



July 18, 2017

STRONGER Patents Act of 2017 Introduced

In late June, the Support Technology and Research for Our Nation's Growth and Economic Resilience (STRONGER) Patents Act of 2017 was introduced in the Senate by co-sponsors Sen. Chris Coons (D-Dela.), Sen. Tom Cotton (R-Ark.), Sen. Dick Durbin (D-Ill.) and Sen. Mazie Hirono (D-Hawaii). The bill is an expanded version of Senator Coons' STRONG Patents Act of 2015 that promotes innovation, competitiveness and economic growth.

The STRONGER Patents Act takes critical steps to improve the patent system. It treats patents like any other property, permitting injunctions to protect patent owners against infringement during and after court cases. It ensures fairness in Patent Office administrative proceedings, limiting repetitive and harassing challenges against inventors and it ends the diversion of patent application fees to other government spending, ensuring the Patent Office has the funding needed to grant high-quality patents without harmful delay.

[A one-pager on the STRONGER Patents Act](#) explains why the bill was drafted in the first place. The overview cites changes wrought by the U.S. Supreme Court and unintended consequences of activities at the [Patent Trial and Appeal Board \(PTAB\)](#) created by the [America Invents Act \(AIA\) of 2011](#) which have undermined the U.S. patent system. According to the one-pager, the impact of undermining the patent system will be significant to patent-intensive industries creating high paying jobs with wage premiums of 74 percent and the \$85 billion trade surplus that the U.S. enjoys due to the licensing of intellectual property. At the same time, the bill also has aspects which target the abuses of bad-faith demand letters as well as provide full funding for the U.S. Patent and Trademark Office (USPTO) to create high quality patents.

Specifically, the STRONGER Patent Act fights patent abuse and encourages positive reform by:

- Reducing repetitive and harassing attacks on patents by authorizing only one review per patent claim;
- Limiting entities making financial contributions to a patent challenge from making future challenges;
- Minimizing abuse of post-grant proceedings by ensuring that a petitioner has a business or financial reason to bring a patent case;
- Ensuring pleading standards for patent-infringement cases match the standards used for all other civil actions;
- Providing an "expedited" examination procedure instead of amending claims;
- Eliminating fee diversion from the USPTO; and,
- Permitting injunctions to protect patent owners against infringement during and after court cases, among other things.

The major bulk of the bill consists of amendments to both inter partes review (IPR) and post-grant review (PGR) proceedings at the PTAB. [A two-pager providing a section-by-section review of the](#)

bill summarizes the various amendments made to IPRs and PGRs. First, the bill would harmonize the claim-construction standard used in PTAB proceedings with the standard used in district court, requiring claims to be construed as they would under patent validity challenges made under [35 U.S.C. Section 282\(b\)](#) for the ordinary and customary meaning of the claim while also taking into account claim constructions from previous court rulings. In terms of burden of proof, the bill also harmonizes IPRs and PGRs with district court proceedings by maintaining the presumption of patent validity governed by [35 U.S.C. 282\(a\)](#) and placing the burden of proving unpatentability “by clear and convincing evidence” on the petitioner. For standing, the bill would amend IPR and PGR statutes to ensure that petitioners have either been sued by the patent owner or have been charged with infringement, limiting standing to those parties with a real financial or business interest in the patent to limit incentives for privateering or extortion of nuisance settlements. The bill would also amend existing U.S. code surrounding patent law to provide discovery of real parties in interest in PTAB petitions, including setting forth procedures for the deposition of witnesses submitting affidavits or declarations.

Patent protections are particularly important for small businesses, which operate on much smaller margins and often rely more heavily on their intellectual property for revenue than large firms. According to the U.S. Small Business Administration, small businesses produce 16 times more patents per employee than large patenting firms, which has a direct correlation with job growth.

The STRONGER Patents Act offers a balanced solution to stop the practice of fraudulent and abusive patent demand letters and various other improvements to the current U.S. patent law, and stops short of weakening existing patents and discouraging innovation in the U.S. for years to come.