

Resolution No. 3

Date: 6/17/2017

City: Washington, DC

NAHB Resolution

Title: Intellectual Property  
Sponsor: Design Committee  
Submitted by: Sanford Steinberg

WHEREAS, the members of the National Association of Home Builders (NAHB) recognize the importance of promoting and securing intellectual property rights;

WHEREAS, intellectual property includes patents, trademarks (and service marks), and copyrights, with each of these having application to residential construction and the building process;

WHEREAS, NAHB recognizes that the federal government plays a primary role in promoting and securing intellectual property rights through various agencies including the United States Patent and Trademark Office (USPTO) and the United States Copyright Office (Copyright Office);

WHEREAS, NAHB recognizes that the role of the USPTO is to promote the progress of science, technology and the useful arts by granting patents that provide inventors with exclusive rights to their inventions for a stated statutory period and that these patents can include residential construction processes, land development plans and processes, architectural designs or other processes associated with residential building;

WHEREAS, NAHB members face a threat from low-quality patents and patents held by non-practicing entities; low-quality patents, for residential construction processes or other processes associated with home building, are those patents that have a low threshold for invention or minimally meet the statutory requirements for patentability (useful, novel or new, non-obvious, and not previously disclosed to the public);

WHEREAS, non-practicing entities are individuals or businesses who purchase patents, but do not produce any products or services related to those patents, and use their ownership in the patents to send demand letters or sue businesses claiming patent infringement with the hope of a quick cash settlement to avoid expensive litigation;

WHEREAS, NAHB recognizes the role of the Copyright Office is to administer the copyright laws for the advancement of the public good and offer services and support to authors and users of creative works by, among other things, registering copyrights to protect works of original authorship fixed in a tangible medium of expression covering both published and unpublished works, and including architectural works, home plans, and buildings, among others; and

WHEREAS, NAHB recognizes that copyrights can be claimed for residential buildings, and plans with design features and elements that are commonly used in all residential construction or that are very similar to residential buildings, and plans found throughout the United States, and that those who are already using these common design features and elements could be negatively affected by copyright infringement claims,

NOW, THEREFORE, BE IT RESOLVED that NAHB support efforts before Congress, the Administration, the Courts, and the U.S. Patent and Trademark Office to protect small businesses from low-quality patents and from the legal liability related to the granting of such patents, particularly with respect to the abusive measures taken by non-practicing entities who have purchased patents;

BE IT FURTHER RESOLVED that NAHB support similar efforts before Congress, the Administration, the Courts, and the Copyright Office to protect small businesses from copyright holders asserting infringement claims against small businesses with respect to plans that lack originality in design features and elements commonly used or found in residential construction buildings, while at the same time supporting efforts to preserve copyright holders' valid claims of infringement of protectable features and elements of their designs, plans and drawings;

BE IT FURTHER RESOLVED that NAHB work with stakeholders, including other construction industry groups, to promote higher quality intellectual property, including improved review procedures during the examination of applications for intellectual property protection; and

BE IT FURTHER RESOLVED that NAHB continue to coordinate with the various federal agencies charged with promoting and securing intellectual property rights to help ensure that the requirements for patents, trademarks, and copyrights are properly demonstrated and that intellectual property rights are not secured or claimed for inventions, features and elements in designs or marks that are already in common use in residential construction.

*If approved, this resolution updates and replaces policy 2009.5 No. 6 Design Patents which is due to expire.*

Board of Directors Action:	APPROVED
Executive Board Action:	Recommends Approval
Resolutions Committee Action:	Recommends Approval
Land Development Committee Action:	Recommends Approval
Custom Home Builders Committee Action:	Recommends Approval
Business Management and Information Technology Committee Action:	Recommends Approval
Design Committee Action:	Recommends Approval
Single Family Builders Committee Action:	Recommends Approval
Construction Liability, Risk Management, and Building Materials Committee Action:	Recommends Approval
Legal Action Committee Action:	Recommends Approval
Federal Government Affairs Committee Action:	Recommends Approval
Multifamily Council Board of Trustees Action:	Recommends Approval