

Small Businesses Oppose Misguided 'Patent Reforms'



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As a representative of the 5,000 firms who participate in the Small Business Innovation Research (SBIR) program, I can say that small businesses across the country are, or should be, opposed to the misguided “patent reform” bills now being considered in Congress. Both H.R. 9, the “Innovation Act,” in the House and the Senate’s PATENT Act (S. 1137) would have significant detrimental effects on small inventing companies, undermining their intellectual property rights and stifling risk-taking and innovation. That is why small businesses are increasingly joining the long list of universities, venture capitalists, technology startups, small inventor entrepreneurs, former patent commissioners, patent court judges, conservatives, and liberals that oppose these misguided bills.

While purportedly promoting innovation and suppressing so-called “troll” activity, the Innovation Act and the PATENT Act would actually do neither. Legislation can help to target abuses, and Representatives should vote for a “patent reform” bill, but definitely not these two bills, which should never be allowed to move forward. Here is why:

1. **They attack the only Right guaranteed by the Constitution.** The Innovation Act and the PATENT Act would severely hurt the most fundamental (and only) right in the U.S. Constitution. [If you search the Constitution, the word “right” is only used once. Once! And that is for “*To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries*” [Art. 1, Sec. 8, Cl. 8. Note: The Founders capitalized the word “Right.” They knew its importance.] Thus, the authors of these bills would suppress the only original Constitutionally-provided right. It is not a very conservative or American action to diminish the Constitution. What makes this even more stunning is that this “*exclusive Right to their respective Writings and Discoveries*” was even more fundamental to the Founding Fathers than were the rights of religion, speech, press, assembly, petition, and

the right to keep and bear arms, which came three years later (ratified in 1791 for the Bill of Rights vs. 1788 for the Constitution).

2. **They suppress invention.** The Innovation Act and the PATENT Act are currently being promoted by large, multi-national information technology firms who want to assure that their dominance is not challenged by new ideas from small business and independent inventors that create new and better products. These two bills advantage large, market-dominant, mega-multinational firms by changing the rules to make it more difficult and costly for small inventors to enforce a legitimate patent. They promote giant corporations' "Patent Ogre" activity (the stealing of legitimately patented inventions), ensuring those big corporation can more easily continue to infringe with impunity. They would also quash new investment by piercing the corporate veil, making investors personally liable in patent suits. This would stifle the formation and investment in new companies. For this reason, the Small Business Technology Council, the National Small Business Association, the National Venture Capital Association, and research universities all strongly oppose these bills as being bad for small business, innovation, job generation, and wealth creation.
3. **They are bad for the economy.** Recent administrative and legislative changes have already reduced the value of patents. As a result, the average price of an issued patent dropped 61 percent in the last two years. The average Return on Investment (ROI) for inventing (R&D and patenting) is already negative in many business sectors. The Innovation Act and the PATENT Act would put an added cloud over patent titles, making the ROI on patents even worse. This would mean many fewer individuals or small business inventors would attempt to patent, which would have a devastating effect on company formation. Since the average life span of a corporation on the S&P 500 is about 18 years, this would negatively affect the economy of America in just a few years.
4. **They solve the wrong problem.** Instead of improving patent prosecution, these bills prosecute patentees. The crucial problem that should be fixed is that the U.S. Patent and Trademark Office (USPTO) needs to keep its fees, enabling it to improve its examination procedures and only grant well-reviewed, strong, enforceable patents. Instead of fixing that problem, the patent office is left to continue leading honest patentees to believe that they have a valid patent, which harms the investors who backed them. This missed opportunity wastes resources, promotes infringement, and encourages more, not less, litigation. We need strong enforceable patents, not more litigation.

The Innovation Act and the Patent Act attack Constitutional Rights, are bad for invention, bad for the economy, attempt to solve the wrong problem, and would significantly harm small businesses and small inventors. It is time to put a stop to these bills.

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Tags: Innovation Act, PATENT Act, Robert Schmidt, small businesses, U.S. Patent and Trademark Office

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