

Oral Testimony of Robert N. Schmidt
Co-Chair, Small Business Technology Council
Before the
Senate Small Business and Entrepreneurship Committee
March 19, 2015

Senator Vitter, Senator Cardin, Committee Members, thank you for allowing me to testify today on this very important matter for technology startups and small business. For the past 25 years, I have founded and lead five high-tech companies. Together, they have about 80 employees, a dozen doctorate degrees, over \$10M in annual revenues, and we sell products on all seven continents.

I am here today as the Co-Chair of the [Small Business Technology Council](#), speaking on behalf of the 5,000 firms who participate in the SBIR and STTR programs. I do so to raise our concerns regarding the detrimental effects that “Patent Reform” bills such as H.R. 9, the so-called “Innovation Act,” will have on small inventing companies. We would like to add small business to the list of individual inventors, universities, venture capitalists, patent examiners, former patent commissioners, and Patent Court judges that oppose such legislation. Crafting a narrow and targeted alternative to this harmful legislation is important to small business and inventors, as patents are critical to all innovative firms, and especially SBIR firms.

The Federal Reserve found that patents are the number one indicator of regional wealth.

Small Businesses employ 37% of scientists and engineers, 50% more than all large corporations combined. SBIR firms have received about 121,000 patents. The Fortune 500 firms’ share of R&D 100 awards (the world’s most valuable innovations) has dropped from over 40% in the 1970s and early 1980s to just

6%. (1 in 16); while SBIR firms receive four times as many as all the Fortune 500 firms together.

In short SBIR firms and small business is where invention happens.

Large firms can and do survive without strong patent rights. Small businesses cannot. Weakening patent rights threatens the very interests of universities and small businesses. **Without strong patents, we cannot commercialize our inventions and technology jobs will go overseas.**

The overbroad and sweeping proposed legislation in H.R. 9 will have the effect of suppressing patent rights of *all* patentees, and in particular, will hurt the small high-tech, job-creating SBIR businesses, and thus the economy. Simply stated, patents are far more important to small businesses' survival and growth than to large businesses. And licensed patents are the only way universities can commercialize their research.

The Senate is *now* presented with the choice between two bills, the House's H.R. 9, the ill-named "[Innovation Act](#)"¹, or S.632, the appropriately-termed [STRONG Patents Act of 2015](#).² H.R. 9, which I believe should be more aptly named "The Ending the American Dream Act," with features such as those providing for endless review, clouds title to patents³, weakens the patent holder's ability to economically enforce their patent, and undermines fundraising and licensing activities. In contrast, the STRONG Patents Act ends the "invention tax" by securing the PTO user fees from diversion away from the Patent Office, ensuring that resources are commensurate with examination workload. And the STRONG Patents Act protects patent holders from large patent "Ogres" who would otherwise infringe small firms' valid patents with impunity. Let me repeat, H.R. 9, **does not eliminate trolls**, but it will engender the large monopolistic and market dominant firms, encouraging more Patent Ogre activity.

Finally, I want to put to rest the myth that small business supports the Innovation Act. HR 9 does not solve the Troll problem. Virginia Gavin, a small business owner had received two demand letters and paid twice. She was as anti-troll as one could be. But once she understood each and every provision of HR 3309, HR 9's predecessor, she stated, **“There is NOTHING in this bill that will help me and several items that will harm my business.”** Thus, we opposed HR 9.

However, we do support legislation proposed in the STRONG Patent Act, and the TROL Act,

Thank you.

¹ <https://www.congress.gov/114/bills/hr9/BILLS-114hr9ih.pdf>

² <http://patentlyo.com/media/2015/03/STRONG-Patents-Act-of-2015.pdf>

³ For example, See HR 9 section, 9(a) striking “or reasonably could have raised,” allowing infringers to have multiple bites at the apple, prolonging Post Grant Review proceedings, increasing cost to the patent holder, and making it more difficult for small patent holders to raise money.