INTELLECTUAL PROPERTY: HOUSE JUDICIARY REPORTS BILL TO PREVENT ABUSIVE PATENT LITIGATION

On November 20, 2013, the House Judiciary Committee marked up H.R. 3309, the Innovation Act. Several members have co-sponsored the legislation introduced by Committee Chairman Bob Goodlatte (VA), including Reps. Zoe Lofgren (San Jose) and Anna Eshoo (Atherton). The bill was reported by a vote of 33-5.

The legislation is aimed at reforming the patent system to make it easier to invalidate low quality patents, to protect companies from frivolous lawsuits filed by so-called "patent trolls." Patent troll entities often file lawsuits against companies to extract settlement payments for what are often common business methods. Recently, these entities have begun demanding payments from a much broader range of companies, including retailers, real estate agents, and others.

Specific provisions in H.R. 3309 to address the problem include:

- targeting abusive patent litigation behavior and not specific entities with the goal of preventing individuals from taking advantage of gaps in the system to engage in litigation extortion, while protecting valid patent litigation;
- increasing transparency by including heightened pleading standards and other provisions;
- shifting liability for attorney's fees to the losing party;
- providing for more clarity surrounding initial discovery, case management, joinder and the common law doctrine of customer stays; and
- providing for small business education and outreach by the U.S. Patent and Trademark Office.

Chairman Goodlatte offered a Manager’s Amendment to the bill, which was approved by voice vote. The amendment dropped the provision previously included in the bill expanding the “covered business method” (CBM) to software patents. The CBM, currently limited to some financial patents, puts litigation on hold while the PTO considers the patent’s validity. Supporters of expanding the CBM to include software patents argued that it would deter patent trolls that often use the threat of expensive patent litigation to their advantage. Opponents, however, argued that the provision could stymie innovation by undermining the rights of legitimate patent holders and creating uncertainty.
One issue that garnered a lot of discussion during the markup was the shifting of attorney fees under the bill to the losing party unless the court finds that the losing party’s position was “substantially” justified. One amendment offered by Rep. Mel Watt (NC) that would have narrowed the language to provide more leeway to the presiding judge was defeated by a vote of 12-23. A second amendment, however, offered by Rep. Hakeem Jeffries (NY), was adopted by a vote of 36-2. It allows the court to decline to shift fees if the losing party’s position is “reasonably” justified.

In remarks after the markup, Rep. Lofgren said: “The bipartisan, wide margin of support in the Judiciary Committee shows the depth of concern about abusive patent litigation. Amendments during the markup improved the bill and further efforts to resolve additional issues will receive attention between today and House floor action. Today was an important step forward for startups, inventors and U.S. innovation. The American economy – and job creation – will benefit from these efforts.”

For a section-by-section analysis of the bill, as it was introduced, go to: http://judiciary.house.gov/news/2013/10232013%20%20Section%20by%20Section%20%20Patent%20Bill.pdf

INTELLECTUAL PROPERTY: SUBCOMMITTEE HOLDS HEARING ON DELIVERY OF DIGITAL CONTENT

The House Judiciary Subcommittee on Courts, Intellectual Property and the Internet held a hearing on November 19, 2013 on “The Rise of Innovative Business Models: Content Delivery Methods in the Digital Age.” The hearing was the first in what is expected to be a series of hearings on copyright law in the expanding digital era.

Witnesses were: Mr. Paul Misener, Vice President, Global Public Policy, Amazon.com; Mr. John S. McCoskey, Executive Vice President and Chief Technology Officer, Motion Picture Association of America; Mr. Sebastian Holst, Executive Vice President and Chief Strategy Officer, PreEmptive Solutions; and Mr. David Sohn, General Counsel and Director of CDT’s Project on Copyright and Technology, Center for Democracy and Technology.

Issues discussed at the hearing included:
- ensuring that copyright law encourages continued innovation in the marketplace;
- reforming the Copyright Act’s statutory damages provisions;
- providing greater legal certainty for personal, non-commercial uses;
- streamlining the statutory license process to make it easier for music to be made available, while ensuring that songwriters, publishers, and artists are properly compensated; and
- working together with all stakeholders in the digital ecosystem to find voluntary solutions to curb abusive practices online that harm the digital marketplace and consumers.

