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The Current Patent Landscape in the U.S. and Abroad

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Early Stage Innovation's Chance to Save Itself



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Print Article



Congressional pursuit of HR 9-type comprehensive patent reform seems to have slowed. Maybe inventors, investigators and investors can breathe easy for a while. *Or not!* Unless universities and others engaged in early stage commercialization can convince Congress now that Bayh-Dole-based commercialization is the

bridge created by Congress to connect past and future congressional R&D funding to the public benefits of jobs, growth and medical progress contemplated by its annual R&D appropriation, trouble lies ahead. R&D funding on one side of the commercialization bridge must reliably cross to its public benefit other side or Congress will invest its billions elsewhere. This bridge connects congressional investment with private sector investment and can fail on either side.

Google was just tagged with a \$ 20M patent infringement damages award. Despite AIA's built-in deterrents, big tech's efficient infringement business model exposes information and communications technology (ICT) firms to similar damages. On a pure cost-benefit basis the enforcement shield provided by HR 9-type legislation is still compelling to ITC component aggregators. Beyond denying court access to most patent holders, HR-9 reduces their

components' costs, which increases their share of consumers' product point-of-sale purchase price. Moreover, although their substantial past investments in PR-spawned patent trolls, junk science analysis, academic analytic blather and indirect judicial influence are getting stale, they haven't reached their "sell by date". To be sure big tech titans have new pressing priorities and no longer have a president in their thrall. But as long as Representatives Goodlatte and Issa run IP issues in House Judiciary, any IP legislation that comes their way can be converted into all or any part of HR 9. This session more than one eligible bill may be on its way to House Judiciary. And worse, in the year's burgeoning budget battle, R&D funding is a tempting target.

House Judiciary Chair Goodlatte publicly admitted that recent judicial responses to issues addressed by HR 9 have reduced its urgency. His IP Subcommittee Chair Issa has indicated that the HR 9 issues are more likely to be addressed on a "modular" rather than on a comprehensive basis. Both [blame universities for stalling HR 9](#) after it had earlier passed the House by a vote of 325 to 91. They have said that fixing the venue problem would be considered depending on how it is addressed by the SCOTUS in the now pending *Heartland* case. [Senator Hatch has said that fixing the venue problem should await Heartland but also said however it is decided, the venue issue needs to be addressed by Congress.](#)

Then there's the *Alice/Mayo* controversy [outlined and explained in an IPWatchdog post by Manny Schecter](#). A number of major IP players including; The American Bar Association's Section on IP, AIPLA, IPO and PhRMA have expressed the need for a Section 101 fix. IPO is already circulating a draft bill. It thus seems highly likely that if and when the House and Senate Judiciary Committees find the time to deal with *Alice/Mayo*, patent reform will be in play again.

Apple's recent attack on Qualcomm's licensing model has had some wondering whether efficient infringers have concluded that in light of SCOTUS and AIA, further barriers to patent enforcement by under-resourced patent holders proposed in last session's HR 9 and S.1137 are no longer as important as otherwise undermining the bargaining power of well-resourced component licensors. Some larger firms in their component supply chain are simply not susceptible to efficient infringement, devaluation's pricing beat-down, or HR-9's litigation costs and sanctions. Apple's recent US court challenge to Qualcomm's licensing business model may be a sign that big ICT aggregators have found "bigger fish to fry" in their quest to pay less for product components. Efforts to increase their margins by compressing component pricing have driven congressional patent reform. Now according to Qualcomm CEO Steve Mollenkopf's response to Apple's suit, "*They want to pay less than the*

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