INTELLECTUAL PROPERTY: HOUSE PASSES PATENT LITIGATION BILL

With an overwhelmingly bipartisan vote of 325-91, the House on December 5, 2013 passed H.R. 3309, the Innovation Act. The legislation is aimed at reforming the patent system to make it easier to invalidate low quality patents in order to protect companies from frivolous lawsuits filed by so-called "patent trolls." Patent troll entities often acquire patents in order to 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:

- Requires plaintiffs to disclose who the owner of a patent is before litigation, so that it is clear who the real parties behind the litigation are. This is intended to ensure that patent trolls cannot hide behind a web of shell companies to avoid accountability for bringing frivolous litigation.

- Requires plaintiffs to explain why they are suing a company in their court pleadings.

- Requires courts to make decisions about whether a patent is valid or invalid early in the litigation process so that patent trolls cannot drag patent cases on for years based on invalid claims. This provision is intended to prevent invalid patents from being used to extort money from retailers and end users.

- When parties bring lawsuits or claims that have no reasonable basis in law and fact, the Innovation Act requires judges to award attorneys' fees to the victims of the frivolous lawsuit. The bill allows judges to waive the award of attorneys' fees in special circumstances. The provision applies to both plaintiffs and defendants who file frivolous claims.

- Requires the Judicial Conference to make rules to reduce the costs of discovery in patent litigation, so that patent trolls cannot use the high costs of discovery to extort money from small businesses and entrepreneurs.

- Creates a voluntary process for small businesses to postpone expensive patent lawsuits while their larger sellers complete similar patent lawsuits against the same plaintiffs, to protect customers who simply bought the product off-the-shelf.
During House consideration, six amendments were made in order, only two of which were approved. A Manager’s Amendment, primarily making technical and clarifying changes, offered by Judiciary Committee Chairman Bob Goodlatte (VA) was adopted by a vote of 341-73. The House also adopted an amendment offered by Rep. Dana Rohrabacher (Costa Mesa). The amendment strips the provision in the bill that repealed a patent applicant’s ability to appeal a PTO decision in court. It was adopted 260-156.

The House defeated, 199-213, an amendment offered by Rep. Mel Watt (NC). The amendment would have allowed a judge to consider dilatory or other abusive tactics by the prevailing party in determining whether to reduce or deny a fee award.

The White House has indicated it supports H.R. 3309.


Banking: House Subcommittee Examines Regulatory Effects on Small Financial Institutions

On December 3, 2013, the Investigations, Oversight and Regulations Subcommittee of the House Small Business Committee held a hearing titled "Regulatory Landscape: Burdens on Small Financial Institutions" to examine the effects of regulations stemming from a patchwork of laws that govern financial institutions of all sizes and structures. Witnesses testified to the importance of recognizing the unique role of small lenders such as credit unions and community banks in providing financial services to diverse populations. In the wake of the financial crisis, major legislation such as the Dodd-Frank Act of 2010 have added to the framework of regulations that affect the operations of credit unions and large banks alike. While large banks can leverage economies of scale and can have more full time employees dedicated to compliance, small institutions may struggle to keep up with the rapidly changing regulatory framework with their limited staff resources, witnesses argued. With ongoing hearings in both the House and Senate on housing finance reform, as well as the evolving rulemaking processes that are a part of the implementation of the Dodd Frank Act, the witnesses stated that a key issue is relieving small lenders of burdensome regulations without sacrificing important consumer protections.

Witnesses included: Linda Sweet, President and CEO, Big Valley Credit Union, Sacramento, CA, representing the National Association of Federal Credit Unions (NAFCU); Hester Perice, Senior Research Fellow, George Mason University, Arlington, VA; B. Doyle Mitchell Jr., President and CEO, Industrial Bank, representing Independent Community Bankers of America; and Adam J. Levitin, Professor, Georgetown University Law Center.

