

Statement Of Senator Patrick Leahy On Senate Debate Of The Patent Reform Act, S.23

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The Senate is today turning its attention to a measure that will help create jobs, energize the economy and promote innovation. The Patent Reform Act, which has also come to be called the America Invents Act, is a key part of any jobs agenda. We can help unleash innovation and promote American invention, all without adding a penny to the deficit. This is commonsense, bipartisan legislation. During the next few days, the Senate can come together to pass this needed legislation, and do so in a bipartisan manner that represents the finest traditions of the Senate.

I thank the majority leader for proceeding to this measure and the Republican leader for his cooperation. This is a bill that was reported unanimously by the members of the Judiciary Committee because we all know it is important to our country's continued economic recovery, and to our successfully competing in the global economy. America needs a 21st century patent system to lead. The last extensive reform of our patent system was nearly 60 years ago. It is time.

While the Congress debates spending and budget measures in an often-to-partisan manner, the American people are craving – and the American economy is demanding – bipartisan legislation that can create jobs and stimulate our economy through common sense structural changes, rather than by spending.

In his State of the Union address, President Obama challenged the Nation to out-innovate, out-build and out-educate. Enacting the America Invents Act is a key to meeting this challenge. Reforming the Nation's antiquated patent system will promote American innovation, create American jobs, and grow America's economy. I thank the President and his administration for their help and support for the Leahy-Hatch-Grassley America Invents Act. Commerce Secretary Locke has been a strong partner in our efforts, and Director Kappos of the Patent and Trademark Office has been an indispensable source of wise counsel.

Innovation drives the Nation's economy, and that entrepreneurial spirit can only be protected by a patent system that promotes invention and spurs new ideas. We need to reform our patent

system so that these innovations can more quickly get to market. A modernized patent system – one that puts American entrepreneurs on the same playing field as those throughout the world – is a key to that success. This is an idea that cuts across the political spectrum.

Our bipartisan Senate cosponsors include Senator Kohl of Wisconsin; Senator Klobuchar of Minnesota; Senator Gillibrand of New York; Senator Coons of Delaware; as well as Senator Kyl, the Assistant Republican leader; Senator Sessions of Alabama; Senator Lieberman of Connecticut; Senator Franken of Minnesota; and Senator Blumenthal of Connecticut. Republicans and Democrats from big states and small, and from all ends of the political spectrum are coming together to support American innovation.

The Senate Judiciary Committee unanimously approved this legislation on February 3, 2011. But this effort extends back several years. Our current congressional efforts to reform the Nation's patent system began in 2005. Indeed, our bill is the product of years of work and compromise. The Senate Judiciary Committee has reported patent reform legislation to the Senate in each of the last three Congresses. And the House has seen efforts over the same period led by Congressmen Lamar Smith of Texas and Howard Berman of California. The legislation we are considering today, in fact, is structured on the original House bill and contains many of the original provisions.

From the beginning, we each recognized the need for a more effective and efficient patent system, one that improves patent quality and provides incentives for entrepreneurs to create jobs. A balanced and efficient intellectual property system that rewards invention and promotes innovation through high quality patents is crucial to our Nation's economic prosperity and job growth.

That is how we win the future – by unleashing the American inventive spirit. This bill, the America Invents Act, will allow our inventors and innovators to flourish.

And let me emphasize, it will do this without adding a penny to the deficit. Not a dime in taxpayer money is spent on the Patent and Trademark Office (PTO) reforms. They are all funded by patent fees, not taxes.

The America Invents Act will accomplish three important goals, which have been at the center of the patent reform debate from the beginning: It will improve and harmonize operations at the PTO; it will improve the quality of patents that are issued; and it will provide more certainty in

litigation. In particular, the legislation will move this Nation's patent system to a first-inventor-to-file system, make important quality enhancement mechanisms, and provide the PTO with the resources it needs to work through its backlog by providing it with fee setting authority, subject to oversight.

The America Invents Act provides the tools the PTO needs to separate the inventive wheat from the chaff, which will help business bring new products to market and create jobs.

This legislation has been supported by business and labor, including the National Association of Manufacturers, the United Steelworkers, the National Venture Capital Association, the AFL-CIO, the Association of American Universities, and companies representing all sectors of the patent community that have been urging action on patent reform proposals for years. I ask that certain letters of support be included in the Record at this point.

