H. R. ____

To amend title 35, United States Code, restore patent rights to inventors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

_______, 2021

Mr. DANNY K. DAVIS of Illinois (for himself and ____________) introduced the following bill; which was referred to ________________

A BILL

To amend title 35, United States Code, restore patent rights to inventors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Inventor Rights Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Inventors have contributed significantly to innovation in the United States and their continued dedication to inventing and sharing solutions to modern technical challenges is essential for the
United States to maintain leadership in the global economy.

(2) Inventors, not employees or investors, are the source of innovation intended by the Constitution (“securing to inventors”) and the Patent Act (“(Whoever invents or discovers . . . may obtain a patent therefore . . .)”).

(3) Recent changes to patent laws and procedures and Supreme Court decisions have adversely affected inventors such that the promise of Article 1, section 8 of the Constitution of “securing for limited times to inventors the exclusive right to their discoveries” is no longer attainable.

(4) Inventors are denied the fundamental right to “exclude others” by the Supreme Court’s 2006 decision in eBay Inc. v. MercExchange, LLC.

(5) Inventors were stripped of the right to file suit in their own judicial district by the Supreme Court’s 2017 decision in TC Heartland LLC v. Kraft Foods Group Brands LLC.

(6) Issued patents fail to secure to inventors their exclusive rights because—

(A) the Patent Trial and Appeal Board institutes trials in over 60 percent of cases and
invalidates one or more claims in over 80 percent of trials which reach a final decision;

(B) many patents are subjected to multiple post issuance reviews; or

(C) most inventors cannot afford the costs of defending a patent challenged in a single post issuance review, as these costs can reach hundreds of thousand of dollars.

(7) Infringement trials can cost tens of millions of dollars and can take up to ten years to reach a final judgment after all appeals, making legal relief unattainable for inventors.

(8) These obstacles have given rise to an “efficient infringement” business model whereby large corporations infringe patent rights held by inventors without concern for any legal consequences.

(9) Patent protection has led to patient cures, positive changes to the standard of living for all people in the United States, and improvements to the agricultural, telecommunications, software, biotech, pharmaceutical and electronics industries, among others.
SEC. 3. INVENTOR PROTECTIONS.

(a) INVENTOR-OWNED PATENT.—Section 100 of title 35, United States Code, is amended by adding at the end the following:

“(k) The term ‘inventor-owned patent’ means a patent with respect to which the inventor of the invention claimed by the patent or an entity controlled by that inventor—

“(1) is the patentee; and

“(2) holds all substantial rights.”.

(b) INVENTOR-OWNED PATENT PROTECTIONS.—

Chapter 32 of title 35, United States Code, is amended by adding at the end the following new section:

“§ 330. Inventor protections

“(a) PROTECTION FROM POST ISSUANCE PROCEEDINGS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.—The United States Patent and Trademark Office shall not undertake a proceeding to reexamine, review, or otherwise make a determination about the validity of an inventor-owned patent without the consent of the patentee.

“(b) CHOICE OF VENUE.—Any civil action for infringement of an inventor-owned patent or any action for a declaratory judgment that an inventor-owned patent is invalid or not infringed may be brought in a judicial district—
“(1) in accordance with section 1400(b) of title 28;

“(2) where the defendant has agreed or consented to be sued in the instant action;

“(3) where an inventor named on the patent in suit conducted research or development that led to the application for the patent in suit;

“(4) where a party has a regular and established physical facility that such party controls and operates, not primarily for the purpose of creating venue, and has—

“(A) engaged in management of significant research and development of an invention claimed in a patent in suit prior to the effective filing date of the patent;

“(B) manufactured a tangible good that is alleged to embody an invention claimed in a patent in suit; or

“(C) implemented a manufacturing process for a tangible good in which the process is alleged to embody an invention claimed in a patent in suit; or

“(5) in the case of a foreign defendant that does not meet the requirements of section 1400(b)
of title 28, in accordance with section 1391(c)(3) of such title.

“(c) INJUNCTION.—

“(1) Presumption.—Upon a finding by a court of infringement of an inventor-owned patent not proven invalid or unenforceable, the court shall presume, respectively, that—

“(A) further infringement of the patent would cause irreparable injury; and

“(B) remedies available at law are inadequate to compensate for that injury.

“(2) Overcoming the Presumption.—A presumption described under subparagraphs (A) or (B) of paragraph (1) may be overcome if the infringing party shows clear and convincing evidence that the patentee would not be irreparably harmed by further infringement of the patent, including evidence of unreasonable delay by the patentee from the date on which the infringement was known or reasonably could have been known to the patentee.

“(d) Recovery.—A patentee that asserts a claim for infringement of an inventor-owned patent in a civil action under subsection (a), (b), (e), (f), or (g) of section 271 may elect, at any time before final judgment is entered by the court, recovery under this subsection in lieu of dam-
ages under section 284. If an election for recovery under this subsection is made, the following provisions apply upon a finding of infringement:

“(1) Profit Disgorgement.—The court shall award the patentee the profits from the use made of the invention by the infringer. In assessing profits the patentee shall be required to prove only the infringer’s revenues resulting from the infringement; the infringer must prove all elements of cost or deduction claimed.

“(2) Interest and Costs.—The court shall award the patentee the costs described under section 1920 of title 28.

“(3) Infringement Found Willful.—If the court finds the infringement to be willful, the court may award the patentee damages equal to no more than three times the amount of the profits found in paragraph (1).

“(4) Attorneys Fees.—The court shall award the patentee any amount of their attorneys fees that exceeds 10 percent of the amount of the profits and damages of paragraphs (1) to (3).”.

(e) Technical and Conforming Amendment.—The table of sections for chapter 32 of title 35, United
8

1 States Code, is amended by adding at the end the fol-
2 lowing:

"330. Inventor protections.".