For more information, go to: http://judiciary.house.gov/hearings/113th/hear_11192013.html
TRANSPORTATION: HOUSE SUBCOMMITTEE HOLDS HEARING ON AUTONOMOUS VEHICLES

The House Transportation Subcommittee on Highways and Transit held a hearing on November 19, 2013 entitled "How Autonomous Vehicles Will Shape the Future of Surface Transportation." The purpose of the hearing was to better understand the role of the federal government in maximizing the benefits of and overcoming the challenges presented by these emerging technologies.

Witnesses included: The Honorable David Strickland, Administrator, National Highway Traffic Safety Administration; Mr. Kirk Steudle, Director, Michigan Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials; Mr. Mike Robinson, Vice President of Sustainability and Global Regulatory Affairs, General Motors; Mr. Andrew Christensen, Senior Manager of Technology Planning, Nissan Technical Center North America; Dr. Raj Rajkumar, Carnegie Mellon University; and Dr. Joshua Schank, President and CEO, Eno Center for Transportation.

Only one year after Google announced a major milestone in the development and deployment of self-driving vehicles – the logging of over 300,000 accident-free miles with a dozen autonomous vehicles (AVs) on the U.S. highway system – Nissan Motor Company held an event in Irvine, CA to announce plans to deliver the first commercially-viable autonomous vehicle system by 2020. Nissan has opened a research facility in Silicon Valley to integrate the rich IT knowledge available there into its engineering efforts and is exploring collaboration with top level universities, such as Stanford. With several other automobile manufacturers touting their own autonomous vehicle prototypes, the possibility for a transportation system dominated by driverless vehicles (or at least vehicles that rely less and less on human operation) is very probable within the foreseeable future, according to the witnesses at the hearing.

Although there is no clear working definition of "autonomous vehicles," the conversation about them can be framed in terms of a continuum of automation in which there are increasing levels of driver assistance and vehicle management, up to a completely self-driving vehicle. As Mr. Robinson of General Motors, and other witnesses discussed, the primary technologies discussed are mostly contained within and between vehicles and such that systematically they "do not require dramatic upgrades or modifications to the national highway infrastructure network." However, a strategic plan to incorporate autonomous vehicles into the highway infrastructure through various means is still critical to maximizing their benefits. At a minimum, for example, clearly marked lanes and shoulders will enhance the capabilities of the technologies already in use to "sense" the road.

Proponents of these technologies argue that along with the safety benefits afforded by these autonomous vehicles – one study estimates human error is the probable cause for 93% of accidents and the NHTSA estimates that 34,080 fatalities occurred in the U.S. as a result of vehicle crashes in 2012 – there are many other social benefits such as reduced congestion due to the ability of automated cars to travel more closely at uniform speeds (which results in less need to invest in the expansion of the current highway system), reduced fuel consumption (up to 224 million gallons of gas saved at 50% market penetration of AVs), and increased mobility for the elderly and those with disabilities.

California is one of the few states that has already passed preparatory legislation regarding autonomous vehicles, allowing for their use on public roads for testing purposes. Shortly thereafter, the NHTSA announced a preliminary statement of policy regarding AVs, including plans for research on related safety issues and recommendations for states related to the testing, licensing, and regulation of AVs. Mr. Strickland of the NHTSA outlined various recommendations to states outlining the most appropriate role for state level oversight and where the NHTSA could best offer federal guidelines. As
Mr. Robinson notes, "In some cases, states could unintentionally or needlessly restrict vehicles already on the road – or technology development and implementation that is underway."

Based on their report "Preparing a Nation for Autonomous Vehicles: Opportunities, Barriers, and Policy Recommendations," Dr. Schank of the Eno Center for Transportation testified to three major principles for how the federal government can assist in a smooth transition to a driverless fleet of vehicles: (1) expand research and development efforts for AV technology, (2) develop federal guidelines for AV licensing, and (3) determine appropriate standards for liability, security, and data privacy.

"An AV is really the convergence of a host of technologies. It is a system built on breakthroughs in sensing and actuator technologies, and continuing improvements in computing and communications. Put another way, autonomous driving is an emerging and welcome result of the rich foundation of federal investments in basic research in engineering, computer science, and robotics," notes Dr. Rajmukar. Research and development, innovation, and proper planning for the integration of these technologies into the existing system will help the U.S. to realize a "future of driving that is dramatically safer, more energy-efficient, more sustainable, more productive and, of particular interest in major cities...less congested."

