

	H.R. 3309 – Goodlatte (12/5/2013)	H.R.3540 - Polis	S. 1720- Leahy	S. 1612 - Hatch	S. 1013 - Cornyn	S. 866 - Schumer	S. 2049 – McCaskill	IPO Position
1. Cost Shifting Including Attorney Fees	<ul style="list-style-type: none"> Awards to prevailing party unless position and conduct of nonprevailing party reasonably justified in law and fact or special circumstances (e.g., severe economic hardship to named inventor) make unjust. If losing party unable to pay, court may make recoverable against joined “interested party.” Party asserting claim, who later extends covenant not to sue, is deemed “non-prevailing party.” 	n/a	n/a	<ul style="list-style-type: none"> Awards to prevailing party unless non-prevailing party position “substantially justified” or exceptional circumstances make unjust. Court may, on motion by defendant/ respondent, require party alleging infringement to post bond. 	<ul style="list-style-type: none"> Awards to prevailing party unless non-prevailing party position and conduct “objectively reasonable and substantially justified” or exceptional circumstances make unjust. If losing party unable to pay, court may make recoverable against any interested party. 	n/a	n/a	<ul style="list-style-type: none"> Award to prevailing party unless position and conduct of non-prevailing party were objectively reasonable and substantially justified. Not required if exceptional circumstances make unjust.
2. Disclosure of Real Party-in-Interest (RPI)	<ul style="list-style-type: none"> Disclosure to court, USPTO, and adverse parties in infringement suits except ANDA suits; encumbers patent with ongoing duty of disclosure to USPTO. Includes assignee, entity with right to sublicense or enforce patent, financial interest in patent or plaintiff, and ultimate parent. Financial interest defined as ownership/control of > 5% of plaintiff or right to receive proceeds from assertion of patent. Party violating USPTO ongoing disclosure requirement may not recover fees/damages related to period of noncompliance, and court may award adverse party costs incurred as result of nondisclosure unless such sanction would be unjust. Court may join “interested party” upon showing by defendant that plaintiff interest is primarily asserting the patent in litigation. 	n/a	<ul style="list-style-type: none"> Disclosure to court and adverse parties in infringement suits. Includes all entities with financial interest in subject matter or party to proceeding; or any other interest that could be substantially affected by outcome of proceeding. “Proceeding” and “financial interest” defined in 28 U.S.C. §455(d). Disclosure to USPTO of assignee’s ultimate parent entity within 3 months of assignment. Party violating USPTO disclosure requirement may not recover fees/damages related to period of noncompliance, and court may award adverse party costs incurred as result of nondisclosure, unless denial of fees or award of sanctions would be unjust. 	n/a	<ul style="list-style-type: none"> Requires disclosure in complaint alleging patent infringement, along with description of plaintiff’s business, identification of assignees and exclusive licensees, any identify of any person known to have legal right to enforce patent or financial interest in outcome of proceeding. Court can join “interested party” upon showing by defendant that plaintiff’s interest is primarily asserting the patent in litigation. 	n/a	n/a	<ul style="list-style-type: none"> Support requiring limited disclosure of titleholder information in PTO rules. Oppose Congress dictating outcome of Judicial Conference deliberations, or bypassing its rulemaking entirely, relative to rules of civil procedure on initial disclosure and joinder of interested parties in patent cases. Oppose requiring disclosure of non-ownership interests: direct financial interest, exclusive licensees and others with right to enforce patent.
3. Stays of Litigation Against End Users	<ul style="list-style-type: none"> Requires stay as to customer where manufacturer is party to same or other action on same patent. Parties must consent to stay. Motion must be filed within later of 120 days or the date the first scheduling order is entered. Customer must agree to be bound by any issues finally decided as to the manufacturer. If manufacturer seeks or consents to entry of a consent judgment or does not appeal a final decision, court may determine that decision is not binding on customer. May be lifted where manufacturer suit will not resolve major issue in customer suit or unjust to party seeking to lift. 	n/a	<ul style="list-style-type: none"> Requires stay as to customer where manufacturer is party to same or other action on same patent. Parties must consent to stay. Customer must agree to be bound under collateral estoppel by any issues finally decided as to manufacturer. Motion must be filed within later of 120 days of relevant pleading or date first scheduling order is entered. May be lifted where manufacturer suit will not resolve major issue in customer suit or unjust to party seeking to lift. If manufacturer seeks or consents to entry of consent judgment or does not appeal a final decision, court may determine that decision is not binding on customer. 	n/a	n/a	n/a	n/a	Support stay against customer while suit proceeds against manufacturer. Should be carefully tailored to avoid unintended adverse consequences to innovators, manufacturers and customers.
