

Commentary: Pat Choate

Innovation And Presidential Politics

The most important piece of economic legislation now before Congress is the Leahy-Berman Patent Act (S1145). It would adversely shape American innovation for decades because it would radically weaken the U.S. Patent System.

Yet, in the all the Presidential debates, not a single question has been asked the candidates about their position on that bill. It is a glaring omission, since three of the leading runners are in the Senate and may be voting on it in a month or so. They are, of course, Senators Clinton, Obama and McCain.

All three are running as outsid-

ers who oppose Washington's corrupt special interest culture. Yet, this bill was concocted by a small group of Big Tech corporations that have hired some of the best-connected Democratic and Republican lobbyists in Washington to get it passed.

Though deceptively labeled as patent "reform," the real purpose of the legislation is to make patent infringement easier and less costly for these Big Tech corporations. Their victims will be small companies and individual inventors.

The fact that this bill has made it through the House by a narrow victory in September 2007 and is awaiting consideration in the Senate is mute testimony of just how greatly the policymaking and legislative processes in Washington are shaped by well-financed special interests.

Specifically, this legislation is moving through Congress despite the

fact that it is opposed by most major organizations involved with innovation. Among the opponents are:

The American Bar Association's Section on Intellectual Property;

The National Association of Manufacturers;

The U.S. Business and Industrial Council;

The AFL-CIO;

The United Steelworkers;

The Big Ten Universities;

The National Venture Capital Association;

The Patent Office Professional Association; and

The Professional Inventors' Alliance

And hundreds of large and small companies.

Any other bill with this much opposition, from such prominent groups, would have been withdrawn long ago.

Equally significant, other nations are watching in amazement as the U.S. Congress proceeds to weaken the force and spirit of a patent system that for more than two centuries has been the bedrock of U.S. innovation and economic growth. Not surprisingly, they are also preparing to exploit such a historic mistake.

Yongshun Cheng, who was a senior judge in the intellectual property division of the Beijing High People's Court, analyzed the bill and reported in November 2007 to Chinese companies that the bill is "friendlier to the infringers than to the patentees in general as it will make the (U.S.) patent less reliable, easier to be challenged and cheaper to infringe."

The Economic Times of India reported in July 2007, "[t]he U.S. Congress is set to give a new inexpensive option to attack (U.S.) patents ... and will subject many existing U.S. patents to an immediate threat of invalidation."

Even as this legislation would make piracy and counterfeiting easier for thieves in China and India, it would also hurt vital American allies.

Gernot Pehnelt, an economist at Germany's Friedrich Schiller University, in Jena, noted in a recent Providence Journal editorial "The U.S. patent system has been an integral part of German technological development. ... the recent effort by the United States to reform its patent system threatens to undermine German innovation and deprive Americans and the world of its benefits."

Likewise, Israeli inventors and companies rely primarily on U.S. pat-

ents to protect their innovations in the global economy. The number of U.S. patents issued to Israeli inventors has surged from around 300 per year in 1990 to more than 1,200 annually by 2007. To weaken U.S. patents, as this bill would do, would also weaken Israeli innovation and economic growth.

One of the principal arguments that the Big Tech advocates make for this legislation is that the U.S. is in a litigation crisis and they need help to defend themselves against rapacious lawyers. Yet, the annual Federal Judicial Statistics report reveals that the number of lawsuits filed per the number of patents issued has remained a constant 1.5 percent for decades. Moreover, last year only about 100 patent lawsuits resulted in a trial in the whole of the U.S. 100 trials per year are anything but a crisis.

Ironically, the Leahy-Berman Act would actually create a surge of new litigation. The legislation puts into place a new judicial procedure that allows anyone, from anywhere, to challenge a U.S. patent's validity after it has been issued. It is a mirror of the judicial process used in Europe.

The big flaw in the European system is that it has a litigation rate of 5.4 percent of all patents issued. Put into context, the United States issues about 190,000 patents per year. If this bill passes, the U.S. could be looking at 10,000 new patent challenges every year, which would become a classic example of the law of unintended consequences.

Amazingly, despite all the opposition from such prominent groups, despite the clear declarations from China and India that this bill will make infringement easier and cheaper for them, the bill lives, indeed may become law.

All of the Presidential candidates say they will create a new innovation agenda if they win. It is a fair question to ask Senators Clinton, Obama and McCain how they will vote on this legislation and why.

Their answers will tell us much about how serious they are about innovation. Their votes will also reveal much about their real relationship with a narrow but rich special interest group that is pouring millions of dollars into lobbying and campaign contributions for the purpose of disemboweling the U.S. Patent System for their own selfish financial advantage.

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The Penny Press Tips Its Cap To:

The teachers union for filing suit against the Democratic Party for allowing "at large" precinct at the request of the Culinary Workers which just, by chance, endorsed Barak Obama. Of course, this is the same Democratic Party which, while it is vehemently opposed to showing photo ids at the polls, is requiring, you guessed it, a photo id at its "at large" caucus sites. Can they spell hypocrisy? Or did they all go to Clark County schools? How about hipocresía?

NBC for standing firm in stopping Dennis Kucinich from participating in a candidates debate. He should at least be a real candidate.

The Penny Press Sends A Bronx Cheer And A Bouquet of Weeds To:

District Judge Jackie Glass, the so-called "Angry Judge" who first, allowed the DA to bring O.J. Simpson back to Las Vegas for making a phone call to HIS OWN BONDSMAN and then doubled his bail for making a call which never reached its intended recipient. Glass usually has better common sense than that. Were our justice system only to concentrate the assets on a few crooked developers that it is expending on O.J....