For the full testimony of witnesses, please visit: http://transportation.house.gov/calendar/eventsingle.aspx?EventID=357149

**SECURITY: HOUSE HOMELAND SECURITY SUBCOMMITTEE EXAMINES MARITIME SECURITY**

As a large coastal state, the security of California’s maritime transportation network and borders are of utmost importance to the state, national and global economy. The ports, waterways, and vessels which handle billions of dollars worth of cargo every year and are points of entry for criminals smuggling narcotics and other contraband are monitored carefully through various programs of the Department of Homeland Security (DHS). Within DHS, the Coast Guard is responsible for many homeland security efforts in the maritime domain, including conducting port facility and commercial vessel inspections and coordinating maritime information-sharing efforts; they balance the need for security with the facilitation of legitimate trade and passengers. The Government Accountability Office issued various reports from July 2003 through October 2013 identifying key factors important to securing the maritime borders, and discussing progress and challenges in related DHS programs.

The House Homeland Security Subcommittee on Border and Maritime Security convened a hearing entitled "What Does a Secure Maritime Border Look Like?" on November 19, 2013 to examine these reports and learn from witnesses what various Department of Homeland Security programs exist to combat threats to maritime security.


Admiral Lee of the U.S. Coast Guard and Mr. Alles of U.S. Customs and Border Protections (CBP) each detailed the various programs within their organizations that are being employed to secure the maritime borders, gave updates regarding their progress regarding the improvement of these
programs, and discussed some of the most pressing issues in maritime security today. According to Admiral Lee, "One of the most important aspects of the Coast Guard's layered security approach is to understand the movement of vessels, people and goods across our maritime borders," otherwise known as maritime domain awareness. Admiral Lee and Mr. Alles also discussed the increased collaboration between the Coast Guard, CBP and the U.S. Navy. One example of this collaboration is the creation of the maritime Predator Unmanned Aerial System program, which will improve detection and surveillance activities at a significantly reduced cost when compared to manned aviation.

Another example of the evolution of coordinated joint operations among interagency partners is the Regional Coordinating Mechanism (ReCoM), located in San Diego, Los Angeles, and San Francisco; manned with Coast Guard, CBP, and state and local law enforcement agencies, the San Diego and Los Angeles/Long Beach ReCoMs coordinated operations contributed directly to the interdiction of 1,002 illegal migrants and 210,900 pounds of illegal drugs in FY 2012 and FY 2013, according to Admiral Lee. The drug and migrant smuggling threat in waters off Southern California are countered through the Coast Guard Operation Baja Tempestad, another partnership with federal, state, and local agencies. "This combined operation brings additional resources to the fight against transnational criminal organizations, including flight deck-equipped cutters with airborne and surface use-of-force capability; increased Coast Guard and Customs and Border Protection maritime patrol aircraft flights; additional non-compliant vessel use-of-force endgame capabilities from our shore based boats; and enhanced intelligence collection, analysis, and dissemination. In FY 2013, this interagency effort has led to the removal of more than 90,900 pounds of marijuana and the apprehension of 400 illegal migrants," noted Admiral Lee.

On behalf of CBP's Office of Air and Marine (OAM) – the world's largest aviation and maritime law enforcement organization and critical component of CBP's layered enforcement strategy for border security – Mr. Alles discussed how CBP is working to increase interagency collaboration to improve border security. One of the two operational entities of the OAM, the Air and Marine Operations Center (AMOC) is located in Riverside, California; it is a state-of-the-art law enforcement operations and domain awareness center that conducts air and marine surveillance operations. These air and marine surveillance operations provide direct coordination and support to OAM. One threat that OAM is currently addressing is the recently identified Southern California panga threat. Mr. Alles described this threat: "A recent trend identified off the California coast is a shift from using smaller panga vessels that make quick cross-border trips to beach areas near San Diego to using larger pangas. Larger pangas are typically used in the Western Caribbean transit zones from South America, but are now transiting from Mexico farther offshore and farther Northward along the California coast. In FY 2013, the San Diego Maritime Domain along the California Coast, had 243 maritime smuggling events and 123 seizures, of which 81 were pangas, accounting for 93,240 pounds of marijuana...[OAM] is evaluating a number of options to aggressively address the significant increase in smuggling events and the trends moving these panga trips northward. Our response includes increasing the number of Multi-Role Enforcement Aircraft (MEAs) and maritime UAS patrols; the realignment of vessels and personnel in Southern California through surge operations; and the expansion of our partnerships."

