

the world use a first-to-file system, if you want your patent to be valid outside the United States you need to comply with first-to-file in any event.

Among many of our most innovative companies, 70 percent of their licensing revenues come from overseas. Obviously, they are already going to be complying with the first-to-file rules. This bill does not, therefore, so much switch the system with which Americans are complying today as it simply allows American companies to only have to comply with one system rather than two. As I said before, the first-to-file concept is clearer, faster, more transparent, and provides more certainty to inventors and manufacturers.

On the other hand, the first-to-invent concept would make it impossible, in many instances, to know who has priority and which of the competing patents is the valid one. To determine who has priority under first to invent, extensive discovery must be conducted and the Patent Office and courts must examine notebooks and other evidence to determine who conceived of the invention first and whether the inventor then diligently reduced it to practice.

Under first-to-file, on the other hand, an inventor can get priority by filing a provisional application. This is an important point. It is easy. It is not as if the first-to-file is hard to do. This provisional application, which only costs \$110 for the small inventor, only requires you to write a description of what your invention is and how it works. That is all. That is the same thing that an inventor's notebook would have to contain under the first-to-invent concept if you are ever going to prevail in court by proving your invention date.

Because a provisional application is a government document, the date is clear. There is no opportunity for fraudulently backdating the invention date. There is no need for expensive discovery: What did the inventor know and when did he know it? You are essentially not requiring anything in addition. You file a provisional application. You have an entire year to get all of your work together and file your completed application, but your date is as of the time you file the provisional application.

As I said, for a small entity, the fee is only \$110. That grace period makes it clear that the patent will not be invalid because of disclosures made by the inventor or someone who got information from an inventor during 1 year before filing. That is important.

A lot of academics and folks go to trade shows and begin talking about their concepts and what they have done. If you disclose this, you have a year to file after you disclose the information. And under the bill's second, enhanced grace period, no other disclosure, regardless of whether it was obtained from the inventor, can then invalidate the invention.

The bill has been very carefully written to protect the small inventor or

the academic. That is what it is designed to do. This is not a case of big versus small, although people both big and small support the legislation. If anybody suggests the Feinstein amendment will protect the small inventor, it does not protect the small inventor. In fact, as I said, the legislation is very carefully crafted to give the small inventor a variety of ways to ensure that he or she is protected.

The first coalition to bring the whole idea of patent reform to the Congress, the Coalition for 21st Century Patent Reform, is very strongly in support of the legislation and in opposition to the Feinstein amendment. In fact, it noted in a statement released Wednesday that not only does it oppose the amendment, it would oppose the entire bill if the amendment were to be adopted and this first-to-file concept were stricken from the bill.

In fact, here is what they said:

The first-inventor-to-file provisions currently in S. 23 form the linchpin that makes possible the quality improvements that S. 23 promises.

Here is what the Obama Statement of Administration Policy says. It lays out exactly what is at stake:

By moving the United States to a first-to-file system, the bill simplifies the process of acquiring rights. This essential provision will reduce legal costs, improve fairness, and support U.S. innovators seeking to market their products and services in the global marketplace.

I am continuing the statement:

Most of the arguments in opposition to the bill and FITF appear to be decades-old contentions that have been fully and persuasively rebutted. As one example, the National Research Council of the National Academies assembled a group of leading patent professionals, economists, and academics who spent four years intensely studying these issues and concluded in 2004 that the move to FITF represented a necessary change for our patent system to operate fairly, effectively and efficiently in the 21st century.

They go on to say:

Without retaining S. 23's current FITF provisions, the bill would no longer provide meaningful patent reform.

Let me repeat that. If the Feinstein amendment would prevail, "the bill would no longer provide meaningful patent reform."

As an example, the new provisions on post-grant review of patents, an important new mechanism for assuring patent quality, could no longer be made to work. Instead of a patent reform bill, what would remain of S. 23 would be essentially an empty shell.

Let me finish the statement:

Thus, we could not continue our support of passage of S. 23 without the first-inventor-to-file provisions present in the bill. It would place us in the unfortunate position of opposing moving forward with a bill where we have been among the longest, most ardent supporters.

Just to conclude, the National Association of Manufacturers, which represents both large and small manufacturers in every industrial sector, has also made it clear that it strongly opposes the amendment. I will conclude

by quoting from that group's statement in opposition to the Feinstein amendment.

The NAM supports transitioning the United States from a "first-to-invent" system to a "first-to-file" system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies. The "first-to-file" provision currently included in S. 23 achieves this goal.

Mr. President, I hope my colleagues will pay close attention to the arguments made by Chairman LEAHY and the arguments I have made in opposition to the Feinstein amendment. Whether intended or not, it would be a poison pill. It would kill the legislation if it were adopted. We need to move this important legislation forward, as the administration notes in its statement of policy, and therefore I urge my colleagues, when we have an opportunity to vote on the Feinstein amendment, to vote against it and to support the legislation as reported.

The ACTING PRESIDENT pro tempore. Morning business is closed.

PATENT REFORM ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 23, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 23) to amend title 35, United States Code, to provide for patent reform.

Pending:

Leahy amendment No. 114, to improve the bill.

Bennet amendment No. 116, to reduce the fee amounts paid by small entities requesting prioritized examination under Three-Track Examination.

Feinstein amendment No. 133, to strike the first inventor to file requirement.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

AMENDMENT NO. 133, AS MODIFIED

Mr. LEAHY. Mr. President, I understand we have the Feinstein amendment No. 133 at the desk. I ask unanimous consent that the Feinstein amendment No. 133 be modified with the changes that are at the desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 2, line 3, strike "**FIRST INVENTOR TO FILE.**" and insert "**FALSE MARKING.**"

On page 2, strike line 4 and all that follows through page 16, line 21, and insert the following:

(a) FALSE MARKING.—

On page 17, line 18, strike "(1)" and insert "(b)".

On page 18, strike line 22 and all that follows through page 32, line 11.

On page 66, strike line 9 and all that follows through page 67, line 8.

On page 71, line 1, strike "derivation" and insert "interference".

On page 71, line 5, strike “derivation” and insert “interference”.

On page 72, line 24, strike “DERIVATION” and insert “INTERFERENCE”.

On page 72, lines 24 and 25, strike “derivation” and insert “interference”.

On page 73, line 4, strike “derivation” and insert “interference”.

On page 73, line 18, strike “derivation” and insert “interference”.

On page 73, line 23, strike “derivation” and insert “interference”.

On page 74, lines 2 and 3, strike “derivation” and insert “interference”.

On page 74, between lines 20 and 21, insert the following:

(d) CONFORMING AMENDMENTS.—Sections 41, 134, 145, 146, 154, 305, and 314 of title 35, United States Code, are each amended by striking “Board of Patent Appeals and Interferences” each place that term appears and inserting “Patent Trial and Appeal Board”.

On page 74, line 21, strike “(d)” and insert “(e)”.

On page 95, strike lines 13 through 15, and insert the following: by inserting “(other than the requirement to disclose the best mode)” after “section 112 of this title”.

Mr. LEAHY. Mr. President, I wish to thank the distinguished Senator from Arizona for his words here this morning. He is part of the small group of Republicans and Democrats who have worked very hard over the last couple of years on this bill with the idea of giving us something that would allow inventors, innovators, and entrepreneurs in America to be able to compete with the rest of the world.

I am one American who believes we can compete with anybody anywhere provided we get a level playing field. Other countries have set up enough barriers for us of their own. We shouldn't be setting up barriers here in the United States. One thing we can do is to make some major, long-overdue changes in the patent laws to give us that level playing field. Inventors and innovators in America who will take advantage of this will be better off for it and will create jobs, but most importantly, we will show the rest of the world that America is open for business.

Americans can be the innovators they have been from the time the first patent was issued—and I say this with pride—to a Vermonter back when then-Secretary of State Thomas Jefferson reviewed the application, which was then signed by the President of the United States, George Washington. Now, of course, they are not reviewed by the Secretary of State and signed by the President, thank goodness, because there are over 700,000 applications pending.

We need legislation to bring us up to date, and this act will promote innovation, it will create new businesses and, as a result, new jobs. This is bipartisan legislation that will allow inventors to secure their patents more quickly and to have better success commercializing them.

The pending amendment would gut the reforms intended by the bill. With all due respect, it would destroy all the work we have tried to do in this bill. It would eliminate a major piece of this

effort—the transition to a first-inventor-to-file patent system. First-inventor-to-file is a necessary component of this legislation and enjoys support from every corner of the patent community.

The administration, the Secretary of Commerce, and the head of the Patent and Trademark Office all oppose this amendment. A vast array of individuals, independent small inventors, small businesses, and labor oppose this amendment. The four senior Republicans on the Judiciary Committee who have worked so hard on this bill—Senators GRASSLEY, HATCH, KYL, and SESSIONS—oppose this amendment. Needless to say, I oppose this amendment. It would be a poison pill to these legislative reform efforts.

Supporters of the legislation before us—ranging from high-tech and life sciences companies to universities and small businesses—place such a high importance on the transition to the first-inventor-to-file system that many of them, including those who reside in just about every State, would not support a bill without those provisions.

A transition to first-inventor-to-file has been part of this bill since its introduction four Congresses ago. Yet, until very recently, first-inventor-to-file was never the subject of even a single amendment in the Judiciary Committee over all those years. This legislation is the product of eight Senate hearings and three markups spanning weeks of consideration and numerous amendments. Never was first-inventor-to-file a contentious issue. Now some well-financed special interests that do not support the America Invents Act have decided to kill the bill by a last-minute campaign to strike these vital provisions.

I urge Senators to support the goals of the America Invents Act and vote against this amendment to strike first-inventor-to-file.

Mr. President, the United States is the only industrialized country still using a first-to-invent system, and there is a reason for that. A first-inventor-to-file system, by contrast, where the priority of a right to a patent is based on the earlier filed application, adds simplicity and objectivity into a very complex system. By contrast, our current outdated method for determining the priority right to a patent is extraordinarily complex, it is subjective, it is time-intensive, and it is expensive. The old system almost always favors the larger corporation and the deep pockets over the small independent inventor.

This past weekend, the Washington Post editorial board endorsed the transition, calling our first-inventor-to-file standard a “bright line.” They went on to say it would bring “certainty to the process.” The editorial also rightly recognizes the “protections for academics who share their ideas with outside colleagues or preview them in public seminars” that are included in the bill.

The transition to a first-inventor-to-file system will benefit small inventors

and inventors of all sizes by creating certainty. Once a patent is granted, an inventor can rely on its filing date on the face of the patent.

The reduction in costs to patent applications that comes with a transition to this system should also help the small independent inventor. In the current outdated system where more than one application claiming the same invention is filed, the priority of a right to a patent is decided through an “interference” proceeding to determine which applicant can be declared to have invented the claimed invention first. It is lengthy, it is complex, and it can cost hundreds of thousands of dollars. Small inventors rarely, if ever, win interference proceedings. In a first-inventor-to-file system, however, the filing date of the application is objective and easy to determine, resulting in a streamlined and less costly process.

The bill protects against the concerns of many small inventors and universities by including a 1-year grace period to ensure the inventor's own publication or disclosure cannot be used against him as prior art but will act as prior art against another patent application. This encourages early disclosure of new inventions regardless of whether the inventor ends up trying to patent the invention.

The transition to first-inventor-to-file is ultimately needed to help American companies and innovators compete globally. As business and competition increasingly operate on a worldwide scale, inventors have to file patent applications in both the United States and other countries for protection of their inventions. Since America's current outdated system differs from the first-inventor-to-file system used in other patent-issuing jurisdictions—all our competitors—it causes confusion and inefficiencies for American companies and innovators. Harmonization will benefit American inventors.

Commerce Secretary Gary Locke highlighted the importance of the first-inventor-to-file provision to the bill in his column published in *The Hill* yesterday. He noted that it “would be good for U.S. businesses, providing a more transparent and cost-effective process that puts them on a level playing field with their competitors around the world.”

Secretary Locke went on to confront the erroneous notion that the current outdated system is better for small independent inventors, and he did it head-on by explaining that in his “strong opinion that the opposite is true.” The first-inventor-to-file system is better for the small independent inventor. As the Secretary noted:

The cost of proving that one was first to invent is prohibitive and requires detailed and complex documentation of the invention process. In cases where there's a dispute about who the actual inventor is, it typically costs at least \$400,000 in legal fees, and even more if the case is appealed. By comparison, establishing a filing date through a provisional application and establishing priority of invention costs just \$110.

Secretary Locke explained how the 125,000 provisional applications currently filed each year prove that early filing dates protect the rights of small inventors. He reiterated that during the past 7 years, under the current outdated, cumbersome, and expensive system, of almost 3 million applications filed, only 1 patent was granted to an individual inventor who was the second to apply.

Our reform legislation enjoys broad support. I have already mentioned some of those supporters, but let me highlight a few more:

Just yesterday, the National Association of Manufacturers urged every Senator to oppose the effort to strike the first-to-file transition, writing, "The NAM supports transitioning the United States from a 'first-to-invent' system to a 'first-to-file' system to eliminate unnecessary cost and complexity in the U.S. patent system."

The Small Business & Entrepreneurship Council has expressed its strong support for the first-inventor-to-file system, writing that "small firms will in no way be disadvantaged, while opportunities in the international markets will expand."

The Intellectual Property Owners Association calls the first-inventor-to file system "central to modernization and simplification of patent law" and "very widely supported by U.S. companies."

Independent inventor Louis Foreman has said the first-inventor-to-file transition will help "independent inventors across the country by strengthening the current system for entrepreneurs and small businesses."

Six university, medical college, and higher education associations have urged the transition to first-to-file, saying that it will "add greater clarity to the U.S. system."

And, in urging the transition to the first-to-file system, the Association for Competitive Technology, which represents small and mid-size IT firms, has said the current outdated system "negatively impacts entrepreneurs" and puts American inventors "at a disadvantage with competitors abroad who can implement first inventor to file standards." That is why it is so important to move to a first-inventor-to-file system.

I ask unanimous consent copies of the Washington Post editorial, "Patenting Innovation," be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. I also ask letters from the National Association of Manufacturers, higher education associations, the Small Business & Entrepreneurship Council be printed in the RECORD at the conclusion of my comments.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. LEAHY. I will conclude with this: If we are to continue to lead the globe in innovation and production, if we are to win the future through American ingenuity and innovation, we must have a patent system that is streamlined and efficient. The America Invents Act, and a transition to a first-inventor-to-file system in particular, is crucial to fulfill this promise. I urge all Senators on both sides of the aisle to oppose the Feinstein amendment and support the important provision of first-inventor-to-file, which is at the heart of the America Invents Act.

As I said, I submit the list of stakeholders across the spectrum from high-tech and life sciences to universities and small inventors in support of a transition to the first-to-file system, and ask unanimous consent that list be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 3.)

Mr. LEAHY. Mr. President, I see the distinguished Senator from Delaware who has been so helpful on this legislation on the floor, so I yield the floor.

EXHIBIT 1

[From the Washington Post, Feb. 26, 2011]

PATENTING INNOVATION

More than 60 years have passed since a major overhaul of the U.S. patent system has taken place. And it shows.

The U.S. patent system lags woefully. One example: Patents in the United States are given to those "first to invent." This approach is out of step with the rest of the world's "first to file" approach and is highly inefficient. It invites people to come out of the woodwork years after a product has been on the market to claim credit and demand royalties.

The secretive and lengthy U.S. process also too often results in patents for products that are neither novel nor innovative. It leaves manufacturers vulnerable to infringement lawsuits and damage awards long after their products have gone to market.

The Senate is poised to take up a bill on Monday that would eliminate these defects and bring the U.S. system into the 21st century.

The Patent Reform Act, introduced by Sens. Patrick J. Leahy (D-Vt.) and Orrin G. Hatch (R-Utah), would recognize the "first inventor to file" standard, creating a bright line—the date on which a patent application was filed—and bringing certainty to the process. Yet the bill is not inflexible and wisely keeps in place protections for academics who share their ideas with outside colleagues or preview them in public seminars.

The bill also would increase protections for those with legitimate gripes. Third parties, currently shut out of the process, would be given clear rules and time limits to challenge patents that have not yet been approved. They'd also have a chance to lodge objections after a patent has been granted; the U.S. Patent and Trademark Office (PTO) would resolve these disputes. This safety valve should reduce the litigation costs associated with court challenges.

