



Conservatives
for
Property Rights

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Statement on the Republican Study Committee's Countering Communist China Act

This statement on the House Republican Study Committee's "Countering Communist China Act" may be attributed to James Edwards, Executive Director, Conservatives for Property Rights:

"The RSC has crafted effective legislation in the Countering Communist China Act. Its comprehensive approach reflects the fact that America's industrial competitiveness is at stake when adversaries can freely break the rules, conduct espionage and plunder American private property — especially patents and other IP.* If we don't protect property rights and increase our vigilance, our economic security and national security will remain vulnerable to malign actors. Thankfully, the Countering Communist China Act has teeth.

"This legislation would give patent owners a real shot at stopping patent infringers once a court finds a patent valid and infringed. This correction of a Supreme Court error would restore patents as property rights.** If you can't get an injunction and stop infringement from continuing in the marketplace, infringers in Beijing or Silicon Valley can continue collecting ill-gotten gains.

"The Countering Communist China Act would prohibit the U.S. Trade Representative from working to add waivers to the TRIPS agreement.*** USTR would be blocked from aiding and abetting efforts to remove IP protections for COVID-19 vaccine technology or for other IP.

"The bill contains provisions to rein in the Patent Trial and Appeal Board.**** The act's rules-based, due process-respecting measures would address claim construction, burden of proof, presumption of patent validity and repeated pursuit of invalidating the same patent claims.

"Properly, the Countering Communist China Act would give Article III courts' rulings on patent validity priority over PTAB's. PTAB's inferior officers unconstitutionally adjudicates administrative proceedings. The bill would require an inventor's consent to go to PTAB proceedings. These measures would improve patent reliability. Reliable patents spell trouble for China's ability to vacuum up U.S. IP."

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*See CPR's webpage and report on industrial competitiveness and blog posts here, here and here.

**The harmful Supreme Court opinion referred to is eBay v. MercExchange in 2006. By withholding injunctive relief, the eBay ruling enables predatory infringement, also known as "efficient infringement."

***This refers to the TRIPS waiver proposal at the World Trade Organization. See H.R. 3035/S. 1683.

****PTAB's biases invalidate patents far more than federal courts. See here, here and here.