AMENDMENT TO H.R. 1499

OFFERED BY M_.

[Page and line numbers refer to the committee print dated March 28, 2019]

Page 12, after line 8, insert the following (and redesignate succeeding provisions accordingly):

1 (e) SAFE HARBOR.—

2 (1) ISSUANCE OF DETERMINATION.—At the re-3 quest of one or more parties who propose to enter 4 into an agreement resolving or settling a covered 5 patent infringement claim, the Commission shall, in 6 accordance with this subsection, issue a determina-7 tion regarding whether the proposed agreement 8 would violate this section. The Commission may not 9 issue a determination under this paragraph after an 10 agreement is entered into.

11 (2) Effect of determination.—

(A) IN GENERAL.—Except as provided in
subparagraph (B), if the Commission issues a
determination under paragraph (1) that a proposed agreement does not violate this section—
(i) no person shall be considered to be
in violation of this section by reason of en-

1	tering into or carrying out such agreement;
2	and
3	(ii) the Commission may not, on the
4	basis of such agreement, commence or
5	maintain any administrative proceeding or
6	civil action to enforce this section.
7	(B) EXCEPTION.—A determination issued
8	by the Commission under paragraph (1) that a
9	proposed agreement does not violate this sec-
10	tion—
11	(i) shall not apply to the extent that—
12	(I) any material term or condi-
13	tion of the agreement entered into is
14	in addition to or has been modified
15	from the proposed agreement sub-
16	mitted in connection with the request
17	for such determination; or
18	(II) any material term or condi-
19	tion of the proposed agreement sub-
20	mitted in connection with the request
21	for such determination is not con-
22	tained in the agreement entered into;
23	and
24	(ii) if the agreement entered into con-
25	tains the same terms and conditions as the

1	agreement submitted in connection with
2	the request for such determination, shall
3	cease to apply if any material term or con-
4	dition is added, removed, or modified after
5	such agreement is entered into.
6	(C) FAILURE TO SEEK OPINION.—The fail-
7	ure of a party to seek a determination under
8	paragraph (1) may not be introduced into evi-
9	dence to prove that such party is in violation of
10	this section or section 5 of the Federal Trade
11	Commission Act (15 U.S.C. 45) with respect to
12	such agreement.
13	(3) Regulations.—
14	(A) IN GENERAL.—Not later than 180
15	days after the date of the enactment of this
16	Act, the Commission shall issue regulations
17	under section 553 of title 5, United States
18	Code, to carry out this subsection. Such regula-
19	tions shall provide for—
20	(i) the procedure to be followed by a
21	party requesting a determination under
22	paragraph (1);
23	(ii) the procedure to be followed by
24	the Commission in responding to a request
25	for such a determination;

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1	(iii) the interval in which the Commis-
2	sion shall respond to such a request; and
3	(iv) the reasonable fee to be charged
4	to the party requesting such a determina-
5	tion.
6	(B) Specific contents.—Under the reg-
7	ulations promulgated pursuant to subparagraph
8	(A)—
9	(i) the Commission shall be required
10	to issue a determination under paragraph
11	(1) to a party requesting such a deter-
12	mination by not later than 30 days after
13	the request is received; and
14	(ii) the fee charged to the party re-
15	questing a determination under paragraph
16	(1) shall be equal to the costs incurred by
17	the Commission in responding to the re-
18	quest.
19	(4) DISCLOSURE EXEMPTION.—Any informa-
20	tion or documentary material filed with the Commis-
21	sion in connection with a request for a determination
22	under paragraph (1) shall be exempt from disclosure
23	under section 552 of title 5, United States Code,
24	and no such information or documentary material
25	may be made public, except as may be relevant to

any administrative or judicial action or proceeding.
 Nothing in this paragraph is intended to prevent
 disclosure to either body of the Congress or to any
 duly authorized committee or subcommittee of the
 Congress.

Page 17, beginning on line 23, strike "after June 17, 2013," and all that follows through "entered into" on page 18, line 1.

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