

Intellectual Property Alert

June 18, 2015

An Overview, A Summary And An Update To The Latest Patent Reform

Just four years ago in 2011, President Obama signed the America Invents Act (AIA) into law. Since the enactment of the AIA, there has continued to be steady pressure for further reform. In 2013, the Innovation Act was introduced to target frivolous patent lawsuits and abusive settlement practices. The Innovation Act passed the House by a wide margin but hit an unexpected roadblock in the Senate. Two Supreme Court decisions (*Octane Fitness and Highmark*) that affirmed the power of district court judges to award attorney's fees in exceptional cases played a role in the demise of the Innovation Act in 2013.

In late 2014, after Republicans regained control of Congress in the midterm elections, ranking Republicans declared patent reform a priority. At around the same time, a super-coalition made up of some of the world's biggest technology and pharmaceutical giants, that also included department stores, retailers, restaurants, trade groups and national associations was formed to support a second, bipartisan attempt at patent reform. Ultimately, the 2014 efforts failed to produce new legislation.

Despite these setbacks, the proponents of patent reform remain active in Washington. Numerous bills have been introduced this year, seeking to reform the patent system in various ways. Less than two weeks ago, on June 4, 2015, the Senate Judiciary Committee voted to send the leading bipartisan Senate proposal, the Protecting American Talent and Entrepreneurship (PATENT) Act, to the full Senate for debate. One week later, on June 11, 2015, the House Judiciary Committee reintroduced the Innovation Act and voted to send the bill to the House floor. Both bills include stringent requirements aimed at curtailing abusive patent litigation. It is widely expected that Congress will work across aisle to harmonize both bills in the coming weeks before debate and a full vote.

Whether a new patent reform bill will be passed by Congress and signed by the president this year remains unclear. But it is clear that patent reform remains an important point of emphasis for many in Congress and that there will be significant time and effort spent trying to pass a patent reform bill this year. Aside from the PATENT Act and the Innovation Act, there are several other proposed bills directed to patent reform. Each of the proposals is in different stage of consideration. A summary of each of these seven bills is detailed below. In addition, we have included a prediction on the likelihood that each bill will become law. The predictions are taken from GovTrack, an analytics company that predicts passage probabilities for bills based on its tracking of bills and voting records in Congress.

The Innovation Act (H. R. 9)

- **Latest Status:** On June 11, 2015, the House Judiciary Committee voted 24-8 to send the bill to the House floor for debate and a full vote.

- **Primer:** The Innovation Act, which is the same legislation that passed the House in 2013, builds on the reforms in the America Invents Act (AIA) and addresses certain abusive business and litigation practices.
- **Legislative History:** This bill was first introduced on February 5, 2015, by Rep. Bob Goodlatte (R-VA). This bipartisan bill has 26 co-sponsors: 12 Democrats and 14 Republicans.
- **Prediction:** According to GovTrack, there is a 37 percent chance of this bill being enacted.
- **Key Provisions:**
 - **Venue Shopping:** The bill incorporates strict venue provisions and seeks to ensure that patent infringement suits are brought in only judicial districts that have a reasonable connection to the dispute. It requires plaintiffs to file patent infringement lawsuits where the defendant has (1) its principal place of business or is incorporated, (2) committed the infringement and has a physical presence that gives rise to the infringement or (3) consented to be sued, or where the plaintiff has a regular and established physical facility involving research and invention prior to the filing date of the patent, manufacturing a tangible product that embodies the claimed invention.
 - **Claim Construction Standard:** The bill requires post-grant review (PGR) and *inter partes* review (IPR) proceedings to have the same claim construction standard followed by the district courts. This provision is generally viewed as pro-plaintiff (because the claim construction standard used by the district courts is narrower than the broadest reasonable interpretation standard used by the PTAB).
 - **PTAB Proceedings:** The bill requires the Patent Trial and Appeal Board (PTAB) to consider claim constructions issued in related civil litigation. The bill sets forth the requirement on a petitioner's eligibility to address market manipulation concerns. The bill also authorizes the submission of evidence in a preliminary response to a PGR or an IPR petition.
 - **Heightened Pleading Standard:** The bill eliminates Form 18, but raises the pleading requirement in several ways. It requires each civil complaint to specify (1) each asserted claim, (2) the act of infringement, (3) the plaintiff's principal place of business, (4) authority and ground for alleging infringement, (5) each complaint filed that asserts the same patent(s) and (6) whether the asserted patent is essential or has potential to become essential to a standard-setting body. Pharmaceutical companies filing Hatch-Waxman infringement actions under 35 U.S.C. § 271(e)(2) are exempt from these heightened pleading requirements.
 - **Customer-Suit Exception:** The bill requires a court to stay actions against customers pending resolution of litigation against manufacturers. Such a stay would require the customers to agree to be bound by any judgment against the manufacturers. The definition of customers is narrowed to end users and retailers.
 - **Limited Discovery:** The bill limits discovery until a claim construction ruling is issued. The discovery is limited to information necessary for the court to determine the meaning of

