

**“Patent Reform” –
Is U.S. Congress About to
Help Wall Street and the 'Mega-Banks' Maintain their
'Strangle-Hold' on the American Public?**

by

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"The rich ruleth over the poor, and the borrower [is] servant to the lender." - Proverbs 22:7: King James Bible

"...banking establishments are more dangerous than standing armies..." - Thomas Jefferson, 1816 ⁱ

"Give me control of a nation's money supply, and I care not who makes its laws." - Mayer Amschel Rothschild, (1743-1812) ⁱⁱ

On a recently passed Senate bill S.23, ⁱⁱⁱ the 'Manager's Amendment' include provisions, introduced by Senators Schumer (D-NY) and Kyl (R-AZ), *designed to exclusively benefit the 'financial industry' i.e. the 'mega-banks' and Wall Street and place a huge burden on small innovators and businesses, as well as the public.* ^{iv}

Banks Buy Another Patent Reform Amendment, by Patrick, GameTimeIP.com, March 2, 2011;
<http://gametimeip.com/2011/03/02/banks-buy-another-patent-reform-amendment/>; ^v

Senator Schumer actually calls patents a "plagu[e on] the financial sector."

This is similar to legislation introduced by Jeff Sessions (R-AL) two years ago, the *only purpose of which is protecting banks and Wall Street.*

Lawmakers Move to Grant Banks Immunity Against Patent Lawsuit, By Jeffrey H. Birnbaum, Washington Post, February 14, 2008;
<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/13/AR2008021303731.html>;

It is bad enough that this S. 23 legislation was instigated by a few large multinational corporations and our banking interests, ^{vi} and will hurt American innovation, small inventors and small businesses generally. ^{vii} *Why should*

Congress carve out a special provision to 'protect Wall Street and the mega-banks' from the competition of innovative, new technologies which might "promote progress" ^{viii} and help and protect the American public? Haven't Wall Street and the banks already done enough damage?

This is an outrage! Hasn't America been hurt enough already, with millions of Americans losing their homes, losing their hard-earned savings, and being unemployed?

Time and again, Congress has worked hand-in-glove in the fraud of big multinational corporations, financial institutions and Wall Street in destroying our hard-working 'middle-class.' Have we learned nothing in the past 30 years? NAFTA sucking jobs out of America and having our pockets picked by the WTO; deregulation and collapse of the savings and loan industry in the 80s; passage of 'inter-state banking' in the 90s which has allowed a mere handful of 'mega-banks' to drain \$ trillions deposits from local communities' economies; ENRON; and finally, the total meltdown of the world economy in 2008 because of our government's complicity. *Our legislators and regulators have precipitated, and participated in, every single one of these financial disasters because they cater to an elite group of 'special interests.'* ^{ix}

The one bright spot in our economy over the past 20 years has been in computer and information technology, including particularly the Internet. The Internet is the most significant development in disseminating information since the invention of the printing press; and Mr. Schumer and Mr. Kyl want to inhibit innovation from the financial sector.

Keep in mind that computer technology is *just* in its infancy. Things will be coming down the road that *no one* has yet imagined! For those who don't understand what 'innovation' is all about, think about where America might be if it hadn't been for Thomas Edison, Alexander Graham Bell, and the Wright Brothers.

There are 1000s of new, innovative "financial products or services" which will shortly benefit the public, small businesses, and our economy. Many will, among other things:

- protect the American public from 'predatory lending;'
- help consumers protect valuable financial information on-line;
- help American consumers automatically budget their purchases in real time while online or checking their bank balance so they don't fall into unmanageable debt;
- instantly receive more competitive interest rates for credit cards and loans;

- allow businesses to 'hedge' commodities for legitimate business purposes but screen out commodity or currency speculators which cause disruptive price swings and unnecessary economic uncertainty;
- provide a way for the \$2-3 trillion the Fed has pumped into the economy over the past 2 years to actually get to the millions of consumers, small community banks, and small businesses instead of staying in the pockets of the Wall Street, 'mega-banks,' and the Fortune 500 CEOs?

These sorts of patents and technologies are guaranteed to raise the ire of the 'financial services' sector for obvious reasons.

