[DISCUSSION DRAFT]

115TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. ROHRABACHER introduced the following bill; which was referred to the Committee on ______________________

A BILL

To amend title 35, United States Code, to 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 Protection Act”.

5 SEC. 2. FINDINGS.

6 Congress finds the following:

7 (1) Inventors have historically contributed sign-

8ificantly to innovation in the United States, and
their continued dedication to inventing and sharing solutions to modern technical challenges is essential for the United States to maintain leadership in the global economy.

(2) Inventors, not employees or investors, are the source of innovation intended by the Constitution (“securing to inventors”) and the Patent Act (“Whoever invents or discovers . . . may obtain a patent therefore . . . ).

(3) Recent changes to patent laws and procedures and Supreme Court decisions have adversely affected inventors such that the promise of article I, section 8 of the Constitution of “securing for limited times to inventors the exclusive right to their discoveries” is no longer attainable.

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

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

(6) Issued patents fail to secure inventors their exclusive rights because—
(A) the Patent Trial and Appeal Board declares 85 percent of granted patents invalid in postgrant reviews;

(B) many patents are subjected to multiple postgrant reviews; and

(C) most inventors cannot afford the costs of defending a patent challenged in a single postgrant review, as these costs can reach hundreds of thousands of dollars.

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

(8) These obstacles have given rise to an “efficient infringement” business model whereby large corporations infringe patent rights held by inventors without concern for any legal consequences.

(9) Patent protection has led to patient cures, positive changes to the standard of living for all people in the United States, and improvements to the agricultural, telecommunications, software, biotech, pharmaceutical, and electronics industries, among others.
SEC. 3. INVENTOR PROTECTIONS.

(a) INVENTOR-OWNED PATENT.—Section 100 of title 35, United States Code, is amended by adding at the end the following new subsection:

“(k) The term ‘inventor-owned patent’ means a patent held entirely by the inventor of the claimed invention.”

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

“SEC. 330. INVENTOR PROTECTIONS.

“(a) PATENT AND TRADEMARK OFFICE SOLE JURISDICTION.—No executive entity other than the Patent and Trademark Office may reexamine, review, or otherwise make a determination about the validity of an inventor-owned patent.

“(b) PROTECTION FROM ADMINISTRATIVE PROCEEDINGS.—The Patent and Trade Office may not reexamine, review, or otherwise make a determination about the validity of an inventor-owned patent unless voluntarily agreed to by the inventor.

“(c) CHOICE OF VENUE.—

“(1) IN GENERAL.—An inventor may bring a civil action involving an inventor-owned patent in any district where the defendant is subject to the
court’s personal jurisdiction or where the defendant has committed an act of infringement, regardless of whether the defendant has a regular and established place of business in such district.

“(2) Venue for declaratory judgment claim.—If an inventor is a citizen or a lawful permanent resident of the United States, any claim for declaratory judgement relating to any inventor-owned patent the inventor owns may only be entered in the district where such inventor is domiciled or a district for which such inventor has consented to jurisdiction.

“(3) Transfer of action involving inventor.—If an inventor is a party to a civil action involving an inventor-owned patent the inventor owns, the court may not transfer the action to another district for convenience without consent of the inventor.

“(d) Expedited judicial proceedings.—Unless voluntarily waived, an inventor asserting an inventor-owned patent in a civil action under section 281 shall be entitled to—

“(1) a trial within 12 months after service of a complaint, with prioritization in the court’s docket, if necessary;

“(2) a trial no more than 7 days in duration;
“(3) a maximum of 10 discovery requests for each party;

“(4) pleadings limited to 100,000 words per party; and

“(5) such other provisions as the court determines appropriate to ensure relief is accessible to the inventor.

“(e) Presumption of Irreparable Harm.—

“(1) Presumption.—Upon finding infringement of an inventor-owned patent, the court shall presume that any infringement of such patent causes the inventor irreparable harm.

“(2) Overcoming the Presumption.—The presumption described in paragraph (1) may be overcome if the infringing party shows clear and convincing evidence that the inventor would not be irreparably harmed by further infringement of the patent.

“(f) Simplified Damages.—

“(1) Alternative Relief.—An inventor that asserts a claim for infringement of an inventor-owned patent in a civil action under section 281 may elect relief under this subsection in lieu of relief under section 284.
“(2) Relief under this subsection.—If a request for relief under this subsection is made, the following provisions apply:

“(A) In general.—Upon a finding of infringement, the court shall award damages equal to the sum of—

“(i) the greater of—

“(I) the total profits attributable to the infringing party’s use of the patented invention; or

“(II) 25 percent of the sales attributable to the infringing party’s use of the patented invention; and

“(ii) any interest and costs as fixed by the court.

“(B) Infringement found willful.—

“(i) Treble damages available.—

If the court finds the infringement to be willful, the court may award damages equal to no more than three times the amount of any damages found in subparagraph (A), but shall not include any royalty payments.

“(ii) Presumption of willfulness.—Infringement shall be presumed
willful if the infringing party is an expert in the field of the invention.

“(C) Attorneys Fees.—If an inventor successfully brings a claim for infringement of their inventor-owned patent, the court shall award the inventor any amount of their attorneys fees that exceeds 10 percent of the amount of any damages the court awards to the inventor.”.

(c) Technical and Conforming Amendment.—
The table of sections for chapter 32 of title 35, United States Code, is amended by adding at the end the following:

“330. Inventor protections”.