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Pushing Patent Trolls Into the Light of Day: Congress Attacks the Practices of Non-Practicing Entities

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The Innovation Act, H.R. 3309, was overwhelmingly passed by the House (325-91) last week. The Senate version seems poised to pass soon, and the White House is reportedly also in favor. The legislation was introduced by House Judiciary Committee Chair Bob Goodlatte (R-VA) to address the growing problem of non-practicing entities (NPEs), a.k.a "patent trolls."

Patent trolls are so named for their practice of acquiring patents that they have no intention of bringing to the market. Instead, trolls demand damages or licensing fees from unsuspecting businesses, sometimes including consumers, who use a device or method allegedly covered by the troll's patents. The [Patent Examiner](#) reports that Innovatio IP Ventures, which claims to have a portfolio of patents covering wifi technology, sues businesses such as Caribou Coffee and Panera Bread for providing wifi in their businesses. The trollish penchant for "shell" companies makes it nearly impossible to determine who owns the patents at issue. Often the patents are owned by a law firm, private equity firm, or holding company.

H.R. 3309 strikes directly at these practices by:

- Making any party with a "direct financial interest" in a patent subject to infringement litigation a potential party to the suit, with potential liability;
- Requiring a patent infringement plaintiff to be specific about the ways in which defendants are allegedly infringing, at the inception of the lawsuit;
- Allowing manufacturers of the allegedly infringing product or process to "step in" to the suit to defend any of their customers who is named as a defendant;
- Limiting in the amount of discovery that plaintiffs can request from the alleged infringers; and
- Introducing a fee-shifting provision, whereby the non-prevailing party pays the prevailing party's fees and expenses unless the court finds that the conduct of the non-prevailing party was "reasonably justified in law."

The last of these provisions was nearly removed by the closest vote of the day: 199-213.

Proponents of the bill applaud the legislature's efforts to prevent patent trolls from targeting small businesses or start-ups with potentially frivolous litigation. Such businesses typically don't have the resources to fight the suit and simply pay the troll a fee to settle. Critics, however, argue that the bill will make it more difficult for small businesses or start-ups to defend their own patent rights, chilling innovation. Members of the business community are finding themselves on both sides of the debate.