

115TH CONGRESS
2D SESSION

H. R. 7036

To amend title 35, United States Code, with respect to actions for patent infringement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2018

Mr. CHABOT introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 35, United States Code, with respect to actions for patent infringement, 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 “Zero Tolerance for
5 Electronics Theft Act” or the “ZTE Theft Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Federal Bureau of Investigation (FBI)
2 has determined that certain foreign actors pose a se-
3 rious threat to the telecommunications supply chain.

4 (2) Through cyber espionage and other delib-
5 erate acts, billions of dollars in trade secrets, intel-
6 lectual property, and technology are stolen each year
7 from the Federal Government, corporations, and
8 academic institutions.

9 (3) The People's Republic of China (China) is
10 one of the two largest participants in cyber espio-
11 nage.

12 (4) A 2012 report by the Permanent Select
13 Committee on Intelligence of the House of Rep-
14 resentatives found that China exerts cyber espionage
15 capabilities through telecommunications components
16 and systems marketed directly to businesses and
17 other entities in the United States.

18 (5) A 2018 report by the Office of the United
19 States Trade Representative found that Chinese gov-
20 ernment-owned entities were responsible for a sub-
21 stantial number of patent infringements.

22 (6) ZTE Corporation, based in China, dem-
23 onstrates the risks associated with doing business in
24 countries sanctioned by the United States and pro-
25 vides a model, as well as advocates for, the use of

1 shell companies to subvert the export control laws of
2 the United States, explicitly stating that “[t]he big-
3 gest advantage of [this model] is that it is more ef-
4 fective, [because it’s] harder for the U.S. Govern-
5 ment to trace it or investigate the real flow of the
6 controlled commodities.”.

7 (7) United States businesses provide an esti-
8 mated 25 to 30 percent of the components used in
9 products of ZTE Corporation, including smart-
10 phones.

11 (8) The FBI determined that ZTE Corporation
12 sold banned technology to Iran and used the meth-
13 ods discussed in paragraph (6) to mask its trans-
14 action history in an effort to undermine investiga-
15 tions of the Department of Commerce.

16 (9) Since 2008, ZTE Corporation has been the
17 defendant, counterclaimant, or respondent in 722
18 court actions.

19 (10) On March 23, 2017, the Department of
20 Justice stated that “ZTE Corporation has agreed to
21 enter a guilty plea and to pay a \$430,488,798 pen-
22 alty to the United States for conspiring to violate
23 the International Emergency Economic Powers Act
24 by illegally shipping U.S.-origin items to Iran, ob-

1 structing justice and making a material false state-
2 ment.”.

3 (11) ZTE Corporation has also previously
4 reached settlement agreements with the Bureau of
5 Industry and Security of the Department of Com-
6 merce and the Office of Foreign Assets Control of
7 the Department of the Treasury.

8 (12) The Bureau of Industry and Security sub-
9 sequently found ZTE Corporation in violation of the
10 settlement agreement with the Bureau due to—

11 (A) falsification of reports and correspond-
12 ence with the Bureau; and

13 (B) failure to discipline all individuals
14 named in the settlement agreement.

15 (13) On March 13, 2018, the Bureau of Indus-
16 try and Security notified ZTE Corporation that the
17 agency would activate a conditionally suspended de-
18 nial order, due to the determination by the agency
19 that ZTE Corporation had continuously made false
20 statements to the United States Government.

21 (14) On June 7, 2018, Secretary of Commerce
22 Wilbur Ross announced that ZTE Corporation—

23 (A) agreed to additional penalties and com-
24 pliance measures which would supplant a prior
25 order of the Bureau; and

1 (B) would be removed from the Depart-
2 ment of Commerce’s Denied Persons List, a list
3 of individuals and entities that have been de-
4 nied export privileges.

5 **SEC. 3. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) ZTE Corporation poses a significant risk to
8 the economy and national security of the United
9 States; and

10 (2) ZTE Corporation engages and will continue
11 to engage in the theft of intellectual property to the
12 detriment of businesses in the United States.

13 **SEC. 4. INJUNCTION.**

14 Section 283 of title 35, United States Code, is
15 amended—

16 (1) by striking “The several courts” and insert-
17 ing the following:

18 “(a) IN GENERAL.—The several courts”; and

19 (2) by adding at the end the following:

20 “(b) SPECIAL RULE.—

21 “(1) PRELIMINARY INJUNCTION IN CERTAIN
22 CASES.—Notwithstanding any other provision of law,
23 when a covered entity is a party to a civil action for
24 patent infringement brought under this title, an op-
25 posing party, if seeking a preliminary injunction

1 against such covered entity, need not demonstrate
2 that irreparable harm would result from the failure
3 to grant such injunction.

