THE CONSERVATIVE BLUEPRINT FOR PROTECTING THE CONSTITUTIONAL

RIGHTS OF INVENTORS:

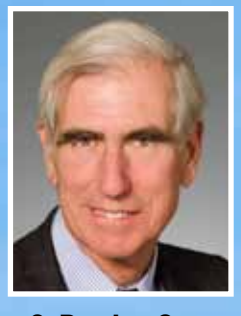
Why the Obama-Goodlatte patent reform bill empowers big government and harms innovation

Thought Leadership From

Ken Blackwell

Charles J. Cooper

Carly Fiorina



C. Boyden Gray

Rep. Thomas Massie

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Fiorina: Patent Reform

Big Government's Latest Comprehensive Debacle

The following excerpts are from a March 4 speech by Carly Fiorina, chairwoman of the American Conservative Union Foundation and former CEO of Hewlett-Packard, at the Inventing America Conference.

My story, a young woman sort of with no plans, not a great resume, getting the opportunity to go from secretary to CEO of the largest technology company in the world. That story is only possible here. And I've traveled and lived all over the world, done business all over the world, and it is still true that my story is possible here and only here. And it is because truly of the genius of our Founding Fathers who were willing to protect certain truths, who were willing to protect what they call certain inalienable rights. Our founders knew that everyone has God-given gifts, that everyone has potential, and they wanted to put in place a system that permitted people to fulfill their potential.

So what does that have to do with patent reform? When our founders wrote the Constitution, they coupled this idea of everyone having God-given gifts, everyone having potential, everyone having the right to fulfill their potential and that right coming from God not being taken away by man or government. They added to that the idea that you own the product of your labors. That you own the output of your gifts. And they said, if you work hard and imagine something in your mind and build something with your hands, you own it. It was, once again, a fairly radical visionary idea, and it is why our founders had the foresight to talk about intellectual property and patent protection all those many hundreds of years ago.

So, as we are talking about patent reform, let us not forget how impactful that incredibly important insight has been in our nation's history. Our nation has thrived because this is the country where virtually everything worth inventing has been invented. Think about the inventions that have occurred here. Think about the revolutionary inventions that were invented here, by people here. And the reason it happened here is because people understood that they would get to benefit. That the world would benefit from their inventions but that they would also get to benefit from the investment of their time and their talent and their treasure in creating something.

We have a lot of great big companies in this country, and we are very proud of them. I was the chief executive officer of Hewlett-Packard for six years, and in that time we took it from $45 billion to $90 billion. But Hewlett-Packard started as an idea of two guys in a garage. Google started with two guys in a dorm room, and the list goes on and on. And, in fact, it has been the small companies, the individual inventors and entrepreneurs who have had the biggest impact on our economy. It is true that small and new businesses create two-thirds of the new jobs in this country. And small and new businesses innovate at seven times the rate of big businesses.

One of the drugs that saved my life, and has saved the lives of millions and millions of women, was invented by a single entrepreneur. So as important as big companies are and big capital is to our economy, to job creation, to invention ... the small inventor, the individual entrepreneur is even more important, and we need to think about that as we discuss patent reform.

So now let's come to another reality of our current economy. Crony capitalism is alive and well. What is crony capitalism? Crony capitalism is when big government and big business work together to make it harder for everyone else. You will hear many liberals say things like "Only big government can check big business." But that's exactly wrong because big government and big business enable and protect each other. Why do I say that? Because if you're Hewlett-Packard and you are trying to deal with the complexity of regulation and legislation and the tax code, you might not like it but you can handle it. You can hire the accountants and the lawyers and the lobbyists to try and influence that to your advantage.

But let's back up and talk about a couple of other pieces of legislation that have followed a similar pattern to what frankly I believe is going on with the Innovation Act. Let us start with Dodd-Frank. Dodd-Frank came about because people identified a problem and the problem was consumers have been harmed in the financial crisis. And so a big, huge, complicated piece of legislation was created with the cooperation of all the big banks who were trying to figure out how to protect their competitive position. What was the result of Dodd-Frank? A huge complicated bill accompanied by tens of thousands of pages of regulation. We have 10 banks too big to fail who have become five banks too big to fail, and no matter how much those five banks complain, the truth is their competitive position is stronger today than it was five years ago.

What happened with the Affordable Care Act? A problem was identified and the ocean was boiled. And the ocean was boiled because everyone who was going to get impacted by that legislation all came to town to help write that legislation to solve what was told to us at the time was a very targeted problem. People with pre-existing conditions aren't getting covered, real problem. People can't afford health insurance. Real problem. Let's boil the ocean. What's the result of that? The result is a piece of legislation that is longer than a Harry Potter novel. Of course, no one's read it. It's also accompanied by tens of thousands of pages of regulation. It's too complicated for anyone to understand it. But if you have the resources to hire lots of lobbyists and lots of accountants and lots of lawyers, you're going to figure out how you can use that brand new complicated set of rules to your advantage. And if you can't do those things, you are in trouble. And so what do we see? We see hospitals consolidating. We see doctors' practices consolidating. We see health insurance companies consolidating, and meanwhile, we haven't solved the original problem and we've created a whole bunch of new problems. I guarantee you this: Every time that happens, the big get bigger and the small become more powerless because only the big can handle it.

