

Subcommittee Chairman Lamar Smith Statement Regarding a Proposed Substitute and Accompanying Redline To H.R. 2795, The "Patent Act Of 2005"

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Today marks our fourth hearing on patent reform in the 109th Congress.

The first two focused on the contents of a Committee Print and the third on H.R. 2795.

Today we will explore the merits of an amendment in the nature of a substitute to H.R. 2795, the "Patent Act of 2005," that was developed in late July pursuant to negotiations among Subcommittee members, industry representatives, and professional associations.

A second document -- a September "redline" to the substitute reflecting further changes -- also will be discussed.

To arrive at this point is no small accomplishment, given the scope of the bill and its eventual application to so many lives and jobs.

Notwithstanding our progress to date, the legislation is at a crossroads.

High-tech and financial service companies believe present law encourages individuals to acquire poor-quality patents.

These patent holders, sometimes called "trolls," can extort settlements from manufacturers by threatening to shut down assembly lines in the course of infringement suits.

It shouldn't become just another lawyer's game to divert money from purposeful endeavors, like manufacturing computers and software.

But some of the changes that we have considered may inadvertently hurt other important industries.

Biotech and brand drug companies, for example, operate under very different business models that rely on a legal system that vigorously protects patent rights.

Their concerns -- about profit margins, lawsuits, and productivity -- are no less sincere than those of the high-tech community.

In this regard, I hope that Members and witnesses will remain especially creative and open-minded as we attempt to thread the needle on two key issues: changes to patent litigation venue and apportionment of damages.

In seeking a compromise on the venue issue, we are taking a different approach.

Instead of focusing on the frequency with which injunctions are issued, why not revise another statute that allows frivolous suits to be brought in "patent-friendly" judicial districts?

We are now exploring the possibility of allowing these suits to go forward, but under more stringent terms; for example, only in districts in which the defendant has committed acts of infringement and has a regular and established place of business.

Consistent with this approach, the redline document would require a district court to transfer an infringement action to a judicial district or division that is a more "appropriate" forum; that is, to a district or division where one of the parties has substantial evidence or witnesses.

Concerning apportionment, both the substitute and the redline document address the matter of determining the "true" value of an invention in an infringement action.

In other words, how much value may be attributable to the inventor's own efforts versus the contributions from other sources, including the infringer's?

I am especially interested in learning what the witnesses think of the redline draft, which replaces the venue language of the bill with a transfer of venue provision.

More than 20 companies representing a broad cross-section of industrial interests support this provision.

The redline text applies apportionment analysis to all inventions -- not just combinations; distinguishes contributions arising from the patented invention from those attributable to the efforts of the infringer; and clarifies that an

infringed patent may not be "credited" with certain features and improvements that an infringer has incorporated into any infringing product.

While all issues set forth in both documents are fair game for discussion today, I am particularly interested in venue and apportionment of damages.

I am convinced that either version, the July substitute or the September redline, with some tweaking, will help individuals and companies obtain seed money for research, commercialize their inventions, grow their businesses, create new jobs, and offer the American public products and services that make our country the envy of the world.

That's what the patent system is supposed to do.

I now recognize the Ranking Member for his comments.