Act. I would like to thank my colleagues who worked diligently to bring this legislation before the full Congress, including Chairman MILLER, Chairman KENNEDY, and Subcommittee Chairman HINOJOSA.

The College Cost Reduction and Access Act takes savings generated as a result of the reconciliation process and makes four major investments in America's students, especially students in African American communities.

First, the bill will increase the maximum Pell grant scholarship—the Federal scholarship for low- and moderate-income students—over the next 5 years to $5,400. This increase in the Pell program is critical. Since the 2001–2002 school year, tuition at public four-year colleges has risen 55 percent. Unfortunately, during that same time period, the maximum Pell grant award increased by less than 8 percent and did not increase at all over the past 4 years.

Second, H.R. 2669 will cut the interest rate on student loans in half over the next 4 years. This interest rate reduction will provide enormous relief to the many students who take out subsidized Federal loans.

Third, this legislation will make a strong and historic investment in Historically Black Colleges and Universities and minority serving institutions. HBCUs represent an important piece of our history and investments in HBCUs are imperative for both student services and programs as well as institutional needs and infrastructure improvements. The College Cost Reduction and Access Act shows this commitment by improving and increasing funding for much needed student programming and opportunities. The funding for these colleges and institutions can be used for a variety of important programs and needs, including science and lab equipment, library books, and enhancement of certain disciplines of instruction such as math, computer science, engineering and health care.

This funding will go a long way toward closing the achievement gap that exists across our nation and helping those who wish to better themselves through education achieve their goals. The bill also provides, for the first time ever, funding for Predominantly Black Institutions and Asian and Pacific Islander-serving institutions, thereby recognizing the importance of institutions of higher learning that serve these communities. In addition, it also provides additional funding to Hispanic-serving institutions, Tribal Colleges and Universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions. While this funding will cover only a portion of the unique needs of these historical places of learning, I appreciate the commitment that members of the House Education and Labor Committee have expressed to continue to find ways to support these important institutions.

Finally, the College Cost Reduction and Access Act includes a provision to aid the Upward Bound program, which is the last hope and ticket to the future for many low income and first generation college students. The bill includes an additional $228 million to fund both new and prior funded Upward Bound programs across the Nation. This funding will reach several Upward Bound programs at HBCUs. In this grant cycle, 30 percent of Upward Bound programs at HBCUs would have been eliminated despite an increase in the total number of Upward Bound programs receiving grants. This provision would also provide funding to other deserving Upward Bound programs including programs serving Hispanic students.

I believe the College Cost Reduction and Access Act contains critical support for our nation's higher education system and I urge my colleagues to support the conference report.

Mr. WELDON of Florida. Mr. Speaker, I join with my colleagues in support of efforts to make college education more affordable for more Americans. Indeed, earlier this year I voted in support of H.R. 5, the College Student Relief Act of 2007. I believed that bill took some positive steps.

Unfortunately, the bill that is being brought before the House today for consideration, H.R. 2669, is full of budget gimmicks, creates five new entitlement programs, spends tens of billions of dollars, and shifts from the private sector to the taxpayers the potential liability for billions of dollars should student loans borrowers default.

I am very disappointed that the bill before us, H.R. 2669, falls far short of its goal. While those who drafted the bill assert that it is a comprehensive solution to making college more affordable, H.R. 2669 fails to address the core problem of access to U.S. colleges and universities: sky-rocketing rates of tuition and room and board. In just the last 7 years, annual inflation has increased on average 2.7 percent. However, higher education costs for students have increased an average of 4.2 percent—a rate that is 55 percent higher than regular inflation. This bill takes a pass on addressing that fundamental issue, and simply makes it easier and more likely that students will borrow more money and accumulate a larger debt by the time they graduate from college. H.R. 2669 completely ignores the root problem. The end result of this bill will be that the average college student graduating from college 4 years from now will still face a higher college debt than those graduating this year—even with all of the billions of dollars included in this bill.

Under H.R. 2669, those attending college in the future will be able to borrow more money and perhaps pay a lower interest rate for a short period of time, but with college expenses growing at a rate that far exceeds the annual inflation rate, students will end college with a significantly larger debt.

This bill creates five new Federal entitlement programs, costing tens of billions of dollars. In an attempt to feign compliance with the pay-as-you-go rules adopted by the current Congress, the Democrats include a provision that sunsets these new entitlement program. This is a budget gimmick designed to fool the American people. Does anyone really think that when these programs expire and students are half way through their college education, they will simply be allowed to expire? Of course they won't, and taxpayers will be forced to hand over tens of billions of additional dollars to continue these programs. Incidentally, this will come at about the same time when the House-passed state children's health insurance program, SCHIP, funding dries up and Congress will be looking for tens of billions of dollars to extend that program. Creating five new entitlement programs and spending tens of billions of dollars puts this nation on a path to financial ruin.

The bottom line is that H.R. 2669 enables students to take on more debt which will further burden them for many years past graduation. In 2006, the Higher Education Price Index, HEPI, calculation showed that inflation for colleges and universities jumped to 5 percent. This is 30 percent higher than the consumer price index, CPI—the regular inflation rate. When colleges and universities know that students have access to more funds through financial aid, loans, and grants, they have simply seen this as an opportunity to raise costs for students. This was the case in the past when college loan limits were significantly expanded and it will be repeated after this bill is passed.

The bill takes a pass on encouraging colleges and universities to put a lid on uncontrolled tuition increases. But it's not surprising given that this is the same Democrat majority that created a massive $100 million lobbying loophole for public universities. If we truly want to help our students go into the world with a good education saddled with less debt, we should hold colleges and universities who take government aid more accountable and not allow them to continue their excessive increases in college costs. Colleges and universities have an obligation to exercise fiscal responsibility rather than simply seeing these new student loans and grants as an opportunity to shift more of their fiscally irresponsible costs onto the backs of students and taxpayers.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KAGEN). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## PATENT REFORM ACT OF 2007

The SPEAKER pro tempore. Pursuant to House Resolution 636 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1908.

□ 1223

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1908) to amend title 35, United States Code, to provide for patent reform, with Ms. SOLIS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. CONYERS. Madam Chairman, I yield myself such time as I may consume.

