

113th Congress – Bills to Address Abusive Patent Litigation and Related Issues

Issue	H.R. 3309 - Goodlatte	H.R. 3540 - Polis	S. 1720 - Leahy	S. 1612 - Hatch	S. 1013 - Cornyn	S. 866 - Schumer	S. 2049 - McCaskill	IPO Position
1. Cost Shifting Including Attorney Fees	✓			✓	✓			<ul style="list-style-type: none"> • Award to prevailing party unless position and conduct of non-prevailing party were objectively reasonable and substantially justified. • Not required if exceptional circumstances make unjust.
2. Disclosure of Real Party-in-Interest (RPI)	✓		✓		✓			<ul style="list-style-type: none"> • Support requiring limited disclosure of titleholder information in PTO rules. • Oppose Congress dictating outcome of Judicial Conference deliberations, or bypassing its rulemaking entirely, relative to rules of civil procedure on initial disclosure and joinder of interested parties in patent cases. • Oppose requiring disclosure of non-ownership interests: direct financial interest, exclusive licensees and others with right to enforce patent.
3. Stay of Litigation Against End Users	✓		✓					Support stay against customer while suit proceeds against manufacturer. Should be carefully tailored to avoid unintended adverse consequences to innovators, manufacturers and customers.
4. Heightened Pleading Standard for Patent Infringement	✓				✓			<ul style="list-style-type: none"> • Support modifying Form 18 to include identification of at least one claim alleged to infringe, statement explaining such infringement, and statement addressing any indirect infringement alleged. • Oppose Congress dictating outcome of Judicial Conference deliberations, or bypassing its rulemaking entirely, relative to rules of civil procedure on setting the pleading standard in patent cases.
5. Claim Construction in Post-Grant and Inter Partes Review	✓		✓					Require USPTO to change approach to claim construction in PGR and IPR
6. Eliminating Post-Grant Review Estoppel Provision	✓		✓					<ul style="list-style-type: none"> • Support eliminating provision barring PGR petitioner from later asserting in civil action or at ITC that a claim is invalid on any ground petitioner “reasonably could have raised” during PGR.
7. Expanding §18 Program for Covered Business Method Patents	✓					✓		<ul style="list-style-type: none"> • Oppose elimination 8-year sunset. • Oppose deleting limitation to “a financial product.”
8. Core Discovery and Discovery Fee Shifting	✓				✓			<ul style="list-style-type: none"> • Oppose Congress dictating outcome of Judicial Conference deliberations, or bypassing its rulemaking entirely, relative to rules of civil procedure on scope and sequencing of discovery in patent cases, including claim construction.
9. Bankruptcy Protection	✓		✓					<ul style="list-style-type: none"> • Support preserving IP licenses during bankruptcy. • Support in concept including trademarks, service marks, and trade names in definition of IP in bankruptcy code, where trustee, debtor, or acceptable designee agrees to assume contractual obligation to monitor and control quality of product or service.

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10. Bad-Faith Demand Letters	√	√	√				√	<ul style="list-style-type: none"> • Support legislation to make high volume sending of bad faith demand letters, to end users who are not resellers, a deceptive act or practice within the meaning of § 5(a)(1) of the FTC Act, provided it is carefully tailored to differentiate between abusive activity and legitimate, lawful activity. Should include clear identification of objective acts/practices that would deceive recipients. • Oppose legislation to require overly burdensome and detailed disclosures in bad faith demand letters, e.g., information that could trigger DJ jurisdiction or confidential information. • Should preempt state legislation.