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

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

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,
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4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Patent Litigation and
6 Innovation Act of 2013”.
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8 SEC. 2. PLEADING REQUIREMENTS.
9 (a) IN GENERAL.—Chapter 29 of title 35, United States Code, is amended by inserting after section 281 the following:
§ 281A. Pleading requirements for patent infringement actions

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

(1) an identification of each patent allegedly infringed;

(2) an identification of each claim of each patent identified under paragraph (1) that is allegedly infringed;

(3) for each claim identified under paragraph (2), an identification of each accused apparatus, product, feature, device, method, system, process, function, act, service, or other instrumentality (referred to in this section as an ‘accused instrumentality’) alleged to infringe the claim;

(4) for each accused instrumentality identified under paragraph (3), an identification with particularity, if known, of—

(A) the name or model number of the accused instrumentality; and

(B) the name of each accused method, system, process, function, act, or service, or the name or model number of each apparatus, product, feature, or device that, when used, al-
legedly results in the practice of the claimed invention;

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

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

“(B) whether each such element is infringed literally or under the doctrine of equivalents; and

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

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

“(A) the direct infringement;

“(B) any person alleged to be a direct infringer known to the party alleging infringement; and

“(C) the acts of the alleged indirect infringer that contribute to or are inducing the direct infringement;

“(7) a description of the right of the party alleging infringement to assert each—
“(A) patent identified under paragraph (1); and

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

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

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

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

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

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

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

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

“281A. Pleading requirements for patent infringement actions.”.
(c) Review of Form 18.—Not later than 12 months after the date of the enactment of this Act, the Supreme Court shall review and amend Form 18 of the Federal Rules of Civil Procedure to ensure that Form 18 is consistent with the requirements under section 281A of title 35, United States Code, as added by subsection (a).

(d) Rule of Construction.—Nothing in this section or the amendments made by this section shall be construed to alter existing law or rules relating to joinder.

SEC. 3. JOINDER OF INTERESTED PARTIES.

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

“(d) Joinder of Interested Parties.—

“(1) Definition.—In this subsection, the term ‘interested party’, with respect to a civil action arising under any Act of Congress relating to patents—

“(A) means a person described in paragraph (9) or (10) of section 281A; and

“(B) does not include an attorney or law firm providing legal representation in the action if the sole basis for the financial interest of the attorney or law firm in the outcome of the action arises from an agreement to provide that legal representation.
“(2) Joinder of interested parties.—In a civil action arising under any Act of Congress relating to patents, the court shall grant a motion by a party defending an infringement claim to join an interested party if the defending party files the motion to join within 120 days after the first complaint, answer, or counterclaim and shows that the interest of the plaintiff in any patent identified in the complaint, including a claim asserted in the complaint, is limited primarily to asserting any such patent claim in litigation.

“(3) Limitation on joinder.—The court may deny a motion to join an interested party under paragraph (2) if—

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

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

SEC. 4. STAY OF ACTION AGAINST SECONDARY PARTIES.

(a) In general.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following:

“§ 300. Stay of action against secondary parties

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

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

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

“(C) the secondary party agrees to be bound by any judgment entered against the primary party to the same extent as such primary party may be bound with respect to issues that the primary and secondary parties have in common.

“(2) TREATMENT OF SECONDARY PARTY.—During a stay under paragraph (1), the secondary
party shall be treated as a nonparty to the action against the primary party for purposes of discovery, hearings, trial, or otherwise. The stay shall continue until such time that a final adjudication in the action against the primary party has been entered and all appeals thereof exhausted.

“(b) Other Authority Not Affected.—Nothing in this section shall be construed as abrogating a court’s discretion to grant any stay or expand any stay granted pursuant to this section where otherwise permitted by law.

“(c) Definitions.—In this section:

“(1) Primary Party.—The term ‘primary party’ means a person who manufacturers or supplies, or causes the manufacture or supply of, an apparatus, product, feature, device, method, system, process, function, act, service, or other instrumentality, in whole or in material part—

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

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

“(2) Secondary Party.—The term ‘secondary party’ means a party accused of infringing a patent in dispute based on the use, distribution, resale, or
consumption of a product or process by a primary party.”.

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

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

SEC. 5. STAY OF DISCOVERY.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following:

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

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), in a civil action arising under any Act of Congress relating to patents—

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

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

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

“(2) if the court determines that a ruling relating to the construction of terms used in a patent claim asserted in the complaint in the action is required, the court shall stay discovery until after the court has made the ruling.
“(b) Exception.—Notwithstanding subsection (a), the court may, in an action described in that subsection, allow discovery to the extent necessary for the court to make the ruling under paragraph (1) or (2) of that subsection, as the case may be.

“(c) Discretion to expand scope of discovery in extraordinary circumstances.—If, under any provision of Federal law (including the Drug Price Competition and Patent Term Restoration Act (Public Law 98–417)), the court determines that extraordinary circumstances exist because resolution within a specified period of time of a civil action arising under any Act of Congress relating to patents will have an automatic impact upon the rights of a party with respect to the patent, the court may permit discovery in addition to the discovery authorized under subsection (b) before the ruling described in subsection (b) as necessary to ensure timely resolution of the action.

“(d) Preservation of evidence.—

“(1) In general.—During the pendency of any stay of discovery under this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored
data), and tangible objects that are in the custody
or control of such person and that are relevant to
the allegations, as if they were the subject of a con-
tinuing request for production of documents from an
opposing party under the Federal Rules of Civil Pro-
cedure.

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

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

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

SEC. 6. S ANCTIONS FOR A BUSIVE LITIGATION.

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

“§ 300B. S anctions for abusive litigation

“(a) MANDATORY REVIEW BY COURT.—In any civil
action arising under any Act of Congress relating to pat-
ents, upon final adjudication of the action, the court shall
include in the record specific findings regarding compli-
ance by each party and each attorney representing any
party with each requirement of Rule 11(b) of the Federal
Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

“(b) SANCTIONS.—If the court makes a finding under subsection (a) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court may impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Before making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.”.

(b) CONFORMING AMENDMENTS.—

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

“300B. Sanctions for abusive litigation.”.

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

SEC. 7. EFFECTIVE DATE.

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