



2015 Patent Reform: Protecting American Talent and Entrepreneurship Act of 2015 (S. 1137)

Senate Judiciary Committee Chairman Chuck Grassley (R-IA) and Ranking Member Patrick Leahy (D-VT), joined by Senators John Cornyn (R-TX) and Chuck Schumer (D-NY), introduced the bipartisan Protecting American Talent and Entrepreneurship Act (“PATENT Act”) on April 29, 2015.¹ The third major patent reform bill introduced this year, the 55-page PATENT Act is the first reform bill to garner bipartisan support.²

The PATENT Act’s main purpose is to curb the abusive patent litigation practices that plague small businesses.³ According to Senator Grassley, these “frivolous lawsuits cost [small businesses] millions of dollars and force them to settle despite having a strong defense. The meaningful reforms in our bipartisan bill are needed to ensure that the innovation and entrepreneurship our patent system was designed to protect isn’t undermined.”⁴

During the recent Senate Judiciary Committee hearing on the bill, several witnesses supported the bill but also urged reform to *inter partes* review (“IPR”) and post-grant review (“PGR”) proceedings to make it more difficult to invalidate patents.⁵ However, other

witnesses representing the telecommunications industry opposed those changes and stressed the value of IPR and PGR proceedings for ensuring fair challenges to invalid patents.⁶ In response to these comments, Senator Grassley explained that he is “committed to looking at these concerns, determining whether they are valid or not, and working with colleagues to see what can be done to improve the process.”⁷ Thus, while support exists for the bill in its current form, amendments are possible as the legislation moves forward.

The section below discusses the likely implications of four key provisions of the PATENT Act designed to discourage abusive patent litigation.

Key Provisions of the Patent Act

Heightened Pleading Standards. Unlike the Innovation Act (H.R. 9) and the STRONG Patents Act (S. 637) introduced earlier this year, the PATENT Act introduces heightened pleading standards for all civil actions in which a party alleges infringement (in a complaint, counterclaim, or cross-claim), except in Hatch-Waxman and biosimilar litigation under 35 U.S.C. § 271(e)(2).⁸

The bill eliminates Form 18, “Complaint for Patent Infringement,” from the Federal Rules of Civil Procedure (generally requiring identification of the asserted patent and a general description of the accused product) and requires a party alleging infringement to include the following specific information in its pleadings, if known: (i) each patent and claim allegedly infringed; (ii) the accused process, machine, manufacture, or composition of matter (the accused instrumentality); (iii) the name or model number of each accused instrumentality; (iv) description of the elements of each allegedly infringed claim, as well as how the accused instrumentality infringes each element; and, (v) in cases of indirect infringement, a description of the acts that are alleged to contribute to or induce infringement.⁹ The bill allows claimants to file pleadings without this required information if such information is not “accessible,” as long as a party provides general descriptions of the required information and states why the information is not accessible.¹⁰

The bill, if enacted, would impose heightened pleading requirements for all patent owners trying to enforce their patent rights, not just nonpracticing entities. The pleading rules introduced by the bill go beyond the requirements defined by the U.S. Supreme Court in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). These heightened requirements thus might be inconsistent with the Supreme Court’s general approach that patent law should conform to the same general rules controlling other types of federal civil litigation.¹¹ Some of the proposed changes are also already contemplated by the Committee on Rules of Practice and Procedure of the Judicial Conference in its recently published proposed amendments to the Federal Rules of Civil Procedure, which contains specific proposed changes for patent litigation procedures.¹² Additionally, many district courts that handle the majority of patent cases have adopted local rules that require filing of patent infringement contentions early in the litigation, along with disclosure of the theories of liability upon which the parties intend to rely.¹³ Thus, the pleading provisions of the bill, if enacted, might have less practical effect than intended.

