Inventor's Project
Promoting Innovation Defending Intellectual Property

May June 1st, 2015

The Honorable Chuck Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Conyers
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers:

As Congress continues to consider legislation that would amend our current patent system we urge you not to forget the independent inventor. To-date only one inventor has been called by Congress to testify regarding how this legislation affects our ability to innovate. We believe that by avoiding input by this important group that you are missing a large part of the debate.

We write to you as group to express our concerns:

Customer Stay: The proposals include a provision in which 'end users' can ask for litigation to be stayed and require the patent holder to pursue claims against the product manufacturer. The intent of the bill is to allow a manufacturer to step in and essentially take over the case, but the definition of 'end user' has been hotly debated and there is concern that this provision could create a loophole allowing infringing companies to perpetually delay litigation.

Fee Shifting: The bills include fee-shifting provisions with which fees can be shifted to either the plaintiff or defendant. This is a large financial obstacle to small companies, inventors, and investors not only if deciding whether or not to defend their intellectual property against an infringer, but whether or not they will innovate at all. This is being proposed even though recent

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Supreme Court Decisions have already caused a very significant increase in fee-shifting decisions.

Heightened Pleading: Raises the pleading requirements for the complaint in patent infringement cases. The heightened pleading requires the identification of patent claims asserted, with details about the accused methods or acts, the principal business of the party alleging infringement, and the real parties of interest. Further, the bill's requirements make it difficult, if not impossible for a small inventor to state a claim for infringement, since the detail and investigation required may be prohibitively expensive for a small inventor. Moreover, the nature of the infringement often cannot be determined without the discovery phase of litigation.

Estoppel Changes: The bills narrow the Post Grant Review estoppel created by the America Invents Act. This would allow for a patent challenged in post-grant review to be challenged again in district court.

Discovery: The bills shift the timing and cost of discovery in patent cases." They do this in part by redefining core documentary evidence," which the producing party pays for. For any other discovery, if you request it, you pay for it, shifting much of the cost to the patent holder. The proposals would also put discovery mostly on hold until claim construction is complete potentially slowing down the trial, delaying settlement and increasing the cost of litigation.

Joinder: While almost an unbelievable provision, the proposals that we have seen all pierce the corporate veil by exposing investors in situations regarding intellectual property rights that even the highest experts disagree on. This will have the effect of slowing investment, slowing technology transfer, and altogether slowing innovation and innovative companies.

Certification: Certification will have the effect of upfront bonding potentially costing hundreds of thousands of dollars just to open the courthouse doors. With fee shifting and joinder, there will be few investors interested in helping inventors make bond thus closing access to the courts for all but the wealthy.

Our Founding Fathers knew that a strong patent system would help foster a high growth economy. They also understood that one of the ways that the United States would be different from England is that here a King or Queen wouldn't and shouldn't be granted the power to dole out property rights to their supporters. In the end, our founders thought that intellectual property rights were important enough to enshrine them into our constitution.

> Article 1, Section 8 "…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;…"

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Property rights give the owner a reason to invest, a reason to develop, a reason to innovate, and in the end an asset to sell. This all due to the fact that in the United State inventors have the ability to protect their idea.

We believe that any legislation should have the primary goal of providing a strong and secure patent system that recognizes the rights of patent owners and continues to bolster our innovation economy. The US economy has been built on the backs of great innovators, we need to foster and nurture the next generation of innovators to continue our innovation dominance.