Based in Sacramento, Big Valley Credit Union serves more than 7,000 members and has grown to $56 million in assets during its 60 year existence. As the President and CEO of Big Valley, Ms. Sweet's personal experience reflected the broader findings of the National Association of Federal Credit
Unions, which she represented during the hearing. "In my 40 years with Big Valley...I have watched the industry go from helping people with their financial needs and life goals, to a point where I now have limited member interaction due to the unprecedented regulatory onslaught my credit union has faced since the financial crisis," she noted. She cited a NAFCU survey of its member institutions that found 94% of respondents have seen an increased regulatory burden since the passage of Dodd Frank that makes it more difficult for them to serve the nation's 96 million credit union consumers. However, this is just one example of the increasing regulations that are disproportionately burdening small financial institutions cited by the panel. Ms. Sweet emphasized that the entire framework of overlapping or outdated rules imposed by multiple regulators and various laws, rather than any single set of regulations, is most responsible for the increasing cost and complexity of compliance that is putting many small financial institutions out of business. In response to this expanding array of legal requirements, NAFCU has developed a five point regulatory relief plan for the operation of credit unions. A number of provisions from this plan were included in the Regulatory Relief for Credit Unions Act of 2013 (H.R. 2572) introduced by Representative Gary Miller (Diamond Bar). Ms. Sweet applauded numerous provisions of this bill, and offered further proposals for alleviating regulatory burdens on small lenders.

For more information, please visit:

EDUCATION: HOUSE SUBCOMMITTEE CONTINUES HIGHER EDUCATION HEARINGS

In the eleventh hearing in an ongoing series called "Keeping College Within Reach," the House Education and the Workforce Subcommittee on Higher Education and Workforce Training focused on "Strengthening Pell Grants for Future Generations" as part of the upcoming reauthorization of the Higher Education Act. The hearing was held on December 3, 2013.

While the subcommittee heard from a panel of experts last month about the need to streamline the federal financial aid system that serves roughly 71% of undergraduates in some form, this hearing focused specifically on the Pell Grant program – a program that has grown from its start serving 176,000 low-income students to more than 9 million students today. While that growth is attributable to several factors, a major concern of the subcommittee is that the program guarantees aid to any student who meets the eligibility criteria and therefore continued increases in enrollment could make the current structure of the program unsustainable in a tight budget environment. About $30 billion a year is spent on the program, making it one of the federal government's largest education expenditures. Last year, 1,086,766 California students received Pell Grant awards totaling $3,825,255,513.

Witnesses included: Mr. Justin Draeger, President and CEO, National Association of Student Financial Aid Administrators, Washington, D.C.; Dr. Jenna Ashley Robinson, Director of Outreach, John W. Pope Center for Higher Education Policy, Raleigh, North Carolina; Mr. Michael Dannenberg, Director of Higher Education and Education Finance Policy, The Education Trust, Washington, D.C.; and Mr. Richard C. Heath, Director, Student Financial Services, Anne Arundel Community College, Arnold, Maryland.

The panel discussed various proposals for ensuring that the Pell Grant program remains soluble and serves its main purpose of financially supporting low-income students in their attainment of a degree. These proposals included streamlining the application process so that students and families could better understand their options and represent a more accurate picture of their financial needs, tightening eligibility requirements, increasing grant flexibility, and implementing accountability measures to ensure the program is not only helping the neediest students enroll in college, but is also rewarding and encouraging those who make progress toward completion.
As stated by Mr. Draeger, today's student population is much more diverse than during the inception of the Pell program. Increases in nontraditional students, need for college readiness and remedial coursework, vocational education, innovative learning models, and the shifting of institutional goals away from mere enrollment to degree attainment as a metric of success, have all contributed to the need to restructure the availability of Pell Grants to meet student needs efficiently and effectively. Also, according to Dr. Robinson, "Too many students receive Pell grants. Since the creation of the Pell program, participation has grown more than 4500 percent. Much of that growth consists of middle-income students. Eight percent of Pell recipients come from families whose income is higher than the national median. Sixty percent of Pell recipients come from families above the federal poverty threshold. It may seem ironic but evidence shows that these middle-income students do not benefit from Pell grants...For low-income students, the opposite is true. Pell recipients whose families earn less than $25,000 per year are more likely to graduate than non-recipients with the same income." Tightening eligibility requirements to ensure that grants go to the neediest students who are most likely to succeed will increase graduation rates, says Dr. Robinson.

For more on these proposals, please visit http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=363164

**Banking: House Subcommittee Examines Small Business Lending**

On Thursday, December 5, 2013, the House Committee on Small Business Subcommittee on Economic Growth, Tax and Capital Access held a hearing titled, *Where Are We Now? Examining the Post-Recession Small Business Lending Environment.*

Ms. Ann Marie Wiersch, Policy Analyst, Federal Reserve Bank of Cleveland, Cleveland, OH; Mr. Jeff Stibel, Chairman and CEO, Dun and Bradstreet Credibility Corp., Malibu, CA; Mr. Renaud Laplanche, CEO, Lending Club, San Francisco, CA; Mr. Fred L. Green, III, President and CEO, S.C. Bankers Association, Columbia, SC; and Mr. John Farmakides, President/CEO, Lafayette FCU, Kensington, MD.

