

Bill/Statute	Invalidation of Overbroad Patents	Heightened Pre-Litigation Requirements	Heightened Pleading Requirements	Increased Transparency	Fee-shifting	Bonds	Joinder	Early Case Management	Limited/Split Discovery	Bad-faith Cause of Action
<p>H.R. — Patent Discussion Draft Goodlatte, R-VA Not introduced</p>	<p>Encourages full disclosure to PTO: Repeals 35 U.S.C. § 145, Civil action to obtain patent, which allows patent applicants facing rejection by the PTO to file a civil action in federal district court, rather than appeal to the Federal Circuit under § 141, in which the Federal Circuit can only review those facts in the record established during patent prosecution at the PTO.</p> <p>Narrows estoppel effect of post-grant review: Amends 35 U.S.C. § 325(e)(2) so that defendant in patent infringement suit is estopped only from making invalidity arguments it actually raised during post-grant review, and not from making arguments that "reasonably could have been raised" during that post-grant review.</p> <p>Defines standard for inter partes review: Amends 35 U.S.C. § 316(a), Conduct of inter partes review, so that each claim shall be construed as it would be in a civil action to invalidate a patent, using the ordinary meaning of the claim to one of ordinary skill in the art, the prosecution history, and prior judicial claim constructions.</p> <p>Prevents double-patenting: Adds 35 U.S.C. § 106, so that a first patent issued that is not prior art preventing patentability under § 102 for a second patent from the same inventor because of a § 102(b) inventor disclosure exception, will still be considered prior art under a § 103 obviousness determination.</p> <p>Expands specific post-grant review: Dictates broadly construing the definition of covered business method patents under § 18, Transitional program for covered business method patents, to allow challenges to the validity of business methods patents relating to financial activity, even if financial products or services are not explicitly claimed. Also removes 2020 sunset provision.</p>	<p>Requires PTO disclosures: Adds 35 U.S.C. § 263, so that if an entity sends 20 or more demand letters for patent licensing in a year, the entity must submit to the PTO, for each patent claimed in the letters, the identification of the patent and its ownership, identification of each entity asserting a claim, any licensees or licensing obligations (including to SSOs), and ultimate parent entity. Courts may enter monetary sanctions for failure to conform with recordation requirements and treble damages for willfulness would not be available to the patentee.</p>	<p>Eliminates Form 18: Dictates that Supreme Court shall eliminate Form 18 from the FRCP and prescribe new forms setting out model patent infringement complaints that notify accused infringers of the asserted patent claims, identify the accused instrumentalities, and plaintiff's theory for how each accused instrumentality meets each limitation of each asserted claim.</p>	<p>Requires initial disclosures: Amends 35 U.S.C. § 281, Remedy for infringement of patent, so that patentee must disclose to PTO, court, and adverse parties when filing a patent infringement complaint, any person with direct financial interest in the outcome and any agreement or legal basis for the interest.</p>	<p>For discovery costs: (Recommendation to Judicial Conference, not amendment to Patent Act) Each party is responsible for the costs of producing core documentary evidence, but a party bears the cost of any additional discovery (computer code and electronic communications, including email) it seeks from the other party, including reasonable attorney fees.</p> <p>For attorney fees (two-way): Strikes "in exceptional cases" from 35 U.S.C. § 285 awards of attorney fees.</p> <p>For incentivizing settlement: Adds 35 U.S.C. § 285A so that a party in a patent infringement action at least 10 days before trial may make an offer to settle any claim. If the offer is not accepted and the judgment or order finally issued is not more favorable to the offeree with respect to the claim than the last offer, the offeror may file a petition for payment of costs and attorney fees incurred with respect to that claim after the last offer was made, unless requiring payment would be unjust or rejection was justified.</p>	<p>For additional discovery: Party seeking additional discovery (computer code and electronic communications, including email) must post a bond in an amount sufficient to cover the anticipated costs of discovery, or provide other security for the anticipated costs of discovery.</p>	<p>Protects End-Users: Amends 35 U.S.C. § 296, Liability of States for infringement of patents, so that manufacturers or suppliers of an accused instrumentality may intervene as a defendant if a customer is sued for patent infringement. The court may grant the customer's motion to stay pending resolution of the case against the manufacturer, unless the manufacturer is not the principal developer of the allegedly infringing product or process, or cannot satisfy a judgment of damages. Injunctive relief against a manufacturer may extend to other parties in the action.</p>	<p>Expedites case disposition: Dictates that Judicial conference shall recommend case management procedures to identify potential dispositive issues in patent infringement cases and focus on early summary judgment motions to expedite disposition of the case.</p>	<p>Limits additional discovery: (Recommendation to Judicial Conference, not amendment to Patent Act) Court may determine that request for additional discovery is excessive or irrelevant and may set limits.</p> <p>Categorizes discovery: Splits discovery into discovery of core documentary evidence and additional discovery (computer code and electronic communications, including email).</p>	