The PTO has long been overwhelmed and underfunded. The bill would allow the agency to set the amount it charges for filings while providing discounts to solo inventors and small companies. An amendment likely to be introduced by Sen. Tom Coburn (R-

Okla.) would allow the agency to keep all of its fees, thereby ensuring it the resources it needs to carry out the bill's mandates.

The president made much of "winning the future" in his State of the Union address. A patent system that protects innovators and encourages meaningful breakthroughs would help achieve that goal.

EXHIBIT 2

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, March 2, 2011.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The National Association of Manufacturers (NAM), the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states, urges you to oppose amendment 133 offered by Sen. Dianne Feinstein (D-CA) to S. 23, The America Invents Act.

The amendment would remove a key provision in S. 23, The America Invents Act, which is strongly supported by manufacturers, the creation of a "first-inventor-to-file" system.

The NAM supports transitioning the United States from a "first-to-invent" system to a "first-to-file" system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies. The "first-to-file" provision currently included in S. 23 achieves this goal.

Thank you for your consideration and your support for the "first-to-file" system.

Sincerely,

DOROTHY COLEMAN.

FEBRUARY 28, 2011.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: We write as the presidents of six university, medical college, and higher education associations to express the strong support of our associations for S. 23, the Patent Reform Act of 2011, which was reported by the Senate Judiciary Committee on a 15-0 vote and is scheduled to be considered by the Senate this week. This bipartisan agreement represents the successful culmination of a thorough, balanced effort to update the U.S. patent system to support more effectively the nation's economic competitiveness and job creation in the increasingly competitive global environment of the 21st century.

Our universities and medical colleges are this nation's principal source of the fundamental research that expands the frontiers of knowledge, strengthening the nation's innovative capacity. The patent system plays a critical role in enabling these institutions to transfer the discoveries arising from university research into the commercial sector for development into products and processes that benefit society.

S. 23 will:

Harmonize the U.S. patent system with that of our major trading partners, enabling U.S. inventors to compete more effectively in the global marketplace;

Improve patent quality by allowing third parties to submit information to the USPTO concerning patents under examination, and by creating an efficient, effective post-grant opposition proceeding to challenge patents for nine months after they have been granted, allowing challengers to eliminate weak patents that should not have been granted

and strengthening those patents that survive the challenge;

Reduce patent litigation costs by establishing the new post-grant procedure noted above, and by significantly improving the current inter partes review procedure, which will provide a lower-cost alternative to civil litigation to challenge a patent throughout its lifetime, while significantly reducing the capacity to mount harassing serial challenges; and

Provide USPTO with increased resources by providing this fee-funded agency with critically needed fee-setting authority, subject to Congressional and Patent Public Advisory Committee oversight.

We wish to call your attention to two important amendments that may be offered during floor consideration:

Senator Coburn is expected to offer an amendment to prevent diversion of fees collected by USPTO. This amendment is a critical accompaniment to the fee-setting authority provided by S. 23, allowing this seriously under-resourced agency to maintain the fees necessary to carry out its critical functions and reduce the backlog of patent applications. We urge you to support the Coburn amendment.

Senators Feinstein, Boxer, and Reid are expected to offer an amendment to eliminate the transition to a first-inventor-to-file system. The National Academies, in its seminal report on patent reform, A Patent System for the 21st Century, strongly recommended moving from a first-to-invent to a first-inventor-to-file system. Adopting a first-inventor-to-file system will harmonize the U.S. patent law with that of our trading partners, add greater clarity to the U.S. system by replacing the subjective determination of the first inventor with the objective identification of the first filer, and eliminate the costs of interferences and litigation associated with determining the first inventor. We urge you to oppose the Feinstein, Boxer, and Reid amendment.

We believe S. 23 reforms current U.S. law in a way that balances the interests of the various sectors of the patent community and substantially improves the patent system overall, strengthening the capacity of this system to strengthen the nation's innovative capacity and economic competitiveness. We urge you to support this carefully crafted legislation.

Sincerely,

ROBERT M. BERDAHL,
*President, Association
of American Universities;*

MOLLY CORBETT BROAD,
*President, American
Council on Education;*

DARRELL G. KIRCH,
*President and CEO,
Association of American
Medical Colleges;*

PETER MCPHERSON,
*President, Association
of Public and Land-
grant Universities;*

ASHLEY J. STEVENS,
*President, Association
of University Technology
Managers;*

ANTHONY P. DECRAPPEO,
*President, Council on
Governmental Relations.*

This letter was sent to all members of the U.S. Senate.

SMALL BUSINESS &
ENTREPRENEURSHIP COUNCIL,
Oakton, VA, February 28, 2011.

Hon. PATRICK LEAHY,
*U.S. Senate, Russell Senate Bldg.,
Washington, DC.*

DEAR SENATOR LEAHY: The Small Business & Entrepreneurship Council (SBE Council) and its members across the nation have been strong advocates for patent reform. We are pleased that you have introduced the Patent Reform Act (S. 23), and we strongly endorse this important piece of legislation.

An effective and efficient patent system is critical to small business and our overall economy. After all, the U.S. leads the globe in entrepreneurship, and innovation and invention are central to our entrepreneurial successes. Indeed, intellectual property—most certainly including patents—is a key driver to U.S. economic growth. Patent reform is needed to clarify and simplify the system; to properly protect legitimate patents; and to reduce costs in the system, including when it comes to litigation and the international marketplace.

Make no mistake, this is especially important for small businesses. As the Congressional Research Service has reported: "Several studies commissioned by U.S. federal agencies have concluded that individuals and small entities constitute a significant source of innovative products and services. Studies have also indicated that entrepreneurs and small, innovative firms rely more heavily upon the patent system than larger enterprises."

The Patent Reform Act works to improve the patent system in key ways, including, for example, by lowering fees for micro-entities, and by shortening time periods for patent reviews by making the system more predictable.

During the debate over this legislation, it is expected that two important areas of reform will come under attack.

First, the U.S. patent system is out of step with the rest of the world. The U.S. grants patents on a first-to-invent basis, rather than the first-inventor-to-file system that the rest of the world follows. First-to-invent is inherently ambiguous and costly, and that's bad news for small businesses and individual inventors.

In a 2004 report from the National Research Council of the National Academies (titled "A Patent System for the 21st Century"), it was pointed out: "For those subject to challenge under first-to-invent, the proceeding is costly and often very protracted; frequently it moves from a USPTO administrative proceeding to full court litigation. In both venues it is not only evidence of who first reduced the invention to practice that is at issue but also questions of proof of conception, diligence, abandonment, suppression, and concealment, some of them requiring inquiry into what an inventor thought and when the inventor thought it." The costs of this entire process fall more heavily on small businesses and individual inventors.

As for the international marketplace, patent harmonization among nations will make it easier, including less costly, for small firms and inventors to gain patent protection in other nations, which is critical to being able to compete internationally. By moving to a first-inventor-to-file system, small firms will in no way be disadvantaged, while opportunities in international markets will expand.

Second, as for improving the performance of the USPTO, it is critical that reform protect the office against being a "profit center" for the federal budget. That is, the USPTO fees should not be raided to aid Congress in spending more taxpayer dollars or to

subsidize nonrelated programs. Instead, those fees should be used to make for a quicker, more predictable patent process.

Thank you for your leadership Senator Leahy. Please feel free to contact SBE Council if we can be of assistance on this important issue for small businesses.

Sincerely,

KAREN KERRIGAN,
President & CEO.

EXHIBIT 3

RECORD SUBMISSIONS—FIRST-TO-FILE

Mr. President. We have heard from stakeholders from across the spectrum—from high tech and life sciences, to universities and small inventors—in support of the transition to the first-to-file system. These supporters include:

AdvaMed; American Bar Association; American Council on Education; American Intellectual Property Law Association; Association of American Medical Colleges; Association for Competitive Technology; Association of American Universities; Association of Public and Land-grant Universities; Association of University Technology Managers; Biotechnology Industry Organization; Business Software Alliance; Coalition for 21st Century Patent Reform, a coalition of 50 companies from 18 different industry sectors, such as General Electric, Procter & Gamble, 3M, Pfizer, and Cargill.

Council on Governmental Relations; Gary Michelson, Independent Inventor; Genentech; Intellectual Property Owners Association; Louis J. Foreman, Inventys, Independent Inventor; National Association of Manufacturers; The Native American Intellectual Property Enterprise Council; PhRMA; Small Business and Entrepreneurship Council; Software & Information Industry Association.

The ACTING PRESIDENT pro tempore. The Senator from Delaware is recognized.

Mr. COONS. Mr. President, I thank the chairman for his leadership on this floor deliberation regarding S. 23, the America Invents Act.

I rise to speak in opposition to the Feinstein amendment, which would strike the first-to-file provision, which I think is one of the critical components of this act that will harmonize the patent system with that of the rest of the world, as I heard Chairman LEAHY speak to. This is the first comprehensive patent reform bill in 60 years. It is a key piece of our bipartisan work to make sure the United States remains a competitive country which can once again be in the forefront of world innovation.

As someone who, like you, Mr. President, is concerned about manufacturing, is concerned about employment, is concerned about jobs, one of the ways we can restrengthen, reinvigorate, reenergize manufacturing in this country is by making sure our Patent and Trademark Office is as capable, is as strong as it can possibly be. I take quite seriously that the Patent and Trademark Office under the very able leadership of Director Kappos is opposed to this amendment and has also raised concern, which I share, that this amendment would tear apart the very broad coalition that has worked so hard and has negotiated this particular act, the America Invents Act, over the last 6 years.

On an issue that is as important as this, as critical as this to the protection of American innovation and the resulting creation of jobs, I think it is important that we in the Senate not allow this bipartisan bill to fall apart over this issue.

Transition to first-to-file is an improvement over the current system because it provides increased predictability, certainty, and transparency. Patent priority will depend on the date of public disclosure and the effective filing date rather than on secret inventor notebooks, secret personal files which may or may not be admissible and often lead to long and contentious litigation, as the chairman mentioned in his floor comments as well.

This predictability, the predictability that the first-to-file system will bring, I believe will strengthen the hand of investors, inventors, and the public. All will know as soon as an application is filed whether it is likely to have priority over other patent applications.

In contrast, the current system with which we worked for many years does not provide an easy way to determine priority. That is why interference proceedings can be so contentious, so long, and so expensive. There are some small inventors in particular who I know are concerned that first-to-file will be used by larger companies to steal away their rightful invention. This bill contains critical protections for all inventors so the ultimate new system, once this is passed, will be more fair, more predictable, and transparent for all. For those inventors who publicly disclose an invention before anybody else, they have a 1-year grace period to claim priority for any patent application based on the subject matter they disclose. Smaller inventors as well as large inventors will be protected as soon as they publish or otherwise disclose under this America Invents Act.

In my view, that will increase the free flow of ideas while still protecting the IP rights of any inventor, large or small.

The Patent and Trademark Office commissioned a study of patent and trademark applications filed over the last 7 years. They found only 1 out of 300,000 filings would, under the new system, grant a patent to a large company that might otherwise have gone to a small company or individual inventor. By avoiding cost, the difficulty, the unpredictability of lengthy interference proceedings, transition to first-to-file will neutralize what I think is a big structural advantage to large companies in the current dispute system.

First of all, it also gives the holder of a new patent increased confidence in the strength and reliability of this patent, which I also think will accelerate venture capital investment, new company formation, and movement toward deployment of critical new technology.

I think experience has shown in other countries, in Europe and Canada, that transitioning from a first-to-invent to

a first-to-file system will not lead directly to an increase in so-called junk applications and will, instead, make patent examination simpler, fairer, and more predictable. In short, my view is that it is crucial to the success of this legislation. It is crucial for the coalition that has come together over many years to support it. It is crucial for the progress this act will make in strengthening and streamlining the patent review and granting process in the United States. So I urge my colleagues to oppose the amendment, amendment No. 133.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWN of Ohio). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENNET. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNET. Mr. President, I would like to speak briefly on the importance of passing the America Invents Act.

Chairman LEAHY and the Judiciary Committee have worked hard to put this product on the floor that will mark the biggest reforms to our patent system in 60 years. This bill will create jobs in Colorado and across the country by promoting innovation. By making our patent system more efficient, we are building the foundation for future economic growth.

In my State alone, nearly 20,000 patent applications have been granted between the years 2000 and 2009. These applications have created the foundation for our clean energy economy and emerging tech and bio industries.

Having a high quality U.S. Patent and Trademark Office is essential to maintaining American leadership in innovation. The America Invents Act will help us grow new industries and will help cure the backlog and delay that have stunted the ability of inventors to patent their ideas.

Right now, the average pendency period for a patent application is 36 months. That is unacceptable if we are to compete with the rest of the world. This does not even account for those patents that have been tied up in years of litigation after they are granted.

And we have improved the bill on the floor by helping solidify alternatives to litigation, provide for more efficient resolution of disputes and help create more certainty, which is essential to inventors.

It is hard to pass a jobs bill without spending money, but that is absolutely what we have done here. The bill does a good job of balancing the interests of innovators across the many sectors of our economy.

We have passed a number of bipartisan amendments that have improved this bill. We added amendments promoting the establishment of satellite USPTO offices in regions across the country; creating a discount for small

entities to participate in the accelerated patent examination program of the USPTO; and addressing concerns with damages and venue provisions. I am proud to have worked with the chairman and the ranking member to get these issues resolved.

I also commend Senator MENENDEZ on his amendment to provide a fast track for patents that are critical for our national competitiveness, which I cosponsored.

The Senate has come a long way toward improving our patent system with this legislation and harmonizing our system with the rest of the world. There are a lot of people in my State who are interested in further improvements. I pledge to continue to work with them to help make sure we continue to fine tune this legislation where we can.

The America Invents Act represents significant progress for our patent system. We are moving our patent system into the new century, which is already being defined by the next wave of American innovation. The breadth of support for this legislation across industries and from large and small businesses, as well as our universities, has provided the momentum to complete this legislation.

I would like to close by again thanking the chairman and Judiciary Committee. I urge my colleagues to vote for patent reform.

I thank the Chair. I yield the floor.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SETTING THE RECORD STRAIGHT

Mr. DURBIN. This morning the Republican leader came to the floor, Senator MCCONNELL, and made some pretty strong and sweeping statements about the state of the deficit and responsibility. I would like to have a chance to respond.

Senator MCCONNELL said for 2 years now Washington Democrats have taken fiscal recklessness to new heights. The amount of red ink Democrats plan to wrack up this year alone would exceed all the debt run up by the Federal Government since its inception through 1984.

I would like to set the record straight. Understand what the national debt of America was when President William Jefferson Clinton left office. We were running surpluses. We had not done that for decades—surpluses in the Federal Treasury.

What did we do with all this money? We put it in the Social Security trust fund. We bought more longevity and solvency for Social Security and, if you remember, the economy was never stronger.

William Jefferson Clinton left office, and at that moment in time, the national debt, the accumulated debt of

America, from George Washington until he left office, \$5 trillion. Remember that number, \$5 trillion. Fast forward 8 years after the end of President George W. Bush—8 years later—where were we? The national debt was now \$12 trillion.

Fiscal recklessness by Democrats? Under President Bush, the national debt more than doubled. Instead of leaving a surplus for President Obama, he said: Welcome to an economy that is hemorrhaging hundreds of thousands of jobs lost every single month, and we anticipate next year's deficit—he told President Obama—to be \$1.2 trillion. That was what President Bush handed to President Obama.

I do not mind a selective view of history. I guess we are all guilty of that, to some extent. But to ignore the fiscal mess created that more than doubled the national debt in 8 years, to ignore that we waged two wars without paying for them, to ignore that we cut taxes in the midst of a war, which is something no President in the history of the United States has ever done, is to ignore reality.

The reality is, we are here today, in the midst of this Titanic struggle, about whether we are going to continue to keep the Federal Government functioning. We are being asked whether, 2 weeks from now, we want to have security at our airports, air traffic controllers, whether we want to have Social Security checks sent out, people actually sending a check, answering questions at the Internal Revenue Service, whether we want the Securities and Exchange Commission still working on Wall Street 2 weeks from now.

