

Special Patent Rights, but Only for Inventors

Proposed Legislation H.R. 5478, The Inventor Rights Act of 2019

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A new proposed legislation relating to the patent laws has been submitted in the United States House of Representatives—the Inventor Rights Act of 2019. The proposed legislation concerns new rights and privileges that are limited to inventor-owned patents, or patents owned by entities controlled by their inventors. As part of that ownership, the inventor must be in possession of “all substantial rights.” As such, if enacted, the legislation would only apply to a small number of patents currently issued.

The act proposes a number of revisions to title 35 of the United States Code, several of which are quite significant:

- Inventor-owned patents would not be subject to any post-grant proceedings, such as *inter partes* review, post-grant review, or reexamination without the consent of the inventor;
- There would be a legislative, though rebuttable, presumption of irreparable harm and inadequate remedy at law for inventor-owned patents in litigation, making injunctions in inventor-owned patent litigations much more likely;
- A wider scope of venue for inventors to sue for infringement, though not as broad of a scope of venue prior to *TC Heartland*;
- An alternative damages option for inventors, amounting to the infringer’s profits and the patentee’s attorney fees, plus the option of treble the profits awarded in damages for willful infringement.

As stated in the preamble of the submitted text of the legislation, these proposed changes would provide major incentives for inventors to retain control of their patents, and are intended to be somewhat of a course correction for what the legislative sponsors feel is a trend against inventors in the modern patent system. Whether these changes would serve to protect inventors and achieve the stated goal of continuing to incentivize invention, or merely provide a new set of powerful tools for other participants in the patent system to take advantage of, remains to be seen.