

113TH CONGRESS  
1ST SESSION

# H. R. 2639

To amend title 35, United States Code, to add procedural requirements for patent infringement suits, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2013

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

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## A BILL

To amend title 35, United States Code, to add procedural requirements for patent infringement suits, 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 “Patent Litigation and  
5 Innovation Act of 2013”.

6 **SEC. 2. PLEADING REQUIREMENTS.**

7 (a) IN GENERAL.—Chapter 29 of title 35, United  
8 States Code, is amended by inserting after section 281 the  
9 following:

1 **“§ 281A. Pleading requirements for patent infringe-**  
2 **ment actions**

3 “In a civil action arising under any Act of Congress  
4 relating to patents, a party alleging infringement shall in-  
5 clude in the initial complaint, counterclaim, or cross-claim  
6 for patent infringement—

7 “(1) an identification of each patent allegedly  
8 infringed;

9 “(2) an identification of each claim of each pat-  
10 ent identified under paragraph (1) that is allegedly  
11 infringed;

12 “(3) for each claim identified under paragraph  
13 (2), an identification of each accused apparatus,  
14 product, feature, device, method, system, process,  
15 function, act, service, or other instrumentality (re-  
16 ferred to in this section as an ‘accused instrumen-  
17 tality’) alleged to infringe the claim;

18 “(4) for each accused instrumentality identified  
19 under paragraph (3), an identification with particu-  
20 larity, if known, of—

21 “(A) the name or model number of the ac-  
22 cused instrumentality; and

23 “(B) the name of each accused method,  
24 system, process, function, act, or service, or the  
25 name or model number of each apparatus,  
26 product, feature, or device that, when used, al-

1           legedly results in the practice of the claimed in-  
2           vention;

3           “(5) for each accused instrumentality identified  
4           under paragraph (3), an explanation of—

5                   “(A) where each element of each asserted  
6                   claim identified under paragraph (2) is found  
7                   within the accused instrumentality;

8                   “(B) whether each such element is in-  
9                   fringed literally or under the doctrine of equiva-  
10                  lents; and

11                  “(C) with detailed specificity, how the  
12                  terms in each asserted claim identified under  
13                  paragraph (2) correspond to the functionality of  
14                  the accused instrumentality;

15           “(6) for each claim that is alleged to have been  
16           infringed indirectly, a description of—

17                   “(A) the direct infringement;

18                   “(B) any person alleged to be a direct in-  
19                   fringer known to the party alleging infringe-  
20                   ment; and

21                   “(C) the acts of the alleged indirect in-  
22                   fringer that contribute to or are inducing the  
23                   direct infringement;

24           “(7) a description of the right of the party al-  
25           leging infringement to assert each—

1           “(A) patent identified under paragraph  
2           (1); and

3           “(B) patent claim identified in paragraph  
4           (2);

5           “(8) a description of the principal business of  
6           the party alleging infringement;

7           “(9) the identity of any person, other than the  
8           party alleging infringement, who is known to the  
9           party alleging infringement, and who—

10           “(A) owns or co-owns a patent identified  
11           under paragraph (1);

12           “(B) is the assignee of a patent identified  
13           under paragraph (1); or

14           “(C) is an exclusive licensee to a patent  
15           identified under paragraph (1); and

16           “(10) the identity of any person, other than the  
17           party alleging infringement, who is known to the  
18           party alleging infringement, and who has a legal or  
19           financial right to enforce a patent identified under  
20           paragraph (1).”.

21           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
22           The table of sections for chapter 29 of title 35, United  
23           States Code, is amended by inserting after the item relat-  
24           ing to section 281 the following:

          “281A. Pleading requirements for patent infringement actions.”.

1 (c) REVIEW OF FORM 18.—Not later than 12 months  
2 after the date of the enactment of this Act, the Supreme  
3 Court shall review and amend Form 18 of the Federal  
4 Rules of Civil Procedure to ensure that Form 18 is con-  
5 sistent with the requirements under section 281A of title  
6 35, United States Code, as added by subsection (a).

7 (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
8 tion or the amendments made by this section shall be con-  
9 strued to alter existing law or rules relating to joinder.

