AMERICAN ASSOCIATION for JUSTICE

Formerly the Association of Trial Lawyers of America (ATLA®)

June 10, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable John Conyers
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Bldg.
Washington, DC 20515

Dear Chairman Goodlatte and Congressman Conyers:

The American Association for Justice (AAJ), formerly the Trial Lawyers of America (ATLA), hereby submits this letter in strong opposition to H.R. 9, the "Innovation Act." The legislation, sponsored by Rep. Goodlatte (R-VA), completely ignores the eight recent Supreme Court decisions addressing patents, patent litigation statistics from the past two years, and the rule enacted by the United State Judiciary Conference, set to take effect this December. The Manager's Amendment makes no improvement upon the bill, and it remains an innovation-stifling measure.

AAJ, with members in the United States, Canada, and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, and protect access to the courts. AAJ members represent many inventors, small businesses, and patent owners who will be unable to afford to protect their patents, should this bill become law. It is not only a patent issue—the provisions in this bill would detrimentally impact the rights of all our members' clients, as they would set a dangerous tort reform precedent.

Under the Innovation Act, the losing party would bear the winning party's attorney fees unless they can prove that the original claim had merit. This is presumptive fee shifting, and a drastic provision that would have a significant impact on who can bring a patent case. The parties who would be affected are the small inventors who would now be less likely to sue for patent infringement out of fear of losing and not being able to pay the vast attorney fees of the infringing party.

The stringent pleading requirements in H.R. 9 would require excessively-detailed pleadings in the complaint, and would lead to additional litigation and challenges even before the case begins.

Moreover, the United States Judicial Conference has crafted a rule that will heighten pleading standards to those outlined in the U.S. Supreme Court's *Iqbal* and *Twombly* decisions, making the pleading requirements more stringent without shutting the courthouse doors, rendering this section of the bill unnecessary.

Finally, H.R. 9 would stay discovery until after a critical phase of patent suits called "claim construction," which would result in improperly constructed patent claims and unfair results. Placing such severe limits on discovery would inhibit the inventors' or small businesses' ability to access vital documents to prove their patent infringement claims. While an inventor may know his or her patent completely, it is difficult to comprehend an infringing product without either limited technical discovery or the funding to reverse-engineer a product.

There is both a right way and a wrong way to go about enhancing our patent system. The former clarifies rules that already exist courtesy of the Supreme Court, local patent rules, and the United States Judicial Conference. The latter results in patent-holding becoming a luxury of millionaires, not small inventors—big tech, not start-ups.

Sincerely yours,

Linda Lipsen
Chief Executive Officer
American Association for Justice