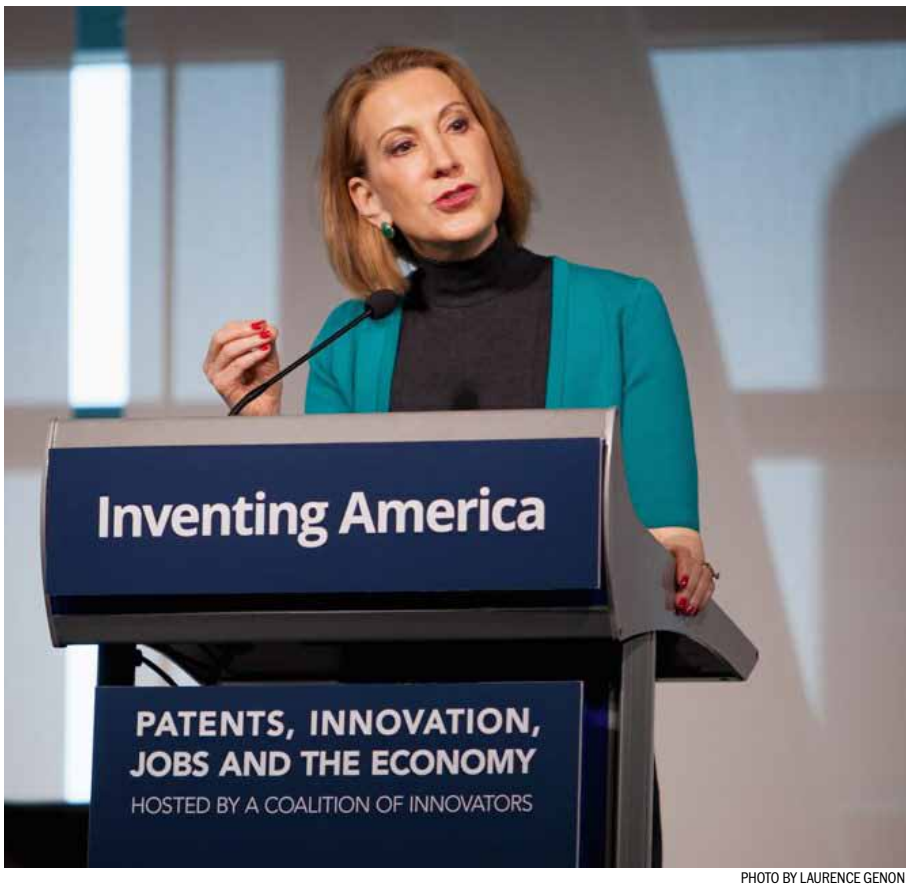


PHOTO BY LAURENCE GENON

And that is what we have sadly now, with the Innovation Act. We have a set of people who believe that there is a real problem. There are some real problems. There are people who are committing fraud with patents. We have solutions for that. We have the court system. There was targeted legislation, called the Troll Act, in the House that would have taken a look at that very specific problem. But people were not content with that. People decided it was time boil the ocean. And, frankly, what happens frequently people hope you don't read the fine print. Watch carefully who is supporting that legislation. It's not the small; it's the big. It's the big companies whose ongoing economic benefit depends upon their ability to acquire innovations and patents at a lower cost. If the Innovation Act were law tomorrow, Thomas Edison would be a patent troll. Some of our greatest inventors would be patent trolls under this law. Our universities would be patent trolls. We are fixing problems that don't exist. We are boiling the ocean.

I would ask people to think carefully through the realities of who can handle big, complicated pieces of legislation and regulation. Who is benefited by complexity and complication? It is not, in the end, the individual inventor or entrepreneur, it is not the new startup, it is not the small business struggling to find its way, and it is not the engine of growth and innovation in this country.

I think we have the greatest economic and innovation engine in this nation in history. And if you doubt that, pause and think about this. The iPhone, Google, Facebook. The iPhone was first introduced to the marketplace in 2007. And in less than a decade, our entire world has changed. In less than a decade we are now sitting at a point in human history unlike any other, because for the first time in human history any person, anywhere, can gain access to any piece of information they choose and communicate with anyone else they choose at the time and place of their choosing. It is revolutionary, and that reality will spawn many, many, many more inventions. It will create many more entrepreneurs, it will give so many more people the opportunity to find their God-given gifts and to build lives of dignity and purpose and meaning, but we can stop it. We can crush it. The thing that always crushes that incredible power of individualism and invention and entrepreneurship is big, complicated, bloated bureaucracy. Our founders had it right when they said that patents and intellectual property needed to be protected as a fundamental right of a citizen in this country. Let us be humble and cautious before we decide to boil the ocean and solve problems that maybe don't need legislators to resolve them.

Inventors in the crosshairs: Congress must resist temptation to weaken patent protections

By Rep. Thomas Massie

At the Northern Kentucky Regional First Lego League Robotics tournament in December, I marveled at the imagination and creativity displayed by so many young people. In these students, I saw the spirit of ingenuity and a culture of invention that have been critical to our nation's economic success for over two centuries. I was reminded of the competitions I participated in as a young inventor, and of the American spirit of innovation that inspired me to obtain 29 patents.

I often think about these young inventors when we debate so-called patent reform in Congress. About a year ago, the House of Representatives passed a bill called the Innovation Act. As a patent holder, I was deeply concerned about the consequences of this bill, which was rushed to the House floor without adequate debate. Fortunately, the bill did not pass the Senate.

The Innovation Act threatens American inventors, particularly individual inventors and those working at small businesses and startups. The bill attempts to "fix" a few isolated abuses of the patent system, but instead it sets forth a comprehensive overhaul of the legal framework that compromises the rights of all legitimate inventors.

