

## **SUMMARY OF S. 2049, THE TRANSPARENCY IN ASSERTION OF PATENTS ACT**

- **DISCLOSURES** – Instructs the FTC to promulgate rules to prohibit unfair or deceptive acts and practices in the sending of patent infringement demand letters. Such rules shall establish the disclosures that a written communication must contain in order for it to be permissible, including: a description of the patent being infringed along with the patent number, each claim of infringement, a clear description of how the patent is being infringed, the name(s) of all owner(s) of a patent including parent companies, disclosure of any licensing obligations, the basis of any proposed amount to license the patent, and disclosure of current reexaminations by the Patent and Trademark Office or ongoing litigation involving the patent(s) in question. The bill allows the FTC to include other disclosures it considers necessary. **This is aimed at providing recipients of demand letters – particularly small businesses that are unfamiliar with the patent system – the basic information they need to determine whether they should hire a lawyer, pay a sum to resolve the claim, or throw the letter in the trash.**
- **EXEMPTIONS** – Allows the FTC to exempt from disclosure requirements demand letters sent between entities that have an existing licensing agreement, as well as other communications the commission determines do not need to be covered in order to protect consumers or that are not covered by the act.
- **UNFAIR OR DECEPTIVE ASSERTIONS** – Instructs the FTC to promulgate rules to specify what constitutes a prohibited unfair or deceptive assertion in patent infringement demand letters, including (1) an assertion that falsely threatens administrative or judicial relief will be sought if compensation is not paid or the infringement is not otherwise resolved; (2) an assertion that lacks a reasonable basis in fact or law; and (3) an assertion that is likely to materially mislead a reasonable intended recipient. **By giving the FTC rulemaking authority in this area the commission can better provide guidance to businesses on what practices are prohibited.**
- **CONSUMER EDUCATION** – Instructs the commission to provide public education and awareness regarding unfair or deceptive patent assertions.
- **FTC ENFORCEMENT** – Violations of the rules promulgated under the bill will be treated as a deceptive act or practice under the Federal Trade Commission Act subject to civil penalties of \$16,000 per violation (adjusted annually for inflation). Existing requirements in Federal Trade Commission Act regarding civil penalties would apply, including a requirement that the FTC prove the violator had actual knowledge that an act or practice is unfair or deceptive and is unlawful.
- **STATE ATTORNEYS GENERAL ENFORCEMENT** – To provide a secondary method of enforcement, the bill allows state AGs to bring civil action in federal district court for violations of the rules promulgated under the bill. State AGs can seek to enjoin further violations by the defendant, compel compliance with the rules, obtain damages for his/her state's residents, or obtain civil penalties of up to \$16,000 per violation (adjusted annually for inflation). A state cannot bring action against a violator while federal action against the same violator is pending.