Members of the House, I am proud and privileged to be the chairman of the Judiciary Committee for this historic consideration of the Patent Reform Act of 2007.

I can't help but begin by commending those members of Judiciary who were in this battle before I became chairman, namely, LAMAR SMITH of Texas; namely, HOWARD BERMAN of California; namely, Mr. COBLE of North Carolina, all who have worked in a remarkable way. Even when the leadership changed in the committees and SMITH became ranking and BERMAN became Chair, the cooperation and bipartisanship continued. I think it is important to lay that groundwork because of the intense cooperation in which we have sought to consult with every conceivable organization, individual, all stakeholders in this matter; and I think it has had a very telling effect on a bill that brings us all together here this afternoon.

After all, patent reform is enshrined in the Constitution, isn't it? Article I, section 8. After all, we have had a patent office pursuant to constitutional direction since 1790. So for a couple hundred years, this has been the driving force for American competition, creativity, inventiveness, and a prosperous economy. Thomas Jefferson was the first patent examiner in our American history. So I am humbly standing in the well to tell you that the continued robustness of the patent concept is very important. It has been estimated that the value of intellectual property in the United States amounts to $5 trillion, and much of that is in the value of the patents that come from the legislation produced by this bill.

Well, if it is so great, why are we here? Well, because certain things have happened over the course of years that need some re-examination. One of them is the trolling situation in which patents of less than high quality, they have created a whole legal industry, as some will continue to describe here today, in which, with very little pretext or excuse, patents are challenged and create a huge nuisance value. They flood the courts with unnecessary litigation. There are abusive practices that have grown up around the concept of patents, and there are certain inefficiencies where, for example, we use the first-to-invent system of granting patents, while most of the active and creative inventors in other countries use the first-inventor-to-file system, and we harmonize that in this legislation.

So there are problems, and they have been addressed with great care, because sometimes they go against the grain or to the detriment of the rest of the people, the stakeholders in this great legal activity of granting patents.

So I am here to tell you that we finally closed the circle, and I am proud of this, being from the highly organized State of Michigan, that with our friends in Labor we have been able to work out differences that they had originally had with this measure. All the consumer groups, there are several of them that have now joined with us. The United States Public Interest Research Group has come in. The pharmaceuticals have mostly come in. The Association of Small Inventors has come in.

We have done a great job, and we have created a manager's amendment to which we have allotted 20 minutes to discuss separately from the bill itself. I am proud, as you can tell, of the bipartisan nature of this work, because that is what it takes to make some 22 changes in the manager's amendment, more than two dozen changes in the underlying bill; and dealing with the question of damages and post grant opposition are stories that can only be told by the gentleman from California with his appropriate brevity. So it is in this spirit that we begin this final discussion of this measure.

I thank all the Members of the Congress not on the Judiciary Committee who have helped us in so many different ways.

Madam Chairman, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chairman, I yield myself such time as I may consume.

I strongly endorse H.R. 1908, the Patent Reform Act of 2007, and I urge my colleagues to support American inventors, American businesses, and the American people by voting for this bill today.

Last year we laid a substantial foundation for patent reform. It was a good start, but we need to finish the job now. The Patent Reform Act is the most significant and comprehensive update to patent law since the 1952 act was enacted. The Judiciary Committee has undertaken such an initiative because changes to the patent system are necessary to bolster the U.S. economy and improve the quality of living for all Americans.

There are two major reasons the committee wrote the bill: first, too many patents of questionable integrity have been approved. Second, holders of these weak patents discovered a novel way to make money, not by commercializing the patents but by suing manufacturing companies whose operations might incorporate the patents. This combination of weak patents and ''seat-of-the-patents'' litigation has hurt the economy.

Most companies don't want to risk shutting down their operations in response to a questionable lawsuit. Nor do they have much faith in a legal system in which juries and even judges become confused by the complexities of patent law. The result: legalized extortion in which companies pay a lot of money to use suspect patents.

The bill will eliminate legal gamesmanship from the current system that rewards lawsuit abuses. It will enhance the quality of patents and increase public confidence in their legal integrity. This will help individuals and companies obtain money for research, commercialize their inventions, expand their businesses, create new jobs, and offer the American people a dazzling array of products and services that continue to make our country the envy of the world.

All businesses, small and large, will benefit. All industries directly or indirectly affected by patents, including finance, automotive, manufacturing, high tech, and pharmaceuticals, will profit.

Given the scope of H.R. 1908, it is impossible to satisfy completely every interested party. But the committee has made many concessions to accommodate many individuals and many businesses.

□ 1230

The bill has not been rushed through the process. Over the past 3 years, our committee has conducted 10 hearings with more than 40 witnesses representing a broad range of interests and views.

The Patent Reform Act was amended at different stages of the process to address criticisms of the bill. Still, not all interests have endorsed the bill. I think their response is mostly resistance to change, any change.

This bill is not intended to favor the interests of one group over another. It does correct glaring inequities that encourage individuals to be less inventive and more litigious.

Supporters of the bill run the educational, consumer and business spectrum. The Business Software Alliance, the Information Technology Industry Council, the American Association of Universities, the American Bankers Association, the Consumer Federation of America, the Computer and Communications Industry Association, and the Financial Services Roundtable, again, they all endorse this bill.

Article I, section 8, as the chairman mentioned a while ago, of the Constitution empowers Congress, ''to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.''

The foresight of the founders, in creating an intellectual property system, demonstrates their understanding of how patent rights ultimately benefit the American people. Nor was the value of patents lost when one of our greatest Presidents, Abraham Lincoln, himself a patent owner, Lincoln described the patent system as adding ''the fuel of interest to the fire of genius.''

Few issues are as important to the economic strength of the United States as our ability to create and protect intellectual property. American IP industries account for over half of all U.S. exports, represent 40 percent of the

country's economic growth, and employ 18 million Americans. A recent study valued U.S. intellectual property at $5 trillion, or about half of the U.S. gross domestic product.

The Patent Reform Act represents a major improvement to our patent system that will benefit Americans for years to come.

