

[DISCUSSION DRAFT]

115TH CONGRESS
2^D SESSION

H. R. _____

To amend title 35, United States Code, to restore patent rights to inventors,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROHRABACHER introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend title 35, United States Code, to restore patent
rights to inventors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Inventor Protection
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Inventors have historically contributed sig-
9 nificantly to innovation in the United States, and

1 their continued dedication to inventing and sharing
2 solutions to modern technical challenges is essential
3 for the United States to maintain leadership in the
4 global economy.

5 (2) Inventors, not employees or investors, are
6 the source of innovation intended by the Constitu-
7 tion (“securing to inventors”) and the Patent Act
8 (“Whoever invents or discovers . . . may obtain a
9 patent therefore . . .”).

10 (3) Recent changes to patent laws and proce-
11 dures and Supreme Court decisions have adversely
12 affected inventors such that the promise of article I,
13 section 8 of the Constitution of “securing for limited
14 times to inventors the exclusive right to their discov-
15 eries” is no longer attainable.

16 (4) Inventors are denied the fundamental right
17 to “exclude others” by the Supreme Court’s 2006
18 decision in *eBay Inc. v. MercExchange, L.L.C.*

19 (5) Inventors were stripped of the right to file
20 suit in their own judicial district by the Supreme
21 Court’s 2017 decision in *TC Heartland LLC v. Kraft*
22 *Foods Group Brands LLC*.

23 (6) Issued patents fail to secure inventors their
24 exclusive rights because—

1 (A) the Patent Trial and Appeal Board de-
2 clares 85 percent of granted patents invalid in
3 postgrant reviews;

4 (B) many patents are subjected to multiple
5 postgrant reviews; and

6 (C) most inventors cannot afford the costs
7 of defending a patent challenged in a single
8 postgrant review, as these costs can reach hun-
9 dreds of thousands of dollars.

10 (7) Infringement trials can cost tens of millions
11 of dollars and can take up to ten years to reach a
12 final judgment after all appeals, making legal relief
13 unattainable for inventors.

14 (8) These obstacles have given rise to an “effi-
15 cient infringement” business model whereby large
16 corporations infringe patent rights held by inventors
17 without concern for any legal consequences.

18 (9) Patent protection has led to patient cures,
19 positive changes to the standard of living for all peo-
20 ple in the United States, and improvements to the
21 agricultural, telecommunications, software, biotech,
22 pharmaceutical, and electronics industries, among
23 others.

1 **SEC. 3. INVENTOR PROTECTIONS.**

2 (a) INVENTOR-OWNED PATENT.—Section 100 of title
3 35, United States Code, is amended by adding at the end
4 the following new subsection:

5 “(k) The term ‘inventor-owned patent’ means a pat-
6 ent [REDACTED]
7 [REDACTED] *held en-*
8 *tirely by the inventor of the claimed invention [REDACTED]*”.

9 (b) INVENTOR-OWNED PATENT PROTECTIONS.—
10 Chapter 32 of title 35, United States Code, is amended
11 by adding at the end the following new section:

12 **“SEC. 330. INVENTOR PROTECTIONS.**

13 “(a) PATENT AND TRADEMARK OFFICE SOLE JURIS-
14 DICTION.—No executive entity other than the Patent and
15 Trademark Office may reexamine, review, or otherwise
16 make a determination about the validity of an inventor-
17 owned patent.

18 “(b) PROTECTION FROM ADMINISTRATIVE PRO-
19 CEEDINGS.—The Patent and Trade Office may not reex-
20 amine, review, or otherwise make a determination about
21 the validity of an inventor-owned patent unless voluntarily
22 agreed to by the inventor.

23 “(c) CHOICE OF VENUE.—

24 “(1) IN GENERAL.—An inventor may bring a
25 civil action involving an inventor-owned patent in
26 any district where the defendant is subject to the

1 court's personal jurisdiction or where the defendant
2 has committed an act of infringement, regardless of
3 whether the defendant has a regular and established
4 place of business in such district.

5 “(2) VENUE FOR DECLARATORY JUDGMENT
6 CLAIM.—If an inventor is a citizen or a lawful per-
7 manent resident of the United States, any claim for
8 declaratory judgement relating to any inventor-
9 owned patent the inventor owns may only be entered
10 in the district where such inventor is domiciled or a
11 district for which such inventor has consented to ju-
12 risdiction.

13 “(3) TRANSFER OF ACTION INVOLVING INVEN-
14 TOR.—If an inventor is a party to a civil action in-
15 volving an inventor-owned patent the inventor owns,
16 the court may not transfer the action to another dis-
17 trict for convenience without consent of the inventor.

18 “(d) EXPEDITED JUDICIAL PROCEEDINGS.—Unless
19 voluntarily waived, an inventor asserting an inventor-
20 owned patent in a civil action under section 281 shall be
21 entitled to—

22 “(1) a trial within 12 months after service of a
23 complaint, with prioritization in the court's docket,
24 if necessary;

25 “(2) a trial no more than 7 days in duration;

1 “(3) a maximum of 10 discovery requests for
2 each party;

3 “(4) pleadings limited to 100,000 words per
4 party; and

5 “(5) such other provisions as the court deter-
6 mines appropriate to ensure relief is accessible to the
7 inventor.

8 “(e) PRESUMPTION OF IRREPARABLE HARM.—

9 “(1) PRESUMPTION.—Upon finding infringe-
10 ment of an inventor-owned patent, the court shall
11 presume that any infringement of such patent
12 causes the inventor irreparable harm.

13 “(2) OVERCOMING THE PRESUMPTION.—The
14 presumption described in paragraph (1) may be
15 overcome if the infringing party shows clear and
16 convincing evidence that the inventor would not be
17 irreparably harmed by further infringement of the
18 patent.

19 “(f) SIMPLIFIED DAMAGES.—

20 “(1) ALTERNATIVE RELIEF.—An inventor that
21 asserts a claim for infringement of an inventor-
22 owned patent in a civil action under section 281 may
23 elect relief under this subsection in lieu of relief
24 under section 284.

1 “(2) RELIEF UNDER THIS SUBSECTION.—If a
2 request for relief under this subsection is made, the
3 following provisions apply:

4 “(A) IN GENERAL.—Upon a finding of in-
5 fringement, the court shall award damages
6 equal to the sum of—

7 “(i) the greater of—

8 “(I) the total profits attributable
9 to the infringing party’s use of the
10 patented invention; or

11 “(II) 25 percent of the sales at-
12 tributable to the infringing party’s use
13 of the patented invention; and

14 “(ii) any interest and costs as fixed by
15 the court.

16 “(B) INFRINGEMENT FOUND WILLFUL.—

17 “(i) TREBLE DAMAGES AVAILABLE.—

18 If the court finds the infringement to be
19 willful, the court may award damages
20 equal to no more than three times the
21 amount of any damages found in subpara-
22 graph (A), but shall not include any roy-
23 alty payments.

24 “(ii) PRESUMPTION OF WILLFUL-
25 NESS.—Infringement shall be presumed

1 willful if the infringing party is an expert
2 in the field of the invention.

3 “(C) ATTORNEYS FEES.—If an inventor
4 successfully brings a claim for infringement of
5 their inventor-owned patent, the court shall
6 award the inventor any amount of their attor-
7 neys fees that exceeds 10 percent of the amount
8 of any damages the court awards to the inven-
9 tor.”.

10 (c) TECHNICAL AND CONFORMING AMENDMENT.—
11 The table of sections for chapter 32 of title 35, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

“330. Inventor protections”.