Proposed Patent Legislation

date	June 1st, 2013

On Thursday, May 30th, the Congressional Internet Caucus Advisory Committee held an hour long event in Washington, DC about recent proposed patent legislation, titled *"If Patent Litigation Is Strangling High Tech Innovation, When Will Congress Act?"* Below are some of the highlights from the event.

Notes:

Eric Hinkes, Legal Policy Fellow for the Congressional Internet Caucus Advisory Committee gave an overview of the SHIELD Act, Patent Quality Improvement Act, and Patent Abuse and Reduction Act. And thanked Senator Leahy, Senator Thune, Congressman Goodlatte and Congresswoman Eshoo for helping to put together the event. *(02:29)*

Scott Burt, Senior Vice President and Chief Intellectual Property Officer, MOSAID Technology, is concerned about the shift of fees potential to leave small businesses without a means to protect themselves, and would avoid litigation against their competitor because of possible fees from potentially losing, as courts are sometimes unpredictable, even if they have a fantastic case. *(13:01)*

Adam Mossoff, Professor of Law at George Mason University School of Law says that judges have the ability to shift fees and punish bad actors in litigation. *(17:55)*

Matt Schruers, Vice President, Law & Policy for Computer & Communications Industry Association says that Rule 11 Sanctions are rarely used in U.S. law, and mentions that fee shifting is done with copyright. *(18:17)*

Tim Sparapani, Vice President, Law, Policy and Government Affairs for Application Developers Alliance says that anything that Congress can do to make it less profitable for litigation, can shift investments into other areas like the next wind farms, the next energy development, or the next great technology company. This will shift the investments dollars to the benefit of consumers. *(21:30)*

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Eric Hinkes says the Patent Quality Improvement Act makes a post-grant review program for a business entity, in addition to the financial industry as was added in the American Invents Act. *(24:00)*

Tim says the Patent Quality Improvement Act should be passed by Congress, and should be expanded from financial to business for the post-grant review. *(32:55)*

Matt says, "…If you poll engineers, the people who are the inventors that are listed on these patents, 80% of software engineers will tell you they don't think the system is working. That is in part because they see themselves and their peers writing interrogatory responses instead of software code. They are spending time responding to the costs of litigation instead of doing their job, doing R&D… of creating stuff that the Bureau of Economics Analysis thinks is so important that we are rewriting our GWP figures to account for it. We have come to the point where producing a product is a liability…" (39:25)

Tim directs the audience to visit devsbuild.it and gives a testimonial of an entrepreneur with five employees and six lawyers. And goes on to say that it used to be only the technology problem, but now software is everywhere, all industries rely on software, which means we rely on software engineers. What is happening in our industry will affect all industries. It's time for Congress to act. (41:55)

Comment:

The proposed legislation only goes a part of the way. To promote innovation for software, the U.S. could be more effective to provide grants and other incentives to release software, and source code, that would be beneficial to the public, enriching the libraries of software already in existence. Software libraries of source code provide more useful information in programming languages like Javascript, Python, and PHP — everything is included that is needed to build a program. The NSA has released the source code for a database they developed called Accumulo, and is a great example of the U.S. participating in software innovation.

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