

# AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



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## **LEGISLATIVE ALERT!**

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September 6, 2007

Dear Representative:

The AFL-CIO commends Judiciary Chairman John Conyers and Subcommittee Chairman Howard Berman for their willingness to work with us to address many of the concerns we have raised with respect to the Patent Reform Act (H.R. 1908), both at the full committee and subsequent to the markup. We share their view that it is necessary to reform and modernize our patent system, but we are also very sensitive to the importance of strong patent protection for the future of innovation and manufacturing in the United States.

HR 1908 has been improved in a number of key areas, and we understand that the bill's sponsors will be offering a managers' amendment and supporting other amendments that will further improve the bill. We recognize and appreciate the work that has been done to address many of the concerns we have raised.

Elimination of the second window for post-grant review in the committee version of the bill was an important step towards addressing our concern that an open-ended review would open patents to serial challenges throughout the life of the patent. We understand that the managers' amendment will include a change to section 6(f) of the bill to extend the estoppel provisions of Section 335 to International Trade Commission cases. We support this provision because it would prevent abuse of the patent system in certain trade cases.

We particularly appreciate efforts made to address some of the concerns we raised with respect to patent office examiners, as well as efforts to strengthen protections for individual investors, although some of these issues will require further action.

Of course, the bill is far from perfect. We remain concerned about the impact of the proposed damages provision. We note that the manager's amendment does clarify how and when the different methods of calculating damages can be applied, and it also addresses some of the concerns that have been raised with respect to apportionment of damages. This issue remains of crucial importance to American manufacturing companies, however, and requires further attention.

We look forward to making further progress in the Senate and in conference to address these remaining concerns. We reserve judgment at this point on final enactment, as we would not be able to support legislation that weakens patent protections for American manufacturers or undermines their ability to protect their innovations from either domestic or foreign infringement.

Sincerely,

William Samuel, Director  
DEPARTMENT OF LEGISLATION