We cannot lurch forward 2 weeks at a time without doing a great disservice to taxpayers of this country, as well as to the men and women who work hard for our government every single day.

What is the answer in the House of Representatives? Well, the House of Representatives says we need to cut \$100 billion this year. They started at \$60 billion, incidentally, and then decided that was not enough for bragging rights; let's get up to \$100 billion this year.

You say: Well, out of a budget of \$3.7 trillion, how big is that? Whoa. They did not look at the budget of \$3.7 trillion. They looked at one 14-percent slice of the pie, domestic discretionary spending. That is it. Nothing to be taken out of the Department of Defense, nothing to be taken away in terms of tax breaks for the wealthiest corporations, the most successful corporations, nothing out of oil and gas royalties and the like—nothing out of that. We will take it all out of domestic discretionary.

So what did they take away? I looked in my State last week. I went up to Woodstock, IL. We have an office there with counselors who are bringing in unemployed people, sitting them in front of computers, with fax machines and copy machines. They are preparing

resumes and trying to get back to work. These are people who want to work. They need a helping hand. This place has been successful. It places people in jobs. What would happen to that office under the House Republican budget resolution? It would close its doors—more unemployed people, more unemployment checks. Is that the answer to putting America's economy back on its feet? Is that how we are going to get 15 million Americans back to work?

How about the House Republicans' proposal to eliminate \$850 a year in Pell grants. Senator LEAHY knows what that is all about. These are kids from the poorest families, many of them for the first time in their family have a chance to graduate from college, but they can't make it; they don't have enough money. We give them a helping hand. The Republicans take it away. What will that do? The President of Augustana College in Rock Island, IL, told me what it will mean. It will mean that 5 percent, 1 out of every 20 students, will not finish the school year. That is what the Republican cut means. To cut job training, to cut education when we have 15 million people out of work, what are they thinking?

Not bad enough, I went to a medical school in my hometown of Springfield, Southern Illinois University School of Medicine, and met with researchers. They get a few million a year to do medical research in fields of cancer therapy, dealing with heart issues, dealing with complaints of returning veterans. What do the House Republicans do? They virtually close down research for the remainder of the year, close down this medical research. Is that right? Is that what we want? Have we ever had a sick person in our family and we went to the doctor and asked: Is there anything, is there a drug, is there something experimental, a clinical trial, is there anything? Have we ever asked that question? If we did, we know this cut by House Republicans is mindless, to cut medical research at this moment in history.

Then I went to a national laboratory, the Argonne National Laboratory, on Monday. What do they do there? A lot of people can't answer that question. I learned specifically. Are Members aware of the Chevy Volt, a breakthrough automobile, all electric? Where did that battery in this automobile come from? The Argonne National Laboratory. How about the latest pharmaceutical breakthroughs? Virtually every one of them uses the advanced photon source at the Argonne National Laboratory. I met a man from Eli Lilly who was there experimenting with a new drug that can save lives. How about computers? Where is the fastest computer in the world today? I wish it was in the United States. It is in China. We are now working on the next fastest computer so we don't lose that edge. Where? At the Argonne National Laboratory. So what would the House Republican budget do to that

laboratory and most every other laboratory? It would eliminate one-third of the scientists and support staff working there and cut their research by 50 percent for the rest of the year.

So what? So what if we don't move these pharmaceuticals forward to market sooner to save lives, if we don't compete with the Chinese on this computer, if we don't deal with battery technology so we don't lose that edge in the world? What will it mean? Lost jobs.

The House Republicans weren't thinking clearly. They were performing brain surgery with a hacksaw. As a result, they have cut what is essential for the future: infrastructure projects, education, research. To have the Republican leader come and tell us we have to accept that, that that is the future of America—no, it is not. Time and again, when we sit down to deal with budget challenges, whether it is in the deficit commission, on which I was honored to serve, or whether it is in past negotiations, we open the table to all Federal spending, not just 14 percent, that tiny slice of the pie.

Senator MCCONNELL can remember—and I can, too—under President George Herbert Walker Bush and under President Clinton, we put on the table tax breaks for some of these oil companies and corporations and said: Is it worth America's future for us to give them a tax break or to use the money to reduce the deficit? That is an honest question. Mandatory spending. All these things need to be brought to the table for conversation, but that is not the position of the Republicans. They would rather see us shut down the government than to open this conversation to the entire Federal budget. They would rather see us shut down the government than fight to make sure education, training, research and innovation and infrastructure are there to build a strong American economy for the future.

I say to my friend Senator MCCONNELL, we don't need any speeches from that side of the aisle about a national debt that more than doubled under the last Republican President. We have to work together in a bipartisan way, acknowledging the reality of history, that we all have had a hand in reaching the point we are at today, both positive and negative, and we all need to take a responsible position to move us forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the comments of the Senator from Illinois. I recall great discussions during the administration of President Reagan. I happened to like President Reagan. We got along very well. But I remember discussions on a balanced budget and all that, as his budget tripled the national debt. I do recall he did veto one spending bill because it didn't spend as much as he wanted. Rhetoric is one thing, as the Senator

from Illinois points out. Reality is often different. I thank him.

AMENDMENT NO. 133, AS MODIFIED

I ask unanimous consent that at 12:30 p.m., the Senate proceed to a vote in relation to the Feinstein amendment No. 133, as modified, with no intervening action or debate; that the time until then be divided equally between the proponents and the opponents, and no amendments be in order to the Feinstein amendment prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. CANTWELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Ms. CANTWELL. Madam President, am I correct there is a vote at 12:30?

The PRESIDING OFFICER. That is correct.

Ms. CANTWELL. The time is equally divided on the Feinstein amendment?

The PRESIDING OFFICER. Correct.

Ms. CANTWELL. Madam President, I rise to support the Feinstein amendment and to ask my colleagues, who I know have been working diligently on the legislation for several years now, to respect the very tough balance that has been sought in this legislation as this legislation came out of the Judiciary Committee.

I know we adopted a managers' amendment yesterday, and I know that managers' amendment now is catching a lot of people off guard because there are far more changes than people realized in that managers' amendment that I think upsets that apple cart of balance that was struck in the Judiciary Committee.

So I am urging my colleagues to support the Feinstein amendment and expressing my concern for the underlying bill that is something that, at this point in time, I cannot support.

I do not come to that decision lightly nor because of the fact that I have many high-tech companies in the State of Washington that might say we need patent reform and that this is good innovation. But large high-tech companies are not the only ones that know something about innovation. In fact, most of the people who have helped build those organizations were once the small inventors themselves of key technology.

What is at stake is unbalancing the apple cart as exists today to innovation—not just innovation in general but innovation in an information age. The meal ticket for all of us is going to be the invention and creation of new products and services. So that is the great time and age we live in.

But if in this legislation we all of a sudden upset that apple cart, where we are tilting the playing field in support of large corporations that have already made their mark and made their markets and made their success and have slowed down on the rate and progress of innovation within their companies and do a lot to acquire technology from smaller inventors—and now, all of a sudden in this underlying bill, particularly in the area of damages, make sure the big corporations can win in any kind of legal dispute against the technology holder or creator because they are able to outlast them in a legal battle because they are more well financed, more well heeled, with the ability to draw out this battle—because of that change in the underlying bill, we leave the small guy without many resources.

The only thing the small inventor has is their intellectual property and a fair day in court. If now we take that away from them, I guarantee you, they will have less success. Then, when you have less success of having 5,000 flowers bloom, we have a problem.

This is not about what five or six or seven large corporations can create. This is about what thousands and thousands of innovators are going to create in the future and whether they are going to be incented or disincented to do that.

The Feinstein amendment tries to protect the current process, to protect what are the rights of those inventors today under current law. I am sure my colleagues will say: Well, that is not the way the rest of the world does it. I would say to my colleagues: I am not sure the way the rest of the world does it is the mark we are trying to hit. What we are trying to preserve is the entrepreneurial spirit that has been created in the United States. I am not saying that is not based on just raw creativity of individuals—it is—but it is also based on financial incentive and the incentive those individuals have that their intellectual property can be protected.

But if this is going to be a game about the big boys coming to Washington and squashing the small inventors, count me out. This has to be a level playing field. I get it is tempting to want to, in the last minute, stick into the managers' amendment language you could not get out of committee. But if we want to get this legislation through this process, then we have to take into consideration the rights of the inventors along with the rights of those larger companies that are trying to acquire or integrate or be part of the manufacturing on a larger scale of that inventor's technology.

So I say to my colleagues, the Feinstein amendment, in keeping the rights of the inventors where they are, gives them at least a modicum of holding on to that. I think the underlying bill has changed so much in the managers' amendment that we are going down a road that is going to make it very dif-

ficult for us to finally get a piece of legislation. We have to respect the rights of the small individuals, and we can't have carve-outs for specific jurisdictions such as Wall Street who think they can have their cake and eat it too.

This has to be about how we move forward on a smoother patent process. We need to take into consideration that we have gotten to this great place in our country because we have had a balance and an empowerment of these technologies. We should not all of a sudden in one fell swoop take that away on the Senate floor and basically undermine what is the creative opportunity for the U.S. economy, which is an invention. We want thousands and thousands of inventors—not just inventors who work for big corporations—thousands of inventors who have their rights.

So I support the Feinstein amendment.

I thank the President, and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I thank the Senator from Washington for her comments. We welcome her support. I was pleased to be able to listen to her comments.

What is the current status of the time allocation?

The PRESIDING OFFICER. The proponents have 3½ minutes remaining, and the opponents have 10 minutes remaining.

Mrs. FEINSTEIN. I ask unanimous consent that our 3½ minutes be extended so that Senator RISCH, who will speak next, has the time he requires, and I have the time for a few brief closing remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Thank you very much.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, I am proud to come to the floor today to speak on the amendment to which I am a cosponsor.

This is simply a matter of fairness. With all due respect to my colleague from Washington, referencing her comments about the big boys versus the small inventors and what have you, I don't view it as that at all. I view it as a fairness issue: The person who created the invention gets the benefits of that creation, not the person with the fastest tennis shoes. That is what we are doing.

We are creating what is called a race notice statute, which is similar to what is in place in many States on real estate filings. It has a legitimate place in the real estate market but not here. With so much on the line, with creativity on the line, it should be the person who actually does the invention who reaps the benefits of that invention, and that is all this does.

The other thing I think is so important is it preserves the situation we

have had for many years in place. I have heard people say: Oh, well, this is a poison pill. If you take this out, it kills the bill. That isn't the case at all. It simply preserves the situation we have in place today. It is the right thing to do. It is the fair thing to do.

I urge an affirmative vote for this amendment.

I yield the floor to my colleague from California, Senator FEINSTEIN.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Thank you very much, Madam President. I thank Senator RISCH for his cosponsorship, and, of course, I agree exactly with his statement.

At this time I wish to briefly summarize the arguments in favor of our amendment to strike the first-to-file provisions from this bill. This amendment is cosponsored, as I said, by Senator RISCH, Majority Leader REID, Senators CRAPO, BOXER, ENSIGN, and I ask unanimous consent to add Senator BEGICH.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Thank you, Madam President.

Proponents of the first-to-file argue that the rest of the world follows this system and making this change will harmonize our system with theirs, and that is true. But under our first-to-invent system, our Nation has been by far the leader in the field of innovation, the leader in the field of new patents, new discoveries, new inventions. The other first-to-file countries have been playing catchup with our technological advances. I wouldn't trade our record of innovation for any of theirs, and I doubt many Members of this body disagree with me if they really think about it.

Think about the history of innovation. What sets America apart is so many of our great inventions start out in small garages and labs, with driven, inspired people who have great ideas, develop them, and then they take off. I mentioned companies that have started this way yesterday, including Hewlett Packard, Apple, and Google, and there are hundreds and perhaps thousands of others. They started from humble beginnings, and they grew spectacularly, creating jobs for millions of Americans and lifting up our economy and standard of living.

I know an inventor who invented Skyy vodka. The vodka he drank disturbed his stomach, so he figured out biologically and chemically what it was, and he invented a vodka called Skyy vodka—a small inventor. I think that company was subsequently sold for a great deal of money. But it started with one man who had a stomachache from drinking vodka.

Now, this may be just one type of example, but Apple is certainly another example. It started in a garage many years ago in California, and out of that emerged this giant company. So these companies started from humble begin-

nings. They grew. This created jobs for millions of Americans. They lifted our economy and our standard of living.

The National Small Business Association is a supporter of this amendment, and just last week other small business inventor groups have joined them in saying that first-to-file "disrupts the unique American start-up ecosystem that has led to America's standing as the global innovation leader."

First-to-invent has served our country well. Here are the main problems, as I see them, with the bill's first-to-file system: First, the grace period. It "guts" the current grace period, in the words of a letter from 108 startups and small businesses that protect inventors' rights to their inventions for 1 year from offering them for sale or making a public use of them, among other things, before they have to file a patent application with the Patent Office. So there is this 1-year grace period for them to get their act together.

Now, under the present system, instead of preparing a costly patent filing, they can concentrate on developing their invention and obtaining necessary funding.

The majority leader just circulated a statement to Members which speaks to this grace period. I wish to quote one part of that statement:

The grace period comports with the reality of small entity financing through friends, family, possible patent licensees, and venture capitalists. The grace period allows small inventors to have conversations about their invention and to line up funding before going to the considerable expense of filing a patent application.

The grace period allows them to not have to race to the Patent Office because they are afraid somebody else might have heard the conversation, might have stolen it from them, and moved on.

Senator REID goes on:

In fact, in many ways, the one-year grace period helps improve patent quality—inventors find out which ideas can attract capital, and focus their efforts on those ideas, dropping along the way other ideas and inventions that don't attract similar interest and may not therefore be commercially meaningful.

So this first-to-file essentially replaces this critical innovation-protecting provision with a more limited and murky grace period that only runs from the undefined term of "disclosure." There is no discovery. Litigation is sure to ensue as courts interpret this term, creating uncertainty that I believe will chill investment in startups which in turn will dampen innovation and job growth.

Unfortunately, first-to-file incentivizes inventors to race to the Patent Office, to protect as many of their ideas as soon as possible, so that they are not beaten to the punch by a rival. Thus, first-to-file will likely result in significant overfiling of dead-end inventions, unnecessarily burdening both the Patent Office and especially small inventors.

The third reason, difficulty of proving copying. The third major problem with this bill's system is the difficulty of proving that someone copied an invention. Currently, you as a first inventor can prove that you were first by presenting evidence that is in your control—this is under first-to-invent—your own records contemporaneously documenting the development of your invention. But under this bill, to prove that someone else's patent application came from you, was derived from you, you would have to submit documents showing this copying. Because there is no discovery, you wouldn't have those documents in your possession, so it makes proving your invention much more difficult. The bill doesn't provide for any discovery in these "derivation proceedings." Therefore, the first inventor can't prove his or her claim because he or she does not have access to the documents of the alleged copier.

Mr. LEAHY. Madam President, if the Senator will yield, how much time is remaining?

Mrs. FEINSTEIN. I will just take 2 minutes more.

The PRESIDING OFFICER. The Senator from California by consent is using the opponent's time.

Mr. LEAHY. Is using my time?

Mrs. FEINSTEIN. No. I have asked to extend our time.

Mr. LEAHY. Madam President, we are supposed to vote at 12:30. I realize the Senator couldn't be here when her amendment was brought up and couldn't be here when her amendment was modified. We did that for her. But I am in opposition to it, and I should at least have some of my time to be able to use.

Mrs. FEINSTEIN. I will be very happy to—I was here yesterday. I did speak on the floor, Mr. Chairman. I did, in a rather lengthy speech, indicate the arguments. I have asked for just a short period of time. My remarks are no more than five pages, which should take me 1½ more minutes to conclude. I hope I would be offered that time.

Mr. LEAHY. Madam President, at the hour of 12:30 we are supposed to vote. I would ask unanimous consent, so far as my time has been used by those in another position, that Senator GRASSLEY and I have 4 minutes back of our time.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator has consent.

Mrs. FEINSTEIN. Fine. Then I would ask that my time on this side be extended for another 1½ minutes.

The PRESIDING OFFICER. The Senator has that time.

Mrs. FEINSTEIN. Thank you very much.

