

THE COALITION FOR 21ST CENTURY PATENT REFORM

Protecting Innovation to Enhance American Competitiveness

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Coalition Welcomes House Introduction of Patent Reform Legislation

Momentum for Patent Reform in 112th Congress Should Benefit Inventors and Job Growth

Washington, D.C. – Gary Griswold of the Coalition for 21st Century Patent Reform today issued the following statement as House Judiciary Chairman Lamar Smith introduced *The America Invents Act of 2011*. Earlier this month the U.S. Senate overwhelmingly approved patent reform legislation. The House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet is holding a hearing on the issue on Wednesday, March 30th.

“With the introduction of *The America Invents Act* in the House, it is becoming increasingly clear that the 112th Congress wants to reform our patent system and encourage inventors to research new ideas that will bring innovation, benefit society and create jobs. With these hearings and the introduction of this bill, Chairman Smith has made patent reform a top priority for the Judiciary Committee; this focus will help build momentum toward sound legislation being adopted and signed into law.

The legislation provides a number of provisions that will improve the nation’s patent laws and the operation of the patent system for all inventors. The bill would adopt a first-inventor-to-file system that would simplify the patent law and speed final patentability determinations based on objective criteria using publicly available information, thus reducing the overall costs of obtaining patents. Further, FITF will facilitate obtaining global patent protection for American technology. The bill would also curtail the plague of false marking litigation, add a robust time-limited opportunity to promptly challenge patents after grant while protecting patentees against abusive serial challenges, provide adequate funding for the USPTO, expand the opportunities for the public to submit relevant information to patent examiners, and limit the consequences of the subjective “best mode” requirement.

There are a few proposals in the bill that need to be modified by the Judiciary Committee as these proposals will not improve the patent system and could erode the current broad support for patent reform. The fact that 95% of all requests to initiate an inter partes review proceeding are granted under the existing “substantial new question of patentability” threshold clearly shows that a higher bar is needed to protect patentees against unfounded challenges as well as to conserve the scarce resources of the USPTO.

Another unfortunate proposal would suggest that district courts and the International Trade Commission should grant stays of patent infringement actions when the accused infringer has initiated a post-grant procedure in the USPTO. This suggestion flows from the provision of a partial list of factors that a court or the ITC must consider in determining whether to stay an action to prevent the infringement of a patent involved in a post-grant proceeding. Not only does the listing of factors improperly constrain judicial discretion to impartially decide the issue, it

overly emphasizes the idea that a stay should be granted – something the ITC generally will not do, in view of its mandate to expeditiously protect US industry from infringing imports.

These and a few other proposals in the bill could jeopardize the overall broad support for reform. Our Coalition will be working with the Judiciary Committee members and others in the House to advance legislation that will solidify our nation's leadership in innovation and strengthen our patent system. Most of the provisions in the America Invents Act represent improvements to current law and are not controversial. The handful of very controversial provisions, however, could undermine the tenuous compromise that has allowed multiple industry sectors, universities, unions, small businesses, independent inventors and other stakeholders to support comprehensive patent reform after several years of efforts. We are hopeful that, working with the Judiciary Committee and others in Congress, these new provisions can be ameliorated so that we will be able to realize the significant consensus package of improvements to the patent system that are now within reach.”

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The Coalition has approximately 50 members from 18 diverse industry sectors and includes many of the nation's leading manufacturers and researchers. The coalition's steering committee includes 3M, Caterpillar, General Electric, Johnson & Johnson, Eli Lilly and Procter & Gamble. The Coalition has members in a variety of industry sectors including: Aerospace and Defense, Chemical, Computers, Diversified Financials, Diversified Technology, Energy, Food Production, Forest & Paper Products, Health Care, Household & Personal Products, Industrial Equipment, Medical Equipment & Devices, Network & Communications, Payroll Services, Pharmaceutical, Biotechnology, Semiconductors & Electronic Components, and Transportation Equipment. Visit <http://www.patentsmatter.com> for more information.