PORTMAN) was added as a cosponsor of amendment No. 1151 intended to be proposed to H.R. 1191, a bill to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act.

AMENDMENT NO. 1189

At the request of Ms. MURKOWSKI, the name of the Senator from North Dakota (Ms. HEITKAMP) was added as a cosponsor of amendment No. 1189 intended to be proposed to H.R. 1191, a bill to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act.

AMENDMENT NO. 1190

At the request of Mr. TOOMEY, the names of the Senator from Delaware (Mr. COONS) and the Senator from Ohio (Mr. PORTMAN) were added as cosponsors of amendment No. 1190 intended to be proposed to H.R. 1191, a bill to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. BLUMENTHAL):

S. 1127. A bill to amend the Internal Revenue Code of 1986 to expand the denial of deduction for certain excessive employee remuneration, and for other purposes; to the Committee on Finance.

Mr. REED. Mr. President, today I am reintroducing the Stop Subsidizing Multimillion Dollar Corporate Bonuses Act with my colleague, Senator BLUMENTHAL. This bill closes a loophole that allows publicly traded corporations to deduct an executive's pay that exceeds $1 million from their tax bill.

Under current tax law, when a public corporation calculates its taxable income, it is generally permitted to deduct the cost of compensation from its revenues, with limits up to $1 million for some of the firm's most senior executives. However, a loophole relating to performance-based compensation has allowed many public corporations to avoid such limits and freely deduct excessive executive compensation. To illustrate how this loophole works, if a CEO receives $15 million in performance-based compensation in a given year, the public corporation's taxable income would decline by $15 million. With the current corporate tax rate at 35 percent, the corporation in this case would receive a tax cut of $5.25 million.

The Stop Subsidizing Multimillion Dollar Corporate Bonuses Act would instead allow a public corporation to deduct all forms of compensation up to only $1 million per employee. Using the same example above, a profitable public corporation, after deducting only $1 million from the $15 million in CEO compensation, would then pay $4.9 million in taxes. In short, instead of costing the government $5.25 million, this public corporation will be paying $4.9 million in taxes, reducing the burden on middle-class families and our national debt.

Indeed, over a 10-year window, the Joint Committee on Taxation, in their most recent assessment, estimated that closing this loophole would save U.S. taxpayers over $50 billion.

First, our legislation extends section 162(m) of the Tax Code to apply to all employees of publicly traded corporations so that all compensation is subject to a deductibility cap of $1 million. Publicly traded corporations would still be permitted to pay their executives as much as they desire, but compensation above and beyond $1 million would no longer be subsidized through our Tax Code.

Second, our bill removes the exemption for performance-based compensation, which currently permits compensation deductions above and beyond $1 million when executives have met performance benchmarks set by the corporation's board of directors. As a result, publicly traded corporations would still be able to incentivize their executives, but all such incentives would be subject to a corporate deductibility cap of $1 million.

Finally, our legislation makes a technical correction to ensure that all publicly traded corporations that are required to provide quarterly and annual reports to their investors under Securities and Exchange Commission rules and regulations are subject to section 162(m). Currently, this section of the Tax Code only covers some publicly traded corporations that are required to provide these periodic reports to their shareholders. Discouraging unrestrained compensation packages shouldn't hinge on whether a publicly traded corporation falls into one SEC reporting requirement or another, and our bill closes this technical loophole.

With this legislation, we aim to put an end to some of the extravagant tax breaks that exclusively benefit public corporations. This is simply a matter of fairness, ensuring that corporations—and not taxpayers who face their own challenges in this economy—are paying for the multimillion dollar bonuses they have decided to dole out.

I want to thank Senator BLUMENTHAL for working with me on this issue, and I urge our colleagues to join us in cosponsoring this legislation.

By Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. CORNYN, Mr. SCHUMER, Mr. LEE, Mr. HATCH, and Ms. KLOBUCHAR):

S. 1137. A bill to amend title 35, United States Code, and the Leahy-Smith America Invents Act to make improvements and technical corrections, and for other purposes; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, the U.S. is the world's leader in innovation. Yet today, our patent system—which has allowed generations of inventors, innovators, and entrepreneurs to thrive—is under attack from bad actors, also known as ''patent trolls''.

Abusive patent litigation is stifling the innovation and entrepreneurship that our patent system has been designed to protect. Over the last decade, there has been an explosion in the growth of this type of harmful litigation as those who exploit abusive patent litigation tactics for financial gain have taken aim at businesses operating in every sector of our economy.

From Main Street to Wall Street to Silicon Valley, from start-ups to neighborhood restaurants to major retailers—businesses and consumers across the country are being harmed. Because of this abuse, innovative companies spend less time and resources on research and innovation, and often must have their talented workforce devote many man-hours to defending against baseless claims. This comes at the expense of discovering that next medical breakthrough or rolling out new technologies that will create jobs.

Patent trolls prey on businesses by filing frivolous lawsuits and employing an array of heavy-handed and deceptive tactics to scare plaintiffs into settlements. These bad actors send vague and overly broad demand letters, exploit loose pleading standards that provide little substance of the alleged infringement claims, hide their identity behind shell companies, and use the threat of high cost patent litigation discovery as a weapon. This is a drag on our economy, costing an estimated $80 billion annually in direct and indirect costs. This means fewer jobs created, less innovation, and higher costs for consumers.