Attorneys’ Fees. The bill also attempts to codify the “sense of Congress” that in patent cases, nonprevailing parties should pay reasonable attorneys’ fees if their litigation position or conduct is not “objectively reasonable.”¹⁴ Upon motion by the prevailing party, if the court finds that the conduct or position

of the nonprevailing party was not objectively reasonable, the court shall award reasonable attorneys’ fees to the prevailing party—with an exception for special circumstances that would make an award unjust.¹⁵ Additionally, the bill requires each plaintiff to identify interested parties in the litigation, certify to the court that it has sufficient funds to satisfy any award of reasonable attorneys’ fees, and demonstrate that its primary business is not the assertion and enforcement of patents or resulting licensing.¹⁶ A plaintiff filing such a certification must first notify the interested parties, who may be held accountable for the fee award unless they renounce their interest.¹⁷ The bill permits courts to exempt institutions of higher education and nonprofit technology transfer organizations (and others, in the interest of justice) from being charged with the fee award.¹⁸

These fee-shifting provisions might have consequences that extend beyond just preventing abusive patent litigation. For example, the Supreme Court recently lowered the threshold for awarding attorneys’ fees, announcing that (i) the statutory “exceptional case” determination should be based on “the substantive strength of the party’s litigating position” or “the unreasonable manner in which the case was litigated” (rather than requiring the case to be subjectively baseless and brought in subjective bad faith), and (ii) district courts should determine in their discretion whether a case is exceptional under a preponderance of the evidence standard (rather than requiring clear and convincing evidence).¹⁹ The bill would alter this standard by requiring courts to conduct an “objectively reasonable” inquiry in every patent case. These provisions might have a chilling effect on patent litigation, deterring patent owners from bringing legitimate suits and deterring counsel who might have contingency fee arrangements with their clients. Thus, in its current form, the bill might have unintended consequences for patent enforcement across the board, not just for nonpracticing entities.

Discovery in Patent Litigation. The bill tackles the issue of disproportionate discovery burden in patent disputes by requiring a court to stay discovery pending resolution of motions to dismiss, transfer venue, and sever accused infringers.²⁰ However, courts have discretion to allow limited discovery necessary to resolve these motions or a motion for a preliminary injunction, or if it finds that additional discovery is necessary to preserve

evidence or prevent prejudice.²¹ Notably, parties can consent to be excluded from these discovery limitations.²²

The bill also requires the Judicial Conference of the United States to develop rules regarding the extent to which each party is entitled to receive “core” or “non-core” documentary evidence, as well as the extent of and limitations to discovery of electronic communications.²³ Thus, instead of introducing changes to reduce the burdens of document production that often plague defendants, the bill directs the Judicial Conference to address the issue.

IPR and PGR Proceedings. The bill introduces minimal changes to IPR and PGR proceedings.²⁴ For example, restrictions barring PGR petitioners from later asserting in a civil

action that a claim is invalid on any ground that the petitioner “reasonably could have raised” during a PGR are eliminated.²⁵ However, unlike the Innovation Act (H.R. 9) introduced earlier this year, the Senate bill does not change the standards for claim construction in IPR and PGR proceedings from the “broadest reasonable interpretation” to the narrower “customary meaning” standard that is applied by district courts.²⁶ Further, the bill does not impose the clear and convincing evidentiary standard or the presumptions of validity for granted patents on petitioners in IPR and PGR proceedings.²⁷

The accompanying chart summarizes the bill’s key provisions and compares them to the Innovation Act (H.R. 9) introduced earlier in the 114th Congress.²⁸

Innovation Act (H.R. 9) and PATENT Act (S. 1137): A Comparison of Key Provisions

TOPIC	Innovation Act – H.R. 9	PATENT Act – S. 1137
Post Grant Review (“PGR”) Proceedings	<ul style="list-style-type: none"> • Claim Construction: Each patent claim “shall be constructed as such claim would be in a civil action to invalidate a patent under section 282, including construing each claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” (H.R. 9, pp. 49-50). • Prior Court Construction: Requires the PTO to consider prior claim construction by a court in a civil action. (H.R. 9, p. 50). • 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. (H.R. 9, p. 48). 	<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. (S. 1137, p. 50).
Inter Partes Review (“IPR”) Proceedings	<ul style="list-style-type: none"> • Claim Construction: Same as for PGR, above. (H.R. 9, pp. 48-49). • Prior Court Construction: Same as for PGR, above. (H.R. 9, p. 49). 	<ul style="list-style-type: none"> • NA

