

CLIENT ALERT

New Year, New Congress, Same Patent Reform Legislation

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On February 5, 2015, House Judiciary Committee Chairman Bob Goodlatte (R-Va.) re-introduced the Innovation Act (H.R. 9). The Act is nearly identical to [legislation that the House passed in 2013](#). According to its sponsors, the Innovation Act broadly seeks to curb the "abusive practices" of non-practicing entities, so-called "patent trolls." Specifically, the Act would:

1. require parties claiming willful infringement to identify the parent entity in demand letters;
2. impose heightened pleading standards, requiring patent holders to more clearly assert which patents and claims are at issue and the specific products that allegedly infringe;
3. mandate fee shifting measures where the loser, unless "reasonably justified in law and fact," would pay the winning party's fees; and
4. limit the scope and breadth of discovery before a court's construction of the patent claims at issue.

The bill also proposes a substantive shift in patent law, requiring the U.S. Patent and Trademark Office's Patent Trial and Appeal Board (PTAB) to construe patent claims during post-grant proceedings using the "ordinary skill in the art" standard used at the district court level. Currently, the PTAB applies the "broadest reasonable interpretation" standard to the review of patent claims—a standard the Federal Circuit affirmed earlier this week in its first American Invents Act appeal ruling in *In Re Cuozzo*.

This Innovation Act is co-sponsored by Representative Peter DeFazio (D-Ore.); Subcommittee on Courts, Intellectual Property, and the Internet Chairman Darrell Issa (R-Calif.); Subcommittee on Courts, Intellectual Property, and the Internet Ranking Member Jerrold Nadler (D-N.Y.); Science, Space and Technology Committee Chairman Lamar Smith (R-Texas); Representative Zoe Lofgren (D-Calif.); and Energy and Commerce Subcommittee on Communications, and Technology Ranking Member Anna Eshoo (D-Calif.).

Supporters, particularly those in the technology sector, have said that the Innovation Act is an important step toward curbing abusive litigation by "patent trolls," who they say effectively tax innovation with no perceptible benefit. Other groups, including those representing small businesses, had mixed reactions to the bill. Notably, the Coalition of Small Business Innovators, a national, non-partisan coalition of organizations dedicated to stimulating sustained, private investment in small companies, praised the bill. BIO, which represents companies in the biotech industry, expressed concern that the Innovation Act may do more harm than good because it may discourage small companies from enforcing their intellectual property rights against patent infringers. The Innovation Alliance, for another example, has expressed skepticism about the broad scope and reach of the bill, especially in light of recent and rapid developments in patent law that seem to be diminishing the patent troll threat already.

Although the last iteration of the Innovation Act ultimately failed in the Senate, supporters of the current bill are more optimistic this time around with a new congress and the continued support from the White House.

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