So I have outlined the difficulty of proving copying under the first-to-file system.

Disputes about who is the first to invent are resolved by the Patent Office in what is called an interference proceeding, which number only about 50 a year out of 480,000 patent applications.

The opposition infers that this is a huge problem. Fifty a year out of 480,000 patent applications is a very small percentage.

As I said in the beginning, America leads the world under the first-to-invent system. I don't think we should fix what isn't broken. This works for people who have great ideas but don't have money, who begin in a garage or in a lab. It has worked well for our system.

I ask my colleagues to join Senator RISCHE, Majority Leader REID, Senators CRAPO, BOXER, ENSIGN, BEGICH, and myself in voting yes on this amendment.

I yield the floor.

Mr. LEAHY. Madam President, as I said earlier, Secretary Locke confronted the notion that the current outdated system is better for small independent inventors. He said the cost of proving that one was first to invent is prohibitive and requires detailed, complex documentation of the invention process. In cases where there is a dispute about who the actual inventor is, it typically costs at least \$400,000 in legal fees and even more if the case is appealed. By comparison, establishing a filing date through provisional application to establish priority of invention costs just \$110.

I appreciate the work of the Senator from California, but her amendment is a killer amendment. It would kill this bill. Our bill is set up so that it will allow us to compete with the rest of the world. Right now, we are behind the rest of the world in our patent system. Our bill as it is written allows us to compete with the rest of the world. Her amendment would hold us back and give an advantage to those countries with which we have to compete.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I associate myself with the remarks of the chairman of the committee. I ask that people on my side of the aisle not support the Feinstein amendment.

At this point, I move to table the Feinstein amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion to table the Feinstein amendment, as modified.

The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 13, as follows:

[Rollcall Vote No. 31 Leg.]

YEAS—87

Akaka	Bingaman	Burr
Alexander	Blumenthal	Cardin
Ayotte	Blunt	Carper
Barrasso	Boozman	Casey
Baucus	Brown (MA)	Chambliss
Bennet	Brown (OH)	Coats

Coburn	Johnson (WI)	Nelson (NE)
Cochran	Kerry	Paul
Collins	Kirk	Portman
Conrad	Klobuchar	Pryor
Coons	Kohl	Reed
Corker	Kyl	Roberts
Cornyn	Landrieu	Rubio
DeMint	Lautenberg	Sanders
Durbin	Leahy	Schumer
Enzi	Lee	Sessions
Franken	Levin	Shaheen
Gillibrand	Lieberman	Shelby
Graham	Lugar	Snowe
Grassley	Manchin	Stabenow
Hagan	McCain	Thune
Harkin	McCaskill	Toomey
Hatch	McConnell	Udall (CO)
Hoeven	Menendez	Udall (NM)
Hutchison	Merkley	Vitter
Inhofe	Mikulski	Warner
Isakson	Moran	Webb
Johanns	Murkowski	Whitehouse
Johnson (SD)	Murray	Wicker

NAYS—13

Begich	Feinstein	Rockefeller
Boxer	Inouye	Tester
Cantwell	Nelson (FL)	Wyden
Crapo	Reid	
Ensign	Risch	

The motion was agreed to.

Mr. LEAHY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 126

Ms. STABENOW. Madam President, I will call up amendment No. 126. I understand it will be agreed to. I ask unanimous consent that the pending amendments be set aside and I call up amendment No. 126.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW], for herself and Mr. LEVIN, proposes an amendment numbered 126.

Mr. LEAHY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To designate the satellite office of the United States Patent and Trademark Office to be located in Detroit, Michigan as the "Elijah J. McCoy United States Patent and Trademark Office")

On page 104, strike line 23 and insert the following:

SEC. 18. DESIGNATION OF DETROIT SATELLITE OFFICE.

(a) DESIGNATION.—The satellite office of the United States Patent and Trademark Office to be located in Detroit, Michigan shall be known and designated as the "Elijah J. McCoy United States Patent and Trademark Office".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the satellite office of the United States Patent and Trademark Office to be located in Detroit, Michigan referred to in subsection (a) shall be deemed to be a reference to the "Elijah J. McCoy United States Patent and Trademark Office".

SEC. 19. EFFECTIVE DATE.

Mr. LEAHY. I ask that it be adopted. The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 126) was agreed to.

Mr. LEAHY. Madam President, I move to reconsider the vote.

Ms. STABENOW. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. I yield to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I thank the distinguished chairman of the Judiciary Committee and our ranking member and those who are working very hard on a very important jobs bill today. On behalf of the people of Detroit, the people of Michigan and Senator LEVIN and myself, I thank very much the Members for their support of this amendment.

Madam President, just few months ago, we learned that Detroit, MI, will be home to the first-ever satellite office of the U.S. Patent and Trademark Office. This office is such great news for Michigan, where we have a proud tradition of innovation and invention.

Every day, we are looking to innovate and create "the next big thing." The decision to locate this satellite office in Detroit shows just how much new invention is happening in Michigan. Thanks to some of the best research universities in the country, with an incredibly skilled workforce, we have become third in the nation in terms of clean energy patents. And we are getting new patents every single day.

In addition to clean energy, Michigan is home to groundbreaking research in fields such as agriculture, defense technology, medical technology and pharmaceuticals, advanced batteries, and, of course, automobiles.

This patent office will help us continue that tradition of innovation, while reducing the backlog of patent applications so those new products can get to the market faster.

It makes perfect sense to locate this new satellite office in Detroit.

Today I am offering, along with Senator LEVIN, amendment No. 126 to the America Invents Act to name this new facility after a great Michigan inventor, Elijah McCoy.

His life captures the spirit of Michigan ingenuity and entrepreneurship. His parents escaped slavery and fled across the border to Canada. After training as an apprentice in Scotland, he came to Ypsilanti, Michigan and set up a home-based invention shop.

Over the course of his brilliant life, Elijah McCoy secured more than 50 patents, but he is best known for his inventions that revolutionized how our heavy-duty machinery, including locomotives, function today. In July of 1872, he invented the automatic lubricator, a device that kept steam engines working properly so trains could run faster and longer without stopping for service.

His invention was incredibly effective and many tried to copy his idea,

but nobody could match McCoy's idea. Machinists started asking if the engines were using the "real McCoy" technology, and people still use that phrase today when they want the best quality product.

He did not have an easy journey. As an African American, he was kept out of many of the histories of the industrial revolution. Despite his brilliance, he was only ever allowed to work in menial jobs on the railroad tracks.

But despite the racial prejudice, Elijah McCoy never gave up and continued inventing. In 1976, the city of Detroit celebrated Elijah McCoy day and dedicated his home as a historic site. In Detroit, Elijah McCoy Drive runs between Trumbull and the Lodge, near Henry Ford Hospital. He is buried in Warren, MI.

It is a great honor for Michigan that the first-ever Patent and Trademark Satellite Office will be named for this great leader and great inspiration for Detroit.

It is a great honor for us to have this first-ever patent and trademark satellite office in Detroit and to have it named after a great leader who has provided great inspiration.

I thank my colleagues very much for supporting this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COONS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BLAMING WORKERS

Mr. BROWN of Ohio. Mr. President, we have all watched the news stories—from Madison, WI; Columbus, OH; Trenton, NJ, and other places around the country—where public employees, when you really analyze it, are paid more or less, including benefits and depending on the place, comparable to the private sector worker. Whether they are high school graduates or college graduates or whatever, the overall pay and benefits are pretty similar. We have seen around the country that these public employees are in most cases willing to share in the sacrifice of balancing budgets and share in the sacrifice of fighting back against this bad economy. In fact, we know that workers—teachers, police officers, nurses, people working at the unemployment bureaus, people working at the Department of the Interior, wherever—have taken pretty big hits already in terms of lost jobs, in terms of no raises, in terms of paying more for their health benefits.

So we know that even though these are not the people who caused the recession any more than the workers at Lordstown, OH, assembling cars or Defiance, OH, building engines or Northwood, OH, making bumpers for the Chevy Cruze are responsible for the

failure of the automobile industry, there just seems to be, as we have seen from these ideological conservative Governors, an assault all over the country blaming workers, whether they are public or private workers, for the problems in this economy.

They continue to want to give tax cuts to the richest people on Wall Street, as they take their bonuses and make big dollars and see their incomes go like this, but as workers have pretty much had no real increase in the last 10 years—wages have been mostly stagnant—how can you blame the workers for this? That is what we have seen around the country.

It has been so interesting. Two days ago in Columbus, OH, 8,500 people demonstrated not against budget cuts, because they know those are coming, but against this direct assault by the government—by the Governor and legislative leaders—on the right to organize and bargain collectively. That is a right that has been part of Americana, a part of our values for 75 years.

Why do they think we have a middle class? We have a middle class because workers have been able to band together and say to a company that is very profitable: We should get some of that profit you are making because we are your workers and we have made your company more prosperous.

Management is important and crucial, but workers are important and crucial. As worker wages go up, management wages typically go up. But we have seen worker wages remain stagnant, in part because of a lack of unionization or a decline in unionization.

Now we are also seeing in Madison, Columbus, Trenton, Harrisburg, Indianapolis, Lansing, in these capital cities, especially in my part of the country, a real play on fear. They are trying to turn private sector workers against public sector workers. They blame the UAW—the auto workers—for the problems in the auto industry. Now they are blaming public workers for problems with State budgets and trying to work the private sector and union workers against each other, fighting with each other. That is the most base Karl Rove-type politics, to turn working-class people against one another. It is wrong. It is morally wrong, it is politically wrong, and it is very wrong for our country.

What has also been interesting about these protests is that they are not all steelworkers and electricians and American Federation of Government Employees and AFSCME and SCMU. There are people of faith also involved.

I did a roundtable at an Episcopal church right off statehouse square, and the leaders of the church and some of the volunteers of the church were there. Now, I don't preach or wear my Christianity on my sleeve, but these people of faith understand that the Bible talks a lot about poverty and a lot about fairness and equality and egalitarianism, if you will, but for

them to go against workers on behalf of the richest people in our country—and that is really what they are doing in the Governors' offices in Columbus and Madison and Trenton and other places—runs counter at least to my faith. I will not judge their faith. They worship what God they worship and read what scripture they read. But when I look at what my faith means—and as I said, I am a Lutheran, I am not a Catholic—but when I look at Leo the XIII and what he said about what Catholicism means for workers and fairness, it is point, set, match. That clearly spoke definitively about this.

Mr. President, I have said this on the floor before today, but I wear this pin on my lapel. It is the depiction of a canary in a birdcage. One hundred years ago, miners took a canary down in the mines. If the canary died from lack of oxygen or from toxic gas, the miner got out of the mine. He only had himself to depend on. He didn't have a government that cared much in those days to write safety laws, particularly child safety laws, on the mines. He didn't have a union strong enough in those days to fight back.

Too many people who are ultra-conservative—and there are many in both the Senate and the House—want to go back to those days. They want to eliminate worker safety laws, and they want to eliminate minimum wage. They are clearly going after collective bargaining and so many of the things we hold dear.

Again, it wasn't the UAW workers, it wasn't the Service Employees Union workers at the State capital who caused this financial crisis. They have been the victims of it, just as a whole bunch of nonunion workers have. This financial crisis was caused by greed, by people overreaching, by the richest in our society grabbing and grabbing and grabbing for more wealth. Yet they are going to turn this—let's change the subject—against those workers. That has happened far too many times in our country.

I am a new member of the Senate Appropriations Committee, and I am lucky enough to serve on Senator LEAHY's Subcommittee on State, Foreign Operations, and Related Programs. We brought the Secretary of State in—Secretary Clinton—to talk to us about the State Department's budget.

One of the things she said—and I mentioned Madison and Columbus after she said it—but one of the things she said is, it has been unions in Egypt, it has been workers in Egypt and Tunisia and around the world, it has been workers who so often, sometimes through their unions—if they are allowed to have unions, sometimes through a more informal collection of people in what might look like a union but is not formalized—fought for freedom, fought for equality. A lot of the problems in Tunisia and Egypt were because people were hungry—not just because they want freedom, but they also

want fairness and a chance to make a living.

But one of the things Secretary Clinton talked about is, yes, this administration is actually enforcing labor laws in Guatemala, this administration will enforce labor laws in the labor component of our trade agreements across the world because we as a country stand for a more egalitarian workforce. We stand for workers rights. We believe workers should organize and bargain collectively, if they choose. We believe in a minimum wage. We believe in workers' compensation. We believe in workers' safety. We believe in human rights. All of that is about the labor movement.

You can support labor rights in Guatemala, but you better be damned sure you are supporting labor rights in Wilmington and Columbus and Cleveland and Detroit and Dover, DE, and everywhere else. Those were some of the words Secretary Clinton said. I am obviously expanding on them.

I looked back in history and some of the worst governments we ever had, do you know the first thing they did? They went after the trade unions. Hitler didn't want unions. Stalin didn't want unions. Mubarak didn't want unions. These autocrats in history did not want independent unions. So when I see Egypt or I see old Soviet Russia and history tells me about Germany—I am not comparing what is happening to the workers in Madison or in Columbus to Hitler and Stalin. But I am saying, history teaches us that unions are a very positive force in society that creates a middle class and that protects our freedom.

So don't tell me you support unions internationally but you don't support unions here. Don't tell me you support collective bargaining in Poland but you oppose collective bargaining in Zanesville or Dayton, OH, because, frankly, that is inconsistent and ultimately it is not taking the side of people whom we are supposed to represent.

I am proud of my State. About two or three blocks from the capitol, in 1876, the capitol in Columbus, the American Federation of Labor was formed. What we know now as the AFL/CIO began in Columbus, OH, in 1876, when some workers got together thinking there was some strength and some safety in numbers and they were going to have a better standard of living and better country and more freedom for all if they began to coalesce in a group of people—not to bust a hole in the State budget, not to hurt companies but to make sure the workers were represented and get a fair shake in the society.

It is all pretty simple. We have a strong middle class in this country because we have the right to organize and bargain collectively. We have a strong middle class in this country because we are a democracy, because workers can share in some of the wealth they create for their employers. So I hope 10 years from now—I know in Delaware this is

something we fought for with manufacturing and middle class and all—we will see, as productivity goes up and profits go up, that workers' wages will go up too. It is the American way. It is what we stand for. Nothing in our society, frankly, is more important than a prosperous middle class and what it brings to us in terms of freedom and equality.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANDERS). Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each, with the majority controlling the first hour and the Republicans controlling the next hour.

The Senator from Maryland.

EFFECTS OF H.R. 1 ON WOMEN AND CHILDREN

Ms. MIKULSKI. Mr. President, I am here representing 150 million women in the United States of America, and they are bewitched, bothered, and bewildered by what the Congress, particularly the House of Representatives, in H.R. 1, has done to women.

Women all over America have to balance their family budgets, so they know our United States of America needs to get its fiscal act together. They also know we need to live in a more frugal time. They understand that. But what they do not understand is that in H.R. 1, with what the House did, the entire burden has come from a very limited amount in discretionary spending. When you take off defense, homeland security, women and children are actually thrown under the bus. Well, they are mad as hell, and they don't want to take it anymore. So the Democratic women today, in the hour we have been given, are going to lay out the consequences of what H.R. 1 means.

Now, we in the Senate, and we, your appropriators—of which there are many women on the committee: LANDRIEU, FEINSTEIN, MIKULSKI, MURRAY—we know we have to bring about fiscal discipline. The Senate Appropriations Committee has already worked to reduce the appropriations in the Senate by \$41 billion. Now that is really meat and potatoes. So we feel we have already given an option, but, my god, enough is enough.

Let me give you just the top 10 reasons why H.R. 1 is bad for women and

children and examine why we are ready to negotiate so we do not have a shutdown of the government. We need a final settlement on the budget for 2011.

Let's just go through them. One, it defunds the entire health care reform law. That is bad for saving lives and saving money. It also eliminates title X family planning money. It jeopardizes breast cancer and cervical cancer screenings for more than 5 million low-income women. They even went after Head Start. Even little kids in Head Start had to take it on the chin. It is going to cause 218,000 children to be kicked off of it. But they go further. For the group who says they are pro family, family values, and that they have to defend life, yet they slash the nutrition programs for pregnant women by \$747 million, affecting 10 million low-income pregnant women, new mothers, and children. They also cut funding for prenatal care, and they went after afterschool programs.

