

S 632

STRONG Patents Act of 2015

Congress: 114 (2015–2017, Ended)

Chamber: Senate

Policy Area: Commerce

Introduced: Mar 3, 2015

Current Status: Committee on Small Business and Entrepreneurship. Hearings held. Hearings printed: S.Hrg. 114-603.

Latest Action: Committee on Small Business and Entrepreneurship. Hearings held. Hearings printed: S.Hrg. 114-603.  
(Feb 25, 2016)

Official Text: <https://www.congress.gov/bill/114th-congress/senate-bill/632>

Sponsor

Name: Sen. Coons, Christopher A. [D-DE]

Party: Democratic • State: DE • Chamber: Senate

Cosponsors (5 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Durbin, Richard J. [D-IL]	D · IL		Mar 3, 2015
Sen. Hirono, Mazie K. [D-HI]	D · HI		Mar 3, 2015
Sen. Vitter, David [R-LA]	R · LA		May 11, 2015
Sen. Cotton, Tom [R-AR]	R · AR		May 21, 2015
Sen. Heinrich, Martin [D-NM]	D · NM		May 9, 2016

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Referred To	Mar 3, 2015
Small Business and Entrepreneurship Committee	Senate	Hearings By (full committee)	Feb 25, 2016

Subjects & Policy Tags

Policy Area:

Commerce

Related Bills

Bill	Relationship	Last Action
114 HR 2045	Related bill	Dec 16, 2016: Placed on the Union Calendar, Calendar No. 688.

## **Support Technology and Research for Our Nation's Growth Patents Act of 2015 or the STRONG Patents Act of 2015**

Directs the U.S. Patent and Trademark Office (USPTO) to prescribe regulations requiring the Patent Trial and Appeal Board (PTAB) to construe patent claims in post-issuance proceedings for inter partes or post-grant review in the same manner as a court in a civil action is required to construe claims regarding the validity of a patent in accordance with the ordinary and customary meaning.

Requires the USPTO to consider a court's claim construction if the court has previously construed the claim in a civil action to which the patent owner was a party.

Requires a patent owner's motion to amend a patent during a post-issuance review to be granted if the owner has not already amended the patent during the review and the proposed number of substitute claims is reasonable. Provides the PTAB with discretion to grant or deny any additional motions to amend the patent if the owner has already amended the patent during the review.

Requires the PTAB to apply a presumption of validity standard during post-issuance challenges. Places the burden on the petitioner to prove unpatentability of: (1) a previously issued claim by clear and convincing evidence, and (2) an amended claim by a preponderance of the evidence. (Currently, the preponderance of evidence standard applies to all such claims.)

Prohibits post-issuance review petitions from being filed with the USPTO unless the person, or a real party in interest or privy of the person, is eligible to file: (1) a petition for an inter partes review because the person has been sued for or charged with infringement such that the petitioner would have standing to bring a declaratory judgment action in federal court, or (2) a petition for post-grant review because the person demonstrates a reasonable possibility of being sued for or charged with infringement or demonstrates a competitive harm related to the validity of the patent.

Allows discovery for review proceedings to include evidence identifying the petitioner's real party in interest.

Allows patent owners to present supporting evidence in a preliminary response to a petition for review.

Prohibits inter partes or post-grant reviews while the patent is the subject of a reissue or reexamination proceeding.

Prohibits post-issuance reviews from being heard by PTAB members who participated in a decision to institute the review.

Requires reexamination requests to identify real parties in interest. Prohibits ex parte reexaminations if the request is filed more than one year after the requester, or a real party in interest or privy of the requester, is served with a complaint alleging infringement of the patent.

Requires the Supreme Court to eliminate the model complaint for patent infringement.

Requires all patent and trademark fees to be credited to a revolving fund in the Treasury to be known as the United States Patent and Trademark Office Innovation Promotion Fund, which will be available to cover USPTO expenses without fiscal year limitation.

Provides courts with discretion to increase damages awarded to a claimant up to three times the amount found by a jury or assessed by the court upon determining, by a preponderance of the evidence, that infringement was willful or in bad faith.

Allows a finding of liability for actively inducing infringement of a process patent, or for contributory infringement of a process patent, even if the steps of the patented process are not practiced by a single entity.

Provides micro entity status (such status makes certain small entities eligible for reduced patent fees) to certifying: (1) institutions of higher education; or (2) tax exempt, nonprofit organizations that hold title to patents and patent applications on behalf of such an institution of higher education for the purpose of facilitating commercialization of the technologies.

Directs the Small Business Administration to report on the impact of: (1) patent ownership by small businesses, and (2) civil actions against small businesses relating to patent infringement.

Requires the Administrative Office of U.S. Courts to expand an existing pilot program to expedite and provide additional resources to cases in which an individual or small business is accused of patent infringement.

Directs the Federal Trade Commission, and authorizes state attorneys general, to enforce against the pattern or practice of sending written communications (commonly referred to as demand letters) that represent in bad faith that the recipient bears liability or owes compensation for infringing a patent. Requires the practice of sending such bad faith demand letters to be treated as an unfair or deceptive act or practice in violation of the Federal Trade Commission Act.

### **Actions Timeline**

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- **Feb 25, 2016:** Committee on Small Business and Entrepreneurship. Hearings held. Hearings printed: S.Hrg. 114-603.
- **Mar 19, 2015:** Committee on Small Business and Entrepreneurship. Hearings held.
- **Mar 3, 2015:** Introduced in Senate
- **Mar 3, 2015:** Read twice and referred to the Committee on the Judiciary.