Patents are *already subjected to a literally-endless series of costly reexamination*^x *and legal attacks which deters innovation and job growth; "...expensive and lengthy interference proceedings that are often ineffective. Some have estimated that the average cost of an interference proceeding is \$600,000, which can present a substantial barrier to smaller players..."* [Emphasis supplied]^{xii} And a series of recent court decisions have made enforcement of patents *more costly and difficult*.^{xiii} Yet, Congress adds more challenges, not less. The provisions of S.23 "America Invents Act," Sec. 18 are simply designed to subject small businesses and inventors to yet *another series of vexatious and costly attacks by companies with huge financial resources; to wear them down and drain them until,...in many cases, they finally give up.*

More importantly, it is special legislation designed to give the 'mega-banks' and Wall Street *another special advantage to maintain their 'strangle-hold' on millions of hard-working America.*

Given the *unlimited financial resources and power of the 'mega-banks' and Wall Street,* this provision will be a huge and unfair burden on small innovators and small businesses and is an outrage!

Ask yourself, why do banks and Wall Street need *added* protection from innovation? Isn't the 'playing field' already tilted enough in their favor?

ⁱ Thomas Jefferson letter to John Taylor, Monticello, 28 May 1816;
[http://wiki.monticello.org/mediawiki/index.php/Private_Banks_\(Quotation\)#_ref-3](http://wiki.monticello.org/mediawiki/index.php/Private_Banks_(Quotation)#_ref-3)

ⁱⁱ Mayer Amschel Rothschild, (1743-1812) [Primary Source unknown];
http://en.wikipedia.org/wiki/America:_Freedom_to_Fascism;

ⁱⁱⁱ S.23 "America Invents Act of 2011;"
<http://www.ipo.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=28748;>

^{iv} S.23 "America Invents Act; Sec. 18. Transitional program for covered business-method patents;"
<http://www.ipo.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=28748;>

In particular, Sec. 18 (d) carves out special rules to protect Wall Street and the 'mega-banks' from disruptive innovation: "...the term 'covered business method patent' means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service,..."

Patents are already subject to endless reexaminations and litigation and shortly to PGR. Yet 'financial products and services' will be subject to even greater costs and delays. Given the huge financial resources of these large financial institutions there is clear opportunity for greater abuse of the new Sec. 18. Transitional program for covered business-method patents (The Schumer/Kyl Amendment). In particular, Sec. 18 (b) (1) (D) provides in part: "...may not assert either in a civil action...that a claim in a patent is invalid on any ground that the petitioner raised during a transitional proceeding that resulted in a final written decision." Among other issues, the language omits: "or could have raised" which opens up the possibility of malicious, serial challenges against the small innovator and small businesses. There is also the likely unnecessary but costly delay caused by 18 (c) (2): "...party may take an immediate interlocutory appeal from a district court's decision under paragraph (1)."

What this boils down to is allowing infringers an opportunity to tie up inventors in a virtually endless series of costly challenges to any 'financial product or service' patents using a computer.

^v "Reading the definition of what a 'covered business method' is, it's painstakingly obvious that the financial industry has purchased another special carve out (reminiscent of the Sessions Amendment from several years ago): '[T]he term 'covered business method patent' means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service,...'" Banks Buy Another Patent Reform Amendment, by Patrick, GameTimeIP.com, March 2, 2011; <http://gametimeip.com/2011/03/02/banks-buy-another-patent-reformamendment/>

^{vi} Letter from America's Small Businesses, Start-up Entrepreneurs, Independent Inventors, and Technical Professionals to Senate Majority Leader, Harry Reid, February 23, 2011; <http://www.patentbaristas.com/wp-content/uploads/2011/02/Small-Biz-Inventors-Empf.pdf>;

IEEE-USA Letter to Patrick Leahy, 15 February 2011; <http://www.ieeeusa.org/policy/policy/2011/021511a.pdf>;

National Small Business Association (NSBA) Letter to Senator Harry Reid, February 15, 2011; http://www.nsba.biz/docs/patent_reform.pdf;

Letter to Patrick Leahy and Charles Grassley, 15 February 2011 from Retired Chief CAFC Judge, Paul Michele and President of IFP&TE AFL-CIO; <http://www.ifpte.org/downloads/news/manager/41c.pdf>;