proposed terms for construction. Parties can also opt out of limited discovery by stipulation. Additionally, discovery of documents that are not “core” would also be severely limited, and anyone asking for discovery would need to first either (a) post a bond sufficient to cover the expected costs of additional discovery or (b) show that it has the financial capacity to pay the expected cost for discovery.

- **Willful Infringement:** The bill prohibits a plaintiff from relying on presuit demand letters to establish willful infringement unless the letters identify the accused product or process, claimant and infringement.
- **Fee-Shifting:** Under the bill, there is a presumption of fee-shifting, and the losing party would have to pay attorney’s fees and other expenses of the prevailing party, unless there is a finding by the district court judge that the positions taken by the losing party were objectively reasonable unless (1) the nonprevailing party was reasonably justified in law and fact and (2) special circumstances, such as severe economic hardship, made an award unjust. If the nonprevailing party is unable to pay the award, the bill allows the award to be recovered from assignees, or anyone with a right to sue, a right to sublicense or a direct financial interest in the asserted patent.
- **Double Patenting:** The bill would make obviousness-type double patenting a statutory ground of unpatentability and invalidity for post-AIA first-inventor-to-file patents.
- **Public Transparency:** The bill directs the United States Patent and Trademark Office (PTO) to notify the public when a patent case is brought in federal court, including by providing information about the patent owners.

The Protecting American Talent and Entrepreneurship Act (S. 1137) (“PATENT Act”)

- **Latest Status:** On June 4, 2011, the Senate Judiciary Committee voted 16-4 to send the bill to the full Senate for debate and a full vote.
- **Primer:** The PATENT Act is the Senate version of the Innovation Act, and it generally offers a more targeted approach to combating patent trolls than the Innovation Act.
- **Legislative History:** This bill was first introduced on April 29, 2015, by Sen. Charles “Chuck” Grassley (R-IA). This bipartisan bill has six co-sponsors: three Democrats and three Republicans.
- **Prediction:** According to GovTrack, there is a 37 percent chance of this bill being enacted.
- **Key Provisions:**
 - **Claim Construction Standard:** Like the Innovation Act, the bill requires PGR and IPR proceedings to apply the same claim construction standard used in district courts and consider district court claim constructions.
 - **PTAB Proceedings:** The bill aims to change the procedural postures of the PGR and IPR proceedings. It presumes that patents are valid in IPR and PGR proceedings, though they

retain the current preponderance of the evidence burden to invalidate a patent in such proceedings. The bill also allows patentees to submit evidence in response to a petition to institute an IPR or a PGR, and permits petitioners to file a reply to respond to new issues. The bill also directs the PTO to modify the IPR and PGR proceedings so that institution and merit decisions are not made by the same judge panels. The bill further removes the ability to join additional claims to a timely filed IPR after the time for filing has elapsed, except for claims that are newly served against the petitioner in an amended complaint (which get one year from the amendment).

