

March 18, 2009

Dear Senators Reid and McConnell, Speaker Pelosi and Congressman Boehner:

We are writing to ask you to strongly oppose the passage of The Patent Reform Act of 2009, S. 515 and HR. 1260, legislation sponsored by Senator Leahy and Rep. Conyers, respectively. These bills, under the mantle of "reform," will actually severely damage U.S. international competitiveness and threaten most American businesses - along with the jobs they create - by undermining America's historically strong intellectual property rights.

This legislation will threaten America's smaller inventors, large and small domestic manufacturers, venture capitalists, agricultural entities, biotech and pharmaceutical firms, non-profit research consortia, and research universities, among others. Downgrading patent rights – which are fundamentally property rights – will seriously constrict innovation and the ability of domestic manufacturers to turn good ideas into products consumer want, and thus good jobs for working Americans.

A series of U.S. Supreme Court and Federal Circuit decisions have already shifted the legal balance of power to favor patent users, tightening standards of patentability and narrowing patent rights and remedies. These judicial reforms eliminate any need for sweeping legislative changes to the patent system.

Foreign interests, who for years have been trying to slow America's innovation engine through measures to weaken and devalue patent rights, are very happy with the proposed changes. In fact, commentary by patent experts in the Chinese and Indian press indicates they believe that intellectual property theft will be much easier under the proposed bill. Unfortunately, these foreign experts are correct in their assessment.

Yongshun Chen, former Senior Judge and Deputy Director of the Intellectual Property Division of Beijing High People's Court China, said this about the patent bill: "This bill will give companies from developing countries more freedom and flexibility to challenge the relative U.S. patent for doing business in the U.S. and make it less costly to infringe.... The bill will weaken the rights of patentees greatly, increase their burden, and reduce the remedies for infringement" (Intellectual Property News, November 2007). This bill will lead to many additional American factories and jobs, even entire industries, being lost to overseas competitors. During this economic recession, more market uncertainty is the last thing that our economy needs.

To put the matter plainly, this bill is written to devalue patents – to the detriment of almost every industrial, service, and financial sector of the economy. Certain high-tech companies who are pushing this bill want to make it cheaper and easier to infringe others' patents. But Congress should safeguard innovation as the backbone of our economy and reject this legislation.

The patent system is rooted in the Constitution. Congress is charged with "securing for limited times to authors and inventors the exclusive right to their respective discoveries." The Founders understood that protection of intellectual property was vital to innovation and progress.

James Madison wrote in the Federalist Papers, "The utility of this power will scarcely be questioned." Yet, today it is being threatened in the Congress.

Small enterprises often drive innovation. About one-third of all patent applications are made by independent inventors, small companies, universities, and nonprofit research groups. Small businesses produce more patents per employee than larger businesses, and small-firm patents are more "innovative" and technologically important than large firm patents. Because small firms must work with others to commercialize and manufacture their innovations, they need strong patents to realize a return on investment.

American manufacturers do about 65 percent of the R&D in this country and hold 60 percent of the patents. Over the last 40 years, we have witnessed a startling transformation of our economy. Whereas previously about two-thirds of a company's wealth was in physical assets, such as land, buildings, and machinery, now the opposite is true. The vast majority of a company's worth is in its intellectual property, not its physical assets. We cannot afford to jeopardize what is in effect America's balance sheet with an ill-advised, special-interest bill, particularly in the midst of a severe economic crisis.

The legislation creates a new, expensive quasi-judicial system within the USPTO to challenge the validity of a patent throughout its entire life. The proposed system would expose patent holders to a perpetual threat of abusive, serial attacks, and, as a result, undermine the benefits of patent ownership for patent-holders and their financial backers. In addition, it would create even greater operational challenges within the USPTO. Incentives to seek patents would be weakened, and venture capitalists, who supply the life blood of the patent system with their investment monies, would face far higher risks when backing new ideas.

The Leahy bill raises multiple barriers to independent innovation. The pending legislation would also make it harder for patent-holders to enforce their rights or win just compensation from those who steal their ideas. Under the bill, it would be harder to prove "willful" infringement, which serves as an important deterrent to deliberate theft.

Perhaps, most significantly, the bill strikes at the very core of the patent system by changing the way infringement and resulting damages are treated. Instead of restoring the pre-infringement parity between the patent holder and the potential licensee, the bill calculates damages in an after-the-fact manner that lessens the value assigned to patents in most products. It throws out the window the venerable Georgia Pacific case and with its time-tested factors in determining a patent's value. In effect, the bill invites an infringe-now-and-(maybe)-pay-later business strategy, which destroys the "exclusive use" given to the patentee by the Constitution and the risk/reward ratio that has so successfully driven American innovation for over two centuries.

According to a recent study, the proposed damages amendment would reduce the value of U.S. patents by as much as \$85.3 billion; reduce R&D expenditures by up to \$66 billion per year; and potentially cost the U.S. economy 298,000 manufacturing jobs. This bill is bad for American businesses; it is bad for American workers; it is bad for American inventors; it is bad for American research universities; thus it is bad for America. We ask that you oppose this

legislation, protect the property rights enshrined in the Constitution, and preserve a patent system that for over 200 years has provided great technological advances, material progress, and a high standard of living for all Americans.

Thank you for your serious consideration of our views.

Sincerely,

Kevin Kearns
US Business and Industry Council

Phyllis Schlafly
Eagle Forum

David Keane
American Conservative Union

Morton Blackwell
Conservative Leadership PAC

Rev. Lou Sheldon
Traditional Values Coalition

Frank Gaffney
Center for Security Policy

Jim Backlin
Christian Coalition of America

Colin A. Hanna
Let Freedom Ring

Susan Carleson
American Civil Rights Union

Ron Pearson
Council for America

Jim Martin
60 Plus Association

Jeffrey Gayner
Americans for Sovereignty

C. Preston Noell III
Tradition, Family. Property, Inc.

Alex St. James
AARLC Organization

Harry Valentine
Capitol Hill Prayer Alert

Connie Marshner
American Family Business Institute

Barrett Duke
Ethics and Religious Liberty Commission of
the Southern Baptist Convention

Jim Backlin
Christian Coalition of America

Gary Aldrich
CNP Action, Inc

Carmen Mercer
Minuteman Civil Defense Corps.

John Kwapisz
VA Coalition for common sense on
Climate Change and Energy

Mark de Bernardo
Council for Employment Law and Equality

Laszlo Pasztor
National Federation of American
Hungarians