Innovation has always been at the heart of America and American success. From the founding of our Nation, we recognized the importance of promoting and protecting innovation, and so the Constitution explicitly grants Congress the power to “promote the progress and science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.” The patent system plays a key role in encouraging innovation and bringing new products to market. The discoveries made by American inventors and research institutions, commercialized by our companies, and protected and promoted by our patent laws have made our system the envy of the world.

In spite of this, a *Newsweek* study last year found that only 41 percent of Americans believe that the United States is staying ahead of China in innovation. A *Thompson Reuters* analysis has already predicted that China will outpace the United States in patent filings this year. China, in fact, has a specific plan not just to overtake the United States this year in patent applications, but to more than quadruple its patent filings over the next five years.

That is astonishing, until considering that China has been modernizing its patent laws and promoting innovation while the United States has failed to keep pace. It has now been nearly 60 years since Congress last acted to reform American patent law. We can no longer wait. We can no longer remain complacent and expect to stay on top.

In many areas that were highly contentious when the patent reform debate began, the courts have acted. Their decisions reflect the concerns heard in Congress that questionable patents are too

easily obtained and too difficult to challenge. The courts have moved the law in a generally positive direction, more closely aligned with the text of the statutes.

Most recently, the Federal Circuit aggressively moved to constrain run-away damage awards, which plagued the patent system by basing awards on unreliable numbers, untethered to the reality of licensing decisions.

The courts have addressed issues where they can, but in some areas, only Congress can take the necessary steps. The America Invents Act will both speed the application process and, at the same time, improve patent quality. It will provide the USPTO with the resources it needs to work through its application backlog, while also providing for greater input from third parties to improve the quality of patents issued and that remain in effect.

High quality patents are the key to our economic growth. They benefit both patent owners and users, who can be more confident in the validity of issued patents. Patents of low quality and dubious validity, by contrast, enable patent trolls who extort unreasonable licensing fees from legitimate businesses, and constitute a drag on innovation. Too many dubious patents also unjustly cast doubt on truly high quality patents.

The Department of Commerce issued a report indicating that these reforms will create jobs without adding to the deficit. The Obama administration supports these efforts, as do industries and stakeholders from all sectors of the patent community. Congressional action can no longer be delayed.

Innovation and economic development are not uniquely Democratic or Republican objectives, so we worked together to find the proper balance for America – for our economy, for our inventors, for our consumers.

Thomas Freidman wrote not too long ago in *The New York Times* that the country which “endows its people with more tools and basic research to invent new goods and services [] is the one that will not just survive but thrive down the road. . . . We might be able to stimulate our way back to stability, but we can only invent our way back to prosperity.”

This country’s first patent was issued to a Vermonter. Thomas Jefferson, the Secretary of State, examined the application, and President George Washington signed it. A recent Judiciary Committee meeting on this measure was on the anniversary of the day Thomas Edison received

the historic patent for the principles of his incandescent lamp that paved the way for the bulb that has illuminated homes, offices and venues throughout the country and around the world. This week is when the patent was issued for life-saving improvements to the diver's suit. It was magician Harry Houdini who devised a mechanism to allow divers in distress to safely escape a diving suit. Working together, we can smooth the path for more interesting – and great – American inventions. That is what bipartisan, comprehensive patent reform bill will do.

I want to recognize in particular the work of Senator Hatch, who has been a longtime partner of mine on intellectual property issues, and Senator Grassley, the Ranking Republican on our Committee. The bill has also received tremendous input from Senator Kyl, Senator Klobuchar, Senator Sessions and many others. We are working together, along with those on both sides of the aisle in the House, to reach the goal of improving patent quality and the operations at the PTO, and to address the related unpredictability of litigation that has been harming innovation.

No one claims that ours is a perfect bill. It is a compromise that will make key improvements in the patent system. Over the course of the next couple of days, the Senate will have the opportunity to consider amendments.

Senator Coburn intends to bring an amendment on the use of patent fees. Other Senators who disagree with the move to a first-to-file system may seek to reverse that progress. I urge those Senators that have amendments to come forward, agree to time agreements and proceed without delay.

We should be able to complete action on this bill this week and I would hope by Wednesday night. Then the Senate will need to move on to other important matters. So after a brief period for opening statements to outline the bill and frame the debate, I will call for Senators to come forward with any amendments they may have to the bill. This bill is important and its scheduling comes as no surprise. It was more than 10 days ago that the Senate unanimously agreed to its consideration.

So, let us do our job, and get to the task of considering and completing action on this important bill in order to help create jobs, encourage innovation and promote American invention.