

# THE COALITION FOR 21ST CENTURY PATENT REFORM

*Protecting Innovation to Enhance American Competitiveness*

## The Managers' Amendment to S. 515 Will Reduce the Time and Costs of Patent Examination and Patent Litigation and Produce Better Results

### Patent Examination

- Simplifies the patent examination process by awarding patents to the first-inventor-to-file
- Bases patentability on transparent, objective criteria that USPTO examiners and the public can readily locate and apply, thereby reducing the cost of obtaining patents and increasing the quality of the patents it grants.
- Allows the public to participate in the examination process by submitting relevant information to patent examiners which will result in better and more reliable patents.
- Creates a new post-grant review procedure handled by Administrative Patent Judges to provide an early quality control check for newly granted patents on all issues of patentability, with estoppels to prevent serial challenges.
- Strengthens existing inter partes reexamination procedures by assigning them to Administrative Patent Judges and requiring them to be completed in one year; retains novelty and nonobviousness on the basis of patents and publications as the grounds for challenge, but allows certain written admissions of the patent owner concerning the scope of a patent's claims to be taken into account.
- Minimizes serial inter partes reexamination proceedings by instituting a higher threshold standard for their initiation and by preventing reconsideration of any issues that the accused infringer "raised or reasonably could have raised" in prior USPTO proceedings.
- Authorizes the USPTO to establish, with public input, the fees needed to improve quality, speed the processing of applications, and make sorely needed upgrades in its IT systems which, if combined with a mechanism that ensures the Office can receive, retain, and use all of its fee revenues it collects, would ensure these goals can be achieved.

### Patent Litigation

- Eliminates issues relating to secret commercial uses or sales
- Reduces the likelihood that prior art will first be considered in patent litigation (due to expanded consideration of prior art through public submission and new post grant review procedures)
- Eliminates the judicial reconsideration of issues that an accused infringer "raised or reasonably could have raised" in a prior USPTO inter partes reexamination
- Ensures that patent damages will be consistently applied by adopting a "gatekeeper" procedure that permits juries to consider only those damages contentions that are cognizable at law and supported by substantial evidence.
- Requires that willful patent infringement must be proven by clear and convincing evidence that an infringer acted with "objective recklessness" (codifying the *In re Seagate* decision).
- Deters forum shopping by requiring transfer patent infringement actions to fora that are "clearly more convenient"
- Eliminates from litigation issues relating to information that is the subject of a supplemental USPTO examination completed prior to the commencement of that litigation
- Eliminates the need to litigate issues relating to the "best mode" contemplated by an inventor for carrying out the invention
- Creates a pilot program to enhance the expertise and efficiency of district courts in patent cases by providing training and professional development opportunities for judges and the hiring of law clerks with technical and legal expertise.