They cut funding for Pell grants. They terminate funding that helps schools comply with title IX. They cut funding for job training, which hurts over 8 million workers, many of them getting new training for the new jobs for the new economy. And something very near and dear, I know, to the Presiding Officer: they went not after Social Security in terms of the benefits but went after the people who work at Social Security—the Social Security offices where they work on everything from the regular Social Security benefit to the disability benefit. If H.R. 1 passes, over 2,500 people at Social Security will be laid off. In my home State, they were out in the streets in front of the Social Security headquarters saying: What about us? We come every day. We give you the actuarial information on how to keep it solvent. We make sure checks are out there on time, and in snowstorms we are showing up to make sure everything works. But at the end of the day, we are going to be told we are nonessential.

This whole nonessential drives me crazy because, ironically, Members of Congress are considered during a government shutdown. Well, if we are going to be essential, we need to get real about how we come to an agreement on this Continuing Resolution.

So, Mr. President, we in the Senate feel we have given \$41 billion already, and we think H.R. 1 just goes too far. It goes too far by leaving so many things off the table.

Now I want to talk about health care reform. We had many goals during health care reform, one of which was to expand universal access. Again, the Presiding Officer has been a champion of that, a stalwart defender of the public option, and a stalwart defender of the single-payer system. As we worked on it and came up with a compromise, what was very clear was that there were certain things we just had to do. One was—whether you were for the public option or not, whether you are for a single-payer system or the system

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Madam President, what is the pending business?

PATENT REFORM ACT OF 2011—
 Continued

The PRESIDING OFFICER. The clerk will report the pending business. The bill clerk read as follows:

A bill (S. 23) to amend title 35, United States Code, to provide for patent reform.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, since this debate began, we have heard a lot about how the America Invents Act will help unleash the American inventive spirit. As a matter of personal pride, I point out that Vermonters have a long history of innovation and invention, and it is that creative spirit which has given rise to some interesting and even revolutionary inventions.

Few people may know that Vermont is issued the most patents per capita of any State in the country. Fewer still may know that the first-ever patent issued in the United States, which was reviewed by Secretary of State Thomas Jefferson and signed by George Washington, was granted to a Vermonter in 1790. It was Samuel Hopkins of Pittsford who began the great tradition of American innovation.

Throughout America's history, Vermont has contributed to our economic prosperity with inventive ideas. Thaddeus Fairbanks of St. Johnsbury patented the platform scale in 1830, which revolutionized the way in which large objects were weighed. Charles Orvis, of Manchester, the founder of the well-known sporting goods retailer Orvis, patented the open fly fishing reel in 1874. Many other inventions originated from Vermont in the early years of America, including an electric motor, an internal combustion engine, and the paddle wheel steamship.

Today, that innovative Vermont spirit continues. Vermonters have been contributing to the American economy through innovation and invention every year.

Exploring new ways to modify existing products to limit the environmental impact is a quintessentially Vermont idea. Researchers at the University of Vermont have developed and are now seeking a patent for a wood finish that releases fewer toxins into the air than standard finishes. They do it by utilizing whey protein instead of petroleum. In the State of the Union Address, President Obama noted that advances in green technology will be a key driver of our economy in the 21st century. Vermont inventors have been and will continue to be out in front in this area.

Computer technology will also be a driver of our 21st-century economy. Vermonters are active in producing the next generation of this technology as well. Viewers across the country were

fascinated by the recent appearance of IBM's Watson supercomputer on "Jeopardy." Components used to power Watson were invented by IBM researchers in Vermont, and I am sure those Vermonters watched proudly as Watson defeated Jeopardy legends Ken Jennings and Brad Rutter in the recent man-versus-machine matchup.

Modernizing the patent system will help to ensure Vermont inventors will still be able to compete, not just on a national stage but in the international marketplace.

Much has changed since Samuel Hopkins received the first U.S. patent in 1790, but the need for a flexible and efficient patent system has remained constant. Inventors from Burlington to the Bay Area require the appropriate incentives to invest in the research required to create the next platform scale or the next Watson computer or the next lifesaving medical device.

Over the last 6 years, I have worked on meaningful, comprehensive patent reform legislation. During that time, I have kept in mind the tradition of great Vermont innovators such as Thaddeus Fairbanks and Charles Orvis. I was also pleased that we had key Republicans and Democrats working together to get this legislation before the Senate.

The next generation of Vermonters is as eager as the last to show America and the world what they can produce. Vermont may be one of the smallest States in our Nation, but it is bustling with creativity. The America Invents Act will ensure that the next Samuel Hopkins can flourish well into the 21st century.

Senator GRASSLEY and I had a couple of matters we were going to take care of. I see a distinguished colleague seeking recognition. Before I yield the floor, might I ask my friend how much time he may need?

Mr. CORKER. I will speak briefly. I apologize. The chairman has done such a wonderful job working this bill through. I came down earlier, but I wasn't able to speak.

Mr. LEAHY. I will yield so my colleague can speak, and then the Senator from Iowa will be back, and we can continue with our other business.

The PRESIDING OFFICER. The Senator from Tennessee.

FUNDING THE GOVERNMENT

Mr. CORKER. Madam President, as in morning business, I rise to speak on another topic that is actually related to us being competitive.

I think everybody understands that we had another bipartisan event that just occurred recently where we kept government funded, if you will, for another couple of weeks beyond the deadline that was coming in the next day or so. I applaud the efforts of both sides to work together to make that happen.

Speaking of competitiveness, it is very difficult for a government to function having short-term CRs every 2 weeks. What I urge, while this work is going on on the floor, is that the House

and the Senate, both sides of the aisle, work toward a longer term CR. I know we are working on reductions in spending which have to take place to keep our government in check and keep our country in the place it needs to be, but the work we need to do to fund the government for the rest of the year is actually the easy work we are going to be facing as it relates to spending.

Today, I saw where Vice President BIDEN has been asked by the White House—the President—to take the lead on this issue. I take that as a good sign. I saw Secretary Geithner today. He is planning on engaging on this issue.

I urge that we do the work we need to do. We all know there are going to be painful and tough decisions coming. A lot of people have been arguing and debating against spending cuts and are talking about the havoc it is going to create for government. I imagine that Secretary Gates over at the Defense Department is trying to deal with overseas operations and trying to deal with investing in the future, and other agencies of government would much rather see what these cuts are going to be and plan accordingly versus working on a 2-week CR.

I am just urging that we do the tough work we have to do. All of us know it will be painful. All of us know we are going to have to prioritize. All of us know there will be a number of constituencies around the country that will be less than happy. But for the good of our country, let's go ahead and together, Democrats and Republicans, Independents and the administration, work together toward a solution.

I know the House sent over a continuing resolution bill that takes us through the rest of the year. We have not yet seen what the Democratic majority in the Senate might offer. It is my hope that something is being worked on. I think the American people in the functioning of this government—those who cause this government to function—need to know what those cuts will be, where we are going.

Speaking on that note—and I will close with this—one of the things most frustrating to me as a Senator who came from the world of business is that we never know where we are going. We debate the current issues. We never plan for the future.

I hope that as a part of all we are doing this spring, this incredible opportunity we have in this body to deal with the issue of spending, with the issue of deficits, it is my hope that as a part of this, what we will do is pass a global cap on spending, a comprehensive cap that takes us from where we are today into a place that has been a 40-year historic average. Senator MCCASKILL and many others have joined me in something called the CAP Act. It is the type of responsible legislation we need to pass to get our country back where it needs to be.

We know we have a huge spending problem today. There are many explanations for that. But as a country, to

make ourselves competitive, as the Senator from Vermont talked about and I am sure the Senator from Iowa is getting ready to talk about, we also need to make sure we keep our fiscal house in order.

Let's deal with these tough issues and solve this problem for this year and move on to the longer term issues.

I thank the Chair, and I thank the Senator from Vermont.

I yield the floor.

Mr. LEAHY. Madam President, I ask unanimous consent to set aside the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I ask unanimous consent to bring up and agree to amendment No. 132, the Cardin-Landrieu amendment.

The PRESIDING OFFICER. The clerk will report.

Mr. GRASSLEY. Mr. President, do we report it first and then object or do we object even to the reporting of it? I heard the Presiding Officer say report the amendment.

The PRESIDING OFFICER. The Senator can object to laying aside the pending amendment.

Mr. GRASSLEY. OK. I object on behalf of Senator COBURN of Oklahoma.

The PRESIDING OFFICER. Objection is heard.

Mr. LEAHY. Madam President, I ask unanimous consent that we revert to the pending amendment, which I believe was the Leahy amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LEAHY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

DELIVERY SYSTEM REFORM

Mr. WHITEHOUSE. Mr. President, I am here to speak about a report that was released by the Centers for Disease Control, which I think is instructive for the American health care system. We are currently in a process of change in health care. Changing the way health care is delivered in our country is going to take years of hard work, of experimentation, and of learning. There are stakeholders on both the Federal and State level who are out there right now, working to implement models of care that increase the coordination and efficiency with which health care is delivered, improve the quality of the care that is delivered, improve the outcomes that patients experience, and control costs—bring down costs. This delivery system reform is the real issue of health care reform in our time. I emphasize, it is a win-win for system—improving the

quality of care while lowering the cost for the system.

This report, called "Vital Signs," released this week by the Centers for Disease Control, illustrates how just one type of quality reform, reducing hospital-acquired infections, has already improved health outcomes and resulted in significant cost savings. Hospital-acquired infections are a tragic reality of our health care system. Nearly 1 in every 20 hospitalized patients in the United States is affected by a hospital-acquired infection each year. The most deadly of these infections occurs when a tube inserted into a patient's vein is either not put in properly or not kept clean. Bloodstream infections resulting from these tubes—what are called central line infections—kill as many as 1 in 4 patients who become infected.

I suspect, if we sat all the Members of the Senate down, there would be very few of us who could not identify a friend, a loved one, a family member, somebody we knew who had been exposed to a hospital-acquired infection.

The deaths from hospital-acquired infections are not only numerous but tragic and particularly tragic because they are largely preventable. These are what should be considered a zero event.

Studies have shown that when providers follow a strict checklist of very basic instructions, including things as simple as washing your hands with soap, cleaning a patient's skin with antiseptic, and placing full sterile drapes over the patient, those rates of hospital-acquired infection plummet.

The CDC's "Vital Signs" report is further evidence of how effective these guidelines are at reducing and in some cases nearly eliminating central line bloodstream infections from intensive care units. The report's findings show that from 2001 to 2009, State and Federal efforts to promote and adopt CDC guidelines and best practices for preventing hospital-acquired infections contributed to a 58-percent decrease in the number of central line bloodstream infections among ICU patients—58 percent decrease in just 8 years, from 2001 to 2009.

A percentage is a fine thing, it is a statistic, but it does not have a lot of meat on its bones. What does this 58 percent mean? It represents up to 27,000 lives saved, 27,000 families who got their loved one home from the hospital instead of having that terrible conversation with the doctor, explaining to them why their loved one passed away. If that were not enough, it also represents approximately \$1.8 billion in cost savings to our health care system—27,000 lives and \$1.8 billion saved from reductions in just one type of hospital-acquired infection in just one type of care setting.

The promising news from the CDC report is that the steps health care providers are taking to prevent this type of infection are working. The bad news is, we are not doing enough to reduce the occurrence of bloodstream infections in other health care settings. The

report found that in 2009, approximately 60,000 central line bloodstream infections occurred in nonintensive care unit settings such as hospital wards or kidney dialysis clinics. This should not be acceptable to us, especially given the tools we know we have to prevent these infections from happening.

Simply put, we can do better. We can save more lives. We can improve the quality of care people receive and, in the process, save billions of dollars in our health care system. The CDC is already working to support partnerships between health care providers to more broadly implement these now-proven quality reforms. This is a good start.

In my home State, I have very proudly watched the Rhode Island Intensive Care Unit Collaborative, a partnership of health care stakeholders led by an organization called the Rhode Island Quality Institute, take the lead in implementing similar quality reforms to reduce the rate of hospital-acquired infections in our intensive care units. Rhode Island is the only State in the country to have 100 percent of its adult intensive care units participating in a collaborative of this kind, and I commend it to any one of my colleagues. It began years ago in Michigan with the Keystone Project and it spread across the country to the Pronovost principles, and in Rhode Island we have run with it. It has only been a few years, but the results, much like those reported by the CDC, are eye-opening. I will quantify this by saying we began with very first-rate hospitals in Rhode Island. We are in that high-tech Northeast corridor. We are near the Boston medical centers, so we are starting from a very high base of care in Rhode Island hospitals. But even from that good base, the collaborative reported significant improvements in two types of deadly infections: central line bloodstream infections and pneumonia, among patients on ventilators.

The collaborative estimates from 2007 to June 2010, just over 7 years, the effort had saved 73 intensive care unit lives—73 lives of intensive care unit patients—it eliminated the need for over 3,200 expensive hospital days, and it saved hospitals, patients, and insurers \$11.5 million.

This evidence underscores the potential for similar types of delivery system reforms which, by improving the quality of care, lower the cost. An array of different strategies can lead to these savings, quality reforms such as this that avoid errors and adverse consequences; prevention programs that save lives and money by getting in there before the disease takes off; a robust health information infrastructure that allows for safer and better coordinated care between your primary health care provider, your specialists, your imaging place, the laboratory, the hospital where you had to be admitted; payment policies that reward better results, not just more procedures; and, finally, better administrative efficiency

so more health care dollars actually go to health care instead of being burned up on bureaucracies and battles over who gets paid and all the rest that weighs down our health care system.

The President's Council of Economic Advisers noted recently that up to 30 percent of health care costs, or about 5 percent of GDP, could be saved without compromising health outcomes. Five percent of GDP is around \$700 billion. Mr. President, \$700 billion a year saved through this kind of win-win is a target worth fighting hard to achieve. I agree with the Council's observation, but from my experience, I think we can achieve these savings not just without compromising health outcomes, I think we can achieve these savings while improving health outcomes.

Implementing these reforms and achieving these reforms will not be easy. It is not just flipping a switch, it is a journey and that journey will have turns and it will have obstacles. It is a process, as very expert reviewers have said, of learning, of experimentation, of adaptation. But we have been down paths such as that before with great success, and the evidence I presented today shows how well it can work in health care.

So I urge my colleagues, I urge the administration and State leaders to continue working together in all of these areas to make reforming our health care delivery system a priority. The future of our health care system and the good health of our constituents and the good health of our country's fisc all depend on it.

I will conclude by saying something I have said before, which is that I give great credit to the Obama administration for working in this area. I believe our health care reform bill put every possible pilot, experiment program, and model for testing these different types of delivery reform systems on the table. Very expert reviewers have looked at it and said: I cannot think of a thing they did not try. Everything is in there. On top of that, the Obama administration has put first-rate people who really get this side of the equation, people such as Don Berwick and David Blumenthal, in charge. So a lot of very good things have lined up to take full advantage of these kinds of win-win savings.

The only thing that I think is missing is that the administration has not yet set a hard goal for itself to hit. It still talks about bending the health care cost curve. Well, fine, but that is not a measurable goal.

We are coming up on the anniversary of President Kennedy's pledge to put a man on the Moon. Way back then, when we feared losing the space race to the Soviet Union, if the President of the United States had said: I am committed to bending the curve of the rate of America's space exploration, that would have been an unmemorable and an ineffective Presidential intervention. Instead, President Kennedy put a hard benchmark out there that every-

body in the world would know we had failed at if we missed it. That was to put a man on the Moon within a decade and bring him home safely. We did not know then how we could do it. We believed we could. We are optimists. We are innovators.

This is a country of innovation and of the "big idea." By putting that marker out there, President Kennedy drove what was then a smaller Federal bureaucracy toward that goal. I believe we need an equally specific goal from the administration on this front in order to make sure our considerably larger Federal bureaucracy is fully purposed toward achieving that because the goals are going to be so significant.