4 “(2) COVERED ENTITY DEFINED.—In this sub-
5 section, the term ‘covered entity’ means an entity (or
6 subsidiary or affiliate thereof) that—

7 “(A) is providing or producing tele-
8 communications, software, or electronics equip-
9 ment;

10 “(B) has a headquarters or a principal
11 place of business located in a region adminis-
12 tered or governed by the People’s Republic of
13 China (excluding Taiwan);

14 “(C) was, on or after March 8, 2016, de-
15 nied export privileges; and

16 “(D) was, subsequent to such denial, re-
17 moved by the Secretary of Commerce from the
18 List of Denied Persons maintained by the Bu-
19 reau of Industry and Security of the Depart-
20 ment of Commerce upon the restoration of such
21 privileges.”.

22 **SEC. 5. EXPORT PRIVILEGES ELIGIBILITY.**

23 (a) IN GENERAL.—Beginning on and after the date
24 that is 180 days after the date of enactment of this Act,

1 a covered entity may only be eligible for export privileges
2 if such covered entity—

3 (1) certifies to the Attorney General that such
4 covered entity—

5 (A) with respect to patents in use by the
6 covered entity, has entered into license agree-
7 ments with the United States persons that own
8 such patents;

9 (B) will abide by the laws of the United
10 States; and

11 (C) will not engage in cyber espionage, or
12 the theft or misappropriation of intellectual
13 property or trade secrets, on behalf of them-
14 selves or a state actor; and

15 (2) maintains an export eligibility account in
16 accordance with subsection (b).

17 (b) EXPORT ELIGIBILITY ACCOUNTS.—

18 (1) ESTABLISHMENT.—The Secretary of the
19 Treasury, at the request of a covered entity, shall es-
20 tablish and manage an export eligibility account for
21 the covered entity in accordance with this sub-
22 section.

23 (2) ACCOUNT BALANCE.—To establish eligi-
24 bility for export privileges under subsection (a), an
25 account established under paragraph (1) shall—

1 (A) at the time such account is established,
 2 include an amount equal to \$2,500,000,000
 3 provided by the covered entity;

4 (B) have a balance accessible only—

5 (i) by the Secretary of the Treasury
 6 for payments described in paragraph (3);
 7 and

8 (ii) by the covered entity—

9 (I) upon closure of the account;
 10 and

11 (II) for purposes of making de-
 12 posits to maintain the account in ac-
 13 cordance with subparagraph (C); and

14 (C) at all times after establishment, in-
 15 clude a minimum of \$600,000,000.

16 (3) USE OF ACCOUNT.—Amounts in an account
 17 established under paragraph (1) may be used by the
 18 Secretary of the Treasury for payments—

19 (A) made to a United States person; and

20 (B) that—

21 (i) relate to final judgments in a pat-
 22 ent infringement action against the appli-
 23 cable covered entity (including interest, at-
 24 torney’s fees, and any other costs specified
 25 in such judgments); and

1 (ii) the covered entity failed to make.

2 (4) CERTIFICATION.—The Attorney General, in
3 consultation with the Secretary of the Treasury and
4 the Secretary of Commerce, shall review and certify
5 the account status of covered entities for purposes of
6 eligibility for export privileges at least once every 7
7 years.

8 (5) NOTIFICATION.—The Attorney General
9 shall notify United States Customs and Border Pro-
10 tection and the Bureau of Industry and Security of
11 the Department of Commerce of the identities of
12 covered entities without an account providing eligi-
13 bility for export privileges.

14 (c) DEFINITIONS.—In this section:

15 (1) COVERED ENTITY.—The term “covered en-
16 tity” means an entity (or subsidiary or affiliate
17 thereof) that—

18 (A) is providing or producing telecommuni-
19 cations, software, or electronics equipment;

20 (B) has a headquarters or a principal place
21 of business located in a region administered or
22 governed by the People’s Republic of China (ex-
23 cluding Taiwan);

24 (C) was, on or after March 8, 2016, denied
25 export privileges; and

1 (D) was, subsequent to such denial, re-
2 moved by the Secretary of Commerce from the
3 List of Denied Persons maintained by the Bu-
4 reau of Industry and Security of the Depart-
5 ment of Commerce upon the restoration of such
6 privileges.

7 (2) EXPORT PRIVILEGES.—The term “export
8 privileges” means, with respect to items subject to
9 the Export Administration Regulations (as codified
10 in subchapter C of chapter VII of title 15, Code of
11 Federal Regulations, or any successor regulations)—

12 (A) the ability to engage in export and re-
13 export transactions involving such items; and

14 (B) the access to such items.

15 (3) UNITED STATES PERSON.—The term
16 “United States person” means—

17 (A) a United States citizen or national;

18 (B) an alien lawfully present in the United
19 States who has lawful status under the immi-
20 gration laws (as such term is defined in section
21 101(a) of the Immigration and Nationality
22 Act);

23 (C) a partnership, corporation, or other
24 legal entity organized under the laws of the
25 United States; or

1 (D) a partnership, corporation, or other
2 legal entity that is organized under the laws of
3 a foreign country and is controlled by entities
4 described in subparagraph (C) or a United
5 States citizen.

○