TOPIC	Innovation Act – H.R. 9	PATENT Act – S. 1137
<p>Bad Faith Demand Letters</p>	<ul style="list-style-type: none"> • Articulates the “sense of Congress” that it is an abuse of the patent system and against public policy for a party to send out purposely evasive demand letters to end users alleging patent infringement. Any actions or 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.” (H.R. 9, pp. 14-15). • Claimant asserting 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.” (H.R. 9, pp. 15-16). 	<ul style="list-style-type: none"> • Initial written notice in a civil action alleging infringement of a patent shall contain: (i) identification of each patent and at least one claim of each patent alleged to be infringed; (ii) identification of each product that is believed to infringe one or more claims; (iii) a detailed description of the reasons why plaintiff believes each patent is infringed; (iv) notice to infringer that he/she may have the right to a stay of any suit; (v) the identity of any person with the right to enforce each patent; and (vi) a short and plain statement as to how a proposed compensation was determined if compensation is proposed. (S. 1137, pp. 32-34). • Claimant asserting willful infringement “may not rely on evidence of pre-suit notification” unless such notification complies with the standards set out above. (S. 1137, p. 35). • Does not apply to communications regarding existing licensing arrangements or any communications after the initial written communication. (S.1137, pp. 36-38). • It shall be “an unfair or deceptive practice,” and a violation of the Federal Trade Commission Act, for a person to send a written communication alleging infringement if the sender falsely: <ul style="list-style-type: none"> • represents that administrative or judicial relief has been sought against recipient; or • threatens litigation if compensation is not paid or the communication is not responded to; and • there is a pattern of false statements having been made without litigation or other relief having been sought. (S. 1137, p. 36). • It shall be “an unfair or deceptive practice” if assertions contained in the communication lack reasonable basis in fact or law because: <ul style="list-style-type: none"> • the sender is not a person with the right to license and enforce the patent; • communications seek compensation based on activities after the patent has expired; • communications seek compensation for a patent that has been held to be invalid or unenforceable in a final or administrative judicial proceeding that is unappealable; • communications seek compensation for activities that the sender knows do not infringe the patent because such activities are authorized by the patentee; • communications falsely represent that an investigation of the alleged infringement has occurred; or • communications falsely state that litigation has been filed against, or a license has been paid by, persons similarly situated to the recipient. (S. 1137, pp. 37-38). • It shall be “an unfair or deceptive practice” if the content of the written communication is likely to mislead a recipient because the content fails to include facts to inform recipient: <ul style="list-style-type: none"> • of the identity of the person asserting a right to license or enforce the patent; • of the patent alleged to have been infringed; and • at least one product or other activity that is alleged to infringe the identified patent or patents, and unless readily available, an explanation of the allegation. (S. 1137, pp. 38-39).

TOPIC	Innovation Act – H.R. 9	PATENT Act – S. 1137
<p>Cost Shifting Including Attorney Fees</p>	<ul style="list-style-type: none"> • Court shall award fees to the prevailing party unless the position and conduct of the nonprevailing party were reasonably justified in law and fact or special circumstances (e.g., severe economic hardship to named inventor) make such an award unjust. (H.R. 9, p. 6). • If the nonprevailing party is unable to pay, court may make fees recoverable against a joined “interested party” (an assignee, a party with right to enforce or sublicense the patent, or a party with direct financial interest in the patent). (H.R. 9, p. 6). • Party asserting claim, who later extends covenant not to sue, is deemed “nonprevailing party” unless that party would have been entitled at the time of extending the covenant to voluntarily dismiss the action. (H.R. 9, p. 7). 	<ul style="list-style-type: none"> • Articulates the “sense of Congress” that, in patent cases, reasonable attorneys’ fees should be paid by a nonprevailing party whose litigation position or conduct is not objectively reasonable. (S. 1137, p. 24). • The court shall determine whether the position of the nonprevailing party was objectively reasonable in law and fact, and whether the conduct of the nonprevailing party was objectively reasonable. If not, the court shall award fees to the prevailing party unless special circumstances (e.g., severe economic hardship to named inventor) make such an award unjust. (S. 1137, pp. 24-25). • A party defending against a claim of infringement may file a statement holding a good faith belief that the primary business of the party alleging infringement is the assertion and enforcement of patents. In response to being served with such a statement, a party alleging infringement shall file a certification that: (i) establishes that it will have sufficient funds to satisfy an award of reasonable attorneys’ fees; (ii) demonstrates that its primary business is not assertion and enforcement of patents; (iii) identifies interested parties; or (iv) states that it has no such interested parties. (S. 1137, pp. 25-27). • Notice to interested parties shall be provided prior to filing of the certification by the party defending against the claim of infringement. (S. 1137, pp. 27-28). • Any interested parties who are timely served with notice and do not renounce their interest may be held accountable for any fees, or a portion thereof, in the event that the party alleging infringement cannot satisfy the full amount of the award. (S. 1137, p. 28). • Institutions of higher education may exempt themselves from the applicability of this subsection. (S. 1137, p. 29). • Claims under section 271(e) (Hatch-Waxman cases) are exempt from this subsection; the court may award reasonable attorneys’ fees to the prevailing party in exceptional cases. (S. 1137, p. 31).