Madam Chairman, this bill has been a bipartisan effort. We would not be here now without the steady hand and gentle suggestions made by our chairman, Mr. CONYERS.

I also want to acknowledge the indispensable contributions of Congressman HOWARD BERMAN and Congressman HOWARD COBLE, among others. All three of us have been chairmen of the Intellectual Property Subcommittee over the past number of years, and we have worked together on developing this bill. But it is Mr. BERMAN's good fortune and a testament to his legislative ability that we are on the House floor today, and I congratulate him for that achievement.

Madam Chairman, I reserve the balance of my time.

Mr. CONYERS. Madam Chairman, part of the Smith-Berman-Coble trio is the chairman now of the Courts, Intellectual Property and Internet Subcommittee. His indefatigable commitment to patent reform is now well known by all of the House, and I'm pleased to yield 2½ minutes to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Madam Chairman, first I have to say that we wouldn't be here, not only for his substantive contributions to this legislation, but because of his suggestions about the approach we should take, whether it was in full committee or as we move towards the floor in terms of working out problems that existed, and that's Chairman CONYERS. He played a critical role in getting us to this point.

LAMAR SMITH, HOWARD COBLE, RICK BOUCHER, who I started this with, DARRELL ISSA, ZOE LOFGREN, ADAM SCHIFF, BOB GOODLATTE, a number of people played key roles in all this. I don't have too much time. The staff, on an issue like this, was indispensable; they made incredible contributions. This is really complicated stuff. Perry Apelbaum who demonstrated great leadership and guidance on many issues, George Elliott, a detailee from the Patent Office who is a great resource, Karl Manheim, who decided to spend his sabbatical helping on patent reform, Eric Gorduna who spent his summer working on the committee report, countless other staff, and of course my Chief Counsel Shanna Winters.

But the question is why, why are we doing this? And here are the things we are told by groups like the National Academy of Sciences and so many other organizations that are tremendously respected for their understanding of science and of our economy:

One, there are serious problems in the patent system;

Two, many poor-quality patents have been issued, which cheapen the value of patents generally;

Three, there have been a variety of abuses in patent litigation rules that have taken valuable resources away from research and innovation;

Four, U.S.-based businesses are disadvantaged because our patent laws aren't harmonized with the rest of the world.

Many organizations, many groups have argued for these reforms.

A quick statement about support. Every major consumer group in this country has endorsed this legislation. There is tremendous support in the financial services sector, in the high technology sector. The universities have now, University of California, which is one of the critical magnets of research and development, have supported passage of this legislation through the House. The American Association of Universities has supported moving the bill forward.

And one last comment. There is one very controversial issue, aside from the ones addressed by the amendments that we have seen that are not fully dealt with, and that particularly relates to the issue of damages and the apportionment of damages. It is our commitment, my commitment, the chairman's commitment, Mr. SMITH's commitment, Mr. COBLE's commitment, to work with people who are concerned about that language to reach an appropriate middle ground that reforms the way damages are calculated between now and the conference committee and when this comes back to deal with that controversy.

I urge strong support for this bill so we can make this historic effort, first in 60 years, move forward to ultimate enactment.

I include short list of the range of groups that support this bill.

The Business Software Association, The Financial Services Roundtable, Small Business & Entrepreneurship Council, TechNet, Consumer Federation of America, Consumer Union, Electronic Frontier Foundation, Knowledge Ecology International, Public Knowledge, United States Public Interest Research Group, American Corn Growers Association, American Agricultural Movement, Federation of Southern Cooperatives, National Family Farm Coalition, National Farmers Organization, Rural Coalition, Securities Industry and Financial Markets Association, Computer and Communications Industry Association, Computing Technology Industry Association, Illinois IT Association, Information Technology Association of America, Information Technology Industry Council, Software & Information Industry Association, St. Jude Medical, Massachusetts Technology Leadership Council, Inc., Hampton Roads Technology Council, Northern Virginia Technology Council.

Mr. SMITH of Texas. Madam Chairman, I yield 5 minutes to my friend from North Carolina (Mr. COBLE), the ranking member and former chairman of the Intellectual Property Subcommittee.

Mr. COBLE. I thank the gentleman from Texas for yielding.

Madam Chairman, I recall several years ago, when we were discussing proposed patent legislation before a crowded hearing room, and I remember one Member saying to the crowd, he said, I have friends for this bill, I have friends opposed to this bill, and I want to make it clear, he said to that group, I'm for my friends. Well, we don't do it quite that easily; easier said than done. But as has been mentioned before, the distinguished gentleman from California (Mr. BERMAN) and I, along with the gentleman from Texas and the gentleman from Michigan, we've plowed this field before. And I've heard many argue that H.R. 1908 undermines everything that we accomplished in 1999 when the American Inventors Protection Act was implemented.

Madam Chairman, this is simply inaccurate. Mr. BERMAN and I shepherded that legislation which, among other things, created patent reexamination, banned deceptive practices, clarified the term for patents, required that patents be published before they're granted, and made the Patent Office independent within the Department of Commerce, among other things.

As our domestic economy becomes increasingly dependent on the global economy, Madam Chairman, so, too, does our patent system.

Other challenges stem from the marketplace. As our domestic economy becomes increasingly dependent on the global economy, so does the patent system. In many international markets, patent protection is one certainty on which American manufacturers can rely when they are trying to compete internationally.

H.R. 1908 addresses these challenges in several respects. First, the bill implements a first-to-file patent system, which is in line with other countries and will streamline the patent review and issuance process.

Other provisions in the bill dealing with willful infringement, post-grant opposition, publication, inequitable conduct and best mode will also help improve patent issuance and patent quality.

By improving patent quality, patent disputes and litigation should be reduced, and patent examiners' ability to perform the daunting task of searching scores of records and files should improve greatly.

Unfortunately, H.R. 1908 has not enjoyed universal support. Several key stakeholders have voiced concerns and objections which cannot be overlooked. And I understand that many, if not all, of the changes in the manager's amendment will address many concerns, but I am still troubled that another key coalition may not endorse H.R. 1908 at the end of today's debate. Many of these companies in this coalition, unfortunately for me, are either located in or near my district, and I'm concerned that anything in H.R. 1908 would adversely affect them.