To restore integrity to our patent system, today, along with Judiciary Committee Ranking Member LEAHY, and Senators CORNYN, SCHUMER, LEE, HATCH and KLOBUCHAR, I am introducing the Protecting American Talent and Entrepreneurship Act, PATENT Act.

This builds upon the reforms made by the America Invents Act and will promote the intellectual property rights that our Founding Fathers recognized are key to American innovation. The provisions of the PATENT Act will promote more transparency in patent ownership, establish a clear, uniform standard for pleading in patent cases, and deter abusive litigation. I would like to note some of the key provisions in the bill.

The PATENT Act will require plaintiffs in a patent suit to identify each patent and each claim that is allegedly infringed, which products are infringing, and include a description of the alleged infringement. The current requirements for pleading in a patent

litigation have been subject to scrutiny by the courts and amount to little more than notice pleading. By providing these congressionally enacted bright line rules across judicial jurisdictions, defendants will be able to better respond to claims and courts will be able to resolve litigation more efficiently.

This legislation will place reasonable limitations on discovery by requiring courts to stay discovery pending the resolution of specific preliminary motions, including motions to dismiss and transfer venue. It also calls on the Judicial Conference to develop rules and procedures to promote efficient and effective discovery, including examining to what extent each party is entitled to ''core documentary evidence''.

While current law allows for fee shifting in patent cases, the reality is that bad actors are almost never subject to fee shifting, leading to an explosion in abusive litigation. The PATENT Act provides that reasonable attorney fees will be awarded if the prevailing party in litigation makes a showing, and the court finds, that the non-prevailing party's conduct was not ''objectively reasonable,'' unless special circumstances make an award unjust. This measure will help to deter the filing of frivolous claims. The bill also provides a process for the recovery of fees from an abusive litigant.

Further, the bill will help stop the widespread sending of fraudulent or materially misleading demand letters by building on existing Federal Trade Commission authority to go after those who violate Section 5 of the FTC Act in connection with patent assertion by engaging in widespread demand letter abuse. This provision has been carefully constructed so that it will not impinge upon legitimate licensing activity or expand FTC authority. We worked on the language contained in this provision with Chairman THUNE and his staff, as the Commerce Committee also has jurisdiction over the FTC, and it was important to us to get their input.

The bill also will help to protect small businesses, who are being targeted for doing nothing more than using products which they bought off-the-shelf, by allowing a suit against an end-user to be stayed while the manufacturer litigates the alleged infringement.

This bipartisan legislation is the result of a careful and deliberative process in which we worked with many stakeholders representing almost every area of the economy, the judiciary, and the administration. Since the process started in the last Congress, we've listened and tried to be responsive to all the concerns raised from the different industries and constituencies. As a result, we have made great strides in addressing issues that have been raised along the way and getting stakeholders comfortable with the bill. So I believe the PATENT Act strikes a good balance. Our intent is to protect the rights of patent holders while addressing the problem of abusive litigation. The PATENT Act does that.

As we move forward, we also intend to try to address other concerns that have been raised more recently by patent holders about the Patent and Trademark Office's IPR process. We want to make sure that the PTO processes are not being abused, and instead are being utilized as envisioned by the America Invents Act.

I would like to especially thank Ranking Member LEAHY for being an outstanding partner on the Judiciary Committee on all things intellectual property, Senators CORNYN and SCHUMER for their sustained leadership on the patent troll issue, Senator LEE for his hard work on the demand letter provision, Senator HATCH for his valuable work on the recovery provision, and Senator KLOBUCHAR for her constructive involvement in moving the bill forward. Because of these efforts, we have a stronger bill and are closer to restoring the integrity of the patent system. I am hopeful that we can move in a deliberative and productive way through Committee so we can get to the floor in a timely manner.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1137

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 ''Protecting American Talent and Entrepreneurship Act of 2015'' or the ''PATENT 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. Pleading requirements for patent infringement actions.
Sec. 4. Customer-suit exception.
Sec. 5. Discovery limits.
Sec. 6. Procedures and practices to implement recommendations of the Judicial Conference.
Sec. 7. Fees and other expenses.
Sec. 8. Requirement of clarity and specificity in demand letters.
Sec. 9. Abusive demand letters.
Sec. 10. Transparency of patent transfer.
Sec. 11. Protection of intellectual property licenses in bankruptcy.
Sec. 12. Small business education, outreach, and information access.
Sec. 13. Studies on patent transactions, quality, and examination.
Sec. 14. Technical corrections to the Leahy-Smith America Invents Act and other improvements.
Sec. 15. Effective date.
Sec. 16. Severability.

SEC. 2. DEFINITIONS.

(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. PLEADING REQUIREMENTS FOR PATENT INFRINGEMENT ACTIONS.

(a) ELIMINATION OF FORM 18.—Not later than 1 month after the date of enactment of this Act, the Supreme Court, using existing resources, shall eliminate Form 18 in the Appendix to the Federal Rules of Civil Procedure (Complaint for Patent Infringement).

(b) 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.—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 a complaint, counterclaim, or cross-claim for patent infringement, except as provided in subsection (c), 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 (or a representative 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 claim identified under paragraph (2), a description of the elements thereof that are alleged to be infringed by the accused instrumentality and how the accused instrumentality is alleged to infringe those elements.

