

H.R. 9 crushes innovation, killing the American dream

By Robert N. Schmidt April 16, 2015, 09:30 am

<http://thehill.com/blogs/congress-blog/technology/238973-hr-9-crushes-innovation-killing-the-american-dream>

H.R. 9, the ill-named “Innovation Act” will allow large, market-dominant firms to infringe with impunity, by making it much more difficult for small inventors to enforce their patents. Three years ago, the American Invents Act made it more difficult to get and keep patents. H.R. 9, purported to solve a patent troll problem, is instead the next step in crushing competition from new small firms, creating “Big Tech Patent Ogres” that can ignore smaller players and their patents. This new bill makes it almost impossible for small technology startups to enforce their patents.

Patents are particularly important for innovative small businesses, which operate on much smaller margins, and often rely much more heavily on their intellectual property for revenue than large firms. Small businesses produced 16 times more patents per employee than large patenting firms, and four times as many of the most valuable patents (R&D 100 awards) as large firms.

H.R. 9 will cloud patent titles, by allowing them to be continually assaulted, making them weaker. For small business, patents will become mostly unenforceable due to the proposed much higher risk of litigation, thus making small business patents significantly less valuable. Loss of patent value constricts new company formation, chilling new investments, and choking job formation. Purporting to attack predatory trolls, H.R. 9 does little to solve the troll problem. Instead it attacks small companies enforcing their patents to protect the interests of large infringers, allowing yet another way for these large, market-dominant firms to crush their competition. This comes at the expense of new business job creation.

There are many changes proposed by the new patent reform legislation that will negatively affect small business. The following are just some of these changes.

When the patent is the principal asset of a small company, investors will be personally liable for the legal fees of the alleged infringer if the plaintiff does not prevail. H.R. 9 makes patents and inventing companies “toxic” assets. An Angel who invested \$10,000 could be stuck with a \$5,000,000 legal bill. This provision is antagonistic to investment in new technologies and discourages small firm patent holders from enforcing their rights. Why should inventors and their investors be singled out as the only class that should bear this burden?

Disclosure of all plaintiff interested parties requires both investors and licensors to be disclosed by small businesses. This discourages commerce in two ways. First, it will require Angel investors to break one of their major priorities: anonymity; discouraging early stage investing, when funding is hardest to obtain. Secondly, it will dampen licensing activities. Licensees need time to incorporate the licensed invention into their product. H.R. 9 requires the disclosure of the license, showing the licensee is adding a new feature, alerting their

competition of their business plans. The licensee may also be liable for legal costs, adding significant risk to the cost of the license. Both these features encourage potential licensees to illegally infringe, rather than doing the right thing and taking a license.

Post Grant Review allows infringers a low cost method to try and invalidate patents at the Patent Office, rather than in court. Some hedge funds are using this law to sell stocks short; and file to invalidate the company's patent for the sole purpose of manipulating the stock price, thus causing great damage to innovative patenting companies. H.R. 9 provides infringers multiple "bites at the apple" by eliminating the estoppel provision, burning the inventor's financial resources and time with effectively "perpetual litigation." It also gives infringers other procedural advantages over patent holders in pleadings and discovery.

The customer stay provision of H.R. 9 leaves some small inventors with no way to enforce their patent. It also encourages large marketers to collude with foreign manufacturers leaving patent holders with no remedy and encouraging American jobs to move overseas.

H.R. 9 also does nothing to eliminate the "invention tax." Inventors have been charged over \$1.7 billion in fees that are collected by the Patent Office, but go to the general fund. This "tax" increases the cost of inventing, diverting funds which should be used for improved patent examination.

The U.S. patent system promotes innovation. H.R. 9 will retard innovation and cost America jobs and wealth. H.R. 9 is contrary to the Founding Fathers' Constitutional intent, contrary to the policies of 220 years of patent law, and contrary to stated intention of the President and Congress to stimulate innovation. We urge the Congress, the White House and the SBA to oppose these potentially damaging changes, and instead support either the Troll Act in the House or the STRONG Patents Act in the Senate, both of which solve the troll issue, but do not hurt small inventors. If H.R. 9 becomes law as is, patent ogres will be a much worse problem than trolls could ever be.

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