4. Heightened Pleading Standard for Patent Infringement	<ul style="list-style-type: none"> Requires pleading each asserted claim, allegedly infringing product or process including names/model numbers if known, and theory of how each accused item infringes each asserted claim, except in ANDA suits and where information not reasonably accessible. Requires description of all rights to assert patent. Requires description of certain licensing commitments, e.g. through standard setting. Requires explanation of inaccessibility and attempts to access where information not disclosed. Permits court to allow filing of confidential information under seal. Eliminates Form 18; Supreme Court may create new form. 	n/a	n/a	n/a	<ul style="list-style-type: none"> Requires pleading with particularity each asserted claim, allegedly infringing product or service including names and model numbers if known, and theory of how each accused product or service infringes each asserted claim. Requires description of all rights to assert patent. Requires amendment of Form 18. 	n/a	n/a	<ul style="list-style-type: none"> Support modifying Form 18 to include identification of at least one claim alleged to infringe, statement explaining such infringement, and statement addressing any indirect infringement alleged. Oppose Congress dictating outcome of Judicial Conference deliberations, or bypassing its rulemaking entirely, relative to rules of civil procedure on setting the pleading standard in patent cases.

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5. Post Grant Review and Inter Partes Review	<ul style="list-style-type: none"> Eliminates provision barring PGR petitioner from later asserting in a civil action that a claim is invalid on any ground that the petitioner “reasonably could have raised” during PGR. Requires USPTO to use district-court claim construction in PGR and IPR. 	n/a	<ul style="list-style-type: none"> Eliminates provision barring PGR petitioner from later asserting in a civil action that a claim is invalid on any ground that the petitioner “reasonably could have raised” during PGR. Requires USPTO to use district-court claim construction in PGR and IPR. 	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> Support eliminating provision barring PGR petitioner from later asserting in civil or ITC action that a claim is invalid on any ground petitioner “reasonably could have raised” during PGR. Support requiring USPTO to change approach to claim construction in PGR and IPR. Oppose treating claim construction in CBM proceedings differently from claim construction in PGR and IPR proceedings.
6. Expanding Transitional Program for Covered Business Method Patents	<ul style="list-style-type: none"> Amends scope of prior art. Allows USPTO Director to waive fee. 	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> Eliminates 8-year sunset and deletes limitation to “a financial product.” 	n/a	<ul style="list-style-type: none"> Oppose eliminating 8-year sunset. Oppose deleting limitation to “a financial product.”
7. Identification of Core Discovery and Discovery Fee Shifting	<ul style="list-style-type: none"> Limits discovery prior to claim construction ruling to information necessary to construe claims or resolve motions. Limit does not apply to actions seeking a preliminary injunction based on competitive harm or if parties voluntarily consent to be excluded. Court shall expand discovery limits where resolution within specified period of time affects rights of a party with respect to a patent. Permits court to allow additional discovery as necessary to prevent manifest injustice. Requires Judicial Conference to develop rules on payment and prerequisites for document discovery in addition to core documentary evidence; provides specific proposals the Judicial Conference should consider on discovery of core and additional documentary evidence, electronic communication, and discovery timing. Requires Judicial Conference to study efficacy of rules and procedures for first four years after implementation and authorizes modification following this study; authorizes modification during the first four years after implementation to prevent a manifest injustice, the imposition of an excessively costly requirement, or an unintended result. 	n/a	n/a	n/a	<ul style="list-style-type: none"> Limits discovery prior to claim construction ruling to information necessary to construe claims or resolve motions. Court may expand where resolution within specified period of time affects rights of a party with respect to patent(s). Each party responsible for producing “core documentary evidence.” Party seeking additional discovery bears costs including attorney fees. 	n/a	n/a	<ul style="list-style-type: none"> Oppose Congress dictating outcome of Judicial Conference deliberations, or bypassing its rulemaking entirely, relative to rules of civil procedure on scope and sequencing of discovery in patent cases, including claim construction.