So while I urge my colleagues to support H.R. 1908, I do not mean to cast

any aspersions upon those who may very well have meritorious concern, particularly dealing with applicant responsibility and how any change to the rule for calculating infringement damages could impact the value of their patents.

That being said, Madam Chairman, I know that Chairman BERMAN, the distinguished gentleman from California, the distinguished gentleman from Texas, the Ranking Member SMITH, have accepted all criticisms in good faith and have worked diligently to forge some sort of compromise where it has been possible. I hope that after today we will continue to pursue compromise so that with some good fortune we may convince all stakeholders to support what I believe is needed patent reform.

And I say to the gentleman from Texas, I thank you for having yielded.

Mr. CONYERS. Madam Chairman, I am pleased to yield to the gentleman from Virginia (Mr. BOUCHER). He is the last Member on this side that's getting 3 minutes.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. I thank the gentleman from Michigan for yielding this time. I also want to commend the gentleman from Michigan for the very fine and persistent work that he has performed in bringing this measure to the House floor today.

Mr. BERMAN and I introduced an earlier version of this patent reform fully 5 years ago. And building on that early effort, Mr. BERMAN has worked tirelessly to build broad support for the patent reform, support externally and bipartisan support in this Chamber, to fine-tune the bill's provisions and to obtain Judiciary Committee approval of the measure earlier this year. That is truly an impressive accomplishment.

There is an urgent need to improve the patent system. Patent examiners are burdened with many applications and are encouraged to move quickly on each one of them. And as they do their work, they are isolated from an important source of highly relevant information. That information source is the knowledge that individuals may have that the work that is the subject of the patent application may, in fact, not be original, that someone else, in fact, may have invented that particular object, and that that object has been in use prior to the time that the application was filed. That information we call ''prior art.'' The existing patent process contains no avenue for third parties who may possess information about prior art to submit that to the patent examiner while the application is being examined. Our reform bill corrects that flaw, and in so doing, will broadly operate to improve patent quality.

Also in aid of patent quality is the provision which significantly strengthens the post-grant interparty's reexamination process through which the Patent Office can be required to take a more careful look at the patent and the application that accompanies it before that patent is issued in final form by the Patent Office.

Our goal with this provision is to ensure that before a patent is issued, parties who contest its validity will have a full and complete opportunity to do so within the confines of the Patent Office itself. That should prove to be a very effective and less costly alternative than litigating the validity of the patent in the court process.

Across its range of provisions, the reform measure before us makes long-needed changes that will improve the quality of patents, adjust aspects of the litigation process to the benefit of patent holders and those who license for use patented items.

The bill before us contains a provision which I offered as an amendment in committee in partnership with my Virginia colleague, Mr. GOODLATTE. Our provision prohibits prospectively the award of patents for tax planning methods.

Madam Chairman, I strongly encourage that the bill, with that amendment, be approved.

I thank the gentleman from Michigan for yielding this time to me, and I commend him on his effective work, which brings the patent reform measure to the House floor today.

Mr. BERMAN and I introduced an earlier version of this reform 5 years ago.

Building on that early effort Mr. BERMAN has worked tirelessly to build broad support for patent reform, to fine tune the bills provisions, and to obtain Judiciary Committee approval of this measure. It is a truly impressive achievement.

There is an urgent need to improve the patent system.

Patent examiners are burdened with many applications and are encouraged to conclude each one quickly.

And as they do that work they are isolated from an important source of highly relevant information.

That information source is the knowledge individuals may have, that the subject of the patent application is not original, that in fact, the object may have previously been invented by someone else. We call that prior art.

And the existing patent process contains no avenue for third parties to submit evidence of prior art to the patent examiner.

Our reform bill correct that flaw, and in so doing will help to improve overall patent quality.

Also in aid of patent quality is the provision which significantly threatens the past grant inter partes reexamination process through which the Patent Office can be required to take a more careful look at the proposed patent prior to its final issuance.

Our goal with this provision is to assure that before a patent is issued, parties who contest its validity will have a full and complete opportunity to make their case.

A meaningful Inter Pates proceeding can also be an expeditious, less costly alternative to litigating the validity of the patent in the courts.

Accross its range of provisions, the reform measure before us makes long-needed changes, which will improve the quality of patents and adjust aspects of the litigation process to the mutual benefit of patent holders and those who license for use patented items.

The bill before us contains a provision which I offered as an amendment in committee along with my Virginia colleague, Mr. GOODLATTE.

Our provisions prohibits prospectively the award of patent for tax planning methods.

Approximately 60 such patents have been issued and at least 85 more are pending at the Patent Office.

These patents limit the ability of taxpayers, and the tax professionals they employ, to read the tax laws and find the most efficient means of lessening or avoiding tax liability (contrary to said public policy).

If someone else has previously read the tax law, found the same means of reducing tax liability and received a patent for it, that person is entitled to a royalty if anyone else tries to reduce his taxes by the same means.

I frankly think that is outrageous. No one should have to pay a royalty to pay their taxes. No one should have sole ownership of how taxes are paid.

Such a barrier to the ability of every American to find creative lawful ways to lessen tax liability is contrary to said public policy.

Our amendment, now a part of the bill before us, will bar the future award of such patents, and I would encourage the Patent Office to reexamine those that have been issued to date.

I also want to thank the bipartisan leadership of the Ways and Means Committee for expressing support for our provision on tax planning strategies.

Mr. Chairman, I urge approval of the bill.

Mr. SMITH of Texas. Madam Chair, I yield a full 4 minutes to my friend from California (Mr. ROHRABACHER) on the condition, of course, that he is not too critical of this legislation and that he is dispassionate in his remarks.

Mr. ROHRABACHER. I thank my friend from Texas.

I rise in strong opposition to H.R. 1908.

