June 20, 2007

Every day, Americans work hard to build businesses and create jobs that compete effectively in – and take advantage of - the global marketplace. These Americans have one question for the federal government: Are you here to help us or hurt us?

Each week, ***The Competitive Edge*** will highlight one government policy or practice that makes it harder for American innovators to succeed in business. This week, a guest columnist, Rep. Darrell Issa, R-Calif., ranking member on the Subcommittee on Domestic Policy, writes about the need to reform the way federal district courts hear patent cases.

The Problem:

Innovation is an important engine that drives our economy. Unfortunately, vast amounts of time, money and energy are wasted on inefficient patent infringement litigation. Presently, 30-40 percent of all district court patent cases are reversed by the Court of Appeals for the Federal Circuit, the court with exclusive appellate jurisdiction over patent cases. This is an extremely high reversal rate, especially compared to the reversal rate across all other cases appealed from district courts – 9.5 percent in 2005-06.

The level of complexity involved in patent litigation, as well as a general lack of enthusiasm on the part of many district court judges to hear these cases, contributes to this high reversal rate. District court judges, overwhelmed with the traditional civil and criminal docket, rarely work on patent matters.

This lack of familiarity with substantive patent law and exposure to patent litigation leads to inadequate preparation when these cases arise. Furthermore, the high reversal rate of district court decisions leads to near-automatic appeals to the Federal Circuit. This inefficient system siphons resources that otherwise could be dedicated to important research and development.

The Solution:

To correct this absurdity, Congress should act now to improve the ability of district court judges to hear patent cases. Indeed, the House of Representatives twice has passed H.R. 34, which establishes a pilot project in at least five districts throughout the United States.

This pilot program would allow participating courts to receive additional law clerks with specialized patent expertise, as well as additional funding to train judges in patent law. Most importantly, judges on participating courts actually would elect to hear patent infringement cases.

This self-selecting process would allow judges who enjoy patent law and are proficient in the subject to handle more patent cases. This legislation should lead to a decrease in the reversal rates in these districts, and as the chance for reversal decreases, so too will the knee-jerk reaction of parties to appeal the decisions made by the district courts.

Why it Matters:

To compete in a global economy, American entrepreneurs must invest significant resources in technology and innovation. Needlessly spending these limited resources on costly litigation that could be avoided is absurd. By cultivating expertise in patent litigation at the trial level, Congress can help U.S. companies compete against their global rivals. This makes sense, and we should act now to implement these sensible reforms.

It's time for patent law to work FOR American workers– not against them. Americans who care about national competitiveness need to make Congress aware that a functioning court system isn't just a theoretical problem– ultimately, it's a jobs issue.

About the Competitive Edge: The Competitive Edge is a weekly bulletin published by the Republican Staff of the House Committee on Oversight and Government Reform. If this bulletin was forwarded to you, you may sign up to receive it each week by emailing your request to Reform@mail.house.gov.