

November 13, 2013

The Honorable Bob Goodlatte
House Judiciary Committee
United States House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
House Judiciary Committee
United States House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The Pharmaceutical Research and Manufacturers of America (PhRMA) commends the House Judiciary Committee for considering legislation to curb abusive patent litigation. We appreciate the opportunity to work with you toward this goal.

However, many of the provisions contained in the recently introduced Innovation Act (H.R. 3309) perhaps unintentionally undermine the ability of patent owners more broadly to enforce their rights by filing a patent suit and litigating it to completion. This may impose substantial burdens on the ability to enforce legitimate patents effectively and efficiently. The unintentional result may actually hinder the value of patents and lessen incentives for patentable innovation across technology areas.

We understand the concerns of the Committee and applaud their efforts regarding abusive litigation, but any attempts to address these issues must strike an appropriate balance with all patent holders and not inadvertently weaken incentives for U.S. innovation.

The following is a list of concerns PhRMA has identified in H.R. 3309, the Innovation Act, as currently drafted:

- Increases pleading requirements in a way that raises questions about the balance between having information available in pleadings and providing for the prompt and effective access to the courts by patent owners more broadly (Section 3(a)).
- Includes a troublesome new paragraph in the fee shifting provisions on “covenants not to sue” (Section 3(b)).
- Imposes restrictions on discovery that could serve to delay ultimate resolution of patent litigation and increase costs (Section 3(d)).
- Raises serious questions regarding balance in requirements for transparency of ownership (Section 4).

The Hon. Bob Goodlatte and The Hon. John Conyers, Jr.

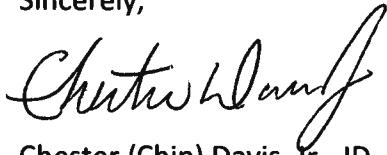
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- Includes a customer suit exception provision is not targeted narrowly and could lead to delayed resolution of disputes (Section 5).
- Prescribes activities for the Judicial Conference, or the Supreme Court, that may more appropriately be considered areas for reflection by those bodies (Section 6).
- Eliminates Section 145 proceedings as a procedural option for patent applicants (Section 9(a)).
- Modifies elements of the Transitional Covered Business Method Patent Program created by Section 18 of the AIA (Section 9(e)) by expanding it in time and scope.
- Proposes an inappropriate limitation on patent term adjustment by the PTO (Section 9(f)).

PhRMA is committed to working with Congress on targeted reforms that curb abusive patent litigation. However, we are hopeful this legislation will be amended to address the above concerns.

Sincerely,



Chester (Chip) Davis, Jr., JD
Executive Vice President
Advocacy and Member Relations