Perhaps the most troubling aspect of the Innovation Act is the "customer stay provision," which makes it easier for corporations to continue shipping products even if a court finds reason to believe those products contain stolen inventions. When deciding whether to pay a fair license fee to the rightful inventors, or whether to steal a patented idea and risk a lawsuit, it is the threat of lost revenue that keeps the big companies honest.

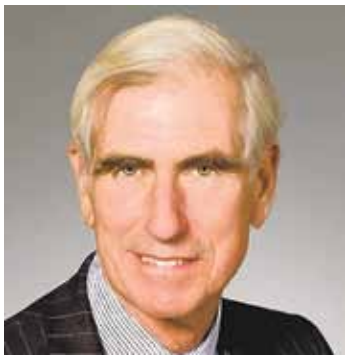
In Article 1, Section 8 of our Constitution, the Founding Fathers (some of whom were inventors themselves), gave Congress the authority to protect ideas. Inventors like myself rely on this protection as we create products. Without the strong congressional protection mandated by our Constitution, inventors and the investors who back them will lose confidence that their work and ideas will be safeguarded. This loss of confidence will cause invention and investment to wither.

Our system of patent protection is what sets the United States apart from nations like China and India. In those countries, theft of intellectual property is rampant, statutory protections for intellectual property are weak or nonexistent, and courts are notoriously hostile to small inventors. If we water down our patent system and give up our competitive advantage, America will cease to be a global hub for innovation.

If Congress recklessly weakens our patent system by pushing through a bill similar to last year's Innovation Act, inventors' very livelihoods will be threatened. Inventors will stop inventing, and as the role models for young inventors quietly fade into history, fewer young students will pursue this rewarding career path. A decade from now, Congress will lament the lack of interest among our nation's youths in subjects like science, technology, engineering and mathematics, arrogantly unaware that Congress itself destroyed it.

Thomas Massie is the Republican U.S. representative for Kentucky's 4th Congressional District.

- Massie received the first $30,000 Lemelson-MIT award for being a prolific student inventor. http://lemelson.mit.edu/winners/thomas-massie
- Massie Graduated from MIT with a bachelor's degree in electrical engineering and a master's degree in mechanical engineering
- During school, Massie invented a technology that enabled people to interact with computers using their sense of touch, and leveraged that technology to found SensAble Technologies, Inc., which raised over $32 million of venture capital, created 70 jobs, and obtained 29 patents.
- The "haptic" software and hardware Congressman Massie invented is used to design automobiles, jewelry, shoes, dental prosthetics, and even reconstructive implants for wounded soldiers.
- Massie appeared on 2 episodes of The Learning Channel's reality show, Junk Yard Wars, where contestants are given one day to build a machine with parts from the junk yard.
- Massie built an energy efficient off-grid home, powered by a 13 Kilowatt solar array.



Property rights, then patent reform

By C. Boyden Gray

Our Founding Fathers cared deeply about property rights. They knew no society could be truly free without them. But they went a step further by recognizing the rights of mankind not only to property ownership, but also to the dignity of one's own ideas. So they harkened to a system established a few millennia earlier: the patent.

The first known patent was issued in ancient Greece in the sixth century B.C. Since then, inventors, artists, scholars and researchers around the world have patented countless innovations that have improved, enhanced and extended our lives.

The architects of the U.S. Constitution reaffirmed the liberties outlined in the Magna Carta of 1215. Chief among these were property rights. The Fifth Amendment powerfully guarantees the right to property ownership, commanding that, "nor [shall a person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

As a result, the sanctity of the patent is detailed in great specificity in the U.S. Constitution. In Article 1, Section 8, the founders wrote that the U.S. Congress maintained the authority to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Today, lawmakers face real political pressure from major corporations to eliminate the property rights of others for their own financial benefit. Quite frankly, many lawmakers have been fooled into going along with it. Under the banner of legal reform and modernizing our patent system, House Republicans in the last Congress passed the Innovation Act, a total restructuring of the way our patent system works. Rep. Bob Goodlatte, Virginia Republican and chairman of the House Judiciary Committee, proposed this measure again during the 114th Congress, and it is expected that the Republican majority in the U.S. Senate will take it up as well.

While well-intentioned, their efforts would make it more difficult for inventors, researchers, universities and job-creating companies to take legal action against those who steal their ideas by violating their patents.

The proponents — principally giant technology companies — argue that their version of patent reform is a significant step toward tort reform, which ultimately would put an end to lawsuit abuse and open markets to greater innovation. What they really want is to devalue patents by making them harder to defend so they can use them at artificially discounted prices. This approach would support their innovations in the short run. Over time, however, the patents they rely on would dwindle from a river to a small stream.

Conservatives agree that unnecessary litigation, like excessive regulation and a punitive tax code, makes it difficult for companies and our economy at large to grow. In reality, this legislation would totally thwart legitimate legal action these patent holders are entitled to pursue.

When a woman returns to her car to find it missing, she notifies the cops. When intellectual property is stolen, the patent holder must turn to the courts. There are no police for patents. The Innovation Act would establish unreasonable standards for patent holders to meet in order to shield themselves and their work from theft. By restricting access to the justice system, which this sweeping overhaul would regrettably but undeniably do, Congress would be in direct contradiction to the very mandate laid out for them in the Constitution.

As a practical matter, the Innovation Act is just bad policy. This legislation would transform our intellectual property rights more into those like China's than those we value in the U.S.

