Patent Office Professional Association
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The Innovation Act of 2013: Be Careful With the Patent System

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The Patent Office Professional Association (POPA), represents more than 8,000 patent examiners and other professional staff at the U.S. Patent and Trademark Office (USPTO). Below are several of POPA's positions and concerns regarding the Innovation Act of 2013 (H.R. 3309). Most importantly, POPA is very concerned that the Innovation Act does not address the most critical issue facing the U.S. Patent system – USPTO funding.

- **USPTO Funding and Sequestration**

  The most urgent problem facing the U.S. Patent System is not "patent trolls," it is stable and adequate funding for the USPTO. One of the most important provisions of the Leahy-Smith America Invents Act provided the USPTO with fee setting authority and access to all of its fee income. No sooner were those provisions implemented, however, than USPTO's fee income was immediately reduced by the impact of sequestration for reasons that remain unclear. **If the Innovation Act of 2013 is going to help keep the U.S. Patent System strong, it must address the continuing problems of USPTO funding by exempting the USPTO from sequestration.**

- **Expansion of the AIA Covered Business Method Provisions (CBM)**

  POPA opposes the provisions of the Innovation Act of 2013 that would expand the scope and/or duration of the transitional covered business method provisions of the America Invents Act. It is premature to contemplate changes to the CBM provisions since the USPTO has only decided one case under these provisions. It remains unclear whether these provisions of AIA adequately address the perceived problems of CBM patents or, perhaps, cause more harm than good. Much more time is needed to collect data and determine the effectiveness, or lack thereof, of the AIA CBM provisions before any changes should be contemplated. This issue should be removed from the Innovation Act of 2013.

- **Real Party in Interest**

  POPA supports the concept of disclosure of the real party in interest in patent prosecution and litigation but recognizes that such provisions need to be carefully crafted so as not to place a significant and expensive burden on patent applicants and patent owners.

- **Broadest Reasonable Interpretation**

  The USPTO's use of the "broadest reasonable interpretation" standard for examination of patent claims should remain intact and in use for procedures before the Agency. This standard represents one of the best tools available to the USPTO for requiring narrowing of claim language and avoiding "overly-broad" patents that many consider to be at the root of patent litigation issues.

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