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

''(b) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS.—The court shall, on the motion of any party, dismiss any count or counts of the complaint, counterclaim, or cross-claim for patent infringement if the requirements of paragraphs (1) through (6) of subsection (a) are not met with respect to such count or counts. The fact that a party pleads in accordance with subsection (c) shall not be a basis for dismissal if the party nonetheless states a plausible claim for relief sufficient under the Federal Rules of Civil Procedure.

''(c) INFORMATION NOT ACCESSIBLE.—If some subset of information required to comply with subsection (a) is not accessible to a party after an inquiry reasonable under the circumstances, consistent with rule 11 of the Federal Rules of Civil Procedure, an allegation requiring that information may be based upon a general description of that information, along with a statement as to why the information is not accessible.

''(d) AMENDMENT OF PLEADINGS.—Nothing in this provision shall be construed to affect a party's leave to amend pleadings as specified in the Federal Rules of Civil Procedure. Amendments permitted by the court are subject to the pleading requirements set forth in this section.

''(e) CONFIDENTIAL INFORMATION.—A party required to disclose information described under subsection (a) may file information believed to be confidential under seal, 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 pleading.

''(f) EXEMPTION.—Subsection (a) shall not apply to a civil action that includes a claim for relief arising under section 271(e)(2).

"§ 281B. Early disclosure requirements for patent infringement actions

''(a) DEFINITIONS.—In this section—

''(1) the term 'financial interest'—

''(A) means—

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

''(ii) with regard to the patentee, direct or indirect ownership or control by a person of more than 20 percent of the patentee; 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 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) the term 'patentee' means a party in a civil action that files a pleading subject to the requirements of section 281A;

''(3) the term 'proceeding' means all stages of a civil action, including pretrial and trial proceedings and appellate review; and

''(4) the term 'ultimate parent entity' has the meaning given the term in section 261A.

''(b) EARLY DISCLOSURE REQUIREMENTS.—Notwithstanding the requirements of section 299B, a patentee shall disclose to the court and each adverse party, not later than 14 days after the date on which the patentee serves or files the pleading subject to the requirements of section 281A—

''(1) the identity of each—

''(A) assignee of the patent or patents at issue, and any ultimate parent entity thereof;

''(B) entity with a right to sublicense to unaffiliated entities or to enforce the patent or patents at issue, and any ultimate parent entity thereof; and

''(C) entity, other than an entity the ultimate parent of which is disclosed under subparagraph (A) or (B), that the patentee knows to have a financial interest in—

''(i) the patent or patents at issue; or

''(ii) the patentee, and any ultimate parent entity thereof; and

''(2) for each patent that the patentee alleges to be infringed—

''(A) a list of each complaint, counterclaim, or cross-claim filed by the patentee or an affiliate thereof in the United States during the 3-year period preceding the date of the filing of the action, and any other complaint, counterclaim, or cross-claim filed in the United States during that period of which the patentee has knowledge, that asserts or asserted such patent, including—

''(i) the caption;

''(ii) civil action number;

''(iii) the court where the action was filed; and

''(iv) if applicable, any court to which the action was transferred;

''(B) a statement as to whether the patent is subject to an assurance made by the party to a standards development organization to license others under such patent if—

''(i) the assurance specifically identifies such patent or claims therein; and

''(ii) the allegation of infringement relates to such standard; and

''(C) a statement as to whether the Federal Government has imposed specific licensing requirements with respect to such patent.

''(c) DISCLOSURE OF FINANCIAL INTEREST.—

''(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, the address of the principal place of business, and the name and correspondence address of the registered agent;

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

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

''(d) PROVISION OF INFORMATION TO THE UNITED STATES PATENT AND TRADEMARK OFFICE.—Not later than 1 month after the date on which the disclosures required under subsection (b) are made, the patentee shall provide to the United States Patent and Trademark Office a filing containing the information disclosed pursuant to subsection (b)(1).

''(e) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—A patentee required to disclose information under subsection (b) may file, under seal, information believed to be confidential, with a motion setting forth good cause for such sealing.

''(2) HOME ADDRESS INFORMATION.—For purposes of this section, the home address of an individual shall be considered to be confidential information.''.

(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 items:

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

''281B. Early disclosure requirements for patent infringement actions.''.

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

SEC. 4. CUSTOMER-SUIT EXCEPTION.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following:

"§ 299A. Customer stay

''(a) DEFINITIONS.—In this section—

''(1) the term 'covered customer' means a retailer or end user that is accused of infringing a patent or patents in dispute based on—

''(A) the sale, or offer for sale, of a covered product or covered process without material modification of the product or process in a manner that is alleged to infringe a patent or patents in dispute; or

''(B) the use by such retailer, the retailer's end user customer, or an end user of a covered product or covered process without material modification of the product or process in a manner that is alleged to infringe a patent or patents in dispute;

''(2) the term 'covered manufacturer' means a person who manufactures or supplies, or causes the manufacture or supply of, a covered product or covered process, or a relevant part thereof;

''(3) the term 'covered process' means a process, method, or a relevant part thereof, that is alleged to infringe the patent or patents in dispute where such process, method, or relevant part thereof is implemented by an apparatus, material, system, software or other instrumentality that is provided by the covered manufacturer;

''(4) the term 'covered product' means a component, product, system, service, 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;

''(5) for purposes of this section, the term 'end user' shall include an affiliate of such an end user, but shall not include an entity that manufactures or causes the manufacture of a covered product or covered process or a relevant part thereof;

''(6) the term 'retailer' means an entity that generates its revenues predominately through the sale to the public of consumer goods or services, or an affiliate of such entity, but shall not include an entity that manufactures or causes the manufacture of a covered product or covered process or a relevant part thereof; and

''(7) for purposes of the definitions in subparagraphs (5) and (6), the terms 'use' and 'sale' mean the use and the sale, respectively, within the meanings given those terms under section 271.

