

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6245

To amend chapter 29 of title 35, United States Code, to provide for the recovery of computer hardware and software patent litigation costs in cases where the court finds the claimant did not have a reasonable likelihood of succeeding, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2012

Mr. DEFAZIO (for himself and Mr. CHAFFETZ) introduced the following bill;  
which was referred to the Committee on the Judiciary

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## A BILL

To amend chapter 29 of title 35, United States Code, to provide for the recovery of computer hardware and software patent litigation costs in cases where the court finds the claimant did not have a reasonable likelihood of succeeding, 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 “Saving High-Tech  
5 Innovators from Egregious Legal Disputes Act of 2012”.

1 **SEC. 2. RECOVERY OF LITIGATION COSTS FOR COMPUTER**  
2 **HARDWARE AND SOFTWARE PATENT.**

3 (a) AMENDMENT.—Chapter 29 of title 35, United  
4 States Code, is amended by inserting after section 285 the  
5 following new section:

6 **“§ 285A. Recovery of litigation costs for computer**  
7 **hardware and software patent**

8 “(a) IN GENERAL.—Notwithstanding section 285, in  
9 an action disputing the validity or alleging the infringe-  
10 ment of a computer hardware or software patent, upon  
11 making a determination that the party alleging the in-  
12 fringement of the patent did not have a reasonable likeli-  
13 hood of succeeding, the court may award the recovery of  
14 full costs to the prevailing party, including reasonable at-  
15 torney’s fees, other than the United States.

16 “(b) DEFINITIONS.—In this section:

17 “(1) COMPUTER.—The term ‘computer’ means  
18 an electronic, magnetic, optical, electrochemical, or  
19 other high-speed data processing device performing  
20 logical, arithmetic, or storage functions, and in-  
21 cludes—

22 “(A) any data storage facility or commu-  
23 nications facility directly related to or operating  
24 in conjunction with such device; and

1           “(B) any processor or peripheral, such as  
2           a monitor or input device, directly related to or  
3           operating in conjunction with such device.

4           “(2) COMPUTER HARDWARE PATENT.—The  
5           term ‘computer hardware patent’ means a patent  
6           that covers computer hardware, including a device or  
7           component of such device.

8           “(3) SOFTWARE PATENT.—The term ‘software  
9           patent’ means a patent that covers—

10           “(A) any process that could be imple-  
11           mented in a computer regardless of whether a  
12           computer is specifically mentioned in the pat-  
13           ent; or

14           “(B) any computer system that is pro-  
15           grammed to perform a process described in sub-  
16           paragraph (A).”.

17           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
18           The table of sections for chapter 29 of title 35, United  
19           States Code, is amended by inserting after the item relat-  
20           ing to section 285 the following new item:

“285A. Recovery of litigation costs for computer hardware and software  
patent.”.

21           (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
22           tion, or the amendments made by this section, shall be  
23           construed as amending or interpreting categories of pat-

1 ent-eligible subject matter set forth under section 101 of  
2 title 35, United States Code.

3 (d) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall take effect on the date of the enact-  
5 ment of this Act and shall apply to any action involving  
6 the validity or infringement of a computer hardware or  
7 software patent (as such terms are defined under section  
8 285A of title 35, United States Code, as added by sub-  
9 section (a)) for which a complaint is filed on or after the  
10 date of the enactment of this Act.

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