- **Heightened Pleading Requirement and Early Disclosures:** This bill eliminates Form 18 and requires plaintiffs to identify each patent and claim allegedly infringed, and which products or processes are infringing, and to describe the alleged infringement. The bill allows plaintiffs to describe information in general terms if it is not accessible to them. The bill clarifies that pleadings can be amended and allows for confidential information to be filed under seal, and exempts 271(e) (e.g., Hatch-Waxman) proceedings. The bill further requires plaintiffs to make additional disclosures to the court and the PTO about the plaintiffs and the asserted patents shortly after filing.
- **Customer-Suit Exception:** The bill allows a case against a customer to be stayed while the manufacturer litigates the alleged infringement, provided that it involves the same issues. The customer stay is available to only those at the end of the supply chain, who are selling or using a technology that they acquired from a manufacturer, without materially modifying it. The bill also allows for a stay to be lifted where it would cause undue prejudice or be manifestly unjust. This bill is similar to the Innovation Act and would ostensibly protect downstream customers of a patent infringer.
- **Limited Discovery:** The bill requires a court to stay expensive discovery pending resolution of preliminary motions. The bill gives the court discretion to allow limited discovery necessary to resolve motion to dismiss, transfer venue, sever accused infringers, file a motion for a preliminary injunction, or if it finds that additional discovery is necessary to preserve evidence or otherwise prevent specific prejudice to a party. The bill allows parties to consent to be excluded from discovery limitations and exempts Section 271(e) (e.g., Hatch-Waxman) cases.
- **Willful Infringement:** The bill prevents vague patent infringement demand letters from being preludes to litigation by requiring that certain information be included in order for the letter to be considered evidence that subsequent infringement was “willful.” If the required information is not in the written notice, the recipient’s time to respond to a later complaint is extended by 30 days.
- **Fee-Shifting:** Unlike the Innovation Act, the bill provides no presumption of fee-shifting, and it awards attorney’s fees if a court determines that position or conduct of the nonprevailing party was not objectively reasonable unless special circumstances make an award unjust. The winner must show that the non-prevailing party’s position was not objectively reasonable and the judge must make a ruling for fees to shift — this is not a presumptive fee-shifting rule. Fee-

shifting extends to cases where a party attempts to unilaterally withdraw from a case on the eve of a trial. The bill does not change, but keeps 271(e) (e.g., Hatch-Waxman) proceedings as they are under the current law.

- **Fee Recovery:** The bill allows defendants to require plaintiffs to identify parties with financial interests in the litigation, and it provides a process for a court to recover fees where the abusive litigant is judgment-proof. If a plaintiff cannot certify that it has sufficient funds to satisfy a fee award, it must notify the interested parties, who can either renounce their interest in the claim or be held accountable for attorney's fees. The bill permits the court to exempt institutions of higher education and qualifying parties (e.g., inventors with undue economic hardship) in the interest of justice.
- **Public Transparency:** The bill requires patentees to disclose to the PTO whenever there is an assignment of interest in the patent that results in a change of ultimate parent entity. If a patent holder fails to disclose, it will not be able to recover increased damages of attorney's fees (unless this would be manifestly unjust).
- **Demand Letter:** The bill sets a national standard for what is considered a deceptive patent demand letter, and it requires the letter to contain meaningful information so that it cannot be used merely to scare letter recipients into early settlements. The bill also heightens penalties for those found to violate the Federal Trade Commission Act (FTC Act) by sending misleading demand letters.
- **Small Businesses:** The bill directs the PTO to develop educational resources for small businesses targeted in patent suits and to provide support to companies named in infringement actions. The bill also instructs the PTO to list pending patent cases so that recipients of demand letters and defendants in lawsuits can more easily identify ongoing litigation that may relate to their cases.

Support Technology and Research for Our Nation's Growth ("STRONG") STRONG Patents Act (S. 632) ("STRONG Act")

- **Latest Status:** The bill is pending before the Senate Committee on Small Business and Entrepreneurship. Congressional hearings were held on March 19, 2015. As of June 15, 2015, there have been no votes to send this bill to the Senate floor.
- **Primer:** The STRONG Act aims to maintain the expeditious nature and fairness of post-grant proceedings at the PTAB, crack down on abusive demand letters, eliminate PTO fee diversion and focus on small businesses.
- **Legislative History:** This bill was first introduced on March 3, 2015, by Sen. Chris Coons (D-DE). This bill has four co-sponsors: two Democrats and two Republicans.
- **Prediction:** According to GovTrack, there is a 3 percent chance of this bill being enacted.

