110TH CONGRESS
1ST SESSION

H. R. ___

To amend title 35, United States Code, to limit damages and other remedies with respect to patents for tax planning methods.

IN THE HOUSE OF REPRESENTATIVES

Mr. BOUCHER (for himself, Mr. GOODLATTE, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on

A BILL

To amend title 35, United States Code, to limit damages and other remedies with respect to patents for tax planning methods.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. LIMITATION ON DAMAGES AND OTHER REM-
4 EDIES WITH RESPECT TO PATENTS FOR TAX
5 PLANNING METHODS.
6 (a) LIMITATION.—Section 287 of title 35, United
7 States Code, is amended by adding at the end the fol-
8 lowing new subsection:
“(d) (1) With respect to the use by a taxpayer or a tax practitioner of a tax planning method that constitutes an infringement under subsection (a) or (b) of section 271, the provisions of sections 281, 283, 284, and 285 shall not apply against the taxpayer, the tax practitioner, or any related professional organization with respect to such tax planning method.

“(2) For the purposes of this subsection—

“(A) the term ‘tax planning method’ means a plan, strategy, technique, or structure that is designed to reduce, minimize, or defer, or has, when implemented, the effect of reducing, minimizing or deferring, a taxpayer’s tax liability, but does not include the use of tax preparation software or other tools used solely to perform or model mathematical calculations or prepare tax or information returns;

“(B) the term ‘taxpayer’ means an individual, entity, or other person (as defined in section 7701 of the Internal Revenue Code of 1986) that is subject to taxation directly, is required to prepare a tax return or information statement to enable one or more other persons to determine their tax liability, or is otherwise subject to a tax law;

“(C) the terms ‘tax’, ‘tax laws’, ‘tax liability’, and ‘taxation’ refer to any Federal, State (as de-
fined in subsection (c)(2)(G), county, city, municipality, or other governmental levy, assessment, or imposition, whether measured by income, value, or otherwise;

“(D) the term ‘tax practitioner’ means any natural person who provides advice and consultation to a taxpayer with respect to a tax planning method or who is acting under the direction of such person in connection with the development or use of a tax planning method;

“(E) the term ‘related professional organization’ means an entity with which a tax practitioner has a professional affiliation under which the tax practitioner may provide advice and consultation with respect to a tax planning method, including a law firm, accounting firm, or a bank; and

“(F) the term ‘professional affiliation’ means an employment or contractual relationship or partnership or other ownership interest.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to any action for patent infringement that is filed on or after that date.