Roll Call

Goodlatte's Patent Bill Is Two Steps Forward, One Back | Commentary

By Erik Telford
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The House Judiciary Committee, led by Chairman Robert W. Goodlatte, R-Va., is making a well-intentioned play to reform patent litigation by reining in the frivolous and costly lawsuits that all too often act as a roadblock to innovation.

Goodlatte's Innovation Act (HR 3309) — aimed at curbing abuse of the patent litigation system — contains many provisions that will undoubtedly help foster advancements in science and technology in America. However, the legislation also contains potentially dangerous proposals that would harm innovation in the software industry; the bill would be most effective if it focused exclusively on litigation reform.

The federal patent system is rooted in the Constitution, which empowers Congress to "promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." In modern context, this clause compels the government to serve as a guardian of the rights of America's creators and innovators. Through legislation, the patent system has evolved alongside the inventions it protects — most recently through the America Invents Act of 2011.

HR 3309 attempts to succeed where other patent bills have failed, aggressively targeting "patent trolls" who buy or file for patents with the sole purpose of suing legitimate businesses and innovators to collect settlements. Although the right to seek protection for one's intellectual property in court is essential and inalienable, frivolous "troll" lawsuits are costly and time-consuming for innovators and discourage research, development and experimentation — moving our entrepreneurial economy in reverse.

Goodlatte's legislation reforms the patent litigation process by raising standards for plaintiffs, including requiring increased complaint details, shifting the discovery costs and instituting a "loser pays" system. Each of these reforms maintains the integrity of the patent litigation system while also protecting innovators — particularly small businesses unable to retain high-priced intellectual property lawyers for the thousands of hours it often takes to fight a lawsuit — from unsubstantiated suits when they've done nothing wrong.

Although the litigation reform elements of this legislation are welcome news for America's innovators, other aspects of the bill seem more likely to undermine their rights. The legislation would expand and make permanent a highly flawed transitional program for challenges to covered business method patents introduced under the America Invents Act of 2011. This review program would place a cloud of uncertainty over innovators' patents by making them subject to commercially motivated challenges for the duration of their lifetime. It also creates a needless, 18-month waiting period during which a challenger can openly infringe and profit on a patent-holder's rights and poach market share, even if their claim is eventually dismissed.

Most damagingly, the expansion of this review program would discriminate against certain fields of technology over others, most significantly the software industry, directly contradicting more than 200 years of congressional precedent that subjects all patents in a certain field to the same rules and requirements. Injecting this level of uncertainty into such a critical sector of our economy is a recipe for disaster.

By including the expansion of an arbitrary and unfair review system in a bill centered on reform of patent litigation, lawmakers are putting out one fire but starting another.

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