I congratulate the CDC on their report. I wish to remind my colleagues how valuable this kind of health care reform is. It is not what we yell about here, but it is out there right now saving lives and saving money. We need to encourage it and we need to expand it, and the more the administration can put a hard goal out there for itself, the quicker we will get where we need to be, to the great benefit of ourselves as a country and our individual fellow American citizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

(The remarks of Mr. WHITEHOUSE pertaining to the introduction of S. 486 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

AMENDMENT NO. 142

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to set aside the pending amendments and, on behalf of Senator BINGAMAN, call up amendment No. 142.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant editor of the Daily Digest read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE], for Mr. BINGAMAN, proposes an amendment numbered 142.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 142

(Purpose: To require the PTO to disclose the length of time between the commencement of each inter partes and post-grant review and the conclusion of that review.)

On page 50, between lines 2 and 3, insert the following:

"(c) DATA ON LENGTH OF REVIEW.—The Patent and Trademark Office shall make available to the public data describing the length of time between the commencement of each inter partes review and the conclusion of that review."

On page 65, between lines 9 and 10, insert the following:

"(c) DATA ON LENGTH OF REVIEW.—The Patent and Trademark Office shall make available to the public data describing the length

of time between the commencement of each post-grant review and the conclusion of that review."

Mr. WHITEHOUSE. Mr. President, it is my understanding that this amendment is agreeable to both sides; therefore, I ask for its adoption.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 142) was agreed to.

Mr. WHITEHOUSE. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

BUDGET CHOICES

Mr. SANDERS. Mr. President, as you well know, Congress is now engaged in a debate of huge consequence; that is, the budget. The budget of a nation, like the budget of a family, expresses who we are as a people and what our priorities are. Where you spend your money, where you make your investments tells you everything about what we believe in.

I am more than aware that this country faces a \$1.6 trillion deficit and a \$14 trillion national debt. And these are enormously important issues, but they are issues that have to be dealt with in a sensible way, and they are issues that have to be dealt with within a broader context.

So I think the very first question we have to ask is, How did we get to where we are today? Is the problem, in fact, that we spend too much money on Head Start and childcare, that we just shower so much on our children, or is the converse the truth in that we have the highest rate of childhood poverty of any major country on Earth?

How did we get into the deficit? Well, let me tick it off. And when we discuss how we got into the deficit situation, the irony here is that those people who are yelling loudest about the deficit, who are fighting hardest to make savage and Draconian cuts on basic programs, are precisely the people who led us to where we are today.

I voted against the war in Iraq for a number of reasons, one of them being that it was not paid for. Do you happen to recall that as we went into the war in Iraq—which will end up costing us about \$3 trillion by the time we take care of our last veteran—do you recall much discussion about how that war was going to be paid for? In fact, do you remember one word of how that war was going to be paid for? I don't remember that. I was in the middle of that debate. Mr. President, \$3 trillion, and no one said: Oh, we cannot afford it.

When the crooks on Wall Street, through their illegal behavior, their reckless behavior, drove this country into the recession we are in right now and they came begging to the Congress for their welfare check of some \$800 billion, do you recall too many of the people who voted for that saying: Gee, we cannot afford to do it. It is going to drive up the deficit. How are we going to provide Wall Street with an \$800 billion bailout? I don't recall that discussion.

When I was in the House a number of years ago, Congress passed an initiative from President Bush for a Medicare Part D prescription drug program. I believe seniors must have prescription drugs, but that legislation, which was written by the insurance companies and the drug companies, was not paid for.

When our Republican friends fought vigorously for tax breaks for billionaires, which would result in significantly less money coming into the Treasury, driving up the deficit, do you recall much discussion about how we were going to pay for that? I don't recall that discussion.

I find it ironic that when we give tax breaks to billionaires, no worry about the deficit. When we bail out Wall Street, no worry about the deficit. But suddenly when we provide childcare to low-income children who are in desperate need of help in the midst of a recession, suddenly everybody is concerned about the deficit. Frankly, I call that absolute hypocrisy. It is hypocrisy to say we can give tax breaks to billionaires and not worry about the deficit, but we have to cut back on the needs of working families, the middle class, the sick, the poor, and the elderly.

This country, at this particular moment, has to make some very basic decisions. The decision we must make is whether, in the midst of this horrendous recession, when the middle class is hurting, when poverty is increasing, do we go after, as our Republican friends in the House want us to, programs that are virtually life and death for millions and millions of working-class and lower income people.

I don't know about West Virginia, but I can tell my colleagues that in Vermont it is very hard for working families to get adequate, affordable, and good-quality childcare, early education for their children. It is a major problem all over the country. Yet our Republican friends say we should balance the budget by cutting Head Start \$1.1 billion, a 20-percent cut from 2010, and throwing over 200,000 kids off Head Start. If you are a working mom who sends her kids to Head Start now, it feels pretty good that your kid is getting a good quality, early childhood education, getting nourishment. They watch these kids for health care problems. We are going to throw over 200,000 kids off Head Start.

I worked very hard to expand the community health center program, which I know is so important in West Virginia and Vermont. The Presiding Officer and I argue about which State has the greater coverage. It is enormously important. A few years ago, about 20 million people accessed the community health center program. We are now working so that in 5 years 40 million Americans will be able to walk in the door, regardless of their income, get health care, dental care, low-cost prescription drugs, and mental health counseling. It is working. President

Obama has been very strong on this issue. Secretary of HHS Kathleen Sebelius has been very strong on this issue. It is working.

Here is the irony. When we give people good quality primary health care, they don't have to go to the emergency room. The emergency room costs 10 times more than treatment at a community health center. When we open the doors for primary health care, people do not get very sick. They don't end up in the hospital. Study after study shows that when we invest in community health centers, we save the taxpayers money. We save Medicaid money and Medicare money because people have access to medical care when they need it. The Republican House wants to cut community health centers by \$1.3 billion, denying 11 million Americans the opportunity to receive the health care they need.

In my State—and I am sure all over the country—people who are applying for disability help, for Social Security are upset about how long the process takes. Our Republican friends want to make major cuts in the Social Security Administration, which means that half a million people are going to find delays in getting their claims processed.

Everybody in America knows that one of the great problems we face is the expense of college. We know hundreds of thousands of bright young people can't even afford to go to college. We know that many people are graduating deeply in debt. One of the accomplishments we have managed to bring about in the last few years is to significantly expand the Pell grant program so low- and moderate-income families will find it easier to send their children to college. Our Republican friends in the House have decided, in their wisdom, that what they want to do is reduce by 17 percent Pell grants, which means that 9.4 million lower income college student would lose some or all of their Pell grants. Here we are, trying to compete with the rest of the world. We are falling, in many cases, further and further behind in terms of the percentage of our young people graduating college. The costs of college are soaring. The Republican solution is to cut the major program which makes it easier for working families to send their kids to college.

The Community Services Block Grant Program is the infrastructure by which we get emergency services, food, help to pay for emergency services for lower income people, housing needs, making sure people keep the electricity on. That would be decimated by the Republicans.

In the midst of a recession, what they want to do is to cut \$2 billion from the Workforce Investment Act and other job training programs when we desperately need that job training to make sure our people can get the jobs that are out there and available. Often they don't have the skills to do that.

My point is a pretty simple one. As a nation, we have to make some choices. The top 1 percent today are doing phenomenally well. That is a fact. Our friends on Wall Street whom we bailed out are now making more money than they did before they caused this recession. The top 1 percent now earns about 23 percent of all income in America, more than the bottom 50 percent. The top 1 percent, the richest people in terms of their effective tax rate, what they pay is now lower than at any time in memory. So we have the wealthy doing phenomenally well, tax rates going down. We have showered huge tax breaks on them. Then we say, to balance the budget, we have to cut nutrition programs for our kids, Social Security Administration, Pell grants, Head Start, and many other programs which millions of people depend upon.

The question we as Americans have to decide is, When the rich get richer, do we give them more tax breaks while the poor get poorer and we cut programs for them? I don't think, frankly, that is what the American people want.

There was a poll that came out yesterday or today. It was an NBC News and Wall Street Journal poll. The questions dealt with the deficit and how the American people think we should go forward in dealing with the deficit. Here are some interesting results. When asked what do Americans want the Federal Government to do to reduce the deficit, the highest percentage said it is totally acceptable or mostly acceptable to impose a surtax on millionaires to reduce the deficit. Eighty-one percent of the people said that for obvious reasons. The rich are getting richer. Given the choice of asking people who are already doing well to pay a little more in taxes or to cut programs that working families need, the choice is not terribly hard.

Seventy-four percent of the American people believe it is totally acceptable or mostly acceptable to eliminate tax credits for the oil and gas industry. Sixty-eight percent of the public believe it is totally acceptable or mostly acceptable to phase out the Bush tax cuts for families earning over \$250,000 a year.

What the American people are saying in this poll, and I believe all over the country, is obvious. Given the choice of decimating programs that working families depend upon or asking the wealthiest people who have been receiving huge amounts of tax breaks to start paying their fair share, it "ain't" a tough answer. The answer the American people are saying is: We cannot move toward a balanced budget just by cutting, cutting, and cutting. A budget has two parts. Everybody in America understands that. It is the money we spend; it is the money that comes in. In the case of the U.S. Government, we have to address our budget deficit in both ways. We have to raise revenue. We do that primarily by asking the wealthiest to pay a little bit more in taxes. Yes, we do have to cut some programs. There is waste out there. There

are programs that can and should be cut. That is what we do. We don't just cut, cut, cut and then give tax breaks to the very wealthiest people.

The Senate has, along with our friends in the House, the responsibility, the constitutional responsibility of coming up with a budget. I certainly hope the President intends to play an active role. I hope the President is prepared to do the right thing and to understand that revenue, asking the wealthiest to start paying their fair share of taxes, is one important component of how we move forward toward a balanced budget. But if the President chooses not to participate or if the President chooses not to take that avenue, that does not mean to say that we in the Senate should not go forward. I intend to work as hard as I can to come up with a deficit reduction program which is fair but responsible. Being responsible means it includes revenue and not only cuts. There are a whole lot of ways to bring in revenue in a fair and progressive way. It is not only asking the wealthiest to pay their fair share of taxes, it is ending abusive and illegal offshore tax shelters. According to a number of studies, we will lose \$100 billion this year because corporations and wealthy individuals are stashing their money in tax havens in the Cayman Islands and in Bermuda. Before we cut nutrition programs for pregnant women, maybe we do away with those tax havens.

We have to begin the process of ending tax breaks for big oil and gas companies. ExxonMobil, the most profitable corporation in the history of the world, not only paid nothing in Federal income taxes in 2009, but they received a \$156 million tax refund from the IRS, according to their own shareholders report. Maybe before we start cutting the Social Security Administration or Pell grants for college students, we might want to ask the most profitable corporation in America to start paying some Federal income tax.

On and on it goes. My point is, now is the moment when we have to do the right thing for working families. There is a lot of pain out there. A lot of people are hurting. This recession has taken a heavy toll. In the middle of these tough times, we don't stick a knife into the people and make it even worse. We have to move toward deficit reduction. I believe that. But I believe we don't do it on the backs of the sick, the elderly, the poor, and the most vulnerable. I think we need shared sacrifice. Some of the wealthiest people are going to have to play their part in deficit reduction as well.

Mr. President, on behalf of the majority leader, there will be no further rollcall votes today. The next rollcall vote is expected on Monday at 5:30 p.m.

Mr. KYL. Mr. President, I rise to submit for the RECORD some of the materials I have quoted from during the Senate's debate on the first-to-file provisions of the America Invents Act. These materials are produced by the

National Association of Manufacturers and by the 21st Century Coalition for Patent Reform, an industry group that has been the leading advocate for the bill. They offer a detailed explanation of and case for the bill's shift from the current first-to-invent system to a first-to-file system of establishing patent priority.

I ask unanimous consent that the following materials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Coalition for 21st Century Patent Reform, Mar. 2, 2011]

S. 23 AMERICA INVENTS ACT REQUIRES FIRST-INVENTOR-TO-FILE PROVISIONS

Any language that dilutes, delays or deletes FITF will gut meaningful patent reform.

An amendment to dilute, delay or delete the first-inventor-to-file provisions of S. 23 would effectively gut the substance of the America Invents Act. The Coalition opposes any such amendment and, were such an amendment to pass, we would oppose passage of the stripped-down bill that would result.

The first-inventor-to-file provisions currently in S. 23 form the lynchpin that makes possible the quality improvements that S. 23 promises. The Statement of Administration Policy lays out precisely what is at stake: "By moving the United States to a first-to-file system, the bill simplifies the process of acquiring rights. This essential provision will reduce legal costs, improve fairness, and support U.S. innovators seeking to market their products and services in a global marketplace."

Most of the arguments in opposition to the bill and FITF appear to be decades-old contentions that have been fully and persuasively rebutted. As one example, the National Research Council of the National Academies assembled a group of leading patent professionals, economists and academics who spent four years intensely studying these issues and concluded in 2004 that the move to FITF represented a necessary change for our patent system to operate fairly, effectively and efficiently in the 21st century.

Without retaining S. 23's current FITF provisions, the bill would no longer provide meaningful patent reform. As an example, the new provisions on post-grant review of patents, an important new mechanism for assuring patent quality, could no longer be made to work. Instead of a patent reform bill, what would remain of S. 23 would be essentially an empty shell.

Thus, we could not continue our support for passage of S. 23 without the first-inventor-to-file provisions present in the bill. It would place us in the unfortunate position of opposing moving forward with a bill where we have been among the longest, most ardent supporters.

After yesterday's 97 to 2 vote, it is time to move this excellent vehicle for comprehensive patent reform—in its current form—through to final Senate passage.

S. 23 MEANS NEW IDEAS CREATING NEW PRODUCTS CREATING NEW MANUFACTURING JOBS

Let S. 23 Make the Patent System Work for the 21st Century U.S. Economy

Keep the first-inventor-to-file provisions of S. 23 in the bill to afford all inventors the benefits for a more transparent, objective, predictable and simple patent law:

The first-inventor-to-file provisions of S. 23 protect independent inventors—they will

particularly benefit from the simplicity of the first-inventor-to-file rule and actually gain patents that they otherwise would forfeit.

Eliminate the potential prejudice to U.S. patent inventors arising from the 1994 law that opened our patent system to foreign-origin invention date proofs.

Simplify the rules for patent applications so they can be processed more rapidly, at reduced cost, and become more effective patents for investing in new products:

Limit "prior art" used to bar a patent from issuing to only those disclosures made available to the public before the patent was sought and disclosures in earlier-filed patent applications.

Remove all arcane and subjective tests for deciding whether to issue a patent.

Repeal the "patent interference" provisions that inject delay, cost and uncertainty into the patenting process.

Let members of the public provide patent examiners with relevant publications and other public documents, before deciding whether a patent can be granted.

Keep and apply rigorous standards for issuing patents, but assure that they are simple, transparent and objective—making patenting rules more predictable.

Assure the highest possible quality for patents that have been granted:

Permit members of the public to challenge whether newly issued patents meet each of the rigorous standards for patenting—and require the United States Patent and Trademark Office to promptly cancel any patents that do not.

Authorize supplemental examination proceedings, before a patent is enforced, to allow patent owners to present the USPTO with information that may be used to assure the scope of the patent is commensurate with its contribution.

Allow the USPTO to set fees for the services it performs for processing patent applications sufficient to cover the costs of promptly completing a high-quality examination.

Make patent lawsuits fair and just for both patent owners and accused infringers.

Limit the ability of a party to recover false patent marking to the amount of the party's actual competitive injuries.

S. 23 PROTECTS INVENTORS ONCE THEY PUBLICLY DISCLOSE THEIR WORK

Protections the 1994 WTO Agreement Took Away, S. 23 Puts Back.

After inventors publicly disclose their work, competitors should not be able to take advantage of those disclosures by filing for patents on the disclosed work.

Once inventors have published on their work—or have made it available to the public using any other means—their competitors should not be able to run off to the USPTO and seek patents on the work that the inventor has already publicly disclosed. The same goes for permitting a competitor to belatedly seek a patent on a trivial or obvious variation of what the inventor had earlier disclosed publicly. This common-sense truth should apply even if competitors can lay claim to having themselves done the same work, but elected to keep secret the work that other inventors have publicly disclosed.

