

# H.R. , PATENT DISCUSSION DRAFT

May 2013

*This Patent Discussion Draft builds on the work of several Congresses and multiple hearings. This bill helps to address the issues that businesses of all sizes and industries face from patent troll-type behavior and aims to correct the current asymmetries surrounding abusive patent litigation. This bill reduces the costs of frivolous litigation, increases patent certainty and promotes the creation of American jobs.*

## FEDERAL COURTS:

- ***Incentivizing Settlement in Patent Litigation*** – develops a process to help encourage and facilitate settlement discussion in appropriate cases and reduce protracted litigation in general.
- ***Discovery Burdens*** – provision helps to reduce abusive discovery tactics, by developing procedures providing for limited initial discovery, to focus document production on core materials.
- ***Case Management*** – provides for procedures to ensure initial disclosure and early case management conference practices in District Courts, to help identify any potentially case-dispositive issues.
- ***Complaint Requirements*** – requires the Supreme Court to update the current model allegation of patent infringement form to require more information and greater specificity.
- ***Customer-Suit Exception*** – allows a manufacturer of the allegedly infringing product to intervene and stay cases against downstream customers and retailers, who are not in the best position to defend an infringement suit. This provision helps protect small businesses and customers from abusive patent suits.
- ***IP Licenses in Bankruptcy*** – under U.S. law a bankruptcy trustee is barred from terminating licenses to patents and other IP of the debtor, since allowing such termination would be disruptive to the economy, create commercial uncertainty and undermine manufacturing investment. This provision does not change existing law, and simply ensures that the courts follow U.S. law and not the laws of foreign countries.

## U.S. PATENT AND TRADEMARK OFFICE:

- ***Transparency in Patent Assertions*** – ensures proper recordation of patents and improves transparency in patent assertions (demand letters and litigation) by providing real-party-in-interest information to the PTO.
- ***Small Business Education and Outreach*** – to ensure that independent inventors and small businesses continue to have a strong voice at the PTO, the ombudsman will work to provide information resources for small businesses facing accusations of infringement.
- ***Improving Information Access and Transparency*** – creates a user-friendly webpage to ensure that the public has a simple and efficient way to access data collected by the PTO.
- ***Studies on Patent Transactions, Quality and Examination*** – provides for studies to examine existing technologies to improve patent examination; recommendations to promote greater transparency in the patent secondary market; and greater information on U.S. government patents and their management.

## IMPROVEMENTS AND TECHNICAL CORRECTIONS TO THE LEAHY-SMITH AMERICA INVENTS ACT:

- ***Post Grant Proceedings*** – makes improvements to existing USPTO post grant programs, including technical corrections; provisions to clarify, reduce uncertainty and ensure consistent application of an existing post grant proceeding; and clarification regarding use of proper claim construction in post-grant and inter partes proceedings.
- ***Double Patenting*** – applies the doctrine to first-inventor-to-file patents, to ensure that patentees do not obtain multiple patents for what is basically the same invention and then sell those patents to different parties, requiring others to obtain multiple licenses from multiple parties to use the invention.