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The Stronger Patents Act of 2017

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THE STRONGER PATENTS ACT OF 2017

In June 2017, Senators Coons, Cotton, Durbin and Hirono introduced the Support Technology and Research for Our Nation's Growth and Economic Resilience (STRONGER) Patents Act of 2017. The bill's purpose is "to strengthen the position of the United States as the world's leading innovator by amending title 35, United States Code, to protect the property rights of the inventors that grow the country's economy."

Section 102 & 103 relate to inter partes and post grant review claim construction, burden of proof, standing, limitations on reviews, interlocutory appeals, elimination of repetitive proceedings, real-party-in-interest, priority of Federal Circuit validity determinations and claim amendments.

Claim construction would be based upon the standard used by district courts rather than the broadest reasonable interpretation. Patent claims would enjoy a statutory presumption of validity that would have to be overcome by clear and convincing evidence. Standing would require that the petitioner have a business or financial reason to file an IPR or PGR. Petitioners would be limited to initiate reviews only once per claim of a patent to prevent patent owner harassment from serial attacks by a party. Interlocutory appeals from institution decisions would be permitted based on a clear error standard. Petitioners could only challenge a patent once, unless later charged with infringement of additional claims. The definition of real-party-in-interest would be clarified to cover those entities that make financial contributions to AIA trials. If a district court issues an opinion an AIA trial should not commence or be stayed pending the outcome of appeals to the Federal Circuit. An ex parte reexamination off-ramp would be permitted to permit claim amendments in patents subject to AIA trials and patent owners would be entitled to one set of claim amendments as a matter of right in AIA trials.

Section 104 would require USPTO personnel used for AIA trials initiation would be different than PTAB judges panels used for AIA trials.

Section 105 would harmonize the treatment of patent reexamination and AIA trials in parallel proceedings.

Section 106 would create a presumption of injunctive relief for patents found not invalid and infringed.

Section 107 eliminates USPTO fee diversion.

Section 108 clarifies that proof of induced infringement only requires that the alleged infringer intended to cause the direct infringement. It provides proof of infringement based upon outsourcing of manufacturing. It eliminated the single-entity rule for proof of joint infringement.

Section 109 provides for universities to qualify for micro-entity status for patent fees.

Section 110 requires SBA reports on how small businesses rely on patents and the prevalence of abusive demand letters. It provides for expedited handling of district court cases filed by small

businesses and individuals by providing more training and law clerks to patent pilot program courts. Expanded access would be provided to USPTO's patent searching databases.

Title II empowers the FTC to crack down on abusive, patent-related, demand letters.

While the fate of this bill is undetermined, the elements included reflect many proposals from major patent bar and owners organizations to recalibrate the patent reform debate to provide a shifting of the pendulum back in the direction of stronger patent rights protection to enhance U.S. innovation and global competitiveness.

The STRONGER Patents Act of 2017
Support Technology & Research for Our Nation's Growth and
Economic Resilience

Why STRONGER Patents?

- A number of changes over the past decade have weakened the U.S. patent system, from Supreme Court decisions to the unintended consequences of new post-grant administrative proceedings at the U.S. Patent and Trademark Office.
- **The result is that the U.S. patent system is now ranked tenth worldwide by the U.S. Chamber of Commerce. Until this year, it was always ranked first.**
- These changes risk undermining investor confidence in technology-intensive small businesses, ceding the U.S.'s historic edge in innovation to Europe or China.
- The impact of undermining the patent system will be significant—patent-intensive industries create high-paying jobs that have a wage premium of 74%, and the U.S. currently has a trade surplus of about \$85 billion due to the licensing of IP rights.
- Strong patents are also vital to technology-intensive startups. Research shows that if a startup receives a patent, its chance of securing venture capital increases over 50% and it is likely to have better growth in employment and sales.

What Can We Do?

Enact balanced reforms to restore the U.S. patent system to the world's gold standard.

➤ **Protect American Inventors from Illegal Infringement**

U.S. courts should treat a patent like any other property right, permitting preliminary injunctions to protect patent owners against infringement while cases are pending, and granting permanent relief to protect a patent owner from ongoing infringement after a court determines the patent to be valid and infringed. A presumption that patent owners are entitled to injunctive relief will also encourage infringers to negotiate fair licenses based on the free market, keeping cases out of court.

➤ **Ensure Fairness in Patent Office Administrative Challenges**

Five years after the Leahy-Smith America Invents Act created proceedings at the Patent Office to allow faster and cheaper challenges to patents, it has become clear that further changes are needed to limit repetitive and harassing challenges against patent owners and to ensure that the proceedings are fair to all parties, including solo inventors and small businesses.

➤ **Protect Small Businesses and Consumers from Abusive Patent Demand Letters**

Changes are needed to ensure that the Federal Trade Commission and state attorneys general have the tools they need to protect consumers and small businesses from bad-faith, abusive demand letters.

➤ **Fully Fund the USPTO to Ensure Timely, High-Quality Patents**

Inventors' patent application fees should remain at the USPTO. It's not fair to tax inventors for government spending. Adequate, dependable funding is critical for timely, higher-quality patents.

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Title search: The Stronger Patents Act of 2017

Also available as part of the eCourse

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"PTAB: Proposed Legislation and Reforms"