



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 27, 2013

H.R. 3309 **Innovation Act**

As ordered reported by the House Committee on the Judiciary on November 20, 2013

CBO estimates that implementing H.R. 3309 would cost \$3 million over the 2014-2018 period, assuming appropriation of the necessary amounts, mainly for reports to be prepared by the Administrative Office of the United States Courts (AOUSC) and the Government Accountability Office and administrative costs incurred by the AOUSC associated with new judicial procedures. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

Based on information from the Patent and Trademark Office (PTO), CBO also estimates that implementing H.R. 3309 would have a gross cost to PTO of about \$30 million per year. However, PTO is authorized to collect fees sufficient to offset its operating expenses; therefore, CBO estimates that the net budgetary effect of PTO's activities undertaken to implement H.R. 3309 would not be significant, assuming appropriation actions consistent with the agency's authorities.

H.R. 3309 would change administrative and judicial processes that support the protection of intellectual property rights. CBO expects that, by requiring inventors to be more specific in pleadings to the court, awarding attorney fees to the prevailing party, and limiting discovery early in an infringement proceeding, the bill would affect the decisions of inventors to initiate lawsuits for patent infringement.

H.R. 3309 would make several adjustments to judicial procedures for patent infringement cases, including which parties may join a suit and when a court is required to grant a motion to stay an action. Further, the bill would require the courts to award the prevailing party reasonable fees and other expenses incurred in connection with such cases. The bill also would require the AOUSC to develop rules and procedures related to the discovery of evidence in lawsuits for patent infringement.

The bill would change procedures that PTO has in place to examine patent applications, award patents, and determine the validity of a patent that has already been granted. Among other things, H.R. 3309 would specify that the agency use methods similar to those used in district courts to evaluate the validity of a patent. The bill also would require the agency to develop new databases to make information about patent ownership and

litigation available on its website, perform an additional review of certain declarations made on original applications, and prepare several studies and reports on patent ownership and the behavior of certain patent owners.

H.R. 3309 would impose a mandate as defined in the Unfunded Mandates Reform Act (UMRA) on both public and private entities because PTO would charge fees to offset the costs incurred to collect and make some information related to patents publicly available. Other provisions in the bill also would result in increased patent fees. The requirement to pay those fees would be a mandate because the federal government controls the patent and trademark system, and no reasonable alternatives to that system exist.

Based on information from PTO, CBO estimates that the annual cost to comply with the mandate would be about \$30 million, with less than \$1 million of those costs accruing to public entities and the rest accruing to private entities. Therefore, the cost for public and private entities to comply with the mandate would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$75 million and \$150 million in 2013, respectively, adjusted annually for inflation).

The CBO contacts for this estimate are Susan Willie and Martin von Gnechten (for federal costs), Melissa Merrell (for the impact on state and local governments), and Paige Piper/Bach and Nathan Musick (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.