The Innovation Act is also a solution in search of a problem. From September 2013 to September 2014, there was a 40 percent reduction in patent-related lawsuits. At a time when patent litigation is down, why would Congress pass a giant bill that would make intellectual property protection more complicated, and therefore, more expensive?

Americans also have experienced the consequences of comprehensive legislation that takes a bulldozer to entire industries, most recently with the total Democratic takeovers of Obamacare and Dodd-Frank. It appears that this time it's Republicans who would be responsible for destructive one-size-fits-all legislation that causes more problems than it solves.

That's not to say that meaningful, targeted reforms aren't necessary and can't be accomplished. Lawmakers should thoughtfully examine how we can ease the regulatory burden that affects businesses both large and small. This would certainly include improving the patenting process.

But any legislation that would restructure our patent system must consider the constitutionally guaranteed property rights of patent holders who lawfully obtain them to protect their ideas and their work. The bill in its current form fails to do that.

C. Boyden Gray was White House counsel for President George H.W. Bush. He also has served as U.S. ambassador to the European Union.

The Honorable John Boehner
The Honorable Mitch McConnell
The Honorable Harry Reid
The Honorable Nancy Pelosi

Dear Speaker Boehner, Senators McConnell and Reid, and Rep. Pelosi:

As advocates for a strong, innovative America, we write to express our opposition to the patent revision legislation proposed by House Judiciary Committee Chairman Bob Goodlatte and Rep. Darrell Issa. H.R. 9, the so-called "Innovation Act," would weaken American patents and the ability of innovators — particularly independent inventors — to secure their constitutionally guaranteed right to their inventions and discoveries.

While sponsors and proponents of this legislation claim it is designed to curb abusive tactics in patent litigation, the bill would in fact increase litigation at the expense of innocent inventors. The bill's overly broad provisions apply to all litigants seeking to assert patents, not just "patent trolls," and as a result will severely undercut the ability of inventors to enforce their intellectual property rights, ultimately devaluing patents, stifling American innovation, and diminishing our global competitiveness. This bill is the intellectual property infringer's best friend.

Of further concern is the reason this bill is being catapulted forward. Some companies need to use others' patents in their products, and they want to pay as little as possible for the right to these patented inventions. While that may make good business sense for them, it makes no sense for America, if lowering the licensing costs of a patent come by way of patent infringement, piracy, unfair competitive practices, artificially devaluing a patent, or reducing the ability to defend one's patent through our legal system. China is already eating our lunch, stealing our patented inventions and harassing American companies with Chinese facilities. Why would we want to willingly give up the competitive edge we enjoy in incentivizing innovation through the strongest IP regime in the world? Surrendering our innovation advantage to China makes absolutely no sense.

In short, the Goodlatte-Issa bill, if enacted, will erode private property protections grounded in Article I, Section 8 of the Constitution: "The Congress shall have Power ... [t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The Founders rightly recognized the importance of intellectual property and its protection as vital to innovation. We must preserve a strong patent system that promotes the right of innovators and inventors to protect their ideas, not diminishes their value and disincentivizes investment.

We urge a scalpel, not a cleaver, in addressing patent revision legislation. We have all seen the impact of Washington approaching every problem with another sweeping overhaul that "fixes" everything instead of addressing specific problems. We ask that you support innovation and a strong patent system by opposing the "Innovation Act" and stopping any such bill from reaching the floor.

Sincerely,

Phyllis Schlafly
Founder and President
Eagle Forum

Charles Sauer
President
Entrepreneurs for Growth

Susan A. Carleson
Chairman/CEO
American Civil Rights Union

C. Preston Noell, III
President
Tradition, Family, Property, Inc.

Robert W. Patterson
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Jim Backlin
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Dan Schneider
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Sandy Rios
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American Family Association

Ambassador Henry F. Cooper
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Strategic Defense Initiative

Richard A. Viguerie
Chairman
ConservativeHQ.com

Cherilyn Eager
President
American Leadership

Ned Ryun
Founder and CEO
American Majority

Republicans beware: Rushing to approve Obama's bad patent legislation isn't a victory

By Ken Blackwell

Since taking control of both chambers of Congress, Republicans have been expected to trumpet patent reform as an issue with bipartisan support and one we can demonstrate early on in which we are willing to work with President Obama. Republican leaders have talked about moving such legislation early this year. Some have tried to claim that this is good for the economy. Nothing could be further from the truth.

Rushing to pass bad legislation just so we can demonstrate a willingness to work with the White House is not the path to take. Despite the support of many Republicans in the previous Congress, this legislation, as it stands, is just another one-size-fits-all, big government overhaul of a sector of the economy that is not broken. The government is here to help? Stop me if you've heard this before.

First there was Obamacare, then Dodd-Frank. Every time the politicians in Washington see a problem, instead of coming up with targeted fixes, they want to push through comprehensive reforms that change the parts of the system that are working right along with the parts they think need help — and always make things worse.

Our constitutionally protected patent system (Article 1, Section 8) is critical to promoting innovation and economic growth. Our founders knew that protecting intellectual property was just as important as protecting physical property. Patent protection gives people the incentive to take risks and invest, knowing they will own and profit from their ideas.

There are valid concerns about the patent system, and there are ways to advance specific and targeted reforms to deal with bad actors, frivolous lawsuits, etc. Unfortunately, the current legislative proposals have not done that. They overhaul the entire system. Just like the other big government overhauls in recent years, this would target the whole incentive structure for innovation — with unintended consequences — rather than address specific areas needing reform.

