

116TH CONGRESS
1ST SESSION

H. R. 5478

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2019

Mr. DANNY K. DAVIS of Illinois (for himself and Mr. GOSAR) introduced the
following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, 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 Rights Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Inventors have contributed significantly to
8 innovation in the United States and their continued
9 dedication to inventing and sharing solutions to
10 modern technical challenges is essential for the

1 United States to maintain leadership in the global
2 economy.

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

8 (3) Recent changes to patent laws and proce-
9 dures and Supreme Court decisions have adversely
10 affected inventors such that the promise of Article 1,
11 section 8 of the Constitution of “securing for limited
12 times to inventors the exclusive right to their discov-
13 eries” is no longer attainable.

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

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

21 (6) Issued patents fail to secure to inventors
22 their exclusive rights because—

23 (A) the Patent Trial and Appeal Board in-
24 stitutes trials in over 60 percent of cases and

1 invalidates one or more claims in over 80 per-
2 cent of trials which reach a final decision;

3 (B) many patents are subjected to multiple
4 post issuance reviews; or

5 (C) most inventors cannot afford the costs
6 of defending a patent challenged in a single
7 post issuance review, as these costs can reach
8 hundreds of thousand of dollars.

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

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

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

5 “(k) The term ‘inventor-owned patent’ means a pat-
6 ent with respect to which the inventor of the invention
7 claimed by the patent or an entity controlled by that in-
8 ventor—

9 “(1) is the patentee; and

10 “(2) holds all substantial rights.”.

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

14 **“§ 330. Inventor protections**

15 “(a) PROTECTION FROM POST ISSUANCE PRO-
16 CEEDINGS IN THE UNITED STATES PATENT AND TRADE-
17 MARK OFFICE.—The United States Patent and Trade-
18 mark Office shall not undertake a proceeding to reexam-
19 ine, review, or otherwise make a determination about the
20 validity of an inventor-owned patent without the consent
21 of the patentee.

22 “(b) CHOICE OF VENUE.—Any civil action for in-
23 fringement of an inventor-owned patent or any action for
24 a declaratory judgment that an inventor-owned patent is
25 invalid or not infringed may be brought in a judicial dis-
26 trict—

1 “(1) in accordance with section 1400(b) of title
2 28;

3 “(2) where the defendant has agreed or con-
4 sented to be sued in the instant action;

5 “(3) where an inventor named on the patent in
6 suit conducted research or development that led to
7 the application for the patent in suit;

8 “(4) where a party has a regular and estab-
9 lished physical facility that such party controls and
10 operates, not primarily for the purpose of creating
11 venue, and has—

12 “(A) engaged in management of significant
13 research and development of an invention
14 claimed in a patent in suit prior to the effective
15 filing date of the patent;

16 “(B) manufactured a tangible good that is
17 alleged to embody an invention claimed in a
18 patent in suit; or

19 “(C) implemented a manufacturing process
20 for a tangible good in which the process is al-
21 leged to embody an invention claimed in a pat-
22 ent in suit; or

23 “(5) in the case of a foreign defendant that
24 does not meet the requirements of section 1400(b)

1 of title 28, in accordance with section 1391(c)(3) of
2 such title.

3 “(c) INJUNCTION.—

4 “(1) PRESUMPTION.—Upon a finding by a
5 court of infringement of an inventor-owned patent
6 not proven invalid or unenforceable, the court shall
7 presume, respectively, that—

8 “(A) further infringement of the patent
9 would cause irreparable injury; and

10 “(B) remedies available at law are inad-
11 equate to compensate for that injury.

12 “(2) OVERCOMING THE PRESUMPTION.—A pre-
13 sumption described under subparagraphs (A) or (B)
14 of paragraph (1) may be overcome if the infringing
15 party shows clear and convincing evidence that the
16 patentee would not be irreparably harmed by further
17 infringement of the patent, including evidence of un-
18 reasonable delay by the patentee from the date on
19 which the infringement was known or reasonably
20 could have been known to the patentee.

21 “(d) RECOVERY.—A patentee that asserts a claim for
22 infringement of an inventor-owned patent in a civil action
23 under subsection (a), (b), (c), (f), or (g) of section 271
24 may elect, at any time before final judgment is entered
25 by the court, recovery under this subsection in lieu of dam-

1 ages under section 284. If an election for recovery under
2 this subsection is made, the following provisions apply
3 upon a finding of infringement:

4 “(1) PROFIT DISGORGEMENT.—The court shall
5 award the patentee the profits from the use made of
6 the invention by the infringer. In assessing profits
7 the patentee shall be required to prove only the in-
8 fringer’s revenues resulting from the infringement;
9 the infringer must prove all elements of cost or de-
10 duction claimed.

11 “(2) INTEREST AND COSTS.—The court shall
12 award the patentee the costs described under section
13 1920 of title 28.

14 “(3) INFRINGEMENT FOUND WILLFUL.—If the
15 court finds the infringement to be willful, the court
16 may award the patentee damages equal to no more
17 than three times the amount of the profits found in
18 paragraph (1).

19 “(4) ATTORNEYS FEES.—The court shall award
20 the patentee any amount of their attorneys fees that
21 exceeds 10 percent of the amount of the profits and
22 damages of paragraphs (1) to (3).”.

23 (c) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections for chapter 32 of title 35, United

- 1 States Code, is amended by adding at the end the fol-
- 2 lowing:

“330. Inventor protections.”.

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