- **Key Provisions:**

- **Claim Construction:** Like the Innovation Act and the PATENT Act, this bill harmonizes the claim construction standard used in PGR and IPR proceedings by requiring the PTO to adopt the same claim construction standard used in district courts.
- **PTAB Proceedings:** The bill attempts to minimize abuse of PGR and IPR proceedings, and reduce unfairness to patentees. It requires that a petitioner have a business or financial reason for bringing a case before the PTAB, to reduce incentives for privateering or extortion of nuisance settlements. It allows patentees to propose amended, narrower claims for the patent under challenge. It maintains the presumption of validity, and it clarifies that unpatentability may be proven by the “clear and convincing evidence” standard used in district court litigation. It permits evidence to determine the petition’s real party in interest and ensures that the patentees have an equal opportunity to present evidence at the outset of the proceedings. It also directs the PTO to modify the IPR and PGR proceedings so that institution and merit decisions are not made by the same judge panels. It also harmonizes treatment of re-examination proceedings (which preceded the AIA) with the treatment of PGR and IPR proceedings.
- **Heightened Pleading Requirement and Early Disclosures:** This bill requires Form 18 to be eliminated by the end of 2015. It also requires patentees to meet the “plausibility” standard under *Iqbal* and *Twombly*.
- **Willful Infringement:** The bill harmonizes the standard for willful infringement with the Supreme Court’s standard for frivolous litigation behavior under *Octane Fitness*.
- **Divided Infringement:** The bill addresses uncertainty in the law of induced infringement after the Supreme Court’s holding in *Akamai v. Limelight* by eliminating the “single-entity” rule for defendants who have knowingly and intentionally caused the infringement of a patent. This does not apply to end-user defendants, however.
- **Small Businesses:** The bill requires the Small Business Administration to analyze the impact of patents on small businesses, from the perspective of both businesses reliant on patents and those facing demand letters or lawsuits on the basis of alleged patent infringement. It also requires additional training materials and an additional law clerk to be provided to help speed the resolution of cases in which an individual or small business has been accused of patent infringement. The bill also requires open access to patent-searching databases currently available at only the Public Search Facility in Alexandria, Virginia and other Patent and Trademark Resource Centers (PTRCs).

The Targeting Rogue and Opaque Letters Act (H. R. 2045) (“TROL Act”)

- **Latest Status:** The House Energy and Commerce Committee approved the bill by a vote of 30-22 and ordered it to be reported on April 29, 2015. Since then, the bill has been referred to and is now

pending before the Commerce, Manufacturing and Trade Subcommittee for consideration. As of June 15, 2015, no hearings related to this bill have been held.

- **Primer:** The bill focuses on combating abusive patent demand letters, and punishes sending demand letters in bad faith. It expressly renders misleading demand letters a violation of Section 5 of the FTC Act. Under the bill's provisions, a demand letter that states or represents "that the recipients are or may be infringing" would be deemed unfair and deceptive under Section 5.
- **Legislative History:** This bill was first introduced on April 28, 2015, by Rep. Michael Burgess (R-TX). This bill has five co-sponsors with one Democrat and four Republicans.
- **Prediction:** According to GovTrack, there is a 26 percent chance of this bill being enacted.
- **Key Provisions:**
 - **Federal Trade Commission:** The bill directs the FTC, and authorizes state attorneys general, to enforce against written communications (e.g., demand letters) that represent in bad faith that the recipient bears liability or owes compensation for infringing an asserted patent. It requires the pattern or practice of sending such bad-faith demand letters to be treated as an unfair or deceptive act or practice in violation of the FTC.
 - **Bad-Faith Representations:** The bill sets forth the types of bad-faith representations, including the following:
 1. The sender has the right to license or enforce the patent;
 2. A civil action for infringement has been filed against the recipient;
 3. A civil action for infringement has been filed against others;
 4. Legal action for infringement will be taken against recipient;
 5. The sender is the exclusive licensee of the patent;
 6. Others have purchased a license for the asserted patent;
 7. Others have purchased a license, and the sender does not disclose that such license is unrelated to the alleged infringement or patent;
 8. An investigation of the recipient's infringement occurred; and
 9. The sender failed to disclose that the act constituting infringement was previously held not to infringe the asserted patent.
 - **Bad-Faith Compensation Requests:** The bill sets forth the types of bad-faith compensation requests, including:
 1. a patent that is held to be unenforceable due to inequitable conduct, invalidity or other unenforceable grounds;
 2. activities taken by the recipient after expiration of the patent; and

3. activity of the recipient that the sender knew was authorized by a person with the right to license the patent.

- **Bad-Faith Omissions:** The bill sets forth the types of bad-faith omissions, including:

1. the identity of the person, including the name of the parent entity, unless the person is a public company and the name of the public company is identified;
2. an identification of at least one patent allegedly infringed;
3. an identification of at least one product or service of the recipient infringing the identified patent;
4. a description of how the accused products or services infringe the patent claims; and
5. a name and contact information for a person the recipient may contact about the assertions or claims.

