

## **Create Jobs – Enact the Patent Reform Act of 2010**

The Managers' Amendment to S. 515 improves, clarifies and updates the patent law in a balanced, thoughtful manner and will have a major, positive impact on investment in R&D, bring new products to consumers, and create new high-wage jobs. It will improve the functioning of the patent system in the following ways:

- Awards patents to the first inventor to file an application and bases patentability on transparent, objective criteria - information made available to the public - removing the criteria in current law, such as secret commercial use or sales, that increases cost of obtaining patents and decreases certainty and predictability.
- Improves the quality of patents by allowing the public to participate by submitting relevant information to patent examiners during the examination process which results in the grant of more reliable patents.
- Resolves the damages controversy with a measured, balanced and fair compromise that fully addresses the concern that patent damages law is sometimes inconsistently applied by adopting a "gatekeeper" procedure that ensures that only those damages contentions that are cognizable at law and supported by substantial evidence will be considered by the jury.
- Codifies the Federal Circuit's decision in *In re Seagate Tech.* that, consistent with U.S. Supreme Court jurisprudence, willful patent infringement must be proven by clear and convincing evidence that an infringer acted with "objective recklessness."
- Creates a robust new post-grant review procedure to provide an early quality control check on newly issued patents on all issues of patentability with a number of safeguards, including a one-year time limit for completion, estoppels to deter serial challenges, assurance that a post-grant review will not preclude consideration of a preliminary injunctions requested by patent owners who promptly file suit, and assigning the procedure to Administrative Patent Judges.
- Strengthens and improves existing inter partes reexamination for later challenges on the basis of prior patents and printed publications on the grounds of novelty and nonobviousness, and allows written statements of the patent owner concerning the scope of the patent to be considered. Several new features – a higher threshold to initiate proceedings, a one-year time limit for completion, and assigning the procedure to be conducted by Administrative Patent Judges rather than examiners – have been added, and existing safeguards against serial challenges have been retained.

- Deters forum shopping by requiring courts to transfer patent infringement actions upon a showing by an accused infringer that another venue is clearly more convenient than the venue chosen by the patentee.
- 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 – but this authorization must be coupled with a mechanism that ensures the Office can receive, retain, and use all of its fee revenues if its goals are to be achieved.
- Creates a “supplemental examination” procedure allowing patentees to request a review of any omitted or inaccurate information on the scope and validity of their patents before litigation to avoid unnecessary expense and use of judicial resources.
- Removes, as a basis for challenging a patent’s validity, the subjective requirement to disclose the “best mode” an inventor contemplates for carrying out the invention – a requirement that is used to make costly, time-consuming attacks on patents that fully satisfy the requirement to provide a disclosure of the invention that fully enables its use by the public.
- 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.