

# Nine Reasons to Vote “No!” on H.R. 9

*Patent law is complicated. Fairness is not.*

**1. It threatens America’s leadership in global innovation** -- Follow the chain of cause and effect: 1) H.R. 9 will make it harder for inventors to protect their inventions; 2) that will make investors less likely to invest in them; 3) that will mean fewer new technologies brought to market; 4) that will mean less innovation here in the United States. American innovation has been on the cutting edge for over 200 years -- from the lightbulb to smart devices -- because of our strong patent protection. We can’t weaken it now.

**2. It will help Chinese patent cheaters** -- H.R. 9 will make it harder to enforce U.S. patent rights by making it harder to get into court, harder to get evidence of infringement, harder to hold an infringer responsible, and riskier to bring a case. The flip side of making patents harder to enforce? *It makes them easier to infringe.* The problem? China has a notoriously low regard for intellectual property rights and will benefit when H.R. 9 makes it easier to copy American innovations.

**3. It isn’t fair** -- H.R. 9 hurts the little guy. It requires patent owners to provide unprecedented documentation to support each element of every patent claim in every lawsuit *before going to court.* This may sound good, but it goes so far that it virtually requires a patent owner to prove his or her case before even walking through the courthouse door—with no right of “discovery” to help gather necessary facts. Big companies may be able to afford this. Little companies, plaintiffs and defendants alike, can’t.

**4. It’s a solution in search of a problem** -- Do “patent trolls” exist? Yes. But H.R. 9 would hurt all patent owners, not just “trolls.” The truth is that patent litigation is way down. Data shows that the percentage of patents involved in litigation has remained steady for decades, and that the number of patent cases has fallen significantly since the last time Congress considered this bill. The TROL Act, H.R. 2045 does something H.R. 9 does not: it goes directly after patent trolls, requiring the Federal Trade Commission to enforce against those who send “demand letters” in bad faith as an unfair and deceptive trade practice, punishable by law. That’s a better solution.

**5. It hurts the little guy** -- H.R. 9 requires “fee shifting,” better known as “loser pays.” If enacted, the losing party will often have to pay attorneys’ fees for both sides. This is intended to fend off abusive patent challenges. But *judges already have the discretion* to include fee shifting in their rulings. H.R. 9 *presumes that the “loser pays.”* Even when an independent inventor challenges a big company but can’t afford the best lawyers. Even when a patent owner honestly believes he’s in the right, but loses in court.

**6. Inventors, universities and start-ups oppose it** -- Scientists working to discover new cures, research universities, and the people who made smart phones possible all oppose the bill. So do the venture capitalists who invest in start-ups and new technologies. These people are not “patent trolls.” So why do they oppose the bill? *Because it undermines innovation and the incentive to fund innovation.* Patents protect their ideas from infringers.

**7. Times have changed** -- H.R. 9 is based on a bill that passed the House (but died in the Senate) in the last Congress. Since then, a lot has changed in the patent litigation world. Like what? Six Supreme Court rulings, for starters. The Patent and Trademark Office has been given new powers. The Judicial Conference of the United States (which sets rules of procedure) has reset the playing field. The Federal Trade Commission has become much more assertive in protecting consumers. The result? *An 18 percent drop in patent litigation in 2014.*

**8. The Founders wouldn’t like it** -- Patent ownership is a fundamental property right—a right Congress is charged with protecting in Article 1 of the Constitution. The Founders gave Congress the power 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.” H.R. 9 weakens the rights of every American inventor.

**9. It hurts America** -- By making it harder for inventors to protect their inventions, and making it easier for Chinese and other foreign entities to copy American patented technology, investors will be less likely to invest in patented inventions. This means less innovation, fewer jobs, slower economic growth, and a weaker America.