The proponents suggest that it is the most fundamental and comprehensive change of American patent law in over a half century. Well, that's true, and that's why it should be defeated, because the changes are almost all aimed at undermining the technological creators and strengthening the hand of foreign and domestic thieves and scavengers who would exploit America's most creative minds and use our technology against us. It would be a disaster for individual inventors, with an impressive coalition strongly opposing this legislation: universities, labor unions, biotech industries, pharmaceuticals, nanotech, small business, traditional manufacturers, electronics and computer engineers, as well, of course, the patent examiners themselves who are telling us this will have a horrible impact on our patent system.

□ 1245

They are all begging us to vote ''no.'' This so-called reform will make them vulnerable to theft by foreign and domestic technology thieves. Our most

cutting-edge technology will be available to our enemies and our competitors. That is why I call this the Steal American Technologies Act. The billionaires in the electronics industry and the financial industries who are supporting H.R. 1908, many of them already have built their factories in China, would do away with the patent system altogether if they could. They are so powerful and arrogant that they have set out to fundamentally alter our traditional technology protection laws, laws that have served America well for over 200 years.

Yes, this is an issue vital to the well-being of the American people, to our standard of living; yet we find ourselves with a severely limited debate. There is only 1 hour of debate. Those of us who are opposing this legislation haven't even been given the right, which is traditional in this body, to control our own time. Yes, the way we are handling this debate is a disgrace. There will be 12 minutes available for those of us who oppose a bill that they claim is so important for the future of our country.

What do we know about this bill? It is a horror story for American inventors and a windfall for foreign and domestic thieves. We don't even know what is in the bill. The manager's amendment has been changed even after the committee did its business. So it wasn't even fully debated in the committee and much less fully debated at the subcommittee level. No, what we are doing is a power play here. That is what we are witnessing. The opposition doesn't even get the chance to argue our case adequately before this body or before the American people. Our inventors and our innovators are begging us not to pass this legislation. Foreign and domestic technology thieves are licking their chops. Let's not let the big guys beat down and smash the little guys, which is what the purpose of this legislation is.

There are problems in the Patent Office, that is true, that can be fixed without having to fundamentally alter the principles that are the basis of our patent system, which is what this legislation does. This legislation, in the name of reform, is being used as a cover to basically destroy the patent system that has served us so well. In the long term, it will destroy American competitiveness and the standard of living of our working people. That is what is at stake here. Overseas, the people in India, China, Japan and Korea are waiting. We have quotes from newspapers suggesting that as soon as this bill passes, they will have a greater ability to take American technology even before a patent is granted and put it into commercial use against us.

This is a shameful, shameful proposal. The American people have a right to know. We are watching out for their interests. I don't care what the billionaires in the electronics industry and the financial industry say. We should have more debate on this. We should have had 2 or 3 hours of debate on this if it is as important as they say. Instead, we have been muzzled, and it is a power grab. Vote against H.R. 1908.

Mr. CONYERS. Madam Chairman, I yield 10 seconds to my colleague from California (Mr. BERMAN).

Mr. BERMAN. I thank the gentleman for yielding.

Madam Chairman, just because the gentleman says it is so, doesn't mean it is so. I have letters from the AFL–CIO, the university community, and the major centers of innovation and research in this country that directly contradict his assertion that they are opposed to the passage of this bill. The Members of this body should understand that.

Mr. CONYERS. Madam Chairman, I am pleased now to yield 2½ minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Right before our break, we passed and sent to the President comprehensive innovation legislation that allowed America to maintain its lead in the area of technology and investment in the R&D of this country. With this legislation, the patent reform, we are taking the second step in assuring that America, American companies and America's innovation, maintains its leadership in the world and the companies that are producing the jobs and well-paying manufacturing jobs here in this country.

I have only a small assortment of letters from the CEO and managements of these companies: Mr. Chambers from Cisco, Safra Catz from Oracle, the president and chief financial officer, the CEOs from Palm and the Micron company, and other companies.

Just to read the sense of what they are saying: ''As a company with several thousand patents, Cisco believes deeply in strong protection for intellectual property. Unfortunately, as you found during the hearing process, there are clear signs the current patent system is not functioning properly.''

This is from Mr. Chambers, the chairman and CEO of Cisco: These reforms you are debating today, this legislation will allow us to continue to innovate and help maintain our Nation's position as the world's technology leader.

This is essential legislation for American companies, America's innovation, and its ability to produce jobs for the future. Major CEOs from major companies that have maintained and also built America's leadership in the high-tech field all support this legislation, in addition to leaders of every major consumer group. So it is both good for consumers and good for business and good for the companies that are producing the jobs here in this country.

I would like to submit into the RECORD these letters from just an assortment of the companies that support this legislation because of what we are doing to maintain America's leadership in the production of new jobs, new technology, and new companies here in the country, formation of new capital, venture capital funding, et cetera. This, though, is the most important step to ensure that when people invent things and design patents that they have the notion and the integrity that those patents and their ideas are going to be protected.

Today we are taking a major step, forward as the CEOs have said in their own letters, in maintaining America's leadership in the production of not only new companies but the most innovative jobs and high-paying jobs that are the future of this country. I want to commend the leadership for producing this legislation and having it on the floor today for a vote.

CISCO SYSTEMS. INC.,
*San Jose, CA, September 6, 2007.*

Hon. JOHN CONYERS, JR.,
*Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.*

Hon. HOWARD L. BERMAN,
*Chairman, Committee on the Judiciary, Subcommittee on Courts, the Internet and Intellectual Property, Rayburn House Office Building, Washington, DC.*

Hon. LAMAR S. SMITH,
*Ranking Member, Committe on the Judiciary, Rayburn House Office Building, Washington, DC.*

Hon. HOWARD COBLE,
*Ranking Member, Committee on the Judiciary, Subcommittee on Courts, the Internet and Intellectual Property, Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN CONYERS, RANKING MEMBER SMITH, CHAIRMAN BERMAN, AND RANKING MEMBER COBLE: I am writing to applaud your tireless efforts to pass H.R. 1908, the Patent Reform Act of 2007. As the House prepares to debate this bill, I want to reiterate to you Cisco's strong support for the legislation.