- **Good-Faith Affirmative Defense:** The bill provides the sender with an affirmative defense if the sender can show that statements, representations or omissions were mistakes made in good faith, which may be demonstrated by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error.

Demand Letter Transparency Act (H. R. 1896)

- **Latest Status:** The bill is pending before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. As of June 15, 2015, no hearings related to the bill have been held.
- **Primer:** The bill aims to assist small companies and end users who lack resources to fight demand letters sent by patent assertion entities (PAEs) by requiring minimum content requirements about the alleged infringement to help determine whether to ignore, settle or defend against assertions made by a PAE. The bill also sets up a national database of demand letters for public review to provide additional transparency.
- **Legislative History:** This bill was first introduced on April 20, 2015, by Rep. Jared Polis (D-CO). This bill has two co-sponsors: with one Democrat and one Republican.
- **Prediction:** According to GovTrack, there is less than 1 percent chance of this bill being enacted.
- **Key Provisions:**
 - **Disclosures to the PTO:** The bill requires any entity that sends a specified number of demand letters (the sending entity) during any 365-day period to submit to the PTO, with respect to each asserted patent, a disclosure identifying:
 1. the patent, including a confirmation that the sending entity is the owner of the patent and is the last recorded entity by assignment;

2. the entity that has the right to license the patent or the name of the exclusive licensee;
 3. each entity asserting a claim with regard to the patent;
 4. each obligation to license the patent and the financial terms at which such patent has been licensed;
 5. the ultimate parent entity of the sending entity;
 6. the number of recipients of the letter;
 7. any case that has been filed by the sending entity relating to such patent; and
 8. any *ex parte* review or IPR of such patent.
- **Monetary Sanctions:** The bill authorizes a court to sanction the sending entity for an amount to be awarded to the adverse party to cover any costs incurred as a result of such violation.
 - **Exemptions:** The bill exempts several entities from the disclosure requirements, including (1) original or joint inventors (2) institutions of higher education and (3) technology transfer organizations facilitating the commercialization of technology developed by institutions of higher education.
 - **Public Database:** The bill directs the PTO to establish a publicly accessible and searchable database of the information obtained pursuant to such disclosures.
 - **Demand Letter Requirements:** The bill requires a demand letter to include specific information, such as:
 1. each claim of each patent allegedly infringed, including each accused instrumentality;
 2. each party alleging infringement;
 3. the direct infringement for each claim alleged to have been infringed indirectly;
 4. the principal business of the party alleging infringement;
 5. each complaint filed that asserts the same patent, each case filed by such entity, and any *ex parte* or IPR for each patent;
 6. whether the patent is subject to any licensing term or pricing commitments;
 7. owners, co-owners, assignees, or exclusive licensees of the patent;
 8. any person who has a legal right to enforce the patent;
 9. any person with a direct financial interest in the outcome of the action; and
 10. how the recipient can access the PTO demand letter database.
 - **Monetary Fees for Non-Compliance:** The bill permits a recipient of a demand letter to file a petition with the PTO if the demand letter fails to meet the requirement. The bill directs the PTO to determine

whether all requirements have been met and, if it is so determined, to notify the patent owner that the patent will be voided unless a fee is paid. The bill also requires the PTO to consider good-faith mistakes when determining whether to void the patent.

Innovation Protection Act (H. R. 1832)