In a word, a competitor seeking a patent on what such an inventor has already published can be thought of as being akin to interloping. The competitor who is spurred into action by another inventor's publication can be regarded as interfering with the understandable and justifiable expectation of inventors who have promptly disclosed their work: they expect that they themselves should be the ones able to secure patents on

the disclosed work or, by publishing without later seeking patents, that they (as well as other members of the public) should remain free to continue to use what they have publicly disclosed.

S. 23 would increase the protection for inventors once they make their inventions available to the public by cutting off the potential for any sort of interloping. S. 23 operates to solidify an inventor's "grace period" that applies after the inventor has published or otherwise made available to the public his or her work. In brief, under S. 23, interloping in any form is prohibited—an inventor who elects to publish an invention will no longer need to have any concern that the publication will spur a competitor into a subsequent patent filing that could preclude the inventor from obtaining a patent or—even worse—from continuing to use his or her published work.

S. 23 better protects inventors than does current U.S. patent law in addressing interloping—by making the one-year "grace period" bulletproof.

Today, inventors enjoy a one-year "grace period" under U.S. patent law. What this means is that inventors themselves can still seek patents on their inventions even if they have made those inventions available to the public before seeking any patents on them. When inventors file for patents during the one-year period after making a public disclosure, their own disclosures are not useable as "prior art" against their patents.

However, the "first to invent" principle of current U.S. patent law makes relying on the one-year "grace period" fraught with some significant risk. The risk comes from the ability of a competitor who learns of the inventor's work through the public disclosure to race off to the USPTO and seek a patent for itself on the disclosed invention. The competitor can interlope in this manner by filing a patent application and alleging its own "date of invention" at some point before the inventor's public disclosure was made.

This makes relying on the current "grace period" a risky hit or miss. If an inventor waits until the end of the one-year "grace period" to seek a patent on the invention he or she made available to the public, an interloping competitor, spurred into quickly filing a patent application, may be issued a patent before the USPTO acts on the "grace period" inventor's patent application. The "grace period" inventor may be forced to fight to get into a patent interference against a competitor's already-issued patent, hoping to get the USPTO to cancel the competitor's patent so the inventor's own patent can be issued.

Interferences are notoriously difficult to win for an inventor who is not the "first to file." The number of situations where someone other than the first to file for a patent on an invention actually succeeds in proving an earlier invention date are very few and very far between. Indeed, the most recent estimate is that striking down a competitor's earlier filed application or patent in a patent interference is less likely than the competitor being struck down by lightning.

What does S. 23 do about this defect in the "grace period" under current U.S. patent law? Quite simply, it wholly excises the defect—it will be gone in its entirety. It makes an inventor's public disclosure of the inventor's own work a bar to anyone thereafter seeking to patent that work itself, as well as any obvious variations of what the inventor made available to the public. In short, it is a complete fix to the risk a competitor will use the inventor's public disclosure as a spur to filing its own patents based on its own work.

S. 23 closes the door to interloping by foreign-based competitors that was opened in

1995 when the WTO agreement forced changes to U.S. law.

Under the World Trade Organization agreement reached in 1994, the United States was forced to change its patent law to benefit foreign-based entities seeking U.S. patents. This change allowed foreign-based entities to take advantage of their secret activities, undertaken outside the United States, in order to establish "invention dates" that could be used under U.S. patent law to obtain valid patents. Specifically—and for the very first time—foreign-based competitors could seek U.S. patents on products that had already been publicly disclosed by U.S.-based inventors. The Uruguay Round Agreements Act, which took effect in 1995, implemented this treaty obligation.

Before this change in U.S. patent law, foreign-based competitors could not use their secret activities outside the United States as a basis for showing that they had made an invention before its publication by a U.S.-based inventor. Up until 1995, once a U.S. inventor published information on a new product or otherwise publicly disclosed an invention, foreign-based competitors were barred from obtaining U.S. patents on the disclosed product and any aspect of it, including trivial and obvious modifications of it.

S. 23, if enacted, would put foreign-based entities back into the position they were in prior to 1995—once a U.S. inventor publishes or makes any other type of public disclosure of a new product, the ability for a foreign-based competitor to then file patent applications seeking to patent the disclosed product would be totally cut off.

Congress should act promptly to end the potential for interloping by foreign-based competitors once U.S.-based inventors have published on their work.

With each passing year, the percentage of U.S. patent filings made by foreign-based entities increases. In 1966, 1 in 5 U.S. patent filings was by a foreign-based entity. That ratio became 1 in 4 in 1969, and 1 in 3 in 1974, before reaching 1 out of every 2 in 2008. Since 2008, the majority of patent filings in the United States came from foreign-based entities. Given the rapid growth in patent filings by Asian (especially Chinese) inventors, this trend may well accelerate in the decade ahead.

As foreign-based entities become more sophisticated in their use of the U.S. patent system, U.S. inventors are put at an ever-greater risk that patenting strategies by foreign-based entities will disadvantage U.S.-based inventors, either in electing to use the "grace period" or even when they file for a patent before making a public disclosure.

How S. 23 operates to protect inventors once they make their work public

S. 23 puts an end to any use of "dates of invention" in order to determine whether a U.S. patent is valid or not. In addition, S. 23 strips out of the U.S. patent law any grounds for invalidating a U.S. patent based on any type of secret activity undertaken by inventors themselves, such as secret "offers for sale" of their inventions before seeking patents. Finally, it further secures the benefits of the one-year "grace period" by preventing the contemporaneous work of an inventor's co-workers or research partners from being cited as a basis for barring the inventor from obtaining a patent.

The consequence of placing this collection of inventor-friendly features into S. 23 is that, once a U.S. inventor publishes or otherwise makes a public disclosure of his or her inventions, the potential for interloping is entirely removed and the ability of the publicly-disclosing inventor to patent the disclosed invention is fully preserved during a one-year "grace period." The public disclosure by U.S. small business or other U.S.-

based small entity, for example, is a bar to anyone else seeking a patent, not only on the publicly disclosed subject matter, but on any trivial or obvious variations of it. Similarly, once a U.S. inventor initially files a patent application (even a provisional one) that subsequently forms the basis for a published patent application or patent, the same protections against competitor efforts to patent the inventor's prior-disclosed work apply.

How can Congress accomplish all of this good for the country? Enact S. 23!

Reverse the WTO's impact, end interloping threats, and protect U.S. inventors.

NATIONAL ASSOCIATION
OF MANUFACTURERS,

March 2, 2011.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The National Association of Manufacturers (NAM), the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states, urges you to oppose amendment 133 offered by Sen. Dianne Feinstein (D-CA) to S. 23, The America Invents Act.

The amendment would remove a key provision in S. 23, The America Invents Act, which is strongly supported by manufacturers, the creation of a "first-inventor-to-file" system.

The NAM supports transitioning the United States from a "first-to-invent" system to a "first-to-file" system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies. The "first-to-file" provision currently included in S. 23 achieves this goal.

Thank you for your consideration and your support for the "first-to-file" system.

Sincerely,

DOROTHY COLEMAN.

Mr. COBURN. Mr. President, I want to thank all of the cosponsors who joined in support of my amendment, particularly Senators BOXER and GRASSLEY, who recognized the importance of this amendment for the proper functioning of the PTO and for the underlying legislation. Furthermore, I want to thank Chairman LEAHY and Ranking Member GRASSLEY for including my amendment in the managers' amendment to the patent reform legislation.

Our Founding Fathers recognized the value that intellectual property provides to this country and sought to protect innovation as they did physical property. Article I, section 8 of our Constitution states "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."

It is necessary for the Federal Government to protect and enforce intellectual property rights domestically and internationally. Intellectual property is important to our country, businesses and individual rights holders, and I believe a strong patent system is one crucial element in maintaining our

country's leadership in innovation, invention and investments. While I do believe it is the goal of this patent reform legislation to strengthen and improve our patent system, I do not believe that such goals are possible without reform to the financial crisis facing the patent office.

My amendment would provide an immediate solution to this crisis. The amendment creates a lockbox—a new revolving fund at the Treasury—where user fees that are paid to the PTO for a patent or a trademark go directly into the revolving fund for PTO to use to cover its operating expenses. Congress would not have the ability to take those fees and divert them to other general revenue purposes.

I do not think everyone in this body understands what it means for the PTO to be a wholly fee-supported agency. PTO does not receive any taxpayer funds. PTO receives fees through the payment of patent and trademark user fees—fees paid by small inventors, companies and universities to protect their ideas and technology. While those that pay these fees expect efficiency and quality from the PTO, they do not receive it. Because of the current PTO funding structure—where PTO user fees are deposited into the Treasury, but PTO is then required to ask for annual appropriations—Congress, who only has authority over taxpayer funds, maintains control over the user-funded PTO. When PTO's fee income is greater than what Congress provides via appropriations, we spend the "excess" on other general revenue purposes. As a result, those that pay to use the patent system are not receiving the quality service they deserve.

It is more than mere coincidence that the two major problems at the PTO, (1) the growing number of unexamined patent applications or "backlog," and (2) the increased time it takes to have a patent application examined or "pendency," are the result of a "lack of connection between the monies flowing into the agency and those available for expenditure." In fact, the latest data from the PTO shows that the patent processing backlog is almost 26 months. That is, it takes 26 months for the patent examiner to even pick up the application to take his "first action." Total overall pendency—from filing to final action—is approximately 35 months. The PTO also states the total number of patent applications pending is over 1.16 million, with over 718,000 of those waiting for a patent examiner to take his first action. One of the primary reasons for these incredibly long waiting periods is a lack of resources at the PTO. By providing a permanent end to fee diversion, Congress has the ability to contribute greatly to the enhanced efficiency of this agency.

This is not the first time Congress has been confronted with its diversion of PTO user fees. Since the early 1980s, Congress has addressed issues related to this issue. Beginning in the late

1990s, our own congressional reports have documented the problems with fee diversion from the PTO, and the domino effect it has on PTO's efficient operation.

In 1997, the House Report on the Patent and Trademark Office Modernization Act stated: "Unfortunately, experience has shown us that user fees paid into the surcharge account have become a target of opportunity to fund other, unrelated, taxpayer-funded government programs. The temptation to use the surcharge, and thus a significant portion of the operating budget of the PTO, has proven increasingly irresistible, to the detriment and sound functioning of our nation's patent and trademark systems . . . this, of course, has had a debilitating impact on the [PTO]."

It is disturbing to me, and should be to all Members, that many of the same practices that this 1997 report notes as those that suffer from lack of consistent PTO funding still occur today—14 years later.

Yet Congress continued to grapple with PTO's funding problem into the early 2000s. In 2003, the House noted in its report on the Patent and Trademark Fee Modernization Act that "by denying PTO the ability to spend fee revenue in the same fiscal year in which it collects the revenue, an equivalent amount may be appropriated to some other program without exceeding their budget caps. Although the money is technically available to PTO the following year, it has already been spent." In 2007, I offered a different version of my current amendment to patent reform legislation considered by the Judiciary Committee. My amendment passed without opposition. Last year, I offered this amendment in the Judiciary Committee, and it was tabled by a vote of 10–9. Yet, in 2008, this body adopted by unanimous consent an amendment by Senator HATCH to the fiscal year 2009 budget resolution that condemns the diversion of funds from the PTO.

Clearly, for more than a decade, both Houses of Congress have recognized that many of the efficiency and operational problems at the PTO could be remedied by giving the PTO authority over its own fee collections. However, we have yet to take the responsibility to relinquish the control over these user fees that we think we deserve. In fact, in the current arrangement, Congress cannot resist the temptation to take what is not ours and divert it to nonpatent related functions. This is especially tempting during bad economic times, which we have recently been experiencing. Such an arrangement flies in the face of logic, commonsense budgeting and overwhelming support from the entire patent industry for providing the PTO with a consistent source of funding. Ending fee diversion is one of the only areas of 100 percent agreement within an industry that has often been divided on other issues in this bill. My amendment is supported

by: PTO; Intellectual Property Owners Association, IPO; American Intellectual Property Law Association, AIPLA; International Trademark Association, INTA; The 21st Century Coalition; Coalition for Patent Fairness, CPF; Innovation Alliance; American Bar Association, ABA; U.S. Chamber of Commerce; Wisconsin Alumni Research Foundation, WARF; BIO; Intellectual Ventures; National Treasury Employees Union, NTEU; Intel; and IBM.

The PTO cannot effectively manage the changes made in this legislation without permanent access to its user fees. I agree that there are aspects of the patent system that need to be updated and modernized to better serve those that use the PTO, and this bill makes reforms to the current patent system. In fact, one of those changes involves giving the PTO fee setting authority. Section 9 of the bill states that the PTO shall have authority to set or adjust any fee established or charged by the office provided that the fee amounts are set to recover the estimated cost to the PTO for its activities. This is a great provision to put in the bill, but it is only one side of the funding story. In fact, providing the PTO with fee setting authority alone is at odds with the way Congress currently funds the PTO. If I were the PTO director, why would I take advantage of this provision by increasing fees to a point where I think they would cover my operational costs, when I know that Congress has the ability to take whatever it wants of those increased fees and spend it on something other than what I budgeted those fees to cover?

In fact, PTO Director Kappos has specifically commented on fee diversion at the PTO. During his confirmation hearing in 2009, Director Kappos stated in his testimony that the PTO faces many challenges and one of the most immediate is "the need for a stable and sustainable funding model." In his private meeting with me prior to his hearing, he discussed his experience as a high-level manager, officer and counsel at IBM. He acknowledged that, despite the vast knowledge and experience that he can bring to the PTO, he could not run PTO efficiently without access to sustainable funding.

In March 2010, Director Kappos appeared before the House CJS Appropriations Subcommittee and stated the PTO was likely to collect at least \$146 million more than its 2010 appropriation. He was right, and in July 2010, the PTO had to ask for more funds from Congress in separate legislation, but it was only given \$129 million. As a result, PTO ended up collecting at least \$53 million above that amount, which it could not access.

In April 2010, Director Kappos made similar comments at a meeting in Reno, NV. When discussing the pending Senate legislation, Director Kappos stated, "I am going to make USPTO much better whether we get new legislation or not . . . There is more than

one way to solve our problems. Lack of funding is a real issue . . . It's very hard to cut down on a huge backlog with a lack of funding . . . Lack of funding hits you at every corner at the USPTO. Just do the math . . . We'll all be dead and gone by the time we get rid of the backlog of appeals at the current rate. It is so overwhelming and it all comes down to the resources you need. It comes down to money."

In January 2011, Director Kappos appeared at a House Judiciary Committee PTO Oversight hearing. He stated, "uncertainty about funding constrained our ability to hire or allow examiners to work overtime on pending applications during the last year."

It baffles me that these comments have not been heeded by Congress. Director Kappos believes much progress can be made without legislation as long as there is a sustainable funding model.

Similar words appear in the House Report on the 2003 Patent and Trademark Fee Modernization Act: "While the agency has demonstrated a commitment to embrace top-to-bottom reform consistent with congressional mandates, it is equally clear that PTO requires additional revenue to implement these changes." Yet, our PTO director, who has incredible plans for this agency, cannot accomplish those due to revenue shortfalls that have plagued the agency for decades—a problem Congress has the ability to permanently fix.

Congress has not ended its diversion of fees from the PTO.

On a regular basis, from 1992 to 2004, the amount Congress "allowed" the PTO to keep via appropriations was less than the fees PTO collected. At the height of this problem in 1998, Congress withheld \$200 million from the PTO and diverted it to other general revenue purposes. As recently as 2004, Congress diverted \$100 million from the PTO, in 2007, it was \$12 million, and in 2010, it was \$53 million. In total, since 1992, Congress has diverted more than \$800 million that the PTO will never be able to recover.

Now, beyond the concern that appropriators have with relinquishing control over PTO funding, some might say that the practice of fee diversion has ended in recent years, making this amendment unnecessary. Under public pressure from numerous sectors of the American innovation industry, in 2005 and 2006 and 2008 and 2009, it is true Congress gave PTO all of the funds it estimated in its budget request. So, some argue that no permanent solution to PTO fee diversion is necessary because of Congress's proven restraint.

