



April 14, 2015

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Goodlatte:

Biocom represents the Southern California life science community, which includes biotechnology, medical device, and diagnostic companies, universities and research institutions, as well as service providers and patient groups. With more than 660 members dedicated to developing life-enhancing and life-saving products, Biocom leads advocacy efforts to positively influence the region's life science community in the development and delivery of innovative products. Biocom and our member companies are deeply concerned that H.R. 9, the *Innovation Act*, as currently written, would undermine the U.S. patent system, while failing to address deceptive litigation practices.

H.R. 9 aims at deterring patent litigation abuses - which Biocom agrees need to be addressed - but it would do so by using the false premise that all patent holders are potentially "patent trolls" and the best way to curb abuses is to enact sweeping reforms that would weaken intellectual property protections for all inventors. Biocom strongly believes that Congress should enact reasonable and balanced legislation that specifically targets bad actors and deceptive behaviors - not the legitimate innovators who need to defend themselves against infringers.

Patents are so important to America's prosperity that they have been enshrined in our Constitution as fundamental rights. Those rights have provided the foundation for a culture of innovation and entrepreneurship that has been an essential driver of our exceptional economic growth and global leadership throughout centuries. Patents are the lifeblood of our economy as they help turn ideas into companies, products, and jobs. Intellectual property creates tens of millions of American jobs and accounts for more than a third of our gross domestic product (GDP).

Research and development (R&D) in the life sciences costs billions, and bringing new products to market can take over a decade, with a failure rate of over 90 percent. The patent system is the primary incentive for investment in R&D by enabling risk-taking innovators to recoup their investment, secure financing - especially as public and private financing becomes more scarce-, gain competitive advantage, and deter infringers. The vast majority of our members are small companies and patents often are their most valuable asset - sometimes their only one. Reforms that weaken patents would undermine the ability of inventors to secure capital and invest in R&D, which would in turn do harm to innovation, entrepreneurship, employment, economic growth, and global competitiveness.

H.R. 9 would effectively devalue patents by making it more difficult, expensive, and lengthy for inventors to enforce their intellectual property rights and defend themselves against infringers. One of the most objectionable provisions in the bill would make all parties financially connected to an innovator liable in a litigation lawsuit. Investors, universities, and research institutes would therefore be responsible for legal fees, which would significantly disrupt the culture of collaboration and partnership that drives research and innovation in the life sciences. Another concerning provision would make the loser of a lawsuit responsible for the legal costs incurred, thus further discouraging innovators to bring suits.

The two provisions described above would be especially detrimental to our small companies and start-ups seeking to enforce their patents because they do not possess the resources to cover additional costs and cannot afford the risks associated with defending themselves against infringement. Many may be forced to sell their patents to large firms better capitalized and equipped to litigate. Increasing the cost of patent enforcement risks creating a system where only large companies can enforce patents, favoring large firms over small businesses and infringers over innovators, and negatively altering our innovation and startup-based economy. The bill, which aims at protecting end-users and consumers against patent trolls, would have the unintended consequence of putting small companies and innovators at greater risk of infringement, engendering another kind of egregious litigation practices, while not being able to stop the well-funded, resourceful trolls. Legislative intervention at this time could very well engender more rather than less litigation.

In addition, several provisions address matters that have already been dealt with outside of legislation. Indeed, H.R. 9 does not take into consideration recent judicial and administrative developments that have changed the patent law landscape. The Judicial Conference of the United States has already adopted changes to the Federal Rules of Civil Procedure that will ensure that discovery is “proportional to the needs of the case,” and that patent cases meet the heightened pleading standards required of all other federal cases. The Supreme Court also decided several cases on pleading standards, fee shifting, and patentability this past year that make it easier to defeat meritless claims.

Furthermore, the Federal Trade Commission (FTC) and state attorneys general have been actively using their authority to stop abusive demand letters and protect small businesses and consumers from abusive practices. The Leahy-Smith America Invents Act (AIA) significantly reformed the U.S. patent system and included several provisions to reduce deceptive practices and increase patent quality. The law was fully implemented only two years ago and its effects are only now beginning to take hold. The U.S. Patent and Trademark Office (USPTO) has also just launched a comprehensive initiative to improve the quality of patents. The full effects of all these substantive changes have yet to be observed and additional legislation is likely to be unnecessary and repetitive. Several studies have already showed that litigation rates plummeted in 2014.

While we can all agree that abusive practices need to be stopped, we strongly oppose doing so by weakening patent rights across the board and undermining the patent system that has been the foundation of innovation and growth in the United States. Reducing patent litigation should never come at the price of limiting patent owners’ ability to defend their technologies and businesses against infringers. H.R.9’s overly broad provisions would apply to all litigants seeking to assert patents, not just patent trolls, going well beyond what is needed to curb egregious practices and causing severe unintended consequences for legitimate innovators.

Congress must exercise caution and enact targeted and balanced legislation that addresses the abuses while strengthening our patent system so it works for all innovators and makes the innovations and breakthroughs of tomorrow possible. We do not believe that H.R. 9 in its current form accomplishes this goal.

Thank you for your consideration of our concerns.

Sincerely,



Joe Panetta  
President and CEO  
Biocom