



# US Inventor

Fighting to Get Our Patent Rights Back

## Unintended Consequences?

By

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Anyone who has observed the current evolution of patent “reform” could not help but observe that the effort has been very one-sided. The proof is that inventors, the very group the American Patent System was created for, have been shut out of hearings. In the Senate, *The PATENT Act* got through the markup without a single inventor being allowed into a single hearing. For the House’s *Innovation Act*, only one inventor was allowed into a single hearing.

When such a bias exists, the possibility of unintended outcomes increases. An example of what can result is a shocking piece of text I recently found hidden within H.R.9:

**“Section 273 of title 35, United States Code, is amended by striking subsection (f).”**

The text provides no further explanation, giving the impression that this is unimportant. However, this sentence removes the penalty to a guilty patent infringer who has asserted false claims regarding prior use in a patent infringement case.\* This appears to be a blatant attempt to remove the disincentive to the stealing of another’s legitimate intellectual property.

Is the purpose of H.R.9 to further enable the theft of legitimate intellectual property? That certainly is not what its proponents claim. Yet the language above does nothing else. Are there other sentences like this hidden in H.R.9? How did this get into H.R.9? Why is this also in the Senate’s PATENT Act?

The potential unintended consequences of this legislation are catastrophic to vital American innovation. The Innovation Act, H.R.9 and The PATENT Act, S. 1137, should be dropped and a truly balanced effort to handle any actual problems within the critically important American Patent System should be undertaken.

\*Section 273 is “**Defense to infringement based on prior commercial use.**”

Subsection (f) is “**Unreasonable Assertion of Defense**— If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney fees under section 285.”

The sentence above wherein subsection (f) is stricken is found on page 7, lines 3-5 of the Managers Amendment version of H.R.9.