

Time to Confront Bias Against Patent Owners in Patent “Reform” Legislation like the VENUE Act

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Last March, I published an op ed in the the [Washington Times](#) on the proposed [VENUE Act](#), a recently introduced bill taken wholesale from a portion of [HR 9](#) (the tendentiously titled “Innovation Act”). HR 9 has rightly stalled given its widespread and radical changes to the patent system that weaken and dilute all property rights in innovation. Although superficially more “narrow” because the VENUE Act contains only the proposed venue rule changes in HR 9, the VENUE Act is just the [Son of Frankenstein](#) for the innovation industries. This bill simply continues the anti-patent owner bias in the DC policy debates that has gone almost completely unchecked since before the start of President Obama’s first term in office.

Here’s a portion of my op ed:

The VENUE Act is the latest proposal in a multi-year campaign by certain companies and interest groups to revise the rules of the patent system. The fundamental problem is that this campaign has created an entirely one-sided narrative about patent “reform”: all the problems are caused by patent owners and thus the solutions require removing the incentives for patent owners to be bad actors in the innovation economy. This narrative is entirely biased against patented innovation, the driver of America’s innovation economy for over two hundred years that has recognized [benefits](#). As a result, it has produced an equally biased policy debate that inexorably leads to the same conclusion in every “reform” proposal arising from this campaign: these vital property rights must be weakened, watered down, or eliminated when it comes to their licensing in the marketplace or enforcement in courts.

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In this narrower bill to address litigation abuse, for instance, it is an *Alice in Wonderland* state of affairs to be talking only about stopping abuse of the courts by patent owners while blatantly ignoring the same abuse by challengers of patents in the administrative review programs run by the Patent Trial and Appeals Board (PTAB). It is [widely recognized](#) that the PTAB is [incredibly biased](#) against patents in both its procedural and substantive rules. The Supreme Court recently agreed to hear just [one](#) of many [appeals](#) that are currently working their

way through the courts that explicitly address these [concerns](#). There is legitimate [outcry](#) about hedge fund managers exploiting the PTAB's bias against patents by filing petitions to invalidate patents after shorting stocks for bio-pharmaceutical companies that own these patents. The PTAB has been called a "[death squad](#)" for patents, and with a patent invalidation rate between [79%](#) to [100%](#), this is not entirely unjustified rhetoric.

The absence of any acknowledgment that reform of the PTAB is just as pressingly important as venue reform by those pushing for the VENUE Act is a massive elephant in the room. Unfortunately, it is unsurprising. But this is only because it is the latest example of a strikingly one-sided, biased narrative of the past several years about patent "reform."

As bloggers like to say: Read the whole thing [here](#).

UPDATE: A more in-depth, legal analysis of proposed "venue reform" and the resulting collateral damage it imposes on all patent owners is provided by Devlin Hartline in his essay, "Changes to Patent Venue Rules Risk Collateral to Innovators," which can be read [here](#).

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