Some conservatives have tried to justify support for these proposals as a form of tort reform. Undermining property rights is not tort reform. Patent litigation is at a five-year low, according to data from Lex Machina, and the rate of patent lawsuits has averaged around 2 percent of all patents for decades. We're going to undermine our fundamental rights to address a supposed litigation explosion that doesn't exist and that supposedly advances tort reform. Conservatives should have no part of this.

The No. 1 corporate cheerleader for patent reform has been Google. Let's not forget how close the Obama administration is to Google. There has been practically a revolving door between the company and the White House. If you hate crony capitalism, then you should be worried about the administration and Congress acting so aggressively to overhaul the patent system to advance the financial interests of Google and others.

Strong patent protections are among the key economic concepts that distinguish us from nations like China, where intellectual property theft is rampant. Why would we support legislation that emulates their model? We should be protecting our inventors from theft and ensuring that American innovation is on the cutting edge, not undermining property rights and surrendering our one key advantage to the Chinese.

A number of leading conservative organizations and legal scholars have expressed grave concerns about the consequences of this legislation. It makes no sense for conservatives to support legislation that stifles innovation, weakens property rights, surrenders our advantage to China and rewards Mr. Obama's leading corporate supporters.

Ken Blackwell, a former secretary of state in Ohio, is the senior fellow for family empowerment at the Family Research Council. He serves on the board of directors of the Club for Growth and the National Taxpayers Union.

Be dubious of 'comprehensive' patent reform ... when big government and special interests get involved

By David Keene
THE WASHINGTON TIMES

In a divisively partisan Washington, politicians and pundits lament the lack of bipartisanship, compromise and a willingness to put aside partisan and ideological interests in the name of the common good. It is true that major policy initiatives are often derailed by partisan or ideological differences, but before condemning the failure to compromise out of hand, it is necessary to determine whether the differences are petty or justifiable.

History tells us that major, or what Washington politicians like to call "comprehensive," reform requires the development of a bipartisan consensus and compromise to win public as well as congressional and presidential support. Truly significant "comprehensive" legislation that is rammed through Congress without such support often creates more problems than it solves and gets its supporters into political trouble. The successful bipartisan civil rights bills of the 1960s and President Obama's Affordable Care Act are examples of the two approaches.

There are a number of ways reforms attract bipartisan support. They can make so much sense that Republicans, Democrats, liberals and conservatives find themselves actually agreeing with one another on the merits. The president's view of bipartisanship a bit different. He believes his opponents should join him or face rhetorical beatings as obstructionists — a strategy that sometimes attracted weak-kneed types willing to surrender principle so they could look like the kinds of folks content to sit before the campfire with their opponents, holding hands and singing kumbaya.

Then there are bipartisan proposals forged by special interests willing to spend as much as they might have to get what they want. The "comprehensive" patent law reform proposals working their way through Congress might serve as poster children for this sort of bipartisanship. There are problems with our current patent laws that haven't been updated in decades, and Congress is rightly focused on perhaps tweaking them to fix those problems and especially to make it more difficult for "trollers," who scam the system by threatening businesses large and small with lawsuits claiming patent infringement unless they pay them to go away.

But some see an opportunity to turn the need for a limited "fix" into an opportunity to push through the sorts of "comprehensive" reforms that would increase their bottom lines. Chief among those trying to do just that is Google, which spent something approaching $17 million last year lobbying with "comprehensive" patent reform at the top of the company's wish list. An investment of that size should be enough to get members to question how Google defines "comprehensive," "reform" and "good public policy."

In addition to spending millions of dollars on lobbying, Google executives contributed $800,000 to President Obama's political campaign coffers, and the company's executives are to be found everywhere within an administration solidly behind the sort of "reform" Google lusts after.

Republicans, meanwhile, see a problem that needs to be solved, a chance to attract some of the money now going to Mr. Obama and his friends and a way to share the thrill of a bipartisan moment. As a result, a bipartisan comprehensive patent reform proposal is working its way through Congress and could end up on Mr. Obama's desk for all the wrong reasons.

"Comprehensive" proposals that would completely rewrite our laws are prone to producing potentially dangerous unforeseen consequences and should set off warning sirens whenever they appear. This is especially true when industry giants are spending millions of dollars to win their passage. Congress should address the problem that needs fixing while refraining from the temptation to rewrite patent laws that have sparked innovation and largely protected the property rights of our most creative citizens, no matter how much Google spends or how badly Republicans crave a bipartisan moment.

Former Ohio Secretary of State Ken Blackwell summed up the danger of compromising one's principles to look accommodating in a letter to conservatives and lawmakers on this subject last month. "Rushing to pass bad legislation," Blackwell wrote, "just so we can demonstrate a willingness to work with the White House is not the path to take."

On the other hand, there are very real problems in this area that Congress ought to address. The problem is devising a reasonable approach to solving them without throwing out a system that has and continues to work pretty well in the name of reform. Fortunately, there are those in both parties taking a serious look at the problem with an eye to doing just this rather than either exaggerating or dismissing the concerns of innovators, small-business owners and consumers.

Democrats like Sen. Chris Coons of Delaware and others are hoping to avoid the pitfalls of comprehensive proposals that could play into the hands of big players out to gain competitive advantages over those without the resources or clout to game the system. He and others looking to improve a patent system that has served the nation well deserve our support as they tackle truly difficult problems. His proposed legislation may not be perfect, but at least he is on the right track.

