

**Assembly Joint Resolution**

**No. 9**

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**Introduced by Assembly Member Chang**

February 25, 2015

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Assembly Joint Resolution No. 9—Relative to patents.

LEGISLATIVE COUNSEL’S DIGEST

AJR 9, as introduced, Chang. Patent reform.

This measure would urge the President and the Congress of the United States to craft a balanced and workable approach to reduce incentives for and minimize abusive and frivolous patent litigation while ensuring that legitimate patent enforcement rights are protected and maintained.

Fiscal committee: no.

1       WHEREAS, The principle of intellectual property is enshrined  
2 in the United States Constitution, specifically under clause 8 of  
3 Section 8 of Article I of the United States Constitution, which  
4 empowers Congress to “promote the Progress of Science and useful  
5 Arts, by securing for limited Times to Authors and Inventors the  
6 exclusive Right to their respective Writings and Discoveries”; and  
7       WHEREAS, A robust patent system is critical to promote  
8 economic growth and innovation and ensure just compensation  
9 for the labor and proliferation of beneficial ideas and innovations;  
10 and  
11       WHEREAS, California accounts for 25 percent of the nation’s  
12 patents; and  
13       WHEREAS, The state recognizes and respects the importance  
14 of patent protections and patent enforcement rights to driving

1 continued research, investment, technological innovation, and job  
2 creation across multiple sectors of our economy; and

3 WHEREAS, Small businesses depend on patents to secure  
4 investments, and firms with fewer than 25 employees hold nearly  
5 one-quarter of United States-held patents in innovative emerging  
6 technologies; and

7 WHEREAS, Enforcement of legitimate patent rights is essential  
8 to promoting an innovation environment that fuels economic  
9 growth; and

10 WHEREAS, There is increasing concern about abusive litigation  
11 by predatory Patent Assertion Entities (PAEs), which are built on  
12 a rent-seeking business model that exploits the patent legal system  
13 for financial gain without producing or manufacturing anything  
14 of value for society; and

15 WHEREAS, Many PAEs attain ambiguous patents with the sole  
16 intent of filing patent infringement lawsuits. PAEs assert these  
17 patents against businesses of all sizes and in all industries, often  
18 years after the product has become standard and widely used; and

19 WHEREAS, PAEs rarely earn successful judgments in court,  
20 underscoring the questionable merits of these particular patent  
21 cases. However, given the high cost and risks associated with  
22 patent litigation, most defendants choose to settle in order to avoid  
23 further financial loss. Indeed, many PAEs will offer royalty  
24 settlements below market value in order to encourage settlement  
25 and avoid trial; and

26 WHEREAS, Predatory PAEs have a detrimental impact on the  
27 economy. PAE activities cost businesses \$29 billion directly,  
28 mostly borne by small and medium businesses; and

29 WHEREAS, The costs of frivolous patent lawsuits constrain  
30 innovation by increasing the risk to investors and businesses of  
31 introducing new products into the marketplace; and

32 WHEREAS, The growth of patent litigation is directly tied to  
33 aggressive PAEs in recent years. In 2010, PAEs were responsible  
34 for 29 percent of patent litigation, and by 2012 PAEs represented  
35 62 percent of all patent suits; and

36 WHEREAS, The California economy is especially vulnerable  
37 to opportunistic litigation given a high proportion of lawsuits  
38 directed at information technology patents; and

39 WHEREAS, Federal legislation is necessary to prevent and  
40 deter abusive patent litigation; now, therefore, be it

1     *Resolved by the Assembly and the Senate of the State of*  
2     *California, jointly,* That the Legislature urges the President and  
3     the Congress of the United States to craft a balanced and workable  
4     approach to reduce incentives for and minimize abusive and  
5     frivolous patent litigation while ensuring that legitimate patent  
6     enforcement rights are protected and maintained; and be it further  
7     *Resolved,* That the Chief Clerk of the Assembly transmit copies  
8     of this resolution to the President and Vice President of the United  
9     States, the Speaker and Minority Leader of the House of  
10    Representatives, the Majority Leader and Minority Leader of the  
11    Senate, and each member of the California delegation to the United  
12    States Congress.

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