8. Bankruptcy Protection	<ul style="list-style-type: none"> Bars bankruptcy trustee from terminating certain licenses. Adds trademarks to definition of “intellectual property” in title 11. Regarding trademarks, holds bankruptcy trustee to any contractual obligation to monitor and control the quality of a licensed product or service. 	n/a	<ul style="list-style-type: none"> Bars bankruptcy trustee from terminating certain licenses. Adds trademarks to definition of “intellectual property” in title 11. Regarding trademarks, holds bankruptcy trustee to any contractual obligation to monitor and control the quality of a licensed product or service. 	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> Support preserving IP licenses during bankruptcy. Support in concept including trademarks, service marks, and trade names in definition of IP in bankruptcy code, where trustee, debtor, or acceptable designee agrees to assume contractual obligation to monitor and control quality of product or service.
9. Double Patenting	Codifies doctrine of double patenting for first-inventor-to-file patents.	n/a	Codifies doctrine of double patenting for first-inventor-to-file patents.	n/a	n/a	n/a	n/a	Support in principle codification of the Double-Patenting Doctrine for First-Inventor- to-File patents, such that an original inventor’s patent claims are not invalidated by that inventor’s later filed improvement patent claims.

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10. Bad-Faith Demand Letters	<ul style="list-style-type: none"> • Articulates the “sense of Congress” that action including litigation stemming from sending a purposely evasive demand letter should be considered “a fraudulent or deceptive practice and an exceptional circumstance when considering whether the litigation is abusive.” • Claimant seeking to establish willful infringement may not rely on evidence of pre-suit notification unless such notification identifies with particularity the asserted patent, identifies the product or process accused, identifies the ultimate parent entity of the claimant, and explains with particularity, to the extent possible following reasonable investigation or inquiry, how the product or process infringes. 	<ul style="list-style-type: none"> • Upon sending 20 demand letters/year, requires certain senders to disclose detailed patent information to USPTO; imposes ongoing duty to correct. • Creates demand letter database at USPTO. • Requires detailed infringement allegations and other information to be included in letters. • Court in a later action may impose sanctions for violations. • Results in patent abandonment for failure to pay fee after USPTO finds violation. • Codifies FTC authority to enforce requirements by defining violations as unfair and deceptive practices. 	<ul style="list-style-type: none"> • Defines as an unfair and deceptive trade practice under § 5 of the FTC Act the practice of engaging in widespread sending of written communications, in connection with assertion of US patent, that state the recipient is infringed and bears liability or owes compensation where: <ul style="list-style-type: none"> • Falsely threaten administrative or judicial relief will be sought; • Assertions lack reasonable basis in fact or law; or • Content likely to materially mislead reasonable recipient. 	n/a	n/a	n/a	<ul style="list-style-type: none"> • Requires FTC to promulgate rules to prohibit unfair or deceptive acts/practices in sending written communication communications in connection with assertion of US patent that state the recipient infringed, bears liability or owes compensation. • Rules shall create requirements for disclosures communications must contain, including detailed description of each patent and claim allegedly infringed; description of each item alleged to infringe and how it is alleged to infringe; notice that recipient may have right to have manufacturer defend against infringement; contact information of sender or identify of those with financial interest or other ownership rights, and ultimate parent of each identified person or entity; description of obligations (e.g., FRAND); method used to calculate proposed compensation; any ongoing PTAB proceeding on the patent; and any other disclosure the FTC may consider necessary. • Allows state attorneys general or other state official to enjoin further violation, compel compliance, or obtain damages or other relief. FTC may intervene. • Amount of civil penalty calculated by multiplying number of violations of rule by amount not greater than \$16,000. 	<ul style="list-style-type: none"> • Support legislation to make high volume sending of bad faith demand letters, to end users who are not resellers, a deceptive act or practice within the meaning of § 5(a)(1) of the FTC Act, provided it is carefully tailored to differentiate between abusive activity and legitimate, lawful activity. Should include clear identification of objective acts/practices that would deceive recipients. • Oppose legislation to require overly burdensome and detailed disclosures in bad faith demand letters, e.g., information that could trigger DJ jurisdiction or confidential information. • Should preempt state legislation.