''(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)), 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 covered process if—

''(1) the covered manufacturer is a party to the action or a separate action in a Federal court of the United States involving the same patent or patents relating to the same covered product or covered process;

''(2) the covered customer agrees to be bound as to issues determined in an action described in paragraph (1) without a full and fair opportunity to separately litigate any such issue, but only as to those issues for which all other elements of the common law doctrine of issue preclusion are met; and

''(3) 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 or paper in the action that specifically identifies the covered product or covered process as a basis for the alleged infringement of the patent by the covered customer, and specifically identifies how the covered product or covered process is alleged to infringe the patent; or

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

''(c) MANUFACTURER CONSENT IN CERTAIN CASES.—If the covered manufacturer has been made a party to the action on motion by the covered customer, then a motion under subsection (b) may only be granted if the covered manufacturer and the covered customer agree in writing to the stay.

''(d) 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 major issues in the suit against the covered customer, such as that a covered product or covered process identified in the motion to lift the stay is not a material part of the claimed invention or inventions in the patent or patents in dispute; or

''(B) the stay unreasonably prejudices or would be manifestly unjust to the party seeking to lift 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)(1), 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)(1)—

''(1) obtains or consents to entry of a consent judgment involving one or more of the 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 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 the issues that gave rise to the stay 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 any stay, expand 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:

''299A. Customer stay.''.

SEC. 5. DISCOVERY LIMITS.

(a) AMENDMENT.—Chapter 29 of title 35, United States Code, as amended by section 4, is amended by adding at the end the following:

''§ 299B. Discovery in patent infringement action

''(a) DISCOVERY IN PATENT INFRINGEMENT ACTION.—

''(1) IN GENERAL.—Except as provided in subsections (b) and (c), in a civil action arising under any Act of Congress relating to patents, discovery shall be stayed during the pendency of 1 or more motions described in paragraph (2) if the motion or motions were filed prior to the first responsive pleading.

''(2) MOTIONS DESCRIBED.—The motions described in this paragraph are—

''(A) a motion to dismiss;

''(B) a motion to transfer venue; and

''(C) a motion to sever accused infringers.

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

''(1) RESOLUTION OF MOTIONS.—A court may allow limited discovery necessary to resolve a motion described in subsection (a) or a motion for preliminary relief properly raised by a party before or during the pendency of a motion described in subsection (a).

''(2) ADDITIONAL DISCOVERY.—On motion, a court may allow additional discovery if the court finds that such discovery is necessary to preserve evidence or otherwise prevent specific prejudice to a party.

''(c) EXCLUSION FROM DISCOVERY LIMITATION.—

''(1) VOLUNTARY EXCLUSION.—The parties to an action described in subsection (a) may voluntarily consent to be excluded, in whole or in part, from the limitation on discovery under subsection (a).

''(2) CLAIMS UNDER SECTION 271(e).—This section shall not apply to a civil action that includes a claim for relief arising under section 271(e).

''(d) RULES OF CONSTRUCTION.—

''(1) TIMELINE FOR RESPONSIVE PLEADINGS.—Nothing in this section shall be construed to alter the time provided by the Federal Rules of Civil Procedure for the filing of responsive pleadings.

''(2) EXCHANGE OF CONTENTIONS.—Nothing in this section shall prohibit a court from ordering or local rules from requiring the exchange of contentions regarding infringement, non-infringement, invalidity or other issues, by interrogatories or other written initial disclosures, at an appropriate time determined by the court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, as amended by section 4, is amended by inserting after the item relating to section 299A the following:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to any action for which a complaint is filed on or after 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, should develop rules and procedures to implement the discovery proposals described in paragraph (2) to address concerns regarding the asymmetries in discovery burdens and costs that may arise in a civil action arising under any Act of Congress relating to patents.

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

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

(B) ELECTRONIC COMMUNICATION.—If the parties request discovery of electronic communication, how such discovery should be phased to occur relative to the exchange of initial disclosures and core documentary evidence, and appropriate limitations to apply to such discovery.

(C) ADDITIONAL DOCUMENT DISCOVERY.—The manner and extent to which the following should apply:

(i) IN GENERAL.—Each party to the action may seek any additional document discovery beyond core documentary evidence as 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) 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.

(iv) 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.—The manner and extent to which 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.

(3) SCOPE OF DOCUMENTARY EVIDENCE.—In developing rules or procedures under this section, the Judicial Conference should consider which kinds of evidence constitute ''core documentary evidence''.

(4) DEFINITIONS.—In this subsection the term ''electronic communication'' means any form of electronic communication, including email, text message, or instant message.

(b) JUDICIAL CONFERENCE PATENT CASE MANAGEMENT.—The Judicial Conference of the United States, using existing resources, should 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.

