

113TH CONGRESS  
1ST SESSION

# S. 1612

To deter abusive patent litigation by targeting the economic incentives that fuel frivolous lawsuits.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2013

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To deter abusive patent litigation by targeting the economic incentives that fuel frivolous lawsuits.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Patent Litigation Integrity Act of 2013”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

### TITLE I—MANDATORY FEE SHIFTING

Sec. 101. Litigation and other expenses.

## TITLE II—DISCRETIONARY BONDING

Sec. 201. Motion for a bond.

1           **TITLE I—MANDATORY FEE**  
2                                   **SHIFTING**

3   **SEC. 101. LITIGATION AND OTHER EXPENSES.**

4           (a) IN GENERAL.—Section 285 of title 35, United  
5 States Code, is amended to read as follows:

6   **“§ 285. Fees and other expenses**

7           “The court shall award to a prevailing party reason-  
8 able fees and other expenses, including attorney fees, in-  
9 curred by that party in connection with a civil action in  
10 which any party asserts a claim for relief arising under  
11 any Act of Congress relating to patents, unless the court  
12 finds that the position and conduct of the nonprevailing  
13 party or parties were substantially justified or that special  
14 circumstances make an award unjust.”.

15           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
16 The table of sections for chapter 29 of title 35, United  
17 States Code, is amended by striking the item relating to  
18 section 285 and inserting the following:

“285. Fees and other expenses.”.

1           **TITLE II—DISCRETIONARY**  
2                           **BONDING**

3   **SEC. 201. MOTION FOR A BOND.**

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

7   **“§ 285A. Motion for a bond**

8           “(a) IN GENERAL.—The court, on motion by the de-  
9 fendant or a respondent in a proceeding, may order the  
10 party alleging infringement to post a bond sufficient to  
11 ensure payment of the accused infringer’s reasonable fees  
12 and other expenses, including attorney fees.

13           “(b) FACTORS TO BE CONSIDERED.—For purposes  
14 of this section, in determining whether a bond requirement  
15 would be unreasonable or unnecessary, the court shall con-  
16 sider—

17                   “(1) whether the bond will burden the ability of  
18 the party alleging infringement to pursue activities  
19 unrelated to the assertion, acquisition, litigation, or  
20 licensing of any patent;

21                   “(2) whether the party alleging infringement  
22 is—

23                           “(A) an institution of higher education (as  
24 defined in section 101(a) of the Higher Edu-  
25 cation Act of 1965 (20 U.S.C. 1001(a))); or

1           “(B) a non-profit technology transfer orga-  
2           nization whose primary purpose is to facilitate  
3           the commercialization of technologies developed  
4           by one or more institutions of higher education;

5           “(3) whether a licensee, who has an exclusive  
6           right under a patent held by an institution of higher  
7           education or a non-profit organization described in  
8           paragraph (2), conducts further research on or de-  
9           velopment of the subject matter to make the subject  
10          matter more licensable;

11          “(4) whether the party alleging infringement is  
12          a named inventor of or an original assignee to an as-  
13          serted patent;

14          “(5) whether the party alleging infringement  
15          makes or sells a product related to the subject mat-  
16          ter described in an asserted patent;

17          “(6) whether the party alleging infringement  
18          can demonstrate that it has and will have the ability  
19          to pay the accused infringer’s fees and other ex-  
20          penses if ordered to do so; and

21          “(7) whether any party will agree to pay the ac-  
22          cused infringer’s shifted fees and other expenses,  
23          provided that the person or entity can demonstrate  
24          that it has and will have the ability to pay the ac-  
25          cused infringer’s shifted fees and other expenses.”.

1           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
2 The table of sections for chapter 29 of title 35, United  
3 States Code, as amended by section 101, is amended by  
4 inserting after the item relating to section 285 the fol-  
5 lowing:

“285A. Motion for a bond.”.

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