TOPIC	Innovation Act – H.R. 9	PATENT Act – S. 1137
Pleadings and Disclosure of Real Party-in-Interest (“RPI”)	<ul style="list-style-type: none"> • A complaint must include each patent, claim, and element allegedly infringed; the allegedly infringing products or processes; the plaintiff’s authority to assert each patent; a description of the plaintiff’s principal business; a list of all other complaints filed related to each asserted patent; and any licensing commitments. (H.R. 9, pp. 2-5). • A complaint must also include a theory of how each accused product or process is allegedly infringing each identified patent. (H.R. 9, pp. 3-4). • Upon filing of an initial complaint for patent infringement (except in ANDA cases), the plaintiff shall disclose to the court, USPTO, and adverse parties the identity of the following parties as related to the patent at issue: <ul style="list-style-type: none"> • the assignee, and ultimate parent entity thereof, • any entity with a right to sublicense or enforce the patent, and any parent entity thereof, • any entity, other than the plaintiff, that the plaintiff knows to have a financial interest in the patent or patents at issue or the plaintiff. (H.R. 9, pp. 16-17). • “Financial interest” is defined as ownership/control of > 5 percent of plaintiff or the right to receive proceeds from assertion of the patent. (H.R. 9, p. 18). <ul style="list-style-type: none"> • Court may join “interested party” upon showing by defendant that plaintiff has no substantial interest in the subject matter at issue other than asserting the patent in litigation. (H.R. 9, p. 8). 	<ul style="list-style-type: none"> • Form 18 is eliminated. A party alleging infringement must identify each patent and claim allegedly infringed. For each such claim, the pleading shall also include “an identification of each accused process, machine, manufacture, or composition of matter,” and for each such accused instrumentality, the pleading shall include “the name or model number of each accused instrumentality” or a description if no model number exists. (S. 1137, pp. 2-4). • For each allegedly infringing claim, the pleading shall also include a “description of the elements thereof that are alleged to be infringed by the accused instrumentality and how the accused instrumentality is alleged to infringe those elements.” (S. 1137, p. 4). • For each claim of indirect infringement, there shall be a requirement of a “description of the acts of the alleged infringer that are alleged to contribute to or induce the direct infringement.” (S. 1137, p. 4). • These heightened requirements do not apply to claims under the Hatch-Waxman Act. (S. 1137, p. 5). • Upon filing an initial complaint for patent infringement, the plaintiff shall disclose to the court, USPTO, and adverse parties the identity of the following parties as related to the patent at issue: <ul style="list-style-type: none"> • the assignee, and ultimate parent entity thereof, • any entity with a right to sublicense or enforce the patent, and any parent entity thereof, • any entity, other than the plaintiff, that the plaintiff knows to have a financial interest in the patent or patents at issue or the plaintiff. (S. 1137, pp. 7-8). • “Financial interest” is defined as ownership/control of > 20 percent of plaintiff or the right to receive proceeds from assertion of the patent. (S. 1137, p. 6).