SEC. 7. FEES AND OTHER EXPENSES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, in patent cases, reasonable attorney fees should be paid by a non-prevailing party whose litigation position or conduct is not objectively reasonable. As the Supreme Court wrote in adopting this legal standard in the context of fee shifting under section 1447 of title 28, United States Code, this standard is intended to strike a balance; in patent cases, a more appropriate balance between protecting the right of a patent holder to enforce its patent on the one hand, and deterring abuses in patent litigation and threats thereof on the other.

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

''§ 285. Fees and other expenses

''(a) AWARD.—In connection with a civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, upon motion by a prevailing party, the court shall determine whether the position of the non-prevailing party was objectively reasonable in law and fact, and whether the conduct of the non-prevailing party was objectively reasonable. If the court finds that the position of the non-prevailing party was not objectively reasonable in law or fact or that the conduct of the non-prevailing party was not objectively reasonable, the court shall award reasonable attorney fees to the prevailing party unless

special circumstances would make an award unjust.

''(b) COVENANT NOT TO SUE.—A party to a civil action who asserts a claim for relief arising under any Act of Congress relating to patents against another party, and who subsequently unilaterally (i) seeks dismissal of the action without consent of the other party and (ii) extends to such other party a covenant not to sue for infringement with respect to the patent or patents at issue, may be the subject of a motion for attorney fees under subsection (a) as if it were a nonprevailing party, unless the party asserting such claim would have been entitled, at the time that such covenant was extended, to dismiss voluntarily the action without a court order under rule 41 of the Federal Rules of Civil Procedure, or the interests of justice require otherwise.

''(c) RECOVERY OF AWARD.—

''(1) CERTIFICATION; DISCLOSURE OF INTERESTED PARTIES.—

''(A) INITIAL STATEMENT.—A party defending against a claim of infringement may file, not later than 14 days before a scheduling conference is to be held or a scheduling order is due under rule 16(b) of the Federal Rules of Civil Procedure, a statement that such party holds a good faith belief, based on publicly-available information and any other information known to such party, that the primary business of the party alleging infringement is the assertion and enforcement of patents or the licensing resulting therefrom.

''(B) CERTIFICATION.—Not later than 45 days after being served with an initial statement under subparagraph (A), a party alleging infringement shall file a certification that—

''(i) establishes and certifies to the court, under oath, that it will have sufficient funds available to satisfy any award of reasonable attorney fees under this section if an award is assessed;

''(ii) demonstrates that its primary business is not the assertion and enforcement of patents or the licensing resulting therefrom;

''(iii) identifies interested parties, if any, as defined in paragraph (2) of this subsection; or

''(iv) states that it has no such interested parties.

A party alleging infringement shall have an ongoing obligation to supplement its certification under this subparagraph within 30 days after a material change to the information provided in its certification.

''(C) NOTICE TO INTERESTED PARTY.—A party that files a certification under subparagraph (B)(iii) shall, prior to filing the certification, provide each identified interested party actual notice in writing by service of notice in any district where the interested party may be found, such that jurisdiction shall be established over each interested party to the action for purposes of enforcing an award of attorney fees under this section, consistent with the Constitution of the United States. The notice shall identify the action, the parties, the patents at issue, and the interest qualifying the party to be an interested party. The notice shall inform the recipient that the recipient may be held accountable under this subsection for any award of attorney fees, or a portion thereof, resulting from the action in the event the party alleging infringement cannot satisfy the full amount of such an award, unless the recipient renounces its interest pursuant to subparagraph (E) or is otherwise exempt from the applicability of this subsection.

''(D) ACCOUNTABILITY FOR INTERESTED PARTIES.—Any interested parties who are timely served with actual notice pursuant to subparagraph (C) and do not renounce their interests pursuant to subparagraph (E) or are not otherwise exempt from the applicability of this subsection may be held accountable for any fees, or a portion thereof, awarded under this section in the event that the party alleging infringement cannot satisfy the full amount of the award. If a true and correct certification under clause (i) or (ii) of subparagraph (B) is timely filed with the court, interested parties shall not be subject to this subparagraph.

''(E) RENUNCIATION OF INTEREST.—Any recipient of a notice under subparagraph (C) may submit a statement of renunciation of interest in a binding document with notice to the court and parties in the action not later than 120 days after receipt of the notice under subparagraph (C). The statement shall be required to renounce only such interest as would qualify the recipient as an interested party.

''(F) INSTITUTIONS OF HIGHER EDUCATION EXCEPTION.—Any institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or under equivalent laws in foreign jurisdictions), or a non-profit technology transfer organization whose primary purpose is to facilitate the commercialization of technologies developed by 1 or more institutions of higher education, may exempt itself from the applicability of this subsection by filing a certification that it qualifies for the exception provided for in this subparagraph with the court and providing notice to the parties.

''(G) INTEREST OF JUSTICE EXCEPTION.—Any recipient of a notice under subparagraph (C) may intervene in the action for purposes of contesting its identification as an interested party or its liability under this subsection, and a court may exempt any party identified as an interested party from the applicability of this subsection as the interest of justice requires.

''(2) INTERESTED PARTY.—In this section, the term 'interested party'—

''(A) means a person who has a substantial financial interest related to the proceeds from any settlement, license, or damages award resulting from the enforcement of the patent in the action by the party alleging infringement;

''(B) does not include an attorney or law firm providing legal representation in the action if the sole basis for the financial interest of the attorney or law firm in the outcome of the action arises from the attorney or law firm's receipt of compensation reasonably related to the provision of the legal representation;

''(C) does not include a person who has assigned all right, title, and interest in a patent, except for passive receipt of income, to an entity described in paragraph (1)(F), or who has a right to receive any portion of such passive income; and

''(D) does not include a person who would be an interested party under subparagraph (A) but whose financial interest is based solely on an equity or security interest established when the party alleging infringement's primary business was not the assertion and enforcement of patents or the licensing resulting therefrom.

