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(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R. _____

To amend chapter 29 of title 35, United States Code, to provide for the recovery of patent litigation costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. DEFAZIO introduced the following bill; which was referred to the Committee on _____

A BILL

To amend chapter 29 of title 35, United States Code, to provide for the recovery of patent litigation costs, 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 “Saving High-Tech
5 Innovators from Egregious Legal Disputes Act of 2013”.

1 **SEC. 2. RECOVERY OF LITIGATION COSTS.**

2 (a) AMENDMENT.—Chapter 29 of title 35, United
3 States Code, is amended by inserting after section 285 the
4 following new section:

5 **“§ 285A. Recovery of litigation costs**

6 “(a) IN GENERAL.—In an action involving the valid-
7 ity or infringement of a patent—

8 “(1) a party asserting invalidity or noninfringe-
9 ment may move for judgment that the adverse party
10 does not meet at least one of the conditions de-
11 scribed in subsection (d);

12 “(2) not later than 90 days after a party has
13 moved for the judgment described in paragraph (1),
14 the adverse party shall be provided an opportunity
15 to prove such party meets at least one of the condi-
16 tions described in subsection (d);

17 “(3) as soon as practicable after the adverse
18 party has been provided an opportunity to respond
19 under paragraph (2), but not later than 120 days
20 after a party has moved for the judgment described
21 in paragraph (1), the court shall make a determina-
22 tion whether the adverse party meets at least one of
23 the conditions described in subsection (d); and

24 “(4) notwithstanding section 285, the Court
25 shall award the recovery of full costs to any pre-
26 vailing party asserting invalidity or noninfringement,

1 including reasonable attorney's fees, other than the
2 United States, upon the entry of a final judgment if
3 the court determines that the adverse party did not
4 meet at least one of the conditions described in sub-
5 section (d), unless the court finds that exceptional
6 circumstances make an award unjust.

7 “(b) BOND REQUIRED.—Any party that fails to meet
8 a condition under subsection (a)(3) shall be required to
9 post a bond in an amount determined by the court to cover
10 the recovery of full costs described in subsection (a)(4).

11 “(c) TIMING AND EFFECT OF PENDING MOTION.—
12 With respect to any motion made pursuant to subsection
13 (a)(1) the following applies:

14 “(1) In the case of a motion that is filed before
15 the moving party's initial disclosure are due—

16 “(A) the court shall limit any discovery to
17 discovery that is necessary for the disposition of
18 the motion; and

19 “(B) the court may delay issuing any
20 scheduling order until after ruling on the mo-
21 tion.

22 “(2) In the case of a motion that is filed after
23 the moving party's initial disclosures are due the
24 court may delay ruling on the motion until after the
25 entry of final judgment.

1 “(3) In the case of a motion that is filed after
2 the entry of final judgment, any such motion must
3 be combined with a motion for fees to the prevailing
4 party.

5 “(d) CONDITION DEFINED.—For purposes of this
6 section, a ‘condition’ means, with respect to the party al-
7 leging infringement, any of the following:

8 “(1) ORIGINAL INVENTOR.—Such party is the
9 inventor, a joint inventor, or in the case of a patent
10 filed by and awarded to an assignee of the original
11 inventor or joint inventor, the original assignee of
12 the patent.

13 “(2) EXPLOITATION OF THE PATENT.—Such
14 party can provide documentation to the court of sub-
15 stantial investment made by such party in the ex-
16 ploitation of the patent through production or sale
17 of an item covered by the patent.

18 “(3) UNIVERSITY OR TECHNOLOGY TRANSFER
19 ORGANIZATION.—Such party is—

20 “(A) an institution of higher education (as
21 that term is defined in section 101 of the High-
22 er Education Act of 1965 (20 U.S.C. 1001); or

23 “(B) a technology transfer organization
24 whose primary purpose is to facilitate the com-

1 mercialization of technology developed by one or
2 more institutions of higher education.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of sections for chapter 29 of title 35, United
5 States Code, is amended by inserting after the item relat-
6 ing to section 285 the following new item:

 “285A. Recovery of litigation costs for patent.”.

7 (c) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on the date of the enact-
9 ment of this Act and shall apply to any action involving
10 the validity or infringement of a patent for which a com-
11 plaint is filed on or after the date of the enactment of
12 this Act.