- **Latest Status:** The bill is pending before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. As of June 15, 2015, no hearings related to the bill have been held.
- **Primer:** Similar to a provision of the STRONG Act, this bill aims to provide for the permanent funding of the PTO, and to end fee diversion from the PTO.
- **Legislative History:** This bill was first introduced on April 16, 2015, by Rep. John Conyers Jr. (D-MI). This bill has 17 co-sponsors: with 13 Democrats and four Republicans.
- **Prediction:** According to GovTrack, there is a 2 percent chance of this bill being enacted.
- **Key Provisions:**
 - **Public Enterprise Fund:** The bill establishes in the Treasury the United States Patent and Trademark Office Public Enterprise Fund, to be used as a revolving fund by the PTO Director without fiscal-year limitation.
 - **Fund Credits and Deposits:** The bill requires the following to be credited to or deposited in the Public Enterprise Fund: (1) appropriations for defraying the costs of PTO activities, (2) fees collected under federal patent and trademark laws, and (3) any unobligated balances remaining in the PTO Appropriation Account and in the Patent and Trademark Fee Reserve Fund. This replaces the Patent and Trademark Office Appropriation Account, eliminates the Patent and Trademark Fee Reserve Fund and provides a source of permanent funding for the PTO.
 - **Fee Collection:** The bill requires fees collected by the Director of the PTO to remain available to the Director until expended.
 - **Fund Availability:** The bill makes the Public Enterprise Fund available to cover (1) ordinary and reasonable administrative, operating and other expenses incurred by the Director for the continued operation of PTO services, programs, activities and duties relating to patents and trademarks; and (2) expenses incurred pursuant to obligations, representations or other commitments of the PTO.
 - **Fund Reporting:** The bill requires the Director of the PTO, on an annual basis, to (1) report to Congress with operation and spending plans, including financial details and staff levels broken down by each major activity; (2) provide for an independent audit of PTO financial statements; and (3) submit a budget to the president.

Grace Period Restoration Act (H. R. 1791/S. 926)

- **Latest Status:** The House bill is pending before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. The Senate bill is pending before the Senate Judiciary Committee. As of June 15, 2015, no hearings related to either bill have been held.

- **Primer:** Both bills are designed to correct a drafting problem in the AIA. The AIA includes language regarding the scope of the grace period during which an inventor who discloses an invention to the public may decide within a one-year period whether to make a patent application filing. That language, however, is ambiguous and gives rise to concerns as to whether the grace period eliminates as prior art all disclosures that follow an inventor's original disclosure made within the grace period or only some such disclosures. The PTO has adopted guidelines that eliminate the grace period by allowing obvious variants of those disclosures (e.g., subsequent disclosures that may have only minor differences from the original invention) to qualify as prior art. The bills aim to realign the Congress's intent to retain the grace period.
- **Legislative History:** The House bill was first introduced on April 14, 2015, by Rep. James Sensenbrenner (R-WI). The Senate bill was first introduced on the same day by Sen. Tammy Baldwin (D-WI). The House bill has only one co-sponsor (a Democrat). The Senate bill also has only one co-sponsor (a Republican).
- **Prediction:** According to GovTrack, there is a 6 percent chance of the House bill being enacted, and a 1 percent of the Senate bill being enacted.
- **Key Provisions:**
 - **Public Disclosures:** The bill amends the AIA and prohibits certain pre-filing disclosures made during the year preceding the effective filing date of a claimed invention from being considered prior art under 102 or 103 grounds.
 - **Pre-filing Disclosures:** The bill prohibits an inventor's or any other person's pre-filing disclosure from being used as prior art on 102 or 103 grounds if the claimed invention was already publicly disclosed in a printed publication by the inventor before such disclosure and within the one-year period before the filing date. The bill also allows an inventor who discloses an invention in a printed publication in the year before filing the patent application to remain entitled to the patent regardless of any subsequent disclosures by third parties.
 - **Public Disclosure Requirements:** The bill sets forth several criteria for determining whether a claimed invention was publicly disclosed in a printed publication, including:
 1. only the state of the art known on and before the date of the disclosure may be considered; and
 2. satisfaction of the written description support requirement under 112(a) established by (a) one or more public disclosures in a printed publication during the grace period and (b) statements under declaration or oath relating to the existence and content of the public disclosure.
 - **Presumption of Validity:** The bill establishes the presumption of patent validity if (a) and (b) above are presented to the PTO prior to the issuance of a notice of allowance.
 - **Ineligible Prior Art:** The bill disqualifies disclosures described in 102(b)(1)(A) (disclosures made by the inventor), 102(b)(2)(A) (subject matter disclosed was obtained directly or indirectly

from the inventor) or 102(b)(2)(C) (subject matter disclosed was owned by the same assignee) as prior art.

- **Effective Date:** The bill requires the amendments to take effect as if enacted as part of the AIA (i.e., September 16, 2011).

Contact Information

If you have any questions regarding this alert, please contact:

Alex Chan

ahchan@akingump.com

512.499.6249

Austin

Steven M. Zager

szager@akingump.com

212.872.1037

New York

Michael Simons

msimons@akingump.com

512.499.6253

Austin