''(d) CLAIMS UNDER SECTION 271(e).—

''(1) APPLICABILITY.—Subsections (a), (b), and (c) shall not apply to a civil action that includes a claim for relief arising under section 271(e).

''(2) AWARD IN CERTAIN CLAIMS UNDER SECTION 271(E).—In a civil action that includes a claim for relief arising under section 271(e), the court may in exceptional cases award reasonable attorney fees to the prevailing party.''.

(c) CONFORMING AMENDMENT AND AMENDMENT.—

(1) 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.''.

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

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to any action filed on or after such date.

SEC. 8. REQUIREMENT OF CLARITY AND SPECIFICITY IN DEMAND LETTERS.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, as amended by section 5, is amended by adding at the end the following:

''§ 299C. Pre-suit written notice

''(a) APPLICABILITY.—Subsection (b) shall not apply—

''(1) to written communication between parties—

''(A) regarding existing licensing agreements;

''(B) as part of an ongoing licensing negotiation, provided that the initial written notice complied with the requirements of subsection (b) of this section; or

''(C) sent after the initial written notice, provided that the initial written notice complied with the requirements of subsection (b) of this section; or

''(2) if the court determines it is in the interest of justice to waive the requirements of subsection (b).

''(b) WRITTEN NOTIFICATION REQUIREMENTS.—

''(1) IN GENERAL.—In a civil action alleging infringement of a patent in which the plaintiff has provided written notice of the accusation of infringement to the party accused of infringement prior to filing the action, the initial written notice shall contain the information required under paragraph (2) or be subject to paragraph (3).

''(2) REQUIRED INFORMATION PROVIDED IN INITIAL WRITTEN NOTICE.—The initial written notice described in paragraph (1) shall contain, at a minimum—

''(A) an identification of—

''(i) each patent believed to be infringed, including the patent number; and

''(ii) at least one claim of each patent that is believed to be infringed;

''(B) an identification of each product, process, apparatus, or chemical composition, including any manufacturer thereof, that is believed to infringe one or more claims of each patent under subparagraph (A);

''(C) a clear and detailed description of the reasons why the plaintiff believes each patent identified under subparagraph (A) is infringed;

''(D) notice to the intended recipient that the intended recipient may have the right to a stay of any suit in accordance with section 299A;

''(E) the identity of any person with the right to enforce each patent under subparagraph (A); and

''(F) if compensation is proposed, a short and plain statement as to how that proposed compensation was determined.

''(3) ADDITIONAL TIME TO RESPOND.—If the initial written notice provided to the defendant prior to the filing of the civil action did not contain the information required by paragraph (2), the defendant's time to respond to the complaint shall be extended by an additional 30 days.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, as amended by section 5, is amended by adding at the end the following:

''299C. Pre-suit written notice.''.

(c) WILLFUL INFRINGEMENT.—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 subparagraph (B), 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 complies with the standards set out in section 299C(b)(2).''; and

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

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply to any action for which a complaint is filed on or after that date.

SEC. 9. ABUSIVE DEMAND LETTERS.

(a) BAD-FAITH DEMAND LETTERS.—Chapter 29 of title 35, United States Code, as amended by section 8, is amended by adding at the end the following:

''§ 299D. Bad-faith demand letters

''(a) DEFINITION.—In this section, the term 'affiliated person' means a person affiliated with the intended recipient of a written communication.

''(b) CIVIL PENALTIES FOR CERTAIN UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN CONNECTION WITH ABUSIVE DEMAND LETTERS.—A person who commits an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), in connection with the assertion of a United States patent, and who engages in the widespread sending of written communications representing that the intended recipients, or any persons affiliated with those recipients, are or may be infringing, or have or may have infringed, the patent and may bear liability or owe compensation to another, shall be deemed to have violated a rule defining an unfair or deceptive act or practice described under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) if—

''(1)(A) the communications falsely—

''(i) represent that administrative or judicial relief has been sought against the recipient or others; or

''(ii) threaten litigation if compensation is not paid, the infringement issue is not otherwise resolved, or the communication is not responded to; and

''(B) there is a pattern of false statements or threats described in subparagraph (A) having been made without litigation or other relief then having been pursued;

''(2) the assertions contained in the communications lack a reasonable basis in fact or law, because—

''(A) 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 affiliated persons;

''(B) the communications seek compensation on account of activities undertaken after the patent has expired;

''(C) the communications seek compensation for a patent that has been held to be invalid or unenforceable in a final judicial or administrative proceeding that is unappealable or for which any opportunity for appeal is no longer available;

''(D) the communications seek compensation for activities by the recipient that the sender knows do not infringe the patent because such activities are authorized by the patentee;

''(E) the communications falsely represent that an investigation of the recipient's alleged infringement has occurred; or

''(F) the communications falsely state that litigation has been filed against, or a license has been paid by persons similarly situated to the recipient; or

''(3) the content of the written communications is likely to materially mislead a reasonable recipient because the content fails to include facts reasonably necessary to inform the recipient—

''(A) of 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;

''(B) of the patent issued by the United States Patent and Trademark Office alleged to have been infringed; and

''(C) if infringement or the need to pay compensation for a license is alleged, of an identification of at least one product, service, or other activity of the recipient that is alleged to infringe the identified patent or patents and, unless the information is not readily accessible, an explanation of the basis for such allegation.