10 **SEC. 3. JOINDER OF INTERESTED PARTIES.**

11 Section 299 of title 35, United States Code, is  
12 amended by adding at the end the following:

13 “(d) JOINDER OF INTERESTED PARTIES.—

14 “(1) DEFINITION.—In this subsection, the term  
15 ‘interested party’, with respect to a civil action aris-  
16 ing under any Act of Congress relating to patents—

17 “(A) means a person described in para-  
18 graph (9) or (10) of section 281A; and

19 “(B) does not include an attorney or law  
20 firm providing legal representation in the action  
21 if the sole basis for the financial interest of the  
22 attorney or law firm in the outcome of the ac-  
23 tion arises from an agreement to provide that  
24 legal representation.

1           “(2) JOINDER OF INTERESTED PARTIES.—In a  
2           civil action arising under any Act of Congress relat-  
3           ing to patents, the court shall grant a motion by a  
4           party defending an infringement claim to join an in-  
5           terested party if the defending party files the motion  
6           to join within 120 days after the first complaint, an-  
7           swer, or counterclaim and shows that the interest of  
8           the plaintiff in any patent identified in the com-  
9           plaint, including a claim asserted in the complaint,  
10          is limited primarily to asserting any such patent  
11          claim in litigation.

12           “(3) LIMITATION ON JOINDER.—The court may  
13          deny a motion to join an interested party under  
14          paragraph (2) if—

15                   “(A) the interested party is not subject to  
16                   service of process; or

17                   “(B) joinder under paragraph (2) would  
18                   deprive the court of subject matter jurisdiction  
19                   or make venue improper.”.

20 **SEC. 4. STAY OF ACTION AGAINST SECONDARY PARTIES.**

21           (a) IN GENERAL.—Chapter 29 of title 35, United  
22          States Code, is amended by adding at the end the fol-  
23          lowing:

24 **“§ 300. Stay of action against secondary parties**

25           “(a) STAY OF ACTION.—

1           “(1) IN GENERAL.—In any civil action arising  
2           under any Act of Congress relating to patents, the  
3           court shall grant a motion to stay all or part of the  
4           action as to a secondary party with respect to in-  
5           fringement related to a primary party in the same  
6           or another action concerning the same apparatus,  
7           product, feature, device, method, system, process,  
8           function, act, service, or other instrumentality, in  
9           whole or in relevant part, of the disputed patent of  
10          the primary party, if—

11                   “(A) the primary and secondary parties  
12                   consent to the stay in writing;

13                   “(B) the motion is filed not later than 120  
14                   days after service of the first complaint in the  
15                   action of the primary party that is asserted as  
16                   the basis for the secondary party’s alleged in-  
17                   fringement; and

18                   “(C) the secondary party agrees to be  
19                   bound by any judgment entered against the pri-  
20                   mary party to the same extent as such primary  
21                   party may be bound with respect to issues that  
22                   the primary and secondary parties have in com-  
23                   mon.

24           “(2) TREATMENT OF SECONDARY PARTY.—  
25          During a stay under paragraph (1), the secondary

1 party shall be treated as a nonparty to the action  
2 against the primary party for purposes of discovery,  
3 hearings, trial, or otherwise. The stay shall continue  
4 until such time that a final adjudication in the ac-  
5 tion against the primary party has been entered and  
6 all appeals thereof exhausted.

7 “(b) OTHER AUTHORITY NOT AFFECTED.—Nothing  
8 in this section shall be construed as abrogating a court’s  
9 discretion to grant any stay or expand any stay granted  
10 pursuant to this section where otherwise permitted by law.

11 “(c) DEFINITIONS.—In this section:

12 “(1) PRIMARY PARTY.—The term ‘primary  
13 party’ means a person who manufactures or sup-  
14 plies, or causes the manufacture or supply of, an ap-  
15 paratus, product, feature, device, method, system,  
16 process, function, act, service, or other instrumen-  
17 tality, in whole or in material part—

18 “(A) that is alleged to infringe a patent in  
19 dispute; or

20 “(B) that uses a process alleged to infringe  
21 a patent in dispute.

22 “(2) SECONDARY PARTY.—The term ‘secondary  
23 party’ means a party accused of infringing a patent  
24 in dispute based on the use, distribution, resale, or



1 consumption of a product or process by a primary  
2 party.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-  
4 tions for chapter 29 of title 35, United States Code, is  
5 amended by adding at the end the following:

“300. Stay of action against secondary parties.”.

