Leahy-Smith America Invents Act to make improvements and technical corrections, and for other purposes, and, pursuant to House Resolution 429, he reported the bill back to the House with an amendment adopted in the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole?

If not, the question is on the amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 5-minute vote on passage of the bill will be followed by a 5-minute vote on the question on agreeing to the Speaker's approval of the Journal, if ordered.

The vote was taken by electronic device, and there were—ayes 325, noes 91, not voting 15, as follows:

[Roll No. 629]

AYES—325

Aderholt
Amodei
Bachmann
Bachus
Barber
Barletta
Barr
Barrow (GA)
Barton
Bass
Benishek
Bentivolio
Bera (CA)
Bilirakis
Black
Blackburn
Blumenauer
Bonamici
Boustany
Brady (PA)
Brady (TX)
Brooks (IN)
Brown (FL)
Brownley (CA)
Buchanan
Bucshon
Burgess
Bustos
Butterfield
Calvert
Camp
Cantor
Capito
Capps
Cárdenas
Carter
Cassidy
Castro (TX)
Chabot
Chaffetz
Chu
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Conaway
Connolly
Cook
Cooper
Costa
Cotton
Courtney
Crenshaw
Crowley
Cuellar
Daines
Davis, Rodney
DeFazio
DeGette
Delaney
DelBene
Denham
Dent
DeSantis
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Duckworth
Duffy
Ellmers
Engel
Eshoo
Esty
Farenthold
Farr
Fattah
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gabbard
Gallego
Garcia
Gardner
Garrett
Gerlach
Gibbs
Gibson
Goodlatte
Gowdy
Granger
Graves (GA)
Graves (MO)
Green, Al
Green, Gene
Griffin (AR)
Griffith (VA)
Grimm
Guthrie
Gutiérrez
Hahn
Hall
Hanabusa
Hanna
Harper
Hartzler
Hastings (FL)
Hastings (WA)
Heck (NV)
Heck (WA)
Hensarling
Higgins
Himes
Holding
Honda
Horsford
Hoyer
Hudson
Huffman
Hultgren
Hunter
Hurt
Israel
Issa
Jeffries
Jenkins
Johnson (OH)
Johnson, E. B.
Johnson, Sam
Jordan
Kelly (IL)
Kelly (PA)
Kennedy
Kildee
Kilmer
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kirkpatrick
Kline
Kuster
Labrador
LaMalfa
Lamborn
Lance
Lankford
Larsen (WA)
Larson (CT)
Latham
Latta
Lee (CA)
Levin
Lipinski
LoBiondo
Lofgren
Long
Lowey
Lucas
Luetkemeyer
Luján, Ben Ray (NM)
Maffei
Maloney, Carolyn
Maloney, Sean
Marchant
Marino
Matheson
Matsui
McAllister
McCarthy (CA)
McCaul
McClintock
McCollum
McGovern
McHenry
McIntyre
McKeon
McKinley
Meadows
Meehan
Meeks
Meng
Messer
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, George
Moran
Mullin
Mulvaney
Murphy (FL)
Murphy (PA)
Nadler
Neal
Neugebauer
Noem
Nugent
Nunes
Nunnelee
O'Rourke
Olson
Owens
Palazzo
Pallone
Pascrell
Paulsen
Pearce
Pelosi
Perlmutter
Perry
Peters (MI)
Peterson
Pittenger
Pitts
Poe (TX)
Polis
Pompeo
Price (GA)
Price (NC)
Quigley
Rahall
Reichert
Renacci
Ribble
Rice (SC)
Richmond
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross
Roybal-Allard
Ruiz
Runyan
Ruppersberger
Ryan (OH)
Ryan (WI)
Sánchez, Linda T.
Sanchez, Loretta
Sanford
Scalise
Schneider
Schock
Schrader
Schwartz
Schweikert
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Shimkus
Shuster
Simpson
Sinema
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Speier
Stewart
Stivers
Stutzman
Swalwell (CA)
Takano
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Tonko
Turner
Upton
Valadao
Van Hollen
Veasey
Velázquez
Wagner
Walberg
Walden
Walorski
Walz
Wasserman Schultz
Waxman
Webster (FL)
Welch
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoder
Young (AK)
Young (IN)