''(c) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

''(1) POWERS OF COMMISSION.—The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

''(2) PRIVILEGES AND IMMUNITIES.—Any person who engages in an act or practice described in subsection (b) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 35, United States Code, as amended by section 8, is amended by inserting after the item relating to section 299C the following:

''299D. Bad-faith demand letters.''.

SEC. 10. TRANSPARENCY OF PATENT TRANSFER.

(a) PATENT AND TRADEMARK OFFICE PROCEEDINGS.—

(1) IN GENERAL.—Chapter 26 of title 35, United States Code, is amended by inserting after section 261 the following:

''§ 261A. Disclosure of information relating to patent ownership

''(a) DEFINITIONS.—In this section:

''(1) PERIOD OF NONCOMPLIANCE.—The term 'period of noncompliance' refers to a period of time during which the assignee or 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.

''(2) ULTIMATE PATENT 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 by regulation modify the definition of the term 'ultimate parent entity'.

''(b) REQUIREMENT TO DISCLOSE ASSIGNMENT.—An assignment of all substantial rights in an issued patent shall be recorded in the Patent and Trademark Office—

''(1) not later than the date on which the patent is issued; and

''(2) when any subsequent assignment is made that results in a change to the ultimate parent entity—

''(A) not later than 3 months after the date on which such assignment is made; or

''(B) in the case of an assignment made as part of a corporate acquisition that meets the reporting thresholds under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)), not later than 6 months after the closing date of such acquisition.

''(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.—In a civil action in which a party asserts a claim for infringement of a patent, if there was a failure to comply with subsection (b) for the patent—

''(1) the party asserting infringement of the patent 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, unless the denial of such damages or fees would be manifestly unjust; and

''(2) the court shall award to a prevailing accused infringer reasonable attorney fees and expenses incurred in discovering the identity of any undisclosed entity required to be disclosed under subsection (b), unless such sanctions would be manifestly unjust.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to any patent for which a notice of allowance is 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:

''261A. Disclosure of information relating to patent ownership.''.

(b) 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 section 261A of title 35, United States Code, as added by subsection (a), to facilitate the collection and maintenance of the information required by the amendments made by this section and section 3(b) of this Act, and to ensure the timely disclosure of such information to the public.

SEC. 11. PROTECTION OF INTELLECTUAL PROPERTY LICENSES IN BANKRUPTCY.

(a) 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).''.

(b) TRADEMARKS.—

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

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

(B) in subparagraph (F), by adding ''or'' at the end; and

(C) 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);''.

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

(A) in subparagraph (B)—

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

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

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

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

''(D) in the case of a trademark, service mark, or trade name, the licensee shall not be relieved of any of its obligations to maintain the quality of the products and services

offered under or in connection with the licensed trademark, service mark or trade name, and the trustee shall retain the right to oversee and enforce quality control for said products and/or services.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of 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. 12. 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 existing small business patent outreach programs of the Office, in consultation with the relevant offices at the Small Business Administration and the Minority Business Development Agency, shall provide education and awareness regarding resources available for those persons responding to allegations of patent infringement.

(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 section 261A of title 35, United States Code, as added by section 10, and section 281B(b) of title 35, United States Code, as added by section 3; 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. 13. 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 18 months after the date of 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 PATENT SMALL CLAIMS PROCEDURES.—

(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 procedures 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 necessary criteria for using small claims procedures;

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

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

(2) REPORT ON STUDY.—Not later than 1 year after the date of 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).

(c) STUDY ON BUSINESS METHOD PATENT QUALITY.—

(1) GAO STUDY.—The Comptroller General of the United States shall, using existing resources, 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 1 year after the date of 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. 14. TECHNICAL CORRECTIONS TO THE LEAHY-SMITH AMERICA INVENTS ACT AND OTHER IMPROVEMENTS.

(a) Section 325(e)(2) of title 35, United States Code, is amended by striking ''or reasonably could have raised''.

(b) 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).

(c) 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) REQUIREMENT TO EXECUTE.—Section 115(a) of title 35, United States Code, is amended in the second sentence by striking ''shall execute'' and inserting ''may be required by the Director to execute''.

(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).

(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).

(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 ''18 months''.

(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.

(d) MANAGEMENT OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.—

(1) IN GENERAL.—Section 3(b)(1) of title 35, United States Code, is amended in the first sentence—

(A) by striking ''be vested with the authority to act in the capacity of the'' and inserting ''serve as Acting,''; and

(B) by inserting before the period ''or in the event of a vacancy in the office of the Director.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to appointments and vacancies occurring before, on, or after the date of enactment of this Act.

SEC. 15. EFFECTIVE DATE.

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

SEC. 16. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision or amendment to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

Mr. LEAHY. Mr. President, I am proud to introduce legislation with Senators GRASSLEY, CORNYN, SCHUMER, LEE, HATCH and KLOBUCHAR. As members of the Senate Judiciary Committee, we have been working for almost 2 years to address abusive conduct in our patent system. Our legislation will deter abusive practices while preserving the strength of America's patent system. After months of negotiations, we have achieved a strong and fair balance that I strongly support.