Patent Deform Act of 2011: Approved by Senate Committee, by Dale B. Halling, State of Innovation, Patents and Innovation Economics; <http://hallingblog.com/2011/02/08/patent-deform-act-of-2011-approved-by-senate-committee/>;

"The Patent Act Is A Cheat On Americans," by Phyllis Schlafly, Eagle Forum; <http://www.eagleforum.org/column/2007/oct07/07-10-31.html>;

Patent Reform: The Senate Makes Its Move, by Manus Cooney and Marla Grossman, American Continental Group, March 7, 2011; <http://ipwatchdog.com/2011/03/07/patent-reform-the-senate-makes-its-move/id=15688/>;

"The Rush to a First-to-File Patent System in the United States: Is a Globally Standardized Patent Reward System Really Beneficial to Patent Quality and Administrative Efficiency?" 7 Minn. J. L. Sci. & Tech. 757-775 (2006), by Brad Pedersen; <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=7+Minn.+J.L.+Sci.+%26+Tech.+757&srctype=smi&srcid=3B15&key=2b867160a53444a997b8704c51378664>;

"The debate over patent reform dates back to a 2004 National Academy of Science report that made several recommendations for modernizing the patent system and the PTO. Traditionally, changes to the patent code were relatively modest and were driven by established and esteemed patent-focused associations like IPO and AIPLA. But, in 2005, a powerful subsection of larger companies from the information technology industry ("IT") saw an opportunity to advance their interests and convinced Congress to include measures in patent reform legislation that would have rewritten the laws around how patents are enforced." Patent Reform: The Senate Makes Its Move, by Manus Cooney and Marla Grossman, American Continental Group, March 7, 2011; <http://ipwatchdog.com/2011/03/07/patent-reform-the-senate-makes-its-move/id=15688/>;

These large multinationals and banking interests have set up 'front organizations' with very nice-sounding names to try to disguise who is in fact pushing for this legislation and the real reasons behind it. They include:

Intellectual Property Owners Association; http://www.ipo.org/AM/Template.cfm?Section=Corporate_and_Law_Members&Template=/CustomSource/MembershipListing/index.cfm&Type=CORP;

Coalition for Patent Fairness Membership; <http://www.patentfairness.org/learn/who/supporters/>;

Coalition for 21st Century Patent Reform; <http://www.patentsmatter.com/about/coalition.php>;

vii Letter from America's Small Businesses, Start-up Entrepreneurs, Independent Inventors, and Technical Professionals to Senate Majority Leader, Harry Reid, February 23, 2011; <http://www.patentbaristas.com/wp/wp-content/uploads/2011/02/Small-Biz-Inventors-Emp1.pdf>;

IEEE-USA Letter to Patrick Leahy, 15 February 2011; <http://www.ieeeusa.org/policy/policy/2011/021511a.pdf>;

National Small Business Association (NSBA) Letter to Senator Harry Reid, February 15, 2011; http://www.nsba.biz/docs/patent_reform.pdf;

Letter to Patrick Leahy and Charles Grassley, 15 February 2011 from Retired Chief CAFC Judge, Paul Michele and President of IFP&TE AFL-CIO; <http://www.ifpte.org/downloads/news/manager/41c.pdf>;

Patent Deform Act of 2011: Approved by Senate Committee, by Dale B. Halling, State of Innovation, Patents and Innovation Economics; <http://hallingblog.com/2011/02/08/patent-deform-act-of-2011-approved-by-senate-committee/>;

"The Patent Act Is A Cheat On Americans," by Phyllis Schlafly, Eagle Forum; <http://www.eagleforum.org/column/2007/oct07/07-10-31.html>;

viii "The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;" The United States Constitution, Article I. Section 8, Clause Eight; <http://topics.law.cornell.edu/constitution/article1#section8>;

