



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 10, 2015

### **H.R. 9 Innovation Act**

*As ordered reported by the House Committee on the Judiciary on June 11, 2015*

H.R. 9 would change administrative and judicial processes that support the protection of intellectual property rights. The bill also would require reports by the Administrative Office of the United States Courts (AOUSC) and the Government Accountability Office.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 9 would cost \$3 million over the 2016-2020 period, mainly for reports and administrative costs incurred by the AOUSC associated with new judicial procedures. Additionally, based on information from the Patent and Trademark Office (PTO), CBO estimates that implementing the bill would cost PTO about \$7 million per year to comply with the bill's requirements. 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. 9 would not be significant, assuming appropriation actions consistent with the agency's authorities. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

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. 9 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. Finally, the bill would require PTO, the Government Accountability Office and the AOUSC to prepare several studies and reports on topics ranging from patent ownership to the behavior of certain patent owners.

H.R. 9 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. 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. 9 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 patent ownership and litigation publically available. Other provisions in the bill that change administrative procedures related to patents 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 the system exist.

Based on information from PTO, CBO estimates that the average annual cost to comply with the mandate would be about \$7 million, with less than \$150,000 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 well below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates (\$77 million and \$154 million in 2015, respectively, adjusted annually for inflation).

The CBO contacts for this estimate are Susan Willie and Marin Burnett (for federal costs), Melissa Merrell (for the impact on state and local governments), and Logan Smith (for the private-sector impact). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.