<p>S. 1013 Patent Abuse Reduction Act Cornyn, R-TX Introduced and referred to Senate Judiciary: May 22, 2013</p>			<p>Amends Form 18: Dictates that Supreme Court must review and amend Form 18 of the FRCP to accommodate heightened pleading requirements.</p> <p>Requires patent information: Adds 35 U.S.C. § 281A so that a party alleging infringement must identify each patent and claim allegedly infringed, and each accused instrumentality that infringes the claim, including the particular name/model number if known, and explain where each element of each asserted claim is found, and whether the element is infringed literally or under the doctrine of equivalents (typical disclosures in infringement contentions).</p> <p>Requires specificity for indirect infringement claims: For indirect infringement claims, plaintiff must provide a description of the direct infringement, the direct infringers, and the acts that contribute to or induce the direct infringement.</p>	<p>Requires pleading disclosures: Adds 35 U.S.C. § 281A so that initial patent infringement complaint must identify the source of plaintiff's right to assert the patent, a description of its principal business, a list of complaints asserting the patents-at-issue, licensing or pricing commitments, including to SSOs, and any other party who owns or is the exclusive licensee of the patent, has a right to enforce the patent, or has a direct financial interest in the outcome.</p>	<p>For discovery costs: Adds 35 U.S.C. § 300 so that each party is responsible for the costs of producing core documentary evidence, but a party bears the cost of any additional discovery (computer code and any electronic communications, including email) it seeks from the other party, including reasonable attorney fees.</p> <p>For attorney fees (two-way): Amends 35 U.S.C. § 285, Attorney fees, so that Court shall award costs and attorneys' fees to prevailing party unless the losing party's position and conduct were objectively reasonable and justified or exceptional circumstances make the award unjust. If losing party cannot pay, the court may make the costs and expenses recoverable against any interested party.</p>	<p>For additional discovery: Adds 35 U.S.C. § 300 so that a party seeking additional discovery must post a bond in an amount sufficient to cover the anticipated costs of discovery, or provide the party from whom the additional discovery is sought payment of the anticipated costs of discovery.</p>	<p>Allows joinder of interested parties: Amends 35 U.S.C. § 299 so that courts will grant defendants' motions to join interested parties, including patent owners, assignees, exclusive licensees, or any party with a direct financial interest in the outcome of the litigation, unless they are not subject to service of process or jurisdiction or venue would become improper.</p>		<p>Limits discovery before claim construction: Adds 35 U.S.C. § 300, limiting discovery prior to claim construction to information necessary for the court to determine the meaning of the terms at issue, unless resolution within a specified period of time will have an automatic impact on a party's rights or if necessary to resolve a motion raised before a claim construction ruling.</p> <p>Categorizes discovery: Splits discovery into discovery of core documentary evidence and additional discovery (computer code and electronic communications, including email).</p>	

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H.R. 2024 End Anonymous Patents Act Deutch, D-FL Introduced and referred to House Judiciary: May 16, 2013				Requires initial disclosures: Expands 35 U.S.C. § 261, Ownership; assignment, to require disclosure of patent owner and any real party in interest upon patent issuance, and upon payment of maintenance fees, so that patent owner can only collect infringement damages from date of compliance. Any transfer of ownership must also be disclosed within 90 days.						
S. 866 Patent Quality Improvement Act Schumer, D-NY Introduced and referred to House Judiciary: May 6, 2013	Expands specific post-grant review: Amends § 18, Transitional program for covered business method patents, to allow challenges to the validity of all business methods patents (i.e. all software patents), rather than merely patents claiming financial products or services. Also removes 2020 sunset provision.									
H.R. 845 Saving High-Tech Innovators from Egregious Legal Disputes Act DeFazio, D-OR; Chaffetz, R-UT Introduced and referred to House Judiciary: Feb. 27, 2013					For attorney fees (one-way): Adds 35 U.S.C. § 285A to allow one-way fee-shifting to any prevailing party asserting invalidity or non-infringement if adverse party was not the original inventor, a university, or a technology transfer organization, or did not substantially invest in exploitation of the patent.	For costs and attorney fees: Adds 35 U.S.C. § 285A so that if the court finds that plaintiff asserting patent was not the original inventor, a university, or a technology transfer organization, or did not substantially invest in exploitation of the patent, then plaintiff must post a bond sufficient to cover full costs and attorney fees.				
Sec. 6, 9 V.S.A. Chapter 120 Bad Faith Assertions of Patent Infringement Effective July 1, 2013		Requires demand letter disclosures: Patent license demand letters must identify the patent, patent owner and any assignees, and factual allegations regarding specific areas in which the accused instrumentalities infringe the patent. Demand letter must give sufficient time for response or payment, and offer to license based on reasonable value of the patent.				For costs and attorney fees: If the court finds that defendant has established a reasonable likelihood of bad-faith patent assertion, patentee must post a bond equal to a good faith estimate of defendant's costs to litigate the claim, and actual and exemplary damages, of not more than \$250,000. Bad faith: Factors include failing to identify patents at issue, patent owners, or how defendant's conduct violates patent in demand letter, demanding too quick a response or too much money for licensing, or making deceptive or meritless assertions. Good faith: Factors include patentee being the original inventor or an education institution, commercializing the patented invention, or previously successfully enforcing the patent in court.				Creates Attorney General cause of action: AG may bring a civil action against a party who asserts a patent in bad-faith. Creates patent assertion target cause of action: Defendant in bad-faith patent litigation may bring an action against patentee for equitable relief, damages, costs and attorney fees, and exemplary damages of \$50,000 or three times the total of damages, costs, and fees, whichever is greater.