TOPIC	Innovation Act – H.R. 9	PATENT Act – S. 1137
Stays of Litigation Against End Users	<ul style="list-style-type: none"> • Court shall grant a motion to stay at least the portion of the action against a covered customer related to infringement of a patent if (H.R. 9, p. 22): <ul style="list-style-type: none"> • the covered manufacturer and the covered customer consent in writing to the stay; • the manufacturer is a party to the action or to a separate action involving the same patent or patents related to the same covered product or process; • the covered customer agrees to be bound by any issues that are in common with the covered manufacturer and are finally decided. • Motion must be filed within the 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. (H.R. 9, p. 23). • If the 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 the customer. (H.R. 9, pp. 23-24). • The stay may be lifted where manufacturer suit will not resolve major issue in customer suit or is unjust to the party moving to lift the stay. (H.R. 9, pp. 23-24). 	<ul style="list-style-type: none"> • Court shall grant a motion to stay at least the portion of the action against a covered customer related to infringement of a patent if (S. 1137, pp. 13-14): <ul style="list-style-type: none"> • the manufacturer is a party to the action or to a separate action involving the same patent or patents related to the same covered product or process; • the covered customer agrees to be bound by any issues that are in common with the covered manufacturer and are finally decided, but only for those issues for which all elements of issue preclusion are met. • Motion must be filed within the later of 120 days or the date the first scheduling order is entered (S. 1137, p. 14). • Motion may be granted only if the manufacturer and customer agree in writing to the stay (S. 1137, p. 14). • The stay may be lifted where manufacturer suit will not resolve major issue in customer suit or is unjust to the party moving to lift the stay. (S. 1137, pp. 14-15). • If the manufacturer obtains or consents to entry of a consent judgment or fails to appeal a final decision, court may determine that decision is not binding on the customer. (S. 1137, pp. 15-16).
Expanding Transitional Program for Covered Business Method Patents	<ul style="list-style-type: none"> • Amends scope of prior art to include 102(e) prior art (in addition to 102(a) prior art). (H.R. 9, p. 53). • Allows USPTO Director to waive fee. (H.R. 9, p. 54). 	<ul style="list-style-type: none"> • NA
Identification of Core Discovery and Discovery Fee Shifting	<ul style="list-style-type: none"> • Discovery prior to claim construction ruling shall be limited 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. (H.R. 9; p. 12, 14). • Court shall expand discovery limits in actions where resolution specified period of time necessarily affects the rights of a party with respect to a patent, to ensure timely resolution of the action. (H.R. 9, pp. 13-14). • Permits court to allow additional discovery as necessary to prevent manifest injustice. (H.R. 9, p. 14). • The Judicial Conference shall 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. (H.R. 9, pp. 27-28). • The Judicial Conference “shall 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. (H.R. 9, p. 34). 	<ul style="list-style-type: none"> • Discovery shall be stayed pending resolution of: (i) a motion to dismiss; (ii) a motion to transfer venue; and (iii) a motion to sever accused infringers. (S. 1137, p. 17). • Court may allow limited discovery to resolve these motions or a motion for preliminary relief, or if it finds that additional discovery is necessary to preserve evidence. (S. 1137, p. 17). • Parties may consent to be excluded, in whole or in part, from discovery limitations. (S. 1137, p. 18). • Claims under section 271(e) (Hatch-Waxman cases) are excluded from discovery limitations. (S. 1137, p. 18). • The Judicial Conference shall 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 sequence and scope. (S. 1137, pp. 19-23). • The Judicial Conference shall develop case management procedures to be implemented by U.S. district courts and the Court of Federal Claims for all patent-related actions, including initial disclosure and early case management conference practices. (S. 1137, p. 23).

