

April 22, 2008

The Honorable Harry Reid
The Honorable Mitch McConnell

Dear Senators Reid and McConnell:

We are writing to ask you to strongly oppose the passage of The Patent Reform Act of 2007, S. 1145, legislation sponsored by Senator Leahy. This bill, 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.

After many months of work, the latest draft of the Leahy bill is still completely inadequate to meet the needs of America's smaller inventors, large and small domestic manufacturers, venture capitalists, labor unions, agricultural entities, biotech and pharmaceutical firms, non-profit research consortia, and research universities, among others. Downgrading patent rights – which are fundamentally intellectual 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.

Foreign interests, who for years have been trying to slow America's innovation engine under the guise of "harmonization" with their own laws, are very happy with the proposed changes. In fact, recent 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. These foreign experts are correct in their assessment.

Do we really need to be "harmonized" with a calcified European system, or the impossibly unfair Japanese system, or the Chinese system, where intellectual piracy is a way of life? This bill will lead to many additional American factories and jobs, even entire industries, being lost to overseas competitors. ***At a time of economic turmoil and possible recession, more market uncertainty is the last thing that our fragile economy needs.***

To put the matter plainly, this bill is written for the benefit of one economic sector, large IT firms, to the detriment of almost every other industrial, service, and financial sector of the economy. They want current patent law rewritten to make infringement easier and less costly. Since when is public policy held captive to meet the narrow needs and self-interest of a single sector?

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 Senate.

Small enterprises often drive innovation. About one-third of all patent applications are made by independent inventors, small companies, universities, and nonprofit research groups. 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.

The legislation creates a new, expensive procedure to challenge the validity of a patent throughout its *entire* life, making the benefits to patent-holders and their financial backers much less certain. Incentives to seek patents are weakened, and venture capitalists, who supply the life blood of the patent system with their investment monies, 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 entails punitive damages.

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 it 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.

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,

Paul Weyrich, Chairman, Coalitions for America

Phyllis Schlafly, Founder and Chairman, Eagle Forum

Morton C. Blackwell, Founder, The Leadership Institute

Colin A. Hanna, President, Let Freedom Ring

Jim Backlin, Vice President of Legislative Affairs, Christian Coalition of America

Kevin L. Kearns, President, U.S. Business and Industry Council

Ron Pearson, President, Council for America

Jeffrey Gayner, Chairman, Americans for Sovereignty

Star Parker, President, Coalition on Urban Renewal and Education

Harry Valentine, President, Capitol Hill Prayer Alert

Jim Boulet, Jr., Executive Director, English First

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Donald E. Wildmon, Founder and Chairman, American Family Association

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Frank Gaffney, Founder and President, Center for Security Policy