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The United States is falling behind the rest of the world in job creation, especially in creating technology based jobs. The United States exports less than one half of what China exports in high-technology products. China has high tech exports of \$457 billion, the US \$221 billion, Germany 186 billion, Japan \$126 billion, Korea \$122 billion, and France \$105 billion. The US is losing the technology commercialization battle.

The SBIR Reauthorization Act added significant provisions encouraging and requiring the Government to commercialize SBIR/STTR technology. If these important provisions of the law are fully implemented it will help the US create more domestic high tech jobs.

The law is quite clear. "Sec. 5108: To the **greatest extent practicable**, Federal agencies and Federal prime contractors **shall** issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology." Hopefully, the agencies will make the use of SBIR/STTR Phase IIIs more of a reality.

Section 5122 of the Reauthorization law requires that insertion **incentives** for prime contractor should be established for all large DOD contracts. To date no such incentives have been established.

The law requires that incentives be established to encourage government personnel to award Phase III follow on contracts to SBIR/STTR awards. To date no such incentives have been established.

The law also requires prime contractors to report the number and dollar amount of all subcontracts for Phase III SBIR or STTR awards. To date there is no such reporting requirement.

The law also requires that the Secretary shall report the number and percentage of Phase II awards that are transitioned into fielded systems or programs of record. To date there has been no such report and I don't believe that DOD is even collecting the data to make the report in the future.

We are disappointed at the DOD's slow actions implementing the commercialization and reporting provisions required in the law.

We are pleased that the DOD in its FAR regulations did recognize the need to set goals for transitioning SBIR/STTR technology. The DFAR 5000.2 instructions require all program managers to set goals for themselves.

STATUTORY. Program managers will establish goals for applying SBIR and STTR technologies in programs of record. For contracts with a value at or above \$100 million, program managers will establish a goal for the transition of Phase III technologies in subcontracting plans, and report the number and dollar amount of contracts entered into for Phase III SBIR or STTR projects. At each milestone indicated, the Program Manager will provide a detailed plan for the use of SBIR and STTR technologies and associated planned funding profile (Phase I, II, and III).

SBA's retroactive application of commercialization indices is a concern. Sequestration and budget cuts have forced some agencies to limit the number of Phase IIs. We are concerned that a number of new technology companies will be terminated prematurely, without recourse. An appeals process should be put in place.

### **Transfer Act**

First, the venture capitalists took 25% of the SBIR programs for majority owned by VC firms. Now universities want to take 22% of the STTR program. HR 2981, the proposed "TRANSFER Act", would transfer \$80 million per year from the STTR program into a new tech transfer program run exclusively for universities. The SBIR program, with only 3% of the extra-mural Federal R&D funding, creates 25% of all key innovations in America. Large firms account for fewer than 5% of key awards, even though they receive **half** the extramural R&D funding. SBTC believes that much more can and should be done to commercialize SBIR technology by the Government. Today SBIR companies file more patents than all universities combined. SBIR companies commercialize one half of Phase II awards while universities total licensing income is only \$2.6 Billion dollars while receiving over \$40 Billion Federal dollars. Despite SBIR firms' outstanding record of commercialization, the TRANSFER Act would take \$80 million dollars each year, or 22% of the STTR program, and transfer it to an untested, unproven program to have universities study how to commercialize technology. The STTR program has been doing what the Transfer Act can only hope to accomplish. More money should be added to the STTR program not taken from it. SBTC strongly opposes the Transfer Act.

### **Patents**

The House patent bill is another area of concern for SBIR and high technology companies. Under this bill inventors will be the only people in America required to pay the other party's attorney fees if they lose a law suit.

HR 3309 was introduced with the goal of furthering reform of the patent system, particularly with respect to patent-related litigation. Unfortunately, as passed by the House, provisions in the legislation would erect unreasonable barriers to access justice for innovators, especially small start-ups that must be able to defend their businesses against patent infringement in a timely and cost-effective manner, and without needless and numerous procedural hurdles or other obstacles

SBTC Concerns for patent holder/inventors

- HR 3309 would routinely defer or suspend discovery and litigation on the merits in patent infringement cases, whether in whole or against certain parties;
- permit parties to seek reimbursement of their litigation costs from other parties under a vaguely-defined and potentially very broad set of patent-related cases, and to asymmetrically require joinder of additional third parties to the litigation in ways that create unwarranted risks for licensors, business partners, and funders of legitimate patentees; and

- require unreasonable amounts of pleading specificity, and disclosure and public recordation of patent ownership, litigation interests, and other business or confidential information.

The provisions bulleted above create opportunities for systematic delays in patent litigation and increase the time and expense of patent litigation, contrary to the legislation’s purported goals. While many of the provisions are well-intentioned and aimed at addressing legitimate patent litigation concerns, the current language is overly broad and would result in too many unintended and unknowable consequences for innovators who rely on the patent system to fund and protect their inventions. In an attempt to target abusive litigation practices by the few, the proposals in HR 3309 will have a chilling effect on innovation by imposing unjustified burdens on too many legitimate patent owners and investors seeking to enforce and defend their inventions in good faith.

**R&D Expenditures on R&D by Country in U.S, Dollars in Billions**

United States	\$405
China	\$296
Japan	\$160
Germany	\$69
South Korea	\$56
France	\$42
United Kingdom	\$38

**High-Technology Exports**

<b>China</b>	<b>\$457 Billion</b>
<b>US</b>	<b>221</b>
<b>Germany</b>	<b>186</b>
<b>Japan</b>	<b>126</b>
<b>Korea</b>	<b>122</b>
<b>France</b>	<b>105</b>

<http://data.worldbank.org/indicator/TX.VAL.TECH.CD>

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