Mr. Stibel explained that Dun & Bradstreet Credibility Corp. is a leading provider of credit building and credibility solutions for businesses. Mr. Stibel stated that while the economy is growing, job growth is not growing at the same pace. “It is the smallest businesses that are suffering, not thriving. Our data show that the rate of job growth is the lowest in the smallest business categories. In 2013, large businesses increased employment by 5.53%, medium-sized businesses increased employment by 0.93%, small businesses by 0.57%, and micro by only 0.44%. It is a great paradox, an alarming problem, that even though small businesses are growing revenues at a faster pace, they are adding the fewest jobs,” he said. He attributed this problem to the inability of small businesses to access capital. The solution to the problem, he testified, is to reduce risk, from both the lending side and the borrowing side.

On the lending side, he recommended that the Small Business Administration’s loan guarantees be focused, not on loan size, but on business size, with a sliding scale providing the highest percentage loan guarantee to microbusinesses, followed by lower percentage guarantees for small and mid-sized businesses. This would effectively tier the risk for banks and incentivize them to lend to the smallest and most productive businesses, he argued.

On the borrowing side, he suggested that changes be made so small business owners are not required to provide as much in the way of personal asset guarantees, which discourages them from taking out small business loans.

Mr. Laplanche also decried the lack of accessible credit for small businesses, especially for those with the smallest businesses, despite the fact that small business loan performance is doing just fine. He
believes that the main reason for the lack of business credit lies in high underwriting costs, and steps should be taken to bring these costs down.

For the testimony of all the witnesses, go to:

**REPORT: FIELD POLL SURVEYS OPINIONS ON PRES. OBAMA AND GOV. BROWN**

Two surveys recently released by the Field Research Corporation show that criticism of President Barack Obama’s job performance is increasing among Californians, while support for the job Governor Jerry Brown is doing is rising.

The survey released on December 3, 2013 found that while 51% of California voters continue to approve of the President's overall performance, the proportion disapproving has risen 8 percentage points since July to 43 percent currently. Moreover, the poll found that “while the growth in the number of Californians disapproving spans most demographic subgroups, some of the greatest increases have occurred among voter segments who have been among the President’s strongest supporters. This includes independent voters with no party preference (+16), Latinos (+16), union-affiliated households (+18), and women (+13).”

By contrast, Governor Brown’s popularity among Californians continues to rise. The Field Poll found that 58 percent of registered voters in the state approve of the job he is doing, while only 33 percent disapprove. That is an increase of seven points in the Governor's approval rating since July.

The survey also explored how the Governor would fare if he chooses to run for reelection next year. In a simulated June open primary election with four possible candidates, the survey showed Governor Brown would be the overwhelming choice among voters. In the hypothetical primary, Brown is preferred by 52% of the voters, while former Lt. Governor Abel Maldonado received 11 percent support, State Assemblyman Tim Donnelly nine percent, and former Assistant Treasury Secretary Neel Kashkari only three percent; another 25% are undecided.

The complete survey regarding President Obama can be found at:

The survey regarding Governor Brown can be found at:

**REPORT: PPIC RELEASES LATEST STATEWIDE SURVEY**

The Public Policy Institute of California released its most recent Statewide Survey: Californians and Their Government on December 4, 2013. Among other issues the survey covered Californian’s views of the Affordable Care Act and their knowledge regarding the state’s health exchange.

The survey found that 68 percent of Californians know there is a health insurance exchange in the state, with 14 percent saying there is no exchange available, and 18 percent who don’t know. Among the uninsured in the state, 63 percent are aware of it (19% say there is no exchange, 18% don’t know). Additionally, the survey found that when uninsured residents are asked if they will get health insurance in accordance with the law or pay a fine, 66 percent say they will get insurance, with 24% saying they will remain uninsured, and 11 percent uncertain whether they will obtain insurance or not. Importantly, the survey found that uninsured residents 18 – 44 years old are far more likely to say they will get in insurance (72%) than are those age 45 years or older (51%).

Californians, however, are evenly split on the law itself: 44 percent support it and 44 percent oppose it, with 13 percent with no opinion. Among likely voters, 51 percent oppose it and 42 percent
support it. Among uninsured Californians, 50% favor the law and 43 percent have unfavorable views of it. Insured Californians are evenly divided in their views, 43% favorable, 43% unfavorable.

The survey also dealt with views on the direction of the economy, approval ratings of the President and Governor Brown, and other issues.

To obtain the full survey, go to: http://www.ppic.org/main/publication.asp?i=1077