For more information, please visit: http://homeland.house.gov/hearing/subcommittee-hearing-what-does-secure-maritime-border-look

**EDUCATION: HOUSE E&C COMMITTEE EXAMINES STEM EDUCATION ISSUES**

The Commerce, Manufacturing and Trade Subcommittee of House Energy and Commerce convened on November 15, 2013, for a hearing entitled “Our Nation of Builders: Training the Builders of the Future.” As the national and global economy continues to evolve into an “innovation economy”
at a rapid pace, many public policy discussions have turned towards identifying and meeting the needs for the human capital to maintain America's competitive edge. STEM—or science, technology, engineering, and mathematics—is the acronym commonly applied to the type of education and work skills needed by many manufacturers today. According to a report sponsored by Deloitte and The Manufacturing Institute, STEM jobs are projected to grow by 17 percent between 2008 and 2018, which likely explains why 56 percent of manufacturing executives believe their skilled workforce shortage will increase over the next 3 to 5 years. Some predict that the inability to meet the future workforce needs could produce a shortfall of as many as 700,000 jobs by 2020. Meeting that need necessarily involves emphasis on STEM education in K-12 as the pipeline to higher education programs that have the ability to produce qualified professionals in these fields.

Witnesses were: Jennifer McNelly, President, The Manufacturing Institute; Allyson Knox, Director, Education Policy and Programs, Microsoft Corporation; Sandra Westlund-Deenihan, Chief Executive Officer, Quality Float Works Incorporated; Lazaro Lopez, Ed.D., Associate Superintendent for Teaching and Learning, Township High School District 214, State of Illinois; Dr. Catherine Hill, Director of Research, American Association of University Women.

Like many other companies in the information technology industry, as well many other industries, Microsoft is facing a talent crisis. There are jobs open that it cannot find enough qualified people to fill. Ms. Knox expounded on the “skills gap” as seen from the perspective of Microsoft, highlighted some of the company's public-private partnership initiatives that focus on STEM skills development, and submitted several policy recommendations for the Committee. In addition to a variety of national programs, Microsoft also supports public-private partnerships at the state level through its IT Academy (ITA) program. “ITA is designed to provide students with college and career ready technology skills on a range of industry programs including network administration, collaboration tools, spreadsheets, databases, word processing, presentation tools, programming, etc.,” explained Ms. Knox. “Built with a series of online learning courses and modules mapped to industry demand certifications, courses cover a range of technologies and subject areas, including Microsoft Office, applications development, database management, and network and systems administration with Windows Server. In total, ITA offers more than 250 courses. Microsoft works directly with state government leaders to systematically deploy the ITA program to students throughout the state...This systemic approach increases program efficiencies, reduces costs, and increases ITA access for urban, rural, and suburban students.”

Among the recommendations provided by Ms. Knox was one to ensure that the reauthorization of the Higher Education Act includes measures to increase the capacity for community colleges and universities to offer more STEM degree opportunities, promote college completion by making degree programs easier for students to navigate from start to finish, and incentivize colleges to focus on other strategies to improve completion rates and ensure transparency.

For more information, go to: http://energycommerce.house.gov/hearing/our-nation-builders-training-builders-future#sthash.aB8W6wkg.dpuf

**SPACE/NASA: HOUSE SCIENCE SUBCOMMITTEE EXPLORES COMMERCIAL SPACE**

On November 20, 2013, The House Science, Space and Technology Subcommittee on Space convened a hearing on “Commercial Space.” In contemplation of H.R. 3038, the Suborbital and Orbital Advancement and Regulatory Streamlining (SOARS) Act, the hearing examined ways in which companies are utilizing federal support and government policies to grow their commercial businesses in space launch, communications, GPS, remote sensing, weather monitoring, suborbital tourism and
science experimentation, and human spaceflight. The witnesses also addressed what government policies would be helpful to U.S. commercial space industry.

Witnesses were: Rep. Kevin McCarthy (Bakersfield), Majority Whip, U.S. House of Representatives; Ms. Patricia Cooper, President, Satellite Industry Association; Mr. Stuart Witt, CEO and General Manager, Mojave Air and Space Port; and Mr. Dennis Tito, Chairman, Inspiration Mars Foundation.

Rep. McCarthy is the author of H.R. 3038. He explained that he supports the commercial spaceflight industry because of its potential to create “thousands of high quality jobs here in America, including many at the NASA Dryden Flight Research Center, which I represent. My district is also home to the Mojave Air and Space Port where many commercial spaceflight companies have located to research, develop, and test their hardware that will soon take Americans back to space.”