TOPIC	Innovation Act – H.R. 9	PATENT Act – S. 1137
Bankruptcy Protection	<ul style="list-style-type: none"> • Bars bankruptcy trustee from terminating certain licenses. (H.R. 9, pp. 37-38). • Adds trademarks to definition of “intellectual property” in Title 11. (H.R. 9, p. 37). • Regarding trademarks, holds bankruptcy trustee to any contractual obligation to monitor and control the quality of a licensed product or service. (H.R. 9, p. 38). 	<ul style="list-style-type: none"> • Bars bankruptcy trustee from terminating certain licenses. (S. 1137, p. 43). • Adds trademarks to definition of “intellectual property” in Title 11. (S. 1137, p. 43). • Regarding trademarks, holds bankruptcy trustee to any contractual obligation to monitor and control the quality of a licensed product or service. (S. 1137, p. 44).
Double Patenting	<ul style="list-style-type: none"> • Codifies doctrine of double patenting for first-inventor-to-file patents. (H.R. 9, pp. 50-52). 	<ul style="list-style-type: none"> • NA
Transparency of Patent Transfer	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • An assignment shall be recorded with the USPTO not later than the date on which the patent is issued, and when any subsequent assignment is made that results in a change to the parent entity, not later than three months after the date assignment is made or six months after the closing date of a corporate acquisition. (S. 1137, pp. 40-41). • If the party asserting infringement failed to disclose the assignment, the party may not recover increased damages of attorneys’ fees unless this denial would be manifestly unjust. (S. 1137, pp. 41-42).
Small Business Provisions	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • The USPTO shall develop educational resources for small businesses to address concerns arising from patent infringement, and provide a user-friendly section on the official website that is searchable by patent number and notifies the public of patent cases brought in federal court. (S. 1137, pp. 45-46).
Studies on Patent Transactions, Patent Quality, and Patent Examination	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • Provides for a study on developing greater transparency and accountability in patent transactions occurring on the secondary market. (S. 1137, p. 47). • Provides for a study to examine the idea of developing a pilot program for patent small claims procedures in certain judicial districts. (S. 1137, p. 48). • Provides for a study examining the quality of business method patents asserted in suits alleging patent infringement. (S. 1137, p. 49).

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Endnotes

- 1 See Press Release, Senator Chuck Grassley, “Senators Aim to End Patent Abuses that Cost U.S. Economy Billions of Dollars Every Year” (Feb. 5, 2015).
- 2 For a summary of the previous bills, see Nix & Thurlow, “2015 Patent Reform Innovation Act (H.R. 9) and STRONG Patents Act (S. 632).”
- 3 See Grassley Press Release, *supra* note 1.
- 4 *Id.*
- 5 “The PATENT Act: Hearings on S. 1137 Before the Comm. on the Judiciary,” 114th Cong. (May 7, 2015).
- 6 *Id.*
- 7 *Id.*
- 8 S. 1137, 114th Cong. (2015).
- 9 *Id.*, pp. 2-4.
- 10 *Id.*, p. 5.
- 11 See, e.g., *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 833 (2015) (“Even if exceptions to the Rule [52 of the Federal Rules of Civil Procedure] were permissible, we cannot find any convincing ground for creating an exception to that Rule here [for patent cases.]”); see also, *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006) (“We hold only that the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards.”); Nix & Castanias, “Key Patent Law Decisions of 2014.”
- 12 See *Committee on Rules of Practice and Procedure of the Judicial Conference*, “Preliminary Draft of the Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure,” (Aug. 2014).
- 13 See, e.g., N.D. Ohio L.P.R. §§ 1.1-6.2; S.D. Cal. Patent L.R. §§ 1.1-4.5.
- 14 *Id.*, p. 24.
- 15 *Id.*, pp. 24-25.
- 16 *Id.*, pp. 25-27.
- 17 *Id.*, p. 27.
- 18 *Id.* p. 29.
- 19 *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, 134 S. Ct. 1749, 1755-58 (2014); 35 U.S.C. § 285.
- 20 *Id.*, pp. 16-17.
- 21 *Id.*, p. 17.
- 22 *Id.*, p. 18.
- 23 *Id.*, pp. 19-20.
- 24 See *generally*, S. 1137, 114th Cong. (2015).
- 25 *Id.*, p. 50.
- 26 H.R. 9, 114th Cong. (2015), pp. 49-50.
- 27 See *generally*, S. 1137, 114th Cong. (2015).
- 28 For a comparison chart of H.R. 9 and S. 632, see Nix & Thurlow, “2015 Patent Reform Innovation Act (H.R. 9) and STRONG Patents Act (S. 632).”

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