

# AMERICA INVENTS ACT

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
INTELLECTUAL PROPERTY,  
COMPETITION, AND THE INTERNET  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

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Exhibit 2104

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poration, donating approximately \$100 million to charitable organizations every year.

Steve Miller has had a successful career as in-house counsel with P&G for over 25 years. He is now vice president and general counsel on intellectual property, where he oversees approximately 150 patent and trademark attorneys worldwide and advises P&G's senior management on IP issues.

Mr. Miller has also authored numerous P&G patents and patent applications and has also been involved in a number of license agreements, acquisitions, interferences, arbitrations, and litigation both in the U.S. and abroad.

Mr. Miller is also the current president of the Intellectual Property Owners Association Education Foundation, on the Board of Directors and past president of the Intellectual Property Association, and on the Board of Directors for the National Inventors Hall of Fame.

I know we look forward to learning more as we hear from Mr. Miller on patent reform this afternoon and the other witnesses as well.

And I thank the Chairman greatly for yielding.

Mr. GOODLATTE. I thank the gentleman.

Welcome to all of our witnesses, and we will begin with Mr. Bartlett.

**TESTIMONY OF THE HONORABLE STEVE BARTLETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE FINANCIAL SERVICES ROUNDTABLE**

Mr. BARTLETT. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member Watt, Mr. Coble, Mr. Chabot, it's good to be here.

This is a very important piece of legislation. It's a legislation that in some ways is long overdue. I commend the Committee and the present draft, and we're here—I'm here to support the present draft language of the House version in its current form.

I'm here to speak on behalf of the Financial Services Roundtable, as you noted, Mr. Chairman. But I should note up front that the roundtable has worked closely with other groups—the American Bankers Association, the Clearing House, credit unions, the ICBA, the community bankers, NAFCU, SIFMA, and others—to address this problem of nonpracticing entities that we believe exploit flaws in the current patent system.

My testimony today is consistent with the views of these other trades. These nonpracticing entities, Mr. Chairman, or NPEs, as they're called, have built an industry based on filing onerous lawsuits involving low-quality business method patents with the expectation of securing large settlements. These are widely described as meritless lawsuits and settlements—and the settlements then help to distort the marketplace.

Fundamental to the operation of the financial services sector is the interoperability of complex financial systems that facilitate the movement of data relating to every type of financial transaction. So it is this network of financial technology infrastructure that is so fundamental that it has been designated as a critical national infrastructure by the Department of Defense.

So given the importance of the financial services sector to the Nation's economy and infrastructure, it's important that the patent system work for everyone, and currently, it does not.

So, instead, the confluence of interoperability, forum shopping, and a lack of quality prior art, particularly in the area of business method patents, has conspired to leave financial firms, from the smallest community banks or local credit union or insurance agent to the largest global company, mired in what we believe are meritless litigation over patents of dubious quality. This litigation has a direct impact on consumers, as capital that could otherwise be deployed for business lending in our communities is tied up with court costs and settlements.

Historically, Mr. Chairman, business methods had not been patented in any significant quantity. This was profoundly changed in 1998 by the State Street decision. So between 1997 and 1998, new applications for business method patents tripled and have tripled again. So by the end of 2009, some 11,000 new applications for patents on business methods were being filed each and every year, with 40,000 pending in 2010.

According to a study by Harvard University, the proliferation of business method patents has resulted in a flood of patent litigation in the financial services industry, occurring at a rate of 39 times greater than the patents as a whole. Now, Mr. Chairman, other than NPEs, there's no reasonable explanation for a 39 times greater rate of patent litigation in the financial services industry.

These nonpracticing entities then are increasingly exploiting the current system to hold hostage entire classes of industry players in a single lawsuit, and thus, interoperability comes into play. Neither 90—nearly 90 percent of infringement cases against the top 20 banks, just as one data point, name multiple financial services companies as defendants, often including 20, 40, or even 60 institutions in a single action.

Now business method patents are not bad, per se, but they do lend themselves to abuse, given the current system. I could cite a number of examples. You've probably heard multiple examples.

One case, scores of banks and insurance companies were sued in the Eastern District of Texas for infringing on a business method patent related to marketing. The patents in this suit covered the printing of marketing materials at the bottom of the back of billing statements instead of on a separate statement stuffer. Now it's difficult to see anything novel or nonobvious in where you print the statement information that would have merited a patent with a 20-year property right.

The cost to all the sectors of the financial services industry and our customers continue to grow at an alarming rate. So, therefore, we support the House draft establishing an opposition proceeding at the PTO to review qualified business method patents against a best prior art.

Under this draft legislation, the PTO would determine whether a patent is qualified, would undertake a review for a maximum of no more than 1 year, and then, critically, examine the patent against the best available prior art, including the evidence of prior use, sale, or offer for sale.

The House bill improves the language related to a stay also of district court litigation by requiring the Federal Circuit to review the decision of the lower court de novo. It's our belief that this stay should be mandatory, but short of it being mandatory, this de novo language is essential to ensure that neither plaintiffs nor dependents—nor defendants bear the cost of parallel proceedings.

Mr. Chairman, with this provision included, we support the draft bill before the Committee. We would, as an industry, strongly oppose any efforts to weaken it.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Bartlett follows:]

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