Mr. Witt, CEO of the Mojave Air and Space Port, located in southeast Kern County, California, testified before the Subcommittee about the work of his company, the nation’s only private experimental flight test center. Entrepreneurs and high networth investors have been utilizing the facilities of the Mojave Air and Space Port to conduct their own orbital research, suborbital development and operations, and deep space propulsion. They are tenants of the facilities and operate independently in their innovative pursuits. “To bring it down to a bottom line,” Mr. Witt notes, “Mojave now hosts 156 separate business contracts employing nearly 3,000 professionals. Annual aerospace revenue from rents and leases alone to our Air and Space Port District is $3,076,000. Total client commerce at the Spaceport is well in excess of $1B annually, not including commerce through our on-property rail yard supporting the renewable energy market.”

Ms. Cooper of the Satellite Industry Association outlined a history of commercial space flight and then described the industry today. She listed several of the major satellite services that are relied upon today, including those for broadband internet, video transmission, military products and services, and public safety voice and data, among others. She went on to explain that “The first notable characteristic of the satellite industry is its long business time horizons. Business cycles in the satellite industry are often measured in terms of decades, and therefore benefit from a stable regulatory and policy environment over a longer time arc.” Along with providing that stable regulatory and policy environment, the federal government also plays a role promoting pro-competitive trade and export control policies in the inherently international nature of the satellite industry. “We note that the Congress took an important step to safeguard the U.S. satellite sector’s competitiveness in passing the 2013 National Defense Authorization Act, which included provisions that enable and encourage needed reforms to U.S. export controls for satellites and related technologies.”

Finally, Mr. Tito of the Inspiration Mars Foundation further elaborated on new models of public-private partnerships that could push the new generation of space exploration. “At the Inspiration Mars Foundation, we have designed the architecture for a mission carrying two astronauts to the far side of Mars and back. It would be a voyage around the sun of more than 808 million miles in 501 days. We propose to do this in collaboration with NASA, as a partner in a NASA mission, in the name of America, and for the good of humanity. The endeavor is not motivated by business desires, but to inspire Americans in a bold adventure in space that reinvigorates US space exploration. In fact, the capabilities developed through private funding will belong to NASA for this and future missions.”

For more information, please visit:
http://science.house.gov/hearing/subcommittee-space-hearing-commercial-space
FEDERAL PROPERTY: HOUSE SUBCOMMITTEE EXAMINES REDEVELOPMENT ISSUES

The House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on November 20, 2013 on “Redeveloping Underutilized Federal Property.” While the hearing largely focused on the redevelopment of the Federal South Triangle in Washington, D.C., the hearing also provided insight as to potential budget saving measures that could be undertaken in managing federal real estate throughout the nation.

Witnesses were: Rep. Jeff Denham (Modesto); The Hon. Daniel Tangherlini, Administrator, U.S. General Services Administration; Mr. L. Preston Bryant, Jr., Chairman, National Capital Planning Commission; Mr. David Winstead, Chair, Public Development and Infrastructure Council, Urban Land Institute.

As the former subcommittee chair for Economic Development, Public Buildings, and Emergency Management, Rep. Denham discussed his work on HR 695, the Civilian Property Realignment Act, which would designate a nonpartisan professional commission to root out waste and inefficiency in the management of federal property. To be successful, he asserts that the Commission would have to do five things: (1) consolidate the federal real estate footprint, (2) house more federal employees in less space, (3) reduce reliance on costly lease space, (4) sell or redevelop high value assets that are underutilized or too valuable for housing federal employees, and (5) dispose of surplus property more quickly. He believes that a Commission that employs these five principles in making decisions about federal real estate could find an immediate savings of up to $15 billion.

Mr. Tangherlini, on behalf of the U.S. General Services Administration (GSA)—the agency responsible for providing real estate services to federal agencies—outlined the various ways in which the GSA is working to realize cost savings in the management of federal property. “GSA partners with private industry to deliver needed space and service to our fellow agencies. Utilizing our consolidated buying power and real estate expertise, we are able to drive down the costs of leasing, operating, and maintaining the government’s real estate footprint. GSA negotiates leases that, on average, are more than 11 percent below market rates,” he notes. “By aggregating the space needs of a variety of agencies, we are also able to aggressively utilize our public buildings. Nationally, GSA’s vacancy rate is 3.1 percent, far below the private sector average of 17.4 percent. If our vacancy rate was as high as the private sector’s, it would cost the taxpayers an additional $1 billion this year alone.”

For more information, please visit: