

US INVENTOR

Innovators, Inventors, Dreamers, and Builders

Representative Darrell Issa Should Not Be IP Subcommittee Chair



Issa has a long history of patent related legislation harmful to small inventors and startups. His legislation enabled Big Tech to monopolize and sent early-stage venture capital from U.S. startups to startups to China. Issa can never be trusted by inventors and startups to Chair the IP Subcommittee.

Issa Damaged U.S. Inventors and Startups to Benefit Big Tech and China

Representative Darrell Issa (R-CA) has been the IP Subcommittee Chair in the past and is currently the Ranking Member of the Subcommittee. He is likely at the top of the Republican leadership's list for becoming the next Chair.

However, Issa's record shows that he is most unsuited for the Chairmanship position, having offered one-sided legislation against patent rights and having been among the driving forces that gutted U.S. patent rights. Issa can never gain broad support or the trust of patent stakeholders necessary to protect or restore those rights.

Issa has repeatedly shown his disdain for patent rights and those who defend their hard-earned patent rights throughout his entire tenure in Congress. In IP Subcommittee hearings Issa labeled inventors and universities as *Patent Trolls*, a pejorative term for one who enforces a patent against an infringer. He stated that he uses the

terms *plaintiff* and *troll* interchangeably. In response the Professor Adam Mossoff's testimony related to startup funding moving to China, he retorted a snarky comment that we must now look to China for "patent tolerance". Patent tolerance, not patent rights. There are many other instances of Issa showing his disdain for inventors and startups patent rights, too many to list here. Issa's record clearly shows his anti-inventor attitude to be true.

Issa's anti-patent record begins in his early days in Congress during the 109th Congress (2005-2006) when he cosponsored H.R.2795, the Patent Reform Act of 2005. Every provision of this bill was aimed at undermining patent rights, including by (1) establishing Post Grant Opposition proceedings similar to those ultimately enacted in the AIA's Post Grant Reviews; (2) moving the US patent system to the first to file system, repealing the American first-to invent system and the one-year grace period; (3) providing for additional infringers' defenses based on patentee's prosecution conduct at the USPTO; (4) narrowing circumstances for treble damages for willful infringement, including

by changing the standard of proof for willful infringement from preponderance of evidence to the highest standard of evidence in federal civil courts, clear and convincing evidence; (5) authorizing the USPTO Director to regulate limits on the filing of continuing applications; (6) making 18-month publication of new applications mandatory; and (7) providing for infringement defense based on prior user rights. When H.R. 2795 failed, he sponsored H.R.1908 in the 110th Congress (2007-2008). He kept pushing this legislation until it passed as the America Invents Act of 2011, thus enacting many of the anti-patent provisions of the failed Patent Reform Act of 2005 and creating the PTAB, which invalidates 84% of challenged patents.

Issa proposed the CLEAR Patents Act of 2021. This legislation is very damaging to U.S. domestic industry, benefiting foreign companies including Chinese Communist Party (CCP)-controlled enterprises. The CLEAR Patents Act does this by undermining the protections of US domestic industries that Congress enacted decades ago in Section 337 of the Tariff Act by introducing in the 117th Congress H.R.5902. ITC proceedings are intended to stop imports of products infringing on U.S. patents. The CLEAR Patents Act would stay patent proceedings in the International Trade Commission (ITC) if a PTAB review is instituted on the same patent claim. These provisions would essentially allow infringers to block ITC proceedings against them and avert ITC exclusion orders (injunctions against importation). Even if the patent survives the PTAB, the CLEAR Patents Act adds years to litigation during which the foreign enterprise can continue to import infringing products. In some cases, this would be enough time to run the U.S. entity out of business.

Issa introduced the PARTS Act in multiple Congresses (H.R.1879, 115th Congress; H.R.1057, 114th Congress; H.R.1663, 113th Congress; and H.R.3889, 112th Congress). This repeatedly failed legislation makes it *not an act of infringement* with

respect to design patents if the purpose of such otherwise infringing article is to repair a motor vehicle to restore its appearance more than 30 months after the claimed component part is first offered for public sale as part of a motor vehicle. In other words, *this bill essentially shortens certain patents' life to a 30-month term*. Without any public policy justification and in an utter disdain for patent rights, Issa would protect infringers through an outright repeal of patent rights.

While Issa was a major force in passing the AIA during the 112th Congress, he doubled down in the 114th Congress. Issa cosponsored H.R. 9, the so-called Innovation Act, which would have put the AIA's harm to patent owners on "steroids." The Innovation Act was biased against patent owners by (1) requiring heightened pleading standards for infringement actions while conspicuously avoiding such requirements for declaratory actions by infringers to invalidate patents; (2) fee shifting provision adverse to patent owners, that would result in a chilling effect on the ability of patentees with limited resources to enforce their patents under a de facto "loser pays" system; (3) a pass through to investors that amounted to piercing the corporate veil by collecting shifted fees from investors if the patent holder could not pay; (4) mandatory disclosure upon filing an infringement action, of assignees and licensees of the patent and any investors with financial interest in the patent, creating a chilling effect for investing in patented technology.

As one who truly believes that patents are a hindrance, who has demonstrated a very long history of extreme anti-patent positions when sponsoring his own legislation and cosponsoring others as well as other anti-patent initiatives and actions, Issa will not garner support and trust from the patent community if appointed Chair of the IP Subcommittee.

Therefore, he should not be appointed Chair of the IP Subcommittee.