Non-Discriminatory Patent Legislation

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IEEE-USA opposes any legislation that discriminates between types of companies or entities; or between types of industries by creating barriers for companies or entities seeking to legitimately enforce, defend, or commercialize their Intellectual Property (IP). Forms of such discrimination include imposing patentability restrictions on the technology of specific industries, imposing enforceability restrictions on patents for specific industries, or treating patent litigation differently than any other civil litigation.

Further, IEEE-USA opposes legislation that creates distinctions between patent litigants based on non-neutral characteristics including, but not limited to: size of entities, business models, financial positions, or technologies practiced by the entities. Nondiscriminatory access to the legal system for enforcing and defending IP property rights is an essential element for securing the property rights that are necessary for investment. The availability to litigate IP property rights is a necessary step to realizing a property right; and without this step, no property right is really secured. If it is not possible to secure a property right in patent, then investments will be deterred, and success will be precluded.

Specifically, IEEE-USA recognizes that, in a minority of cases, abusive patent litigation does exist, as abuse exists in any other field of litigation. However, IEEE-USA opposes legislative remedies that are patent-specific, and targeted at patent owners, to address potential abusive litigation tactics--that should be generally addressed by civil litigation reforms.

This statement was developed by IEEE-USA’s Intellectual Property Committee, and represents the considered judgment of a group of U.S. IEEE members with expertise in the subject field. IEEE-USA advances the public good and promotes the careers and public policy interests of more than 205,000 engineers, scientists and allied professionals who are U.S. members of IEEE. The positions taken by IEEE-USA do not necessarily reflect the views of IEEE, or its other organizational units.
BACKGROUND

IEEE-USA promotes positions that are advantageous to its membership (engineers, faculty, scientists, inventors, tech workforce, entrepreneurs, etc.). A 2012 survey of IEEE members shows that IEEE's membership is very diverse. Members may be employed in private industry, educational institutions, government, or nonprofits; or are self-employed, retired, unemployed, or full-time students. Members are involved in diverse industries, including, but not limited to: computing and processing (hardware/software), general engineering (math, science and engineering), communications, networking, broadcasting, power, energy, signal processing and analysis, circuits and devices, robotics and control systems, bioengineering, aerospace, photonics and electro-optics, medicine, engineering materials, transportation, geoscience, and nuclear engineering. This position statement, therefore, should be construed to support the diversity of our membership and the interests of the membership.

As a concept, IP protection is as important to most societies as real property protection. For example, IP protection includes patent, copyright, trade secret and trademark protection. IP creators include writers and inventors. IP owners include individuals, small companies, large companies and non-profit organizations, such as research institutes and universities. IP creators and owners rely on a mixture of IP strategies to protect their ability to make a living; to leverage their work product to sell goods and services profitably; to keep competitors from duplicating their work product; and/or to have investors provide development or growth funding. IP protection provides at least some security that encourages IP creators to continue creating; and supports IP owners in continuing to invest in and grow their businesses.

However, when legislation is enacted, procedures adopted, or programs started that chip away at the protection of an IP creator's or IP owner's work product--IP creators have less incentive to continue creating; and IP owners have less incentive to invest in new IP, or to continue investing in and growing businesses. More specifically, authors, creators, corporations, startups and individual inventors find it more and more difficult to protect their work product; and also to continue to make a living, grow their businesses, and promote their technologies. The increased barriers to protecting work products resulting from such initiatives are particularly burdensome for small companies, startups and individual inventors—those who are not as well capitalized as their larger counterparts--and therefore less able to absorb the newly introduced, more costly, barriers into their operating procedures.

In particular, IEEE-USA opposes any legislation that creates or increases barriers that make it difficult for companies or entities (and particularly for individuals and small companies, or entities) to obtain patent protection; or to enforce, defend, or commercialize their patents.

This position statement is the result of analysis engaged in by IEEE-USA of certain recent federal initiatives, among them the following:

1. America Invents Act of 2011 (“AIA”);
2. The proposed Promoting Automotive Repair, Trade and Sales Act of 2013 (PARTS Act) (H.R. 1663); and

3. The proposed Saving High-Tech Innovators from Egregious Legal Disputes Act of 2013 (SHIELD Act) (H. R. 845).

IEEE-USA is concerned about the trend demonstrated by these patent-related initiatives to whittle away at IP rights and protections. While each of the above initiatives is purported to address a specific, separate, patent-related concern—their merits are highly questionable—individually and when viewed as a whole, because they erode the protection available to an element of IP. Ultimately, such initiatives undermine the value of a patent owner’s rights.

IEEE-USA urges Congress to look beyond the reasons for an individual initiative under consideration, and consider the competitive effect of the initiative, in combination with other recent initiatives—and as it relates to the IP environment, as a whole.

The U.S. patent system has traditionally been neutral as to inventive entities. When Congress considers IP-focused legislation, IEEE-USA urges Congress to focus on maintaining the U.S. patent system, where protection is awarded without regard to who owns or files the patent, but is based, instead, on the nature and substantive merit of the invention. Where work products that meet the statutory criteria are eligible for patenting without discrimination, patents based on such work products should also be eligible for enforcement, defense, or commercialization—without discrimination.

When Congress considers enacting legislation that imposes barriers to patent litigation based on non-neutral characteristics (including, but not limited to: size of entities, business model, financial positions of entities, or technologies practiced by the entities), it is disrupting the traditional neutrality of the U.S. patent system as to inventive entities, impairing the liquidity of their patent assets, and moving the focus of the U.S. patent system away from the actual innovation, and toward the innovation’s owner. Therefore, IEEE-USA urges Congress to continue to focus its initiatives on protecting innovations, regardless of their natures.

In addition, IEEE-USA cautions against introducing distinctions between rules and procedures in patent litigation and other civil litigation. While it is clear that patent litigation can be expensive in time, effort and resources, it is also clear that patent litigation is no different than other complex litigation, which is equally expensive in time, effort and resources.

There is no evidence that patent litigation is rampant, or being abused any more than other civil litigation. Generally, the growth in the number of patent lawsuits per year has kept pace with the scale of commercial activity over the years. It is about 1% of all federal civil lawsuits today—about the same percentage as in the 1970s.

When Congress considers enacting legislation that imposes barriers to litigation, based on the type of litigation, it risks incorporating inequities into the U.S. justice system. Therefore, IEEE-USA opposes any legislation that singles out problems in patent litigation that are generic to all civil litigation.