America's patent system has fueled our Nation's greatest technological advances, creating jobs and spurring innovation. By promoting investment in new products and designs, our patent system drives developments that benefit us all. In recent years, however, bad actors have abused the patent system to extract money from unsuspecting companies through broad threats of patent litigation. Coffee shops have been threatened with patent suits simply for using a Wi-Fi router they purchased off the shelf, and website owners have faced costly litigation for using basic software in e-commerce. Instead of using patents to drive new creations, some entities are holding up main street businesses and innovative companies simply to extort financial settlements.

The PATENT Act addresses this behavior through several important reforms. It will promote transparency to hold bad actors accountable; curb misleading demand letters; and empower customers who have been improperly targeted for simply using a product when the product's manufacturer should defend the suit instead. I have heard about the urgent need for these measures from businesses in Vermont and across the country, which is why I included them in the bipartisan legislation on patent abuses that Senator LEE and I introduced last Congress. This provision has earned widespread support and I am glad it is part of the bill we introduce today.

The legislation also addresses imbalances in patent litigation that make it unusually difficult and expensive to defend against frivolous lawsuits. These measures would require detailed allegations in legal complaints for patent infringement, establish reasonable parameters for document discovery to save costs, and ensure that litigants can be held accountable for the other side's attorneys' fees if their conduct or position is found by a court to be objectively unreasonable.

Drafting legislation that involves the enforcement of patent rights is a complex problem that requires time and balance. Congress spent multiple years developing what ultimately became the Leahy-Smith America Invents Act of 2011, and we were able to come together to find common ground and enact that major piece of legislation into law. Throughout our negotiations on this bill, I have emphasized the need to address concerns from major manufacturers, inventors, universities, and patent law practitioners who warned that, if taken too far, patent litigation reform proposals would harm legitimate patent holders' ability to protect their rights in court. The legislation we have introduced today is greatly improved as a result of their input.

It is worth highlighting some of the changes that have been made to the bill to respond to those concerns, changes which were personally important to me as we negotiated this legislation. The language in the PATENT Act provides for fee shifting only in cases where the court finds that the losing party was not ''objectively reasonable.'' This is an important change from the approach of ''presumptive loser pays'' contained in the House's patent reform bill, the Innovation Act. It promotes judicial discretion and ensures the burden is on the party seeking fees to show that fees should be awarded. An additional exception allows the court to refrain from awarding fees if such an award would be unjust—for example, because it would cause undue financial harm to an individual inventor or a public institution of higher education.

The PATENT Act simplifies the pleading requirements that are contained in the Innovation Act, and ensures that a plaintiff is not required to plead information if it is not accessible to them. I am grateful that the other authors of this bill worked with me to ensure that the standard of what a plaintiff is required to plead about infringement of their patent claims tracks Rule 8 of the Federal Rules of Civil Procedure, without creating a higher standard for plaintiffs to prove a plausible claim for relief.

I am also grateful for the significant work that was done to streamline the discovery provisions of the bill, to protect litigants from costly discovery while ensuring that legitimate plaintiffs are not prejudiced by unreasonable limitations on their ability to access information. Under the PATENT Act, discovery is stayed while the court resolves early, pre-answer motions about whether the case has been brought in the correct venue, against the correct defendants, and whether the complaint states a plausible claim for relief. Discovery is permitted if necessary to resolve those motions, to resolve a motion for preliminary relief, or if failure to allow discovery would cause specific prejudice to a party.

Taken together, these provisions will help promote efficiency in patent suits while ensuring that patent holders can fairly protect their rights in court. While the provisions are not perfect, they strike a meaningful balance that I am happy to support given the unusual complexities of patent litigation.

As this legislation proceeds to markup in the Senate Judiciary Committee next month, I look forward to considering additional amendments that will improve this bill. For example, in recent months, some companies and inventors have raised concerns about unfair practices that are taking place in the post-grant review proceedings through which patents can be challenged at the Patent and Trademark Office. Those proceedings were created by the Leahy-Smith America Invents Act as an important tool to improve patent quality, but if they are being misused or creating inaccurate perceptions in the marketplace, we should address those concerns. I look forward to working with the stakeholders who have already contributed meaningfully to this bill.

Abusive practices by bad actors are a discredit to our strong patent system, and it is in no one's interest that they continue. Businesses, innovators and customers that are victims of abusive conduct need us to come together to enact reform. I look forward to this bill's swift consideration in the Judiciary Committee.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 154—DESIGNATING MAY 16, 2015, AS ''KIDS TO PARKS DAY''

Mr. WYDEN (for himself, Mr. PORTMAN, Mr. BOOKER, Ms. HIRONO, and Mr. HEINRICH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 154

Whereas the 5th annual Kids to Parks Day will be celebrated on May 16, 2015;

Whereas the goal of Kids to Parks Day is to promote healthy outdoor recreation and environmental stewardship, empower young people, and encourage families to get outdoors and visit the parks and public land of the United States;

Whereas on Kids to Parks Day, individuals from rural and urban areas of the United States can be reintroduced to the splendid national, State, and neighborhood parks located in their communities;

Whereas communities across the United States offer a variety of natural resources and public land, often with free access, to individuals seeking outdoor recreation;