

# The Inventor Protection Act (HR 6557)

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## US INVENTOR

Innovators, Inventors, Dreamers, and Builders

### **ACTION REQUIRED**

### **DEMAND THAT YOUR REPRESENTATIVE**

### **CO-SPONSOR HR 6557**

*The Inventor Protection Act restores patent protection for inventors by reversing a generation of laws, regulations, and court decisions that have discouraged innovation by failing to secure to inventors the exclusive rights to their discoveries.*

#### **TODAY'S INVENTORS –**

- Face hundreds of thousands of dollars in legal expense and annihilation of their patent rights in unlimited third-party patent validity challenges at the Patent Trial and Appeal Board (PTAB)
- Must endure up to a decade and spend tens of millions of dollars in legal expense to obtain a final judgment in court against infringers
- Are denied standing to file suit in their own home district under the 2018 *TC Heartland* decision
- Are denied the basic right to exclude others from using their invention under the 2006 *Ebay* decision
- Are not compensated fairly or sufficiently to prevent efficient infringement of their patent rights
- Are denied meaningful participation in the patent system which stifles our main source of innovation

Incentivizing inventors is the whole purpose of innovation policy. Inventors are the ones who must be equipped and motivated to apply their knowledge and creativity to solving problems.

But current policies and case law focus instead on patents as monetary assets held by corporations, injecting extremely high cost and risk to enforcing any single patent and making patent enforcement a “game of kings”. Big corporations play the game by hiring dozens of lawyers, hoarding hundreds of patents, and pouring millions of dollars into litigation.

Inventors cannot play that game and need a viable path to enforce their patent rights. In order to encourage inventors to participate in the grand bargain – sharing their discovery in exchange for a time-limited exclusive right – **patents owned by the original inventor** must be protected from the policies that target assets held and traded by non-inventors.

#### **PROTECTION FROM ADMINISTRATIVE PROCEEDINGS**

Under the America Invents Act, infringers challenge the validity of patents in the PTAB, which cancels claims in 85% of issued patents. Serial petitions are common with valuable patents suffering a dozen or more attacks with an average cost of \$350,000 each to defend. In the rare instance that the PTAB permits an inventor to keep his patent, there is no monetary recovery. This means the inventor has nothing to offer a law firm to take the case on a contingency basis. Pro bono defense is not available either. Inventors with valuable inventions have virtually no chance of keeping their patents in the PTAB. Traditional federal courts on the other hand still provide a fair playing field for an infringer to challenge patent validity. Inventors need the protections of tenured judges, juries, rules of evidence, and standards of proof offered in court, as well as the right to recover monetary damages from the infringer. This legislation exempts inventors from PTAB proceedings while preserving the right for an accused infringer to raise patent validity as a defense at trial in a judicial court.

#### **CHOICE OF VENUE**

It is a general rule that federal suits can be filed at the scene of the crime – “in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”. But in *TC Heartland* (2018) the Supreme Court held that inventors must file suits for patent infringement in the state where the infringer is incorporated, or many different states when multiple corporations infringe the patent. Under this ruling when an inventor works, hires employees, builds prototypes, manufactures, and pays taxes in one state, and a corporation commits an act of infringement in that state, the inventor nevertheless must go to the state where the infringer is incorporated to enforce his

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patent rights. Inventors should have equal treatment under the law including the right to file a suit in their own district or any district where infringement has been committed.

### **EXPEDITED JUDICIAL PROCEEDINGS**

Complex and lengthy procedures govern patent infringement suits. It frequently takes three to four years of proceedings with hundreds of thousands of pages of pleadings to get to trial. That is followed by a year of post-trial proceedings plus two years of appeals, usually resulting in a retrial on some part of the case. The whole thing can take ten years and no more than a handful of cases reach a final judgment each year. Fortune 500 corporations can weather a decade and tens of millions of dollars as merely a cost of doing business, but inventors cannot survive it. This bill eliminates the waste and guarantees a speedy resolution so the inventor can move forward with building a business on the patented technology.

### **RESTORING INJUNCTIVE RELIEF**

A patent grants to the inventor the right to exclude others from using the invention. But in *Ebay* (2006) the Supreme Court decided that is not so. Instead they determined that the infringer should have to pay the inventor whatever an expert economist hired by the infringer determines the invention is worth, and then they can continue to infringe the patent rights. Instead of choosing whether to sell, who to sell to, and at what price to sell, inventors are forced into a compulsory license with terms they would not otherwise agree to in a voluntary transaction. Under *Ebay* infringers are discouraged from avoiding the patent or paying up front because in the unlikely event the inventor has the resources to prevail in court, the worst case for the infringer is they have to pay the inventor what they should have in the first place. This bill restores rudimentary functionality of the patent system by preventing unauthorized use of an invention as long as the inventor holds an unexpired patent.

### **SIMPLIFIED MONETARY DAMAGES**

The Patent Act of 1952 which is still in effect gives inventors the right to recover “damages adequate to

compensate for the infringement”. The courts have developed extremely complex procedures for determining this amount. It involves invasive examination of a company’s finances, hundreds of hours of depositions, and application of complex and controversial economic theories. One example case law requires detailed analysis of 17 different factors identified in a precedential case called *Georgia Pacific*. In the end the legal costs just to figure out what the damages are exceed a million dollars. The result is that the amount owed is very unpredictable and very costly to ascertain. This legislation offers a more cost effective and predictable approach to calculating the amount necessary to compensate an inventor for infringement of his patent.

### **RECOVERY OF LEGAL FEES**

The current system is not suitable for resolving patent disputes when the amount at stake is no more than a few million dollars. Under the “efficient infringement” business model, such patents can be infringed without concern since litigation would cost the inventor more than the amount he could recover. To end this abuse, this bill requires a defendant that is found guilty of infringement to pay the damage caused plus the inventor’s legal fees that exceed ten percent of the damages.

### **CONCLUSION**

Throughout our history America has led the world in innovation, driven largely by a simple yet profound promise to inventors of the exclusive right to their discoveries. Our founders authorized Congress – “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Without secure patent rights, inventors are starved of time and capital required to explore and develop new technologies. As inventors have been sidelined, the United States faces an escalating innovation crisis as we are forced to rely on outdated or imported technologies. Congress must act quickly to restore reliable patent rights for inventors.

To view the bill visit <http://usinventor.org/ipa>