Patent reform debate pits innovation against ending lawsuit 'trolls'

By Kellan Howell
THE WASHINGTON TIMES

House Republicans have restarted their campaign to reform U.S. patent laws, a bipartisan effort backed by heavyweights such as Google and Facebook Inc. that also has awakened protest from some conservatives who fear it will trample inventors' protections.

Rep. Bob Goodlatte, Virginia Republican and House Judiciary Committee chairman, last month reintroduced the Innovation Act, which passed in the House last session by a vote of 325-91 but was killed in the Senate.

Supporters say the bill will update intellectual property laws to rein in "patent trolls," mostly shell companies that buy up vague patents with the intent of suing other companies for infringement.

"In recent years, we have seen an exponential increase in the use of weak or poorly granted patents by patent trolls to file numerous patent infringement lawsuits against American businesses with the hope of securing a quick payday," Mr. Goodlatte said. "With our current patent laws being abused, American businesses small and large are being forced to spend valuable resources on litigation rather than on innovating and growing their businesses."

Opponents of the legislation unveiled their high-profile pitchwoman, former Hewlett-Packard CEO and potential presidential candidate Carly Fiorina, who argued that the bill imposes overreaching standards on patent litigation that would make it hard for innovators to protect their property rights.

"There are some problems in our patent system and there are people who use the threat of patents inappropriately, but here we have a vast, sweeping piece of legislation that causes more problems than it solves," Ms. Fiorina said.

"Just like with Dodd-Frank or our byzantine tax system, this will allow the big, who can afford the teams of lawyers and lobbyists, to get bigger and the individual inventor will get weaker. Conservatives should continue to stand for innovation and property rights," she said.

The revamped Innovation Act aims to discourage plaintiffs in patent lawsuits from dragging out cases over vague patent infringements in order to bank on settlements.

The bill would require plaintiffs to disclose the owner of a patent before a lawsuit is filed and explain why they are suing. It also would require courts to determine the validity of patent cases early in the process.

The bill would shift attorney fees to parties who bring lawsuits "that have no reasonable basis in law and in fact," Mr. Goodlatte's office said.

Many in the software and computer industry jumped to applaud the announcement and vowed to work with lawmakers to see the bill through its enactment.

"The final bill must be as strong or stronger than the Innovation Act passed by the House in 2012 with overwhelming bipartisan support, in order to bring a permanent end to the chaos caused by patent trolls," said Michael Beckerman, CEO of the Internet Association, whose members include Google and Facebook.

Some conservatives see the reform legislation as a gift from the administration to Google, which stands to gain from a tightened legal patent process as it battles competitors such as Apple Inc.

Google has lobbied the administration heavily over the patent legislation. Google employees contributed more than $800,000 to each of President Obama's two White House campaigns, according to Federal Election Commission data from the Center for Responsive Politics.

Last year, Google spent about $17 million on lobbying, and the majority of its efforts were focused on patent reform. In fact, Google spent more money than any other tech company on copyright, patent and trademark lobbying last year, according to the Center for Responsive Politics, which tracks campaign and lobbying expenditures.

With a new Republican majority in the Senate, House Republicans see an opportunity to pass the bill with bipartisan support and are making it a priority on the legislative docket.

Critics say Republicans are not considering how the proposal could unintentionally weaken property rights for startups and small innovators.

"Unfortunately, what they are sacrificing for the sake of this bipartisanship is the very basis by which our economy works," said Adam Mossoff, a professor of law and senior scholar of the Center for the Protection of Intellectual Property at George Mason University.

In a January letter to 75 conservative leaders, Ken Blackwell, a former Ohio secretary of state, dubbed the bill "another one-size-fits-all, big-government overhaul of a sector of the economy that is not broken," and said that rushing a bad bill to demonstrate a willingness to work with the White House is a mistake.

In an op-ed published by The Courier-Journal of Louisville, Kentucky, Rep. Thomas Massie, Kentucky Republican and a patent holder, urged Congress to open the proposal for debate. He said the bill was sent to the floor too quickly in 2013.

"The bill attempts to 'fix' a few isolated abuses of the patent system, but instead it sets forth a comprehensive overhaul of the existing legal framework that compromises the rights of all legitimate inventors," Mr. Massie wrote.

In a Jan. 21 letter to the House committee, a host of 250 companies, startups and innovators — including Qualcomm Inc., Merck& Co. and Monsanto Co. — objected to the bill, claiming the congressional action was unnecessary in the wake of legal measures that have adequately reined in the worst patent litigation abuses.

"As a result of these developments, we are even more concerned that some of the measures under consideration over the past year go far beyond what is necessary or desirable to combat abusive litigation. Indeed, new patent lawsuit filings already have dropped dramatically — 40 percent, year over year, from September 2013 to 2014," they wrote.

A study by Lex Machina found that patent litigation rates were declining steadily and last year were back to 2009 and 2010 levels.

Patent reform could put American innovation at risk

By Charles J. Cooper

In three great phases, America's economy has been transformed. Before the Civil War, we were a nation where agriculture was the dominant economic driver. Between the Civil War and the 1960s, America became the most powerful manufacturing economy in the world. Beginning in the 1960s, America's dominance in aerospace and computing technology remade the world economy in the most fundamental way. Through it all, America's Constitution and laws have provided risk-takers, visionaries, and men and women with a valuable idea a fundamental protection for their work: the patent.

