



STRONGER Patents Act, Disaster for US Businesses

Senators Coons has introduced the STRONGER Patents Act of 2019, S.2082—a bill that promotes the narrow interests of patent owners over the public interest by dismantling safeguards against wrongly-issued patents that needlessly drive up consumer prices and impede access to innovation.

The bill dismantles important safeguards against improperly issued patents

The STRONGER Patents Act includes a number of provisions that would unbalance the patent system:

- **Gutting the IPR process:** Currently, *inter partes* review (IPR) provides a more efficient and timely process for challenging bad patents. The bill includes numerous provisions would undermine IPR. For example, it would require “clear and convincing” evidence of invalidity from challengers instead of the lower “preponderance” standard that exists now. Raising the standard that high would undo the central purpose of IPR proceedings: making it easier to invalidate wrongly-issued patents, by putting them before administrative patents judges with relevant technical expertise.
- **Silencing the public:** The bill imposes draconian standing requirements that make it possible only for those who are actually sued or charged with infringement such that they would be able to sue for declaratory judgment in district court. That would make it nearly impossible for public interest organizations, like EFF, to file IPRs to challenge bad patents. (EFF previously prevailed in an IPR challenging a patent that had been asserted against podcasters.) This undoes another of the main goals Congress had in creating IPR: creating a pathway for more patent challenges from the public than would be possible in district court.
- **Protecting bad patents:** The bill goes out of its way to protect the owners of the weakest patents by limiting the number of petitions an owner can face per patent claim—regardless of whether the petitions raise the same or entirely different invalidity arguments. Patent owners don’t need this protection—they already benefit from generous estoppel provisions against successful IPR petitioners. All this will do is insulate wrongly-issued patents from the meaningful review IPR was supposed to ensure.

The bill will encourage abuse of the patent system

- **Emboldening patent trolls:** The bill guts the Supreme Court’s [eBay v. Mercexchange](#) decision, which stopped patent trolls from automatically getting injunctions that allowed them to shut down (and threaten to shut down) productive companies. It does so by undoing two key aspects of *eBay*’s holding by re-instated the now-defunct presumption of irreparable harm and inadequacy of money damages in patent cases. That would just give patent trolls the power to threaten productive companies, padding their pockets at the expense of ordinary consumers and small business owners.
- **Toothless protections against abusive patent assertion:** The bill authorizes the Federal Trade Commission (FTC) to target patent owners that send “rogue and opaque” letters accusing others of infringement, but that does almost nothing to make up for the harm the rest of the bill would do by insulating weak patents—the kind that feed abusive patent assertion entities (i.e., patent trolls)—from meaningful post-grant review. The best way to stop abuse of the patent system is to make it easier and more affordable to challenge bad patents, and the post-grant review provisions we have now are crucial for achieving that goal.

For patent issues, contact Alex Moss (alex@eff.org)

Defend Innovation

a project of the Electronic Frontier Foundation