6 **SEC. 5. STAY OF DISCOVERY.**

7 (a) IN GENERAL.—Chapter 29 of title 35, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

10 **“§ 300A. Stay of discovery in patent infringement**  
11 **suits**

12 “(a) IN GENERAL.—Except as provided in sub-  
13 sections (b) and (c), in a civil action arising under any  
14 Act of Congress relating to patents—

15 “(1) the court shall stay discovery until after  
16 the court has ruled on—

17 “(A) any motion to dismiss the action; and

18 “(B) any motion to transfer venue of the  
19 action; and

20 “(2) if the court determines that a ruling relat-  
21 ing to the construction of terms used in a patent  
22 claim asserted in the complaint in the action is re-  
23 quired, the court shall stay discovery until after the  
24 court has made the ruling.

1       “(b) EXCEPTION.—Notwithstanding subsection (a),  
2 the court may, in an action described in that subsection,  
3 allow discovery to the extent necessary for the court to  
4 make the ruling under paragraph (1) or (2) of that sub-  
5 section, as the case may be.

6       “(c) DISCRETION TO EXPAND SCOPE OF DISCOVERY  
7 IN EXTRAORDINARY CIRCUMSTANCES.—If, under any pro-  
8 vision of Federal law (including the Drug Price Competi-  
9 tion and Patent Term Restoration Act (Public Law 98–  
10 417)), the court determines that extraordinary cir-  
11 cumstances exist because resolution within a specified pe-  
12 riod of time of a civil action arising under any Act of Con-  
13 gress relating to patents will have an automatic impact  
14 upon the rights of a party with respect to the patent, the  
15 court may permit discovery in addition to the discovery  
16 authorized under subsection (b) before the ruling de-  
17 scribed in subsection (b) as necessary to ensure timely res-  
18 olution of the action.

19       “(d) PRESERVATION OF EVIDENCE.—

20               “(1) IN GENERAL.—During the pendency of  
21 any stay of discovery under this section, unless oth-  
22 erwise ordered by the court, any party to the action  
23 with actual notice of the allegations contained in the  
24 complaint shall treat all documents, data compila-  
25 tions (including electronically recorded or stored

1 data), and tangible objects that are in the custody  
2 or control of such person and that are relevant to  
3 the allegations, as if they were the subject of a con-  
4 tinuing request for production of documents from an  
5 opposing party under the Federal Rules of Civil Pro-  
6 cedure.

7 “(2) SANCTION FOR WILLFUL VIOLATION.—A  
8 party aggrieved by the willful failure of an opposing  
9 party to comply with paragraph (1) may apply to  
10 the court for an order awarding appropriate sanc-  
11 tions.”.

12 (b) CONFORMING AMENDMENT.—The table of sec-  
13 tions for chapter 29 of title 35, United States Code, is  
14 amended by adding at the end the following:

“300A. Stay of discovery in patent infringement suits.”.

15 **SEC. 6. SANCTIONS FOR ABUSIVE LITIGATION.**

16 (a) IN GENERAL.—Chapter 29 of title 35, United  
17 States Code, is amended by adding at the end the fol-  
18 lowing:

19 **“§ 300B. Sanctions for abusive litigation**

20 “(a) MANDATORY REVIEW BY COURT.—In any civil  
21 action arising under any Act of Congress relating to pat-  
22 ents, upon final adjudication of the action, the court shall  
23 include in the record specific findings regarding compli-  
24 ance by each party and each attorney representing any  
25 party with each requirement of Rule 11(b) of the Federal

1 Rules of Civil Procedure as to any complaint, responsive  
2 pleading, or dispositive motion.

3 “(b) SANCTIONS.—If the court makes a finding  
4 under subsection (a) that a party or attorney violated any  
5 requirement of Rule 11(b) of the Federal Rules of Civil  
6 Procedure as to any complaint, responsive pleading, or dis-  
7 positive motion, the court may impose sanctions on such  
8 party or attorney in accordance with Rule 11 of the Fed-  
9 eral Rules of Civil Procedure. Before making a finding  
10 that any party or attorney has violated Rule 11 of the  
11 Federal Rules of Civil Procedure, the court shall give such  
12 party or attorney notice and an opportunity to respond.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) TABLE OF CONTENTS.—The table of sec-  
15 tions for chapter 29 of title 35, United States Code,  
16 is amended by adding at the end the following:

“300B. Sanctions for abusive litigation.”.

17 (2) AWARD OF ATTORNEYS FEES IN EXCEP-  
18 TIONAL CASES.—Section 285 of title 35, United  
19 States Code, is amended by striking “The court”  
20 and inserting “Subject to section 300B(b), the  
21 court”.

1 **SEC. 7. EFFECTIVE DATE.**

2       This Act and the amendments made by this Act shall  
3 apply to civil actions commenced on or after the date of  
4 the enactment of this Act.

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