However, it is not entirely true that all fee diversion has ended. First, it is inaccurate to say there has been no fee diversion since 2004. According to the PTO, \$12 million was diverted in 2007, and \$53 million in 2010—a type of diversion slightly different from the past. From 1992–2004, PTO provided an estimate of its fees, but appropriators di-

verted funds by appropriating to the PTO less than its estimate and applying the difference to other purposes. In 2007 and 2010, PTO provided its estimate and, it is true, appropriators provided an amount equal to that estimate. But, PTO collected more than what appropriators gave them, and those fees were diverted to other purposes rather than being returned to PTO the following year. Without access to those funds, PTO lost \$12 million in 2007 and \$53 million 2010, for a total of \$65 million.

Second, Congress has engaged in "soft diversion" of PTO funds through earmarking PTO fees. From 2005–2010, appropriators directed PTO to spend its user fees on specific, earmarked items in appropriations bills totaling over \$29 million. Such items included: \$20 million for "initiatives to protect U.S. intellectual property overseas;" \$1.75 million for the National Intellectual Property Law Enforcement Coordination Council, NIPLECC; \$8 million for PTO to participate in a cooperative with a nonprofit to conduct policy studies on the activities of the UN and other international organizations, as well as conferences. While we all agree it is important to protect intellectual property rights abroad, PTO should be able to have discretion to decide how much of its budget should be directed for those purposes.

Third, the PTO faces a huge backlog of unexamined patents, as well as an enormous patent pendency problem for those applications already being processed. Fee diversion from the PTO has exacerbated these waiting periods through a congressional Ponzi-scheme. Even if we were to accept that fee diversion stopped in 2005, CBO states that approximately \$750 million was diverted from 1992–2007. With the addition of the \$53 million diverted last year, the PTO has lost over \$800 million due to fee diversion. Thus, PTO has been constantly trying to recover from years of a "starvation funding diet."

So, when the PTO presents a budget of what it needs to process applications in the next 1-year period, that money is actually going towards processing applications sitting in the backlog. As a result, Congress is really not providing PTO with what it needs for the year in which it receives appropriations. Rather, it is giving short-shrift to the current year's needs because PTO must apply its fees not to the inventor who submitted his application this year, but to those who paid and submitted applications years ago.

Lack of funding is exacerbated under a continuing resolution. In fact, PTO's lack of access to its user fees is further amplified in a year with a continuing resolution, such as this fiscal year. Under this CR, the PTO can only spend at the level given to it by the Appropriations Committee in 2010, which is approximately \$1.5 million per day less than the President's fiscal year 2011 budget request.

PTO already has to wait on year-to-year funding that may not materialize, and under a CR the problem is worse since PTO cannot get access to their fees until the CR is lifted. In January, the PTO Director noted at the House Judiciary PTO oversight hearing, "our spending authority under the continuing funding resolutions and the lack of a surcharge assessment through early March, however, represent foregone revenue of approximately \$115 million as compared to what was proposed in the President's fiscal year 2011 budget request."

Thus, under the House-proposed CR, without a specific provision inserted to allow the PTO to collect all of the fees it collects, PTO will not be able to access its future fee collections. My amendment would solve this problem of constantly using time and resources at both the PTO and Congress to ensure the PTO receives the funding it deserves and does not suffer from Congress's inability to properly fund the government.

As the above problems show, even without direct diversion, PTO still faces the possibility of having its fees diverted by other means. Thus, while I recognize that some effort has been made by Congress, it is no consolation to me or to the PTO Director that, in recent years, appropriators have "restrained" themselves and provided the PTO with all of the fees that it collected. "But, such recent restraint does not guard against future diversion."

In 2007, the American Intellectual Property Law Association stated in a letter to House Speaker NANCY PELOSI, "there is nothing to prevent the devastating practice of fee diversion from returning . . . While everyone wishes for a more rapid recovery by the Office, it must be remembered that the current situation is the result of a 12 year starvation funding diet. It will take permanent, continued full funding of the USPTO . . . to overcome these challenges."

An amendment to permanently end fee diversion is the only effective remedy. The only true solution to the problem of PTO fee diversion that will give solace to those in the patent community and to the PTO Director is a permanent end to fee diversion so the PTO can effectively and efficiently budget for its future operational needs.

The President's fiscal year 2012 Budget also supports a sustainable funding model for the PTO. It states, "another immediate priority is to implement a sustainable funding model that will allow the agency to manage fluctuations in filings and revenues while sustaining operations on a multi-year basis. A sustainable funding model includes: (1) ensuring access to fee collections to support the agency's objectives; [and] (2) instituting an interim patent fee increase. . . ."

In fact, as I stated earlier, in 2008, this body approved, by unanimous consent, an amendment to the 2009 budget resolution by Senator HATCH that condemns the diversion of funds from the

PTO. My amendment is in the same vein—if we will vote to condemn fee diversion, we should also vote to remedy the problem.

I believe we cannot have true patent reform without ending fee diversion and providing the PTO with a permanent, consistent source of funding, which is why I believe very strongly that this amendment should be adopted. As my colleague Senator HATCH so effectively stated in Judiciary Committee markup this year, “fee diversion is nothing less than a tax on innovation.”

Finally, I would like to point out that nothing in this amendment allows the PTO to escape congressional oversight and accountability. You have all heard me talk about the need for more transparency in all areas of our government, and this is no exception. Enacting this amendment will not put the PTO on “auto-pilot” or reduce oversight of PTO operations. In fact, the amendment requires extensive transparency and accountability from the PTO, giving Congress plenty of opportunities to conduct vigorous oversight.

My amendment provides four different methods by which Congress will hold PTO accountable: (1) an annual report, (2) an annual spending plan to be submitted to the Appropriations Committees of both Houses, (3) an independent audit, and (4) an annual budget to be submitted to the President each year during the budget cycle. Furthermore, nothing in this amendment changes the current jurisdiction of any congressional committee, Appropriations or Judiciary, to call PTO before it to demand information, answers and accountability. In fact, it has the potential to yield more information to Congress via the four reporting requirements than provided by other agencies.

This amendment is not about authorizers versus appropriators, but rather it is about giving the PTO and its very capable and experienced director the opportunity to improve the agency and provided top-notch service to PTO applicants. It is also about making oversight of the PTO a priority for all committees of jurisdiction. It is about stimulating our economy because when the PTO is fully funded, patents are actually granted, which creates jobs in new companies and in the development and marketing of innovative new products. It is about fulfilling our responsibility to ensure efficiency, accountability and transparency in our government so that we reduce our deficit and provide our grandchildren relief from the immense financial burden they currently bear.

Thus, to truly reform the patent system in this country, more than any legislation, it is necessary for the PTO to be able to permanently and consistently access the user fees—not taxpayer funds—it collects. Therefore, I urge my colleagues to support this amendment.

Mr. BAUCUS. Mr. President, I want to take a few minutes to explain in de-

tail the tax strategy patent provision in the pending patent reform legislation that was drafted jointly by Judiciary Committee Ranking Member CHUCK GRASSLEY and me. As chairman of the Senate Finance Committee, I am concerned by the growth in the number of patents that have been sought and issued for tax strategies for reducing, avoiding, or deferring a taxpayer’s tax liability. Section 14 of S. 23 would prevent the granting of patents on these tax strategies so that the Internal Revenue Code can be applied uniformly while balancing the critical need to protect intellectual property.

Let me explain. Our Federal tax system relies on the voluntary compliance of millions of taxpayers. In order for the system to work, the rules must be applied in a fair and uniform manner. To that end, everyone has the right to arrange financial affairs so as to pay the minimum amount legally required under the Internal Revenue Code.

Patents granted on tax strategies take away this right and undermine the integrity and fairness of the tax system. These patents have been on ideas as simple as funding a certain type of tax-favored trust with a specific type of financial product or calculating the ways to minimize the tax burden of converting to an alternative retirement plan. Rather than allowing these tax planning approaches to be available to everyone, these patents give the holder the exclusive right to exclude others from the transaction or financial arrangement. As a result, they place taxpayers in the undesirable position of having to choose between paying more than legally required in taxes or paying a royalty to a third party for use of a tax planning invention that reduces those taxes.

The patentability of tax strategies also adds another layer of complexity to the tax laws by requiring taxpayers or their advisors to conduct patent searches and exposing them to potential patent infringement suits. And, in situations where a patent is obtained on a tax shelter designed to illegally evade taxes, the fact that a patent was granted may mislead unknowing taxpayers into believing that the strategy is valid under the tax law.

Section 14 of S. 23 addresses these concerns by providing that any strategy for reducing, avoiding, or deterring tax liability, whether known or unknown by anyone other than the inventor at the time of the invention or application for patent, will be deemed insufficient to differentiate a claimed invention from the prior art for purposes of evaluating an invention under section 102 or under section 103 of the Patent Act. Applicants will not be able to rely on the novelty or nonobviousness of a tax strategy embodied in their claims in order to distinguish their claims from prior art. The ability to interpret the tax law and implement such interpretations remains in the public domain, available to all taxpayers and their advisers.

Under the provision, the term “tax liability” refers to any liability for a tax under any Federal, State, or local law, or law of any foreign jurisdiction, including any statute, rule, regulation, or ordinance that levies, imposes, or assesses such tax liability.

Generally, tax strategies rely on tax law to produce the desired outcome; that is, the reduction, avoidance, or deferral of tax liability. Tax law can include regulations or other guidance, as well as interpretations and applications thereof. Inventions subject to this provision would include, for example, those especially suitable for use with tax-favored structures that must meet certain requirements, such as employee benefit plans, deferred compensation arrangements, tax-exempt organizations, or any other entities or transactions that must be structured or operated in a particular manner to obtain certain tax consequences. The provision applies whether the effect of an invention is to aid in satisfying the qualification requirements for the desired tax-favored entity status, to take advantage of the specific tax benefits offered in a tax-favored structure, or to allow for tax reduction, avoidance, or deferral not otherwise automatically available to such entity or structure.

Inventions can serve multiple purposes. In many cases, however, the tax strategy will be inseparable from any other aspect of the invention. For example, a structured financial instrument or arrangement that reduces the after-tax cost of raising capital or providing employee benefits is within the scope of the provision, even if such instrument or arrangement has utility to issuers, investors, or other users that is independent of the tax benefit consequences. No taxpayer should be precluded from using such an instrument or arrangement to obtain any reduction, avoidance, or deferral of tax that attends it.

At the same time, there may be situations in which some aspects of an invention are separable from the tax strategy. For example, a patent application may contain multiple claims. In this case, any claim that encompasses a tax strategy will be subject to the provision and the novelty or non-obviousness of the tax strategy will be deemed insufficient to differentiate that claim from the prior art. However, any other claim that does not involve a tax strategy would not be subject to the provision. In such a case, if the invention includes claims that are separable from the tax strategy, such claims could, if otherwise enforceable, be enforced.

The mere fact that any computations necessary to implement an invention that is a strategy for reducing, avoiding, or deferring tax liability are done on a computer, or that the invention is claimed as computer implemented, does not exclude the strategy from the provision. In such a case, the claims, if separable from the tax strategy, would be evaluated under sections 102 and 103

without regard to the tax strategy. If those nontax related and separable claims still met the requirements for patentability, a patent would issue, but not on the tax strategy.

The provision is not intended to deny patent protection for inventions that do not comprise or include a business method. For example, an otherwise valid patent on a process to distill ethanol would not violate the rule set forth in this provision merely because a tax credit for the production of ethanol for use as a fuel may be available. Similarly, the mere fact that implementation of an otherwise patentable invention could result in reduced consumption of products subject to an excise tax would not make the invention subject to this provision.

The provision is also not intended to deny patent protection for tax return preparation software that is used solely for preparing a tax or information return or other tax filing, including one that records, transmits, transfers, or organizes data related to such filing. Similar to the review of computer-implemented strategies, such software would still be entitled to patent protection to the extent otherwise patentable. Such patents, however, could not preclude non-users of such software from implementing any tax strategy. No inference is intended as to whether any software is entitled under present law to patent protection as distinct from copyright protection. Nor is an inference intended as to whether any particular strategy for reducing, avoiding, or deferring tax liability is otherwise patentable under present law.

In general, the U.S. Patent and Trademark Office may seek advice and assistance from Treasury and the IRS to better recognize tax strategies. Such consultation should help ensure that patents do not infringe on the ability of others to interpret the tax law and that implementing such interpretations remains in the public domain, available to all taxpayers and their advisors.

The practical result of this provision is that no one can be granted an exclusive right to utilize a tax strategy. The provision is intended to provide equal access to tax strategies.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FRANKEN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 23, the America Invents Act.

Harry Reid, Patrick J. Leahy, Debbie Stabenow, John F. Kerry, Jeanne Shaheen, Christopher A. Coons, Tom Harkin, Mark Begich, Jeff Bingaman, Al Franken, Kay R. Hagan, Michael F. Bennet, Richard Blumenthal, Sheldon Whitehouse, Amy Klobuchar, Bill Nelson, Benjamin L. Cardin, Richard J. Durbin.

Mr. REID. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture occur immediately upon disposition of the judicial nominations in executive session on Monday, March 7; further, that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNIZING THE GOVERNMENT PRINTING OFFICE

Mr. REID. Mr. President, I rise today to recognize the Government Printing Office, GPO, on the occasion of its 150th anniversary. GPO opened its doors on March 4, 1861, the same day President Abraham Lincoln took the oath of office. Since then GPO has used ever changing technologies to produce and deliver government information for Congress, Federal agencies, and the public. GPO plays a vital role in providing the printed and electronic documents necessary for Congress to conduct its legislative business.

I ask my colleagues to join me in congratulating the GPO on its 150th anniversary.

REMEMBERING LEONARD TRUMAN "BUCK" FERRELL

Mrs. MCCASKILL. Mr. President, today I pay tribute to a patriot, a businessman, a loyal father, and an American hero. Though Leonard Truman Ferrell—"Buck" to his many family and friends—was laid to rest at Arlington Cemetery this morning, I know that his legacy lives on in the community that he helped build, the family that he nurtured, and the soldiers with whom he served. Today I would like to take a few moments to honor Buck's life and the contributions he made to his community.

Born and raised in southeast Missouri, Buck was imbued from an early age with those quintessential American values so prevalent among the members of the Greatest Generation:

integrity, service to others, determination, and an undying sense of patriotism. Since Buck's family didn't have much money growing up, he learned at a young age to live within his means and to place little value on worldly possessions. "My father didn't have a lot of worldly goods," Buck once said, "but he was a rich man in character." I know I speak for many when I say that Buck, first and foremost, was also a man rich in character.

Buck was also a patriot of the highest order. Having served in the U.S. Army during the Korean war, he fought for 2 years on the Korean Peninsula and earned, among other decorations, the Combat Infantry Badge, the Presidential Unit Citation, two Silver Stars, and two Purple Hearts. Wounded multiple times, Buck never faltered and steadfastly manned his post, whether in a frontline foxhole or as a heavy weapons trainer for new recruits. In light of his outstanding service, Buck was even offered a battlefield commission. Though he chose not to accept the commission, Buck returned home and remained an active member in a number of veterans' organizations, like the American Legion and the Veterans of Foreign Wars, for the rest of his life. Never forgetting the country that he fought to protect, he raised—every morning—an American flag in his front yard.

As you can guess, Buck's dedication to others and stalwart work ethic continued long after his military service ended. For 25 years, he worked at the McCrate Equipment store in Caruthersville, MO, and retired as the general manager. As a member and former deacon at First Baptist Church, Buck helped sustain a thriving congregation, and he also took on a number of leadership roles in the local Masonic Lodge and Kiwanis Club. His extensive community involvement earned him the Pioneer Heritage Award from the Pemiscot County Historical Society and recognition by the Missouri State Legislature for his enduring impact in southeast Missouri.

But even with all of these commitments, Buck always had time for family. He and his wife Patsy Malin Ferrell raised four wonderful children, were the beloved grandparents to four grandchildren, and one great-granddaughter. In fact, I can personally attest to the great job the Ferrells did with their children—their talented daughter Christy is currently an invaluable member of my staff and is seated along with many other members of the Ferrell family, in the gallery today. My prayers are with them all in this time of loss.

Mr. President, I ask today that my fellow Senators join me in recognizing Buck Ferrell, not only because he was a great Missourian, but also because he embodied the true American values that have cemented American society for generations. Buck worked hard, served God, fought for his country, and loved his family. In short, he lived a life worth living.