



INTELLECTUAL PROPERTY MANAGEMENT

November 7, 2013

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte:

Conversant appreciates the chance to share with you our views on the bipartisan Innovation Act (H.R. 3309). We welcome your efforts to develop balanced legislation that addresses the problem of abusive patent-litigation behavior. Conversant also appreciates your willingness to consider the views of a variety of stakeholders throughout the crafting of your bill. H.R. 3309 has been improved through the drafting process as a result of your open-door policy.

At Conversant, we believe patent owners should act knowledgeably, responsibly, rigorously and with integrity. Our patent licensing practices adhere to these values, and we are proud to be known for our industrious, comprehensive, fair, and detail-oriented approach. While patent stakeholders may disagree about the true scope of the litigation-abuse problem, if the public starts to believe that frivolous patent litigation and associated behavior is a major problem, then that itself is a serious problem that needs to be dealt with by all of us who are invested in maintaining and improving a healthy patent system. To that end, Conversant welcomes your efforts here, appreciates being consulted throughout the process, and hopes to continue to assist.

We particularly appreciate your key principle that any patent-reform legislation should focus on abusive behavior, not specific business models or companies. Conversant also agrees entirely with the other key principles you applied in crafting your bill, which you recently restated during the Judiciary Committee's October 29 hearing:

The Innovation Act contains needed reforms . . . , while keeping in mind several key principles, including targeting abusive behavior rather than specific entities, preserving valid patent enforcement tools, preserving patent property rights, promoting invention by independents and small businesses, and strengthening the overall patent system.¹

Consistent with these principles and our own practices, there are provisions in the bill that Conversant is prepared to support in their fundamentals. For example, we can support a bill that includes provisions for heightened pleading standards, because a patentee should be prepared to document evidence of use of its patents. We support greater transparency concerning the real parties in interest to litigation, because a patent's true, direct ownership should always be disclosed. And we welcome the consideration of balanced fee shifting in patent cases to encourage parties – both plaintiffs and defendants – to pursue only meritorious claims, because both parties should act ethically and responsibly, and obstructionist, irresponsible, or unreasonable behavior by either party should have consequences for that party. But those provisions should be crafted in such a way that preserves an independent judiciary and are not overly burdensome to all patent owners.

¹ <http://judiciary.house.gov/news/2013/10292013.html>

Nevertheless, there are other provisions that we ask be reconsidered as they exist in the bill. For example, reducing the cost and increasing the efficiency of patent litigation is a laudable goal for all stakeholders, but we are concerned that the bill's provisions to always stay certain discovery pending claim construction and to direct specific case-management procedures would encroach on an independent judiciary and lead to unjust results in many cases. In practice, these provisions, as well as the broad mandatory "covered customer" stay provision and the proposed expansion of the covered-business-method program, each could make patent litigation more protracted, expensive, and burdensome regardless of the patentee's identity and business model.

In closing, we look forward to working with you and your colleagues over the course of the coming weeks to achieve a bill that we can fully support – one that addresses abusive patent-litigation behavior while also protecting patent property rights and promoting invention by independent inventors and small businesses.

Sincerely,

Scott W. Burt
Senior Vice President and Chief Intellectual Property Officer
Conversant Intellectual Property Management Inc.

cc: Members of the House Committee on the Judiciary