

The Protecting American Talent and Entrepreneurship Act (PATENT Act) *Short Summary*

Abusive patent litigation is a threat to our innovation economy, costing businesses consumers billions of dollars each year. Abusive actors file frivolous lawsuits; send vague demand letters; and rely on weaknesses in the patent litigation system (and its high cost) – not the merits – to extort expensive settlements. The Protecting American Talent and Entrepreneurship Act (the PATENT Act) makes necessary and commonsense reforms to stop abusive patent litigation practices and prevent bad actors from further undermining the system that made the United States one of the most dynamic and innovative countries in the world.

KEY PROVISIONS CONTAINED IN THE PATENT ACT:

Clarifies Pleading Standards. The bill would establish clear, uniform standards for pleading in patent infringement suits to give defendants real notice of the claims against them, and keep meritless lawsuits from clogging federal court dockets. It also increases transparency by requiring early disclosures about the patent-in-suit.

Protects End Users. The bill protect customers who are targeted for patent infringement based on a product they simply purchased from a manufacturer or off the shelf by allowing the stay of an infringement case against an end user of a product while the manufacturer of the product litigates the alleged infringement.

Reasonably Limits Early Discovery. The legislation protects litigants from the threat of expensive discovery by requiring a court to stay discovery while it resolves key early motions in the case, including motions to dismiss and transfer venue. The bill also directs the Judicial Conference to develop rules about how much a party should bear the cost of discovery beyond what is core for the case.

Creates Risk for Bad Actors. In order to deter plaintiffs and defendants from engaging in abusive and dilatory litigation practices, the bill provides that reasonable attorney fees will be awarded if the winner proves and a court rules that the losing party was not “objectively reasonable.” The legislation provides a process to recover fees where the abusive litigant is hiding behind a shell company.

Curbs Abusive Demand Letters. The legislation adds requirements that demand letters contain meaningful information so they cannot be used merely to scare recipients into early settlements. The bill also heightens penalties for those found to violate the FTC Act by sending misleading demand letters.

Increases Transparency. The bill requires the PTO to keep information about patent ownership in order to provide a resource about patents being asserted in a demand letter or lawsuit.