Legislative Briefing

BSA Position on H.R. 3309, the Innovation Act

BSA | The Software Alliance urges Congress to enact legislation that reduces the incentive for bad actors to engage in abusive patent litigation — an approach that has broad-based support. BSA cautions against measures that risk undermining innovation by disrupting the patent system itself.

In that context, BSA believes that H.R. 3309, the "Innovation Act," has many constructive provisions and a few that are counterproductive. We support the measures that reduce the incentive to engage in ***abusive litigation***. The measures that reduce the incentive to ***innovate*** are a major concern.

Issue Analysis

- **The goal of legislation should be to make life hard for bad actors and better for innovators.** It is important to remember that predatory litigation practices are the problem, not the patent system itself. Right now, being a predatory litigant is too profitable, and defending against such suits is too expensive. Targeted legislation can balance those scales while protecting the patent system itself.

- **Abusive patent litigation is a huge problem that hurts everyone.** It creates a heavy burden for companies across a wide range of industries. No matter how you look at it, it's a drain on innovation, competitiveness and economic growth.

- **The problem is there's big money in being a bad actor.** Opportunistic litigants can force defendants into quick settlements — simply because it's too expensive to defend yourself against a bogus claim. That creates huge leverage. We need to balance the scales.

- **Political consensus dissolves when you shift the focus from stopping bad actors to measures that would disrupt incentives for innovation.** BSA and a broad cross-section of other innovative industries strongly oppose expanding the CBM program because it would undermine the patent system for legitimate innovators.

- **At the end of the day, US innovation and competitiveness is at stake.** If we create different standards for different kinds of invention, we will imperil America's leadership position in a broad range of industries dependent on science, technology and engineering.

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What We Support and Oppose in H.R. 3309

- **H.R. 3309 includes important reform measures that will reduce the financial incentive for bad actors to engage in abusive patent litigation.** Those proposals enjoy broad-based support among stakeholders — as evidenced by a recent letter to Congress from more than 60 companies, associations and interest groups — and BSA urges lawmakers to move them forward.
    - **BSA supports** allowing courts to shift legal fees to losing parties when they bring spurious claims (i.e., changes to §285).
    - **We support** curbing discovery abuse (i.e., adding §299A).
    - **We support** requiring plaintiffs to be precise in their claims of infringement (i.e., adding §281A.)
    - **We support** making patent cases more efficient and less costly (Sec. 6).
- **We oppose expanding the Transitional Program for Covered Business Method Patents.** Sec. 9(e) of H.R. 3309, which would expand Section 18 of the America Invents Act, would undermine the patent system for legitimate innovators in several ways:
    - A legitimate patent owner would be subject to harassment by an infringing competitor who could use the CBM program to **slow walk a case** through the CBM process while they build market share.
    - Expanding the CBM program would create **different standards for different kinds of inventions.** Any patent that facilitates more efficient data management for a purpose even remotely related to financial activity would be put in a special class for differential treatment. That would cover a broad array of inventions far beyond what people think of as financial services.
- **We oppose eliminating the use of "broadest reasonable interpretation" in review proceedings.**
    - **Sec. 9(c) will help, not hurt trolls.** This limits the ability for the public to challenge invalid patents in both *inter partes* and post-grant review proceedings. It also would undermine 100 years of Patent Office practice.

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