Modernizing our patent law would stimulate our economy

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While we bring different perspectives to our work on the Senate Judiciary Committee, on one thing we both strongly agree: Patent law needs to catch up with decades of technological and economic change, and the time for patent reform is now.

That is why we have worked closely together for the last few years to study the patent system, listen to stakeholders, forge constructive reforms, and move them through the legislative process for the Senate's consideration. Now before the Senate are the first significant reforms to our antiquated system in more than 50 years.

The Patent Reform Act of 2007 (S.1145) is the product of years of deliberation and study within Congress and by many esteemed agencies and institutions. We have held dozens of hearings with testimony from scores of witnesses, extensive and substantive mark-up sessions, and hundreds of meetings and discussions with countless stakeholders representing a sweeping array of interests in the patent system.

The Constitution specifically directed Congress to enact a patent law, and Congress has periodically modernized that law over the last two centuries. But the last time our current law was last thoroughly updated our economy was defined by assembly lines and brick-and-mortar production. Now we are living in the Information Age.

Unfortunately, Congress has failed to modernize our patent system to keep pace with the boom in American innovation. Recent Supreme Court decisions have nudged legal standards in the right direction, reflecting the growing sense that questionable patents are too easy to get and too hard to challenge. But the court is constrained in its decisions by the laws on the books, and by the cases brought before it; it is time to dust off and refresh our patent laws.

If we are to maintain our position at the forefront of the global economy and continue to lead the world in innovation and production, we need an efficient and streamlined patent system that issues high-quality patents while limiting wheel spinning and counterproductive litigation. Our bipartisan reform bill is a solid step toward achieving these goals.

In 2003, the Federal Trade Commission reported that patents of questionable validity were inhibiting innovation and competition, harming consumers and businesses and our overall economy. The FTC further found that relying on court battles to challenge questionable patents was unduly costly and cumbersome. To address this problem, our bill would set up an administrative, post-grant review procedure. This would not only cut down on legal costs for the patent holder and the patent challenger, but it would also leave the issue to those best equipped to review patents - the experts at the U.S. Patent and Trademark Office.

We must also restore fairness to the rules that govern how courts determine damages when a patent is infringed. The threat of excessive damages is curtailing progress, and the loss of jobs and innovation is directly linked to litigation costs. But we must be careful to strike the right balance so that violating intellectual property rights of others does not just become an acceptable cost of doing business. The goal of our reforms is to ensure that patent holders will be able to obtain appropriate compensation in cases of infringement.

Under today's rules, patent cases can be brought virtually anywhere in the country. Plaintiffs can "forum shop," filing their lawsuits in jurisdictions that have virtually no relevance to the underlying case, but everything to do with where the plaintiff stands the best chance of winning the case. Our bill would prevent this by bringing the standards for selecting venues in line with mainstream jurisprudence.

Another provision to clarify and limit use of the so-called inequitable conduct defense would also bring balance to the patent system. This defense is used to assert that the patent in question was obtained improperly and is, therefore, invalid. It is frequently pled, and when it is misused, it needlessly drives up the cost of litigation.

The Senate Judiciary Committee passed this important legislation last July, and we have welcomed the continued dialogue on how best to perfect it. Unfortunately, some would like to play political ping-pong with the bill to pursue other

agendas. We are united in our view that these reforms are far too important to fall prey to such partisan tactics from either side. We welcome the continued debate on issue. At the end of day, we are confident that we will resolve the remaining issues in ways that should make everyone comfortable and will ensure final passage.

The Senate has a tremendous and historic opportunity - and a constitutional responsibility - to further strengthen our nation's competitiveness through meaningful patent reform. The time for delay is over; the Senate must consider these important reforms in April.

Leahy is chairman of the Senate Judiciary Committee. Hatch served as chairman from 1995 to 2001 and from 2003 to 2005.