NOES—91

Amash
Andrews
Beatty
Becerra
Bishop (NY)
Bishop (UT)
Braley (IA)
Bridenstine
Brooks (AL)
Broun (GA)
Capuano
Carney
Carson (IN)
Cartwright
Castor (FL)
Cicilline
Conyers
Cramer
Cummings
Davis (CA)
Davis, Danny
DeLauro
Duncan (SC)
Duncan (TN)
Edwards
Ellison
Enyart
Foster
Frankel (FL)
Fudge
Garamendi
Gohmert
Gosar
Grayson
Grijalva
Harris
Hinojosa
Holt
Huelskamp
Huizenga (MI)
Jackson Lee
Johnson (GA)
Jones
Joyce
Kaptur
Keating
Kind
Langevin
Lewis
Loebsack
Lowenthal
Lujan Grisham (NM)
Lummis
Lynch
Massie
McDermott
McNerney
Moore
Napolitano
Negrete McLeod
Pastor (AZ)
Payne
Peters (CA)
Petri
Pingree (ME)
Pocan
Posey
Rangel
Rohrabacher
Rothfus
Royce
Salmon
Sarbanes
Schakowsky
Schiff
Scott (VA)
Shea-Porter
Sherman
Slaughter
Stockman
Tierney
Tsongas
Vargas
Vela
Visclosky
Waters
Watt
Weber (TX)
Wilson (FL)
Wolf
Yoho

NOT VOTING—15

Bishop (GA)
Campbell
Crawford
Culberson
Doyle
Gingrey (GA)
Herrera Beutler
McCarthy (NY)
McMorris Rodgers
Miller, Gary
Nolan
Radel
Reed
Rush
Sires

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There is 1 minute remaining.

□ 1312

Mr. FINCHER changed his vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. MCMORRIS RODGERS. Mr. Speaker, on rollcall No. 623, on H.R. 3309, on Agreeing to the Amendment offered by Mr. GOODLATTE of Virginia, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "yea."

Mr. Speaker, on rollcall No. 624, on H.R. 3309, on Agreeing to the Amendment offered by Mr. WATT of North Carolina, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "nay."

Mr. Speaker, on rollcall No. 625, on H.R. 3309, on Agreeing to the Amendment offered by Mr. MASSIE of Kentucky, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "nay."

Mr. Speaker, on rollcall No. 626, on H.R. 3309, on Agreeing to the Amendment offered by Ms. JACKSON LEE of Texas, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "nay."

Mr. Speaker, on rollcall No. 627, on H.R. 3309, on Agreeing to the Amendment offered by Mr. ROHRABACHER of California, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "nay."

Mr. Speaker, on rollcall No. 628, on H.R. 3309, on Agreeing to the Amendment offered by Mr. CONYERS of Michigan, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "nay."

Mr. Speaker, on rollcall No. 629, on H.R. 3309, on Passage, the Innovation Act, I am not recorded because I was absent due to the birth of my daughter. Had I been present, I would have voted "yea."

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker's approval of the Journal, which the Chair will put de novo.

The question is on the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 417

Mr. CHABOT. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H. Res. 417.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. HOYER asked and was given permission to address the House for 1 minute.)

Mr. HOYER. Mr. Speaker, I yield to my friend, the gentleman from Virginia, the majority leader, for the purpose of inquiring of the schedule for the week to come.

Mr. CANTOR. I thank the gentleman from Maryland, the Democratic whip, for yielding.

Mr. Speaker, on Monday, the House will meet at noon for morning-hour and at 2 p.m. for legislative debate. As announced previously, no votes are scheduled on Monday. On Tuesday, Wednesday, and Thursday, the House will meet at 10 a.m. for morning-hour and at noon for legislative business. First votes of the week will occur no earlier than 2 p.m. on Tuesday. On Friday, the House will meet at 9 a.m. for legislative business. Last votes for the week are expected no later than 3 p.m.

□ 1315

Mr. Speaker, the House will consider a few suspensions next week, a complete list of which will be announced by the close of business Friday.