ix Time and again, Congress has worked hand-in-glove in the fraud of big multinational corporations and Wall Street in destroying our hard-working 'middle-class.' Have we learned nothing in the past 30 years: with NAFTA sucking jobs out of America and having our pockets picked by the WTO; Jobs, Wages and Economic Outcomes Under the NAFTA-WTO Model, PublicCitizen.org; <http://www.citizen.org/Page.aspx?pid=2124>; NAFTA's Effect on United States Employment; http://en.wikipedia.org/wiki/NAFTA%27s_effect_on_United_States_employment; NAFTA's Decade of Job Losses; <http://legacy.usw.org/usw/program/content/839.php>; with the deregulation and collapse of the savings and loan industry in the 80s; "Savings and Loan Crisis," Wikipedia; http://en.wikipedia.org/wiki/Savings_and_loan_crisis; "The Keating Five," Wikipedia; http://en.wikipedia.org/wiki/Keating_Five; passage of 'inter-state banking' in the 90s which has allowed a mere handful of 'mega-banks' to drain \$ trillions deposits from local communities' economies; The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; <http://www.csbs.org/bankinglaw101/Wiki%20Pages/Riegle-Neal%20Interstate%20Banking%20and%20Branching%20Efficiency%20Act%20of%201994.aspx>; deregulation that led to the collapse of ENRON; Blind Faith: How Deregulation and Enron's Influence Over Government Looted Billions from Americans, December 2001, Public Citizen; http://www.citizen.org/documents/Blind_Faith.PDF; and finally, the total meltdown of the world economy in 2008 because of our government's complicity "Alan Greenspan, Brooksley Born, and The Warning." FRONTLINE; <http://video.pbs.org/video/1302794657>; THE FINANCIAL CRISIS INQUIRY REPORT, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, January 2011, U.S. Government Printing Office; http://c0182732.cdn1.cloudfiles.rackspacecloud.com/fcic_final_report_full.pdf; Our legislators and regulators have precipitated, and participated in, every single one of these financial disasters because they cater to an elite group of 'special interests.'

x Statement of JUDGE PAUL R. MICHEL (Ret.), Before the Subcommittee on Intellectual Property, Competition and the Internet, February 11, 2011; <http://www.tplgroup.net:8080/pdf/Statement%20of%20Judge%20Paul%20R%20%20Michel%20Ret%20020911.pdf>;

June 5, 2007 letter from F. James Sensenbrenner to The Honorable John Conyers, Chairman, House Committee on the Judiciary; http://www.aai-usa.org/patent_reform/letters_to_congress/james_sensenbrenner_06_05_2007.html;

xi For a discussion of the problems of 'post-grant review' and 'reexaminations see; THE FAILURE OF S.515 DRAFT BILL TO ADDRESS THE PGR PROBLEM, 2 March 2010, by Daniel E. Leckrone, The TPL Group; http://www.tplgroup.net:8080/pdf/The_Failure_of_S515_Draft_Bill_Memo.pdf;

Lighting Up America's "Innovation Assassin" Problem, March 28, 2010, By Dan Leckrone; Tech News Arizona; <http://technewsarizona.com/Article.aspx?d=20100328&t=1835>;

The Use and Abuse of Patent Reexamination Sham Petitioning Before the USPTO, by Raymond A. Mercado, April 26, 2010, Columbia Science and Technology Law Review, Vol. 12, pp. 93-159, 2011; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1554061;

xii H.R. 1908 — Patent Reform Act of 2007 (Rep. Berman, D-CA) PRELIMINARY ASSESSMENT, Republican Study Committee 9/4/07; http://rsc.jordan.house.gov/UploadedFiles/lb_090707_patentreform.pdf;

xiii There have been a series of recent court cases which will make it more difficult and expensive for patent holder to enforce and protect their 'discoveries.' "In the next decade...expect to see at least another two-fold increase in patent litigation...as a result of the greater ease with which an accused infringer can now file suit for declaratory

judgment,...MedImmune Inc. v. Genentech Inc., 127 S. Ct. 764 (2007) ...an accused infringer may be more willing to sue for declaratory judgment of invalidity in light of the Supreme Court's KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007), which may make it easier to prove obviousness, and in light of eBay (eBay Inc v. MercExchange, 126 S. Ct. 1837), which makes it much more difficult...to obtain an injunction." Expect Twofold Increase in Patent Litigation, By Todd R. Miller, EE Times, 09/24/2007; <http://www.my-esm.com/showArticle.jhtml?articleID=202100936>;

In addition there is In re Seagate, 497 F. 3d 1360 (Fed. Cir. 2007) which will make 'willful' infringement more difficult to prove.