



## A New Patent Shield? House Bill Introduces "Anti-Patent Troll" Legislation

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"Patent Trolls," or non-practicing entities that buy up patents with the expectation of litigating their way to profit, have been targeting software and computer hardware companies for years. Critics of the America Invents Act believe it did not go far enough to stem the tide of this type of litigation. On Wednesday, August 1, 2012, U.S. congressmen, Rep. Peter DeFazio (D-Ore.) and Rep. Jason Chaffetz (R-Utah) introduced HR 6245, the "[Saving High-Tech Innovators from Egregious Legal Disputes \(SHIELD\) Act](#),".

The Act includes provisions that establish a loser-pays regime, forcing plaintiffs to prove that they have valid patents and have brought suits seeking relief in good faith. Specifically, the Act states:

"...in an action disputing the validity or alleging the infringement of a computer hardware or software patent, upon making a determination that the party alleging the infringement of the patent did not have a reasonable likelihood of succeeding, the court may award the recovery of full costs to the prevailing party, including reasonable attorney's fees, other than the United States."

Under the Act, if a person or company files a patent lawsuit, and the court believes that the suit does not sufficiently demonstrate credible patent usage, the party that filed the suit would be responsible for the defendant's legal costs. Essentially, the SHIELD Act would turn the once easy profit from forced patent licensing into a potential loss for the plaintiff if there was no justifiable damage. However, nothing in the proposed legislation is specific to non-practicing entities or to the practice of acquiring patents for the purpose of generating licensing revenue. It is also important to note that the Bill is limited to alleged infringement of computer hardware or software patents, as defined in the Bill.

On his [website](#) Rep. DeFazio states:

"Patent trolls don't create new technology...they pad their pockets by buying patents on products they didn't create and then suing the innovators who did the hard work and created the product. These egregious lawsuits hurt American innovation and small technology start ups, and they cost jobs. My legislation would force patent trolls to take financial responsibility for their frivolous lawsuits."

Critics of the bill believe it is ambiguous as to the definition of "reasonable likelihood of success" and that it provides no

mechanism for patent holders to recover against accused infringers who raise “frivolous” defenses. Obviously, the bill would present a myriad of questions that the courts would need to answer. Nevertheless, this legislation points to the continuing efforts to shield technology companies from the costs of patent challenges. If successful, the bill would be a new legislative deterrent to predatory patent troll lawsuits.

*For more information about this topic, please contact the authors or any member of the Williams Mullen Intellectual Property Team.*

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