More than 200 years ago, the framers of the Constitution saw the value of protecting the works of America's inventors, innovators and builders: "The Congress shall have Power To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." They recognized that work, even before the Industrial Revolution, didn't include just the sweat of a man's brow, but also the value of ideas, concepts and intellectual vision. They viewed the patent as a property right, held by the inventor and protected by the government.

Now, that crucial private property right and the innovation it drives could be put at risk if special interests in Washington have their way. American innovation in software, information technology, biomedical research and a host of other fields that represent the future of the U.S. economy would be put in grave peril by a special-interest scheme that will have devastating economic consequences.

Unfortunately, some conservatives have joined President Obama to put the future of innovation in danger with ill-considered and ideologically driven patent "reform" proposals. In the early days of this session of Congress, some conservatives may abandon their long-held views on the value and importance of private property rights and join hands with Mr. Obama to try to enact a bill that would weaken property rights and disrupt the patent system enshrined in our Constitution.

There is a reason we use the phrase "intellectual property" when we talk about patents. The word "property" is the key. An inventor is no different from the owner of any other kind of property. Like physical property, patents can be bought, sold or used by the owner as he or she sees fit. Like physical property, intellectual property should rest in the hands of its creator and owner.

Unfortunately, the debate over this bill has morphed into one about "tort reform," as advocates claim that this is some strike against the trial bar. However, this debate is not about tort reform. It is about defending property rights, and on that we cannot give ground. Because a patent is property, patent infringement amounts, no more and no less, to trespass. The owner of intellectual property, no less than the owner of a home, must have the legal right and practical ability to protect his or her property by ejecting those who invade that property without invitation or authorization. Weakening the right to defend one's property is not tort reform. In fact, there is great likelihood that this legislation will only prolong litigation and make it costlier.

Some people argue that this so-called reform is designed to stop a few opportunistic "patent trolls" from unleashing a flood of litigation. They claim that such "trolls" do not make productive use of their patents themselves, but instead use the patents to harass businesses into inefficient licensing arrangements and nuisance-value settlements. This argument is specious and false.

Again, one of the inherent features of any type of property is the owner's right to use, sell, rent, license or otherwise dispose of that property as he or she sees fit. Some owners of farmland, for example, lease it to others to plant and harvest, but no one would call such a landowner a farming "troll" for objecting to the presence of trespassers on his property.

Intellectual property is and should be no different in this regard. The fact that some patent owners do not themselves directly practice their invention, but instead license others to do so, often leads to the most efficient utilization of resources in our economy. The proponents of patent "reform" have not made a serious effort to differentiate such entirely legitimate and productive uses of intellectual property from actions that truly amount to abuse of the patent system. Their "reforms," therefore, threaten to trample property rights and to stifle the types of innovation that fuel the 21st century economy.

In any event, there are ways to fight so-called patent trolls that are more targeted and more effective than the kind of sweeping, reckless revision argued for by Mr. Obama and his allies. In fact, the Supreme Court and the Judicial Conference in a number of decisions and rules changes already have tightened patent litigation, addressing the bad lawsuits that proponents of this approach claim to be concerned about. Patent litigation is actually down significantly since last year, according to a number of analyses.

We must tread carefully as the unintended consequences of this legislative approach will have economic ramifications that could cripple American innovation and drive technology development overseas to nations where property rights are not protected.

We're faced with a clear choice: Either we honor the protections that have helped inspire and motivate the most dynamic technology innovation in the history of the world, or we send a message to the inventors and innovators of the future that their work, their vision and their entrepreneurial commitment are free for anyone to take, to use and to profit from.

Charles J. Cooper is founding partner of the Washington law firm Cooper & Kirk PLLC.

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers:

As economists and law professors who conduct research in patent law and policy, we write to express our deep concerns with the many flawed, unreliable, or incomplete studies about the American patent system that have been provided to members of Congress. Unfortunately, much of the information surrounding the patent policy discussion, and in particular the discussion of so-called "patent trolls," is either inaccurate or does not support the conclusions for which it is cited.

As Congress considers legislation to address abusive patent litigation, we believe it is imperative that your decisions be informed by reliable data that accurately reflect the real-world performance of the U.S. patent system. The claim that patent trolls bring the majority of patent lawsuits is profoundly incorrect. Recent studies further indicate that new patent infringement filings were down in 2014, with a significant decline in non-practicing entity (NPE) case filings. Unfortunately, these facts have gone largely unnoticed. Instead, unreliable studies with highly exaggerated claims regarding patent trolls have stolen the spotlight after being heavily promoted by well-organized proponents of sweeping patent legislation.

Indeed, the bulk of the studies relied upon by advocates of broad patent legislation are infected by fundamental mistakes. For example, the claim that patent trolls cost U.S. businesses $29 billion a year in direct costs has been roundly criticized. Studies cited for the proposition that NPE litigation is harmful to startup firms, that it reduces R&D, and that it reduces venture capital investment are likewise deeply flawed. In the Appendix, we point to a body of research that calls into question many of these claims and provides some explanation as to the limitations of other studies.

Those bent on attacking "trolls" have engendered an alarmist reaction that threatens to gut the patent system as it existed in the Twentieth Century, a period of tremendous innovation and economic growth. Indeed, award-winning economists have linked the two trends tightly together, and others have noted that it is exactly during periods of massive innovation that litigation rates have risen. We are not opposed to sensible, targeted reforms that consider the costs created by both plaintiffs and defendants in patent litigation. Yet, tinkering with the engine of innovation— the U.S. patent system—on the basis of flawed and incomplete evidence threatens to impede this country's economic growth. Many of the wide-ranging changes to the patent system currently under consideration by Congress raise serious concerns in this regard.

That these proposed changes to the patent system have not been supported by rigorous studies is an understatement. We are very concerned that reliance on flawed data will lead to legislation that goes well beyond what is needed to curb abusive litigation practices, causing unintended negative consequences for inventors, small businesses, and emerging entrepreneurs. It is important to remember that inventors and startups rely on the patent system to protect their most valuable assets. Legislation that substantially raises the costs of patent enforcement for small businesses risks emboldening large infringers and disrupting our startup-based innovation economy. If reducing patent litigation comes at the price of reducing inventors' ability to protect their patents, the costs to American innovation may well outweigh the benefits.

As David Kappos, the Director of the Patent Office from 2009 to 2013, stated in 2013 testimony before the House Judiciary Committee, "we are not tinkering with just any system here; we are reworking the greatest innovation engine the world has ever known, almost instantly after it has just been significantly overhauled" by the America Invents Act in 2011. "If there were ever a case where caution is called for, this is it." As Congress addresses this important issue, we hope you will demand empirically sound data on the state of the American patent system.

Sincerely,

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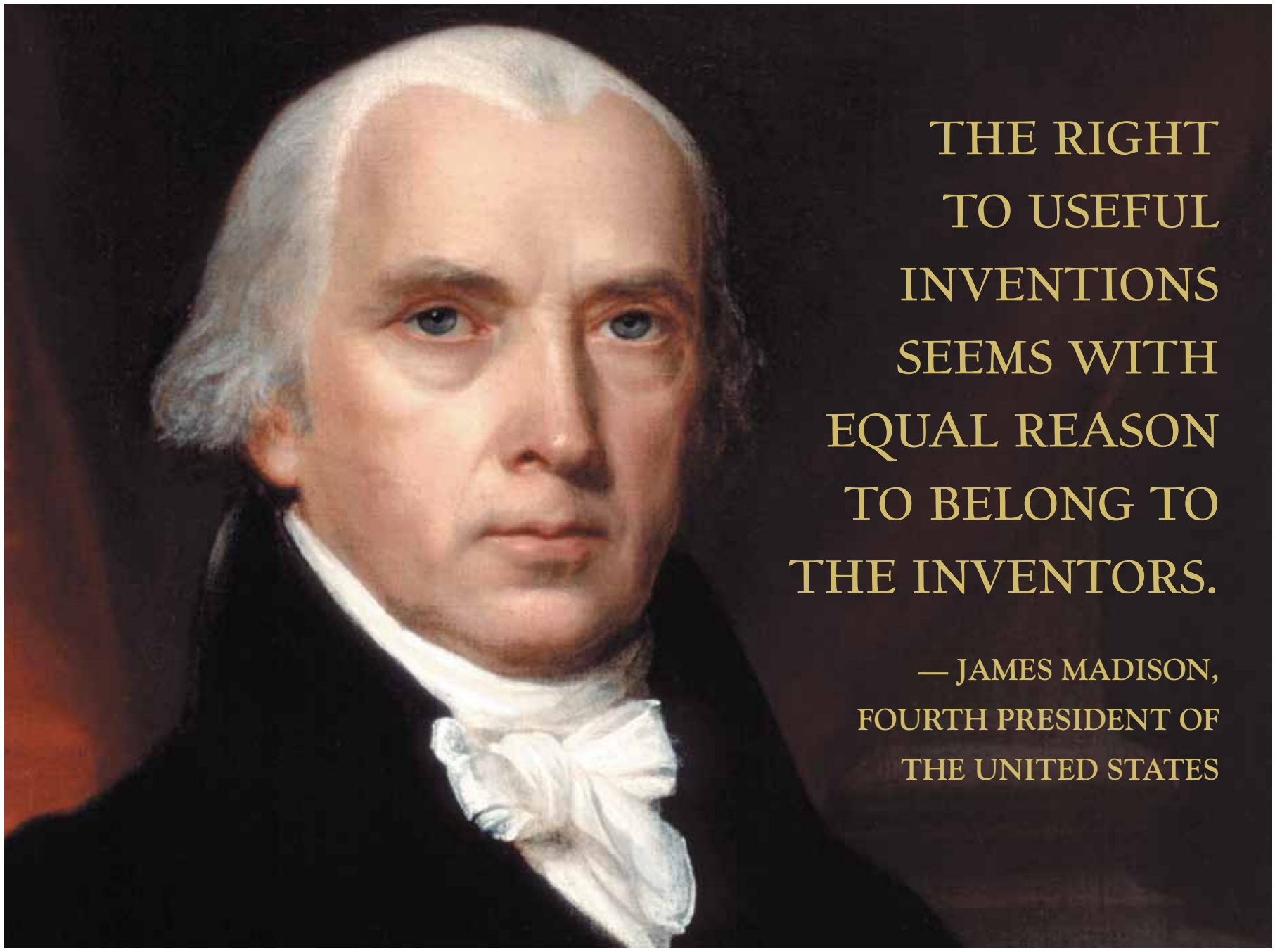

Oppose the Innovation Act before it becomes the next big-government failure.

The Founding Fathers cared about innovation enough to protect it in the Constitution. Don't let Congress break a patent system that has worked in America for two centuries.

THE AMERICAN CONSERVATIVE UNION

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