

December 2, 2013

Higher Education Community Statement on H.R. 3309, the Innovation Act

As six national higher education associations collectively representing over 2,000 colleges and universities, we write to express our opposition to H.R. 3309, the Innovation Act, in its current form. Although we support the goals of this legislation to reduce abusive patent litigation practices, the cumulative impact of a number of the provisions of this bill would seriously undermine the ability of legitimate patent holders to enforce their patent rights, crippling the capacity of the U.S. patent system to continue to serve as an engine of invention and innovation that has strengthened the nation's economic competitiveness and enriched the lives of its citizens in countless ways.

The impact of H.R. 3309 would run exactly counter to the collaborative efforts of universities, industry, and government to increase the breadth and pace of the commercialization of university research. More than half of U.S. economic growth since World War II is a result of technological innovation, much of which has resulted from federally funded scientific research. The ability of universities to transfer inventions resulting from such research into the commercial sector for development relies heavily on the ability of these institutions and their licensees to defend their patents. But the sweeping provisions of H.R. 3309 would undermine that ability, chilling innovation by discouraging the legitimate enforcement of patent rights.

The most problematic provisions of H.R. 3309 for universities are the extremely broad fee-shifting provisions. Coupled with an uncertain court waiver of fees for nonprevailing parties and joinder provisions that could draw universities into litigation they have not initiated, these provisions present a massive financial risk to universities and their licensees, including the undercapitalized startups that hold the promise of productive new innovations if allowed to develop and flourish. The excessive breadth of additional provisions calling for heightened pleading requirements, increased transparency, limitations on discovery, open-ended customer stays, and the weakening of post-grant review estoppel present additional obstacles to the legitimate defense of patents.

The problem of abusive patent litigation is real, but H.R. 3309 in its current form is so sweeping and poorly targeted in its provisions that it will cause significantly more harm than good to the U.S. patent system so recently reformed by the America Invents Act (AIA). Our associations supported passage of that landmark legislation, but we cannot support H.R. 3309, which we believe will move U.S. patent law in the opposite direction from the AIA. We urge that H.R. 3309 be returned to the Judiciary Committee for further work. If it is brought to the House floor for a vote, we ask you to vote no.