

H.R. 5478 – THE INVENTOR RIGHTS ACT

This legislation restores patent protection for inventors and mitigates 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

These are largely unintended consequences of measures put in place to curtail abuses of the patent system committed by non-inventors. This bill preserves the status quo with respect to non-inventors while restoring reliable and enforceable patent rights to genuine inventors.

To encourage inventors to participate in the grand bargain – sharing their discoveries in exchange for a time-limited exclusive right – **patents owned by the original inventor** must be protected from unintended harm of policies and rulings that targeted abusive practices by non-inventors.

1. USPTO MAY NOT REVIEW AN ISSUED PATENT WITHOUT CONSENT OF THE INVENTOR

The PTAB has cancelled claims in 84% of the 2,500+ patents reviewed since 2011 and most inventors do not have a half a million dollars necessary to fund a legal defense. Under this bill inventors who own their own patent will be permitted to opt out of PTAB. Accused infringers will have the right to challenge validity in a regular court of law, which is how the U.S. patent system worked for our first 190 years. If the PTAB is reformed such that it is a faster and cheaper alternative to district court, then inventors will voluntarily participate.

2. INFRINGERS MUST NOT PROFIT BY USING AN INVENTION WITHOUT PERMISSION

Under current law inventors usually only receive a “reasonable royalty”, while even a willful infringer gets to keep most of their profits from using the invention without permission. This bill disgorges all of the profits from willful infringers who knew or should have known of their violation of a patent owned by the original inventor. This remedy is consistent with other forms of intellectual property including design patents, copyrights, and trademarks.

OTHER PROTECTIONS

In addition, inventors that own their own patent will be entitled to:

- injunctions to prohibit unauthorized use of the invention
- the right to file suit in their home district
- recovery attorney fees that substantially exceed the amount of damages awarded