In bringing the issue of patent reform to the floor, the House of Representatives and the sponsors of H.R. 1908, have demonstrated a genuine commitment to promoting innovation. As a company with several thousand patents, Cisco believes deeply in strong protection for intellectual property. Unfortunately, as you found during the hearing process, there are clear signs the current patent system is not functioning properly. H.R. 1908 provides a series of needed reforms, which will modernize and restore balance to the patent system. These reforms will allow us to continue to innovate and help maintain our nation's position as the world's technology leader.

Passage of comprehensive patent reform is Cisco's number one legislative priority for 2007. We have made this issue a priority because we believe a modernized and balanced patent system will promote innovation throughout our economy and thus improve our nation's ability to compete in the global economy.

I believe the time has come for patent reform legislation, and I deeply appreciate your commitment to passing H.R. 1908.

Kind Regards,

JOHN CHAMBERS,
*Chairman and CEO, Cisco.*

ORACLE,
*Washington DC, September 6, 2007.*

Hon. NANCY PELOSI,
*Speaker, House of Representatives, Washington, DC.*

Hon. JOHN BOEHNER,
*Republican Leader, House of Representatives, Washington, DC.*

DEAR MADAM SPEAKER AND REPUBLICAN LEADER BOEHNER: I am so pleased to see that the House of Representatives will soon begin debate and vote on H.R. 1908, the Patent Reform Act. I can't emphasize enough the significance of this upcoming vote—it is perhaps the single most important vote for our innovation-driven industry in the last few years.

Our economy historically has been at the forefront of each new wave of innovation for one simple reason: our intellectual property laws, starting with our nation's Constitution, reward innovation. However, today's U.S. patent system has not kept pace with the growth of highly complex information management systems—the cornerstone of an innovation wave that is truly global in scope. As a result, we have seen a significant increase in low quality patents, which has sparked a perverse form of patent litigation innovation. Some of our nation's most creative companies have been forced to spend tens of millions of dollars to defend themselves against frivolous lawsuits that extract settlements that are in the hundreds of millions of dollars.

This is not news to you and your colleagues. A bipartisan effort, led by Congressmen Howard Berman and Lamar Smith, has been underway for several years now, and after numerous public hearings and discussions with key stakeholders, a balanced blueprint for reform has been produced and approved by the House Judiciary Committee. In addition to long-sought reforms in patent quality, H.R. 1908 will bring certainty, fairness and equity to key stages of the patent litigation process, including determinations of venue, willful infringement and the calculation of damages.

In short, H.R. 1908 is designed to strengthen and bring our patent system back to basic principles: to reward innovation, and preserve our economy's creative and competitive leadership.

We at Oracle thank you and your colleagues for the tremendous work to advance this essential legislation, and we look forward to seeing H.R. 1908 become law in the 110th Congress.

Sincerely,

SAFRA CATZ,
*President and Chief Financial Officer.*

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PALM INC.,
*Sunnyvale, CA, September 5, 2007*

Hon. HOWARD BERMAN,
*House of Representatives, Rayburn Building, Washington, DC.*

DEAR CONGRESSMAN BERMAN: On behalf of Palm, Inc., thank you for your work in bringing the Patent Reform Act of 2007 to the House floor for a vote this Friday, September 7, 2007.

This legislation is extremely important to Palm as well as other companies beyond the technology industry. By updating the current patent system, including changes that affect the litigation process, Palm will be able to continue to effectively innovate in ways that will benefit the consumer and the U.S. economy. We are proud to work with a diverse, multi-industry national coalition that has advanced this critical patent reform legislation over the past six years and we appreciate your leadership in providing a strong opportunity for passage.

I thank you for your time and commitment on this critical issue.

Sincerely,

EDWARD T. COLLIGAN,
*Chief Executive Officer, Palm, Inc.*

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MICRON TECHNOLOGY, INC.,
*Boise, ID, September 6, 2007.*

Hon. NANCY PELOSI,
*Speaker, House of Representatives, Washington, DC.*

DEAR MADAM SPEAKER: As H.R. 1908 the Patent Reform Act of 2007, led by Chairman JOHN CONYERS, Ranking Member LAMAR SMITH, Representatives BERMAN and COBLE, is considered in the House of Representatives, I would like to take this opportunity to thank you and all the bill's supporters who have worked in a bipartisan fashion to help move this legislation forward.

Patent reform is a top legislative priority for the high-tech industry. Like many other supporters of this legislation, Micron Technology, Inc. is one of the world's top patent holders. Protecting our intellectual property is critical to our success. However, the U.S. patent system has not kept pace with the demands of rapidly evolving and complex technologies, and the global competitiveness of U.S. technology companies has suffered as a result. H.R. 1908 would balance many of the imbalances that currently plague our patent system. It would promote innovation, yet safeguard the rights of innovators, thereby restoring fairness to the patent system in our nation.

Thank you again for recognizing that now is the time to move forward on this important legislation.

Sincerely,

STEVEN R. APPLETON,
*Chairman and CEO, Micron Technology, Inc.*

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AUTODESK, INC.,
*San Rafael, CA, September 6, 2007.*

Hon. NANCY PELOSI,
*Speaker of the House, House of Representatives, Washington, DC.*

DEAR MADAM SPEAKER: I want to thank you and your colleagues in the House leadership for scheduling H.R. 1908, The Patent Reform Act of 2007, for consideration this week on the floor of the House of Representatives. This legislation is my company's top legislative priority this year and is important to the innovation economy of the country. It has been thoughtfully drafted in a bipartisan manner to accommodate many diverse perspectives. I applaud the House for taking decisive action on this critical bill, and look forward to its passage and ultimate enactment into law.

Sincerely,

CARL BASS,
*President & CEO, Autodesk, Inc.*

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KALIDO,
*Burlington, MA, September 6, 2007.*

Hon. NANCY PELOSI,
*Speaker of the House, House of Representatives, Washington, DC.*

Hon. STENY HOYER,
*Majority Leader, House of Representatives, Washington, DC.*

Hon. HOWARD BERMAN,
*Chairman, Subcommittee on Courts, the Internet and Intellectual Property, Committee on the Judiciary, House of Representatives, Washington, DC.*

DEAR MADAM SPEAKER, MAJORITY LEADER HOYER, AND CHAIRMAN BERMAN: Thank you for bringing the Patent Reform Act of 2007 to the House floor for a vote this Friday, September 7, 2007.

This legislation is extremely important to the livelihood of my company as well as companies beyond the technology industry. By updating the current patent system, including changes that affect the litigation process, Kalido will be able to continue to innovate in ways that will benefit the consumer and the U.S. economy.

As a software company, our business is our intellectual property, and protecting software companies also protects the large multinational firms that benefit from our innovation. It is extremely important not only to protect our intellectual capital, but to motivate our investors, employees, and ultimately, our customers.

Understanding the challenges in advancing this critical patent reform legislation over the past six years, we appreciate your leadership for providing a strong opportunity for passage.

I thank you for your time and commitment on this issue.

Sincerely,

WILLIAM M. HEWITT,
*President & CEO.*

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AUTHORIA, INC.,
*Waltham, MA, September 6, 2007.*

Hon. NANCY PELOSI,
*Speaker of the House, House of Representatives, Washington, DC.*

SPEAKER PELOSI: I look forward to seeing you again at TechNet Day this Spring.

Thank you for bringing the Patent Reform Act of 2007 to the House floor for a vote this Friday.

This legislation is extremely important to the livelihood of my company as well as tens of thousands of other high-growth companies.

By updating the current patent system, including changes that affect the litigation process, Authoria will be able to continue to innovate in ways that will benefit the consumer and the U.S. economy.

Understanding the challenges in advancing this critical patent reform legislation over the past six years, we appreciate your leadership for providing a strong opportunity for passage.

I thank you for your time and commitment on this issue.

Sincerely,

TOD LOOFBOURROW,
*President, Founder & CEO Authoria, Inc.*

Mr. SMITH of Texas. Madam Chairman, I yield 4 minutes to my friend from Virginia (Mr. GOODLATTE), the ranking member of the Agriculture Committee, the chairman of the House High Tech Caucus, and a senior member of the Judiciary Committee.

Mr. GOODLATTE. I thank the gentleman, and I thank him for his leadership on the Judiciary Committee and for years of leadership on this legislation, along with HOWARD BERMAN, the chairman of the Intellectual Property Subcommittee, and their staffs for this legislation.

Madam Chairman, article I, section 8 of our Constitution lays the framework for our Nation's patent laws. It grants Congress the power to award inventors, for limited periods of time, exclusive rights to their inventions. The Framers had the incredible foresight to realize that this type of incentive was crucial to ensure that America would become the world's leader in innovation and creativity.

These incentives are just as important today as they were at the founding of our country. It is only right that as more and more inventions with increasing complexity emerge, we should examine our Nation's patent laws to

ensure that they still work efficiently and that they still encourage, and not discourage, innovation, so America will remain the world's leader in innovation.

The solution involves both ensuring that quality patents are issued in the first place and ensuring that we take a good hard look at patent litigation and enforcement laws to make sure that they do not contain loopholes for opportunists with invalid claims to exploit. H.R. 1908 addresses both of these concerns.

First, the bill helps ensure that quality patents are being issued by the U.S. Patent and Trademark Office. The PTO, like any other large government agency, makes mistakes. H.R. 1908 creates a post-grant opposition procedure to allow the private sector to challenge a patent just after it is approved to provide an additional check on the issuance of bogus patents. Better quality patents mean more certainty and less litigation for patent holders and businesses.

In addition, H.R. 1908 contains important litigation reforms to rein in abusive lawsuits and forum shopping so that aggressive trial lawyers do not make patent litigation their next gold mine like they did for asbestos lawsuits, class action lawsuits and the like. Specifically, the bill tightens the venue provisions in the current patent law to prevent forum shopping.

H.R. 1908 also prohibits excessive damage awards. Believe it or not, there is no current requirement that damage awards in patent cases be limited to the value the patent added to the overall product. The courts have created a virtual free-for-all environment in this area. H.R. 1908 contains provisions to help ensure that damages are proportional to the value the invention added to the product, which will inject certainty into this area and allow businesses to devote their resources to R&D and innovating.

The bill also creates clearer standards for ''willful infringement'' by requiring greater specificity in notice letters alleging infringement of patent claims and requiring courts to include in the record more information about how they calculate damage awards.

Furthermore, the bill contains an important amendment that Congressman BOUCHER and I added during the Judiciary Committee markup to prevent individuals and companies from filing patents to protect tax strategies. Since 1998, when the Federal Circuit Court of Appeals held that business methods were patentable, 51 tax strategy patents have been granted covering such topics as estate and gift tax strategies, pension plans, charitable giving and the like. Over 80 additional tax strategy patents are pending before the USPTO.

When one individual or business is given the exclusive right to a particular method of complying with the Tax Code, it increases the cost and complexity for every other citizen or tax preparer to comply with the Tax Code. No one should have to pay royalties to file their taxes. H.R. 1908 renders these tax strategy patents unpatentable so that citizens can be free to comply with the Tax Code in the most efficient manner without asking permission or paying a royalty.

Our patent laws were written over 50 years ago and did not contemplate our modern economy where many products involve hundreds and even thousands of patented inventions. H.R. 1908 provides a much-needed update to these laws, and I urge my colleagues to support this litigation.

Mr. CONYERS. Madam Chairman, I am pleased to add to that trio in the Judiciary that has worked for so long on patent reform. Her name is ZOE LOFGREN, and she is a subcommittee Chair; but she stayed with patent reform. I yield her 2½ minutes.

Ms. ZOE LOFGREN of California. Thank you, Mr. CONYERS, Mr. BERMAN, Mr. SMITH for your hard work.

I rise in support of the bill which brings much-needed reform to our system. We have worked hard really over the past half decade to come to this floor today with this legislation.

I want to talk about one issue, and that is venue. Due to a flawed Federal Court decision in 1990, B.E. Holdings, patent trolls have been able to file cases more or less wherever they choose in the United States. And that decision has led to forum shopping as plaintiffs filed in jurisdictions where they knew they stood a better chance of winning, and where they would get more money if they did win.

For example, filings in eastern Texas went from 32 cases a year 4 years ago to over 234 cases last year with a projected 8 percent increase this year. Patent holders win 27 percent more often there, and the awards are much bigger. The presiding judge himself describes the district as a ''plaintiff-oriented district.'' It has led to the formation of entities that exist solely to bring patent cases. For example, the Zodiac Conglomerate is formed of several smaller companies. None of the companies create any technology. They don't produce any products. All of those companies are incorporated in either Texas or Delaware. They exist for one purpose only, to bring patent cases. So far the Zodiac Conglomerate has sued 357 different companies, mostly in the Eastern District of Texas.

□ 1300

Manufacturing venue leads to overly aggressive litigation behavior, which deters legitimate innovation. This manager's amendment is going to correct the problem. The bill will allow cases to be filed where the defendant is located or has committed acts relevant to the patent dispute.

We give the freest rules to independent inventors and to individual inventors and universities, noting their special role in this system. Corporate plaintiffs can only bring cases where the facilities are located if they have engaged in activities relevant to the patent dispute.

In sum, the bill restores fairness and clarity to patent litigation by removing the most glaring instances of forum shopping by patent trolls.

I represent Silicon Valley, which has a diversity of high tech. Biotech, large companies, small companies, universities, small inventors, pharmaceutical companies, we have got them all, including small inventors working out of a garage. A balanced approach to innovation is essential to all of these entities. H.R. 1908 provides that balance. We need to pass this bill today. I urge my colleagues to do so.

Mr. SMITH of Texas. I yield 2 minutes to my friend, the gentleman from Ohio (Mr. CHABOT), the ranking member of the Small Business Committee, ranking member of the Anti-Trust Task Force, and a senior member of the Judiciary Committee.

Mr. CHABOT. Mr. Chairman, I rise in reluctant opposition to H.R. 1908, the Patent Reform Act, that we are considering here now. While this bill has been improved since its introduction back in April, the scheduling of this bill for consideration today makes one question whether reform really is the majority's objective.

Why else would we push a bill through on a Friday afternoon under a structured rule that will only allow a few selected amendments even to be considered? In fact, since this bill was reported from the Judiciary Committee in July, several of us, as well as the stakeholders, have asked the leadership to slow this bill down to ensure that we have a true reform bill that is fair and equitable to all who use the patent system.

I believe the bill in its current form, and even if the manager's amendment is adopted, fails to strengthen the system Congress created to foster and protect innovation. In fact, more than 100 companies, unions, universities, coalitions and other organizations have voiced their concerns with this bill.

These entities, users of the patent system, believe that the changes proposed by this act and the amendments we are considering today will be harmful to their respective businesses, will be bad for the economy, and could threaten our status as the number one patent system in the world. If that is even possible, why would we rush to pass a bill that could jeopardize the very industries and employees that have made this Nation what it is today?

Innovation is the heart and soul of this country. What has made the U.S. the strongest patent system in the world is its ability to adapt to different business models and innovations, protecting those who invent, while at the same time encouraging public dissemination.

Of course, our patent system is not perfect. The Small Business Committee that I happen to be the ranking member of held a hearing on March 29th,

2007, examining how small businesses use the patent system and the impact that this patent reform would have on them. The most revealing aspect of the hearing was the consensus among members and panelists that Congress should be very careful in making significant change to the system.

Mr. Chairman, I urge my colleagues to oppose this.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from North Carolina (Mr. WATT), who has worked continuously on this bill to improve it.

Mr. WATT. I thank the gentleman for yielding.

Mr. Chairman, when you practice law for 22 years, as I have before coming to Congress, and served on the Judiciary Committee for 15 years and never even in all that time dealt with patents, you are tempted to think of patent lawyers and the law of patents as a bunch of technocrats and elevate constitutional considerations and criminal law and other civil rights matters to a higher position. It has been an eye-opening experience for me, the first time to serve on this subcommittee and to see how important patent law is to stimulating, encouraging innovation, and to see how difficult and precise the law needs to be and how far behind the patent law has become in adapting to changes.

One of the changes that I think hasn't gotten much attention in this bill that I was surprised at as a member of the Financial Services Committee that has so many regulators of the various parts of our financial system which can promulgate rules, it seemed to me when I found out that the Patent and Trade Office really didn't have the authority to promulgate any meaningful rules, that that was contributing to the problem, because innovations and ideas and inventions and communications are traveling so fast that the law can't always keep up with them. It is in that context that meaningful regulation is important. So I wanted to point to that particular aspect.

Mr. SMITH of Texas. Mr. Chairman, I yield 3 minutes to my friend, the gentleman from Illinois (Mr. MANZULLO), the former chairman of the Small Business Committee.

Mr. MANZULLO. Mr. Chairman, if we had to patent the way Congress is considering this bill, no one would claim to be its inventor. This is a disgrace. One of the most important bills to come before this Nation in 60 years concerning manufacturing and patentability of articles and processes is so limited that the Democrats have given just 4 minutes of their 30 to two people on the other side. They owe them an apology. They owe them at least another hour of debate. The American people deserve a lot more debate than that.

An amendment was filed at 2:46 yesterday before the Rules Committee, the manager's amendment. One of the groups that contacted us representing pharmacies and labor unions and Caterpillar and all kinds of manufacturing organizations got a hold of it, finally had to analyze it overnight because of the complexity of the issues, and said, my gosh, this could destroy the system of patent law and protection of patent holders in this country.

What we are asking for is the opportunity to be able to explain it. Members of Congress should not be placed in the position of choosing between innovation.

Let me give you an example. Caterpillar is on one side, in Peoria, Illinois, PHIL HARE's district. Hundreds of thousands of suppliers across the country, including the Midwest. Research in Motion, the maker of the BlackBerry, is on the other side of the issue, in favor of it. But inside of the BlackBerry is this motherboard. It is magnesium. It is made by Chicago White Metals. They have the finest processes for magnesium hot-chamber diecasting, a company that is the only diecasting company in the country that is rated ISO 14001 for its higher environmental standards.

You have to get on the inside of these machines to understand the importance of this law. You have to be able to take every single word that is added at the last minute and be able to study it to see the impact upon American innovation. That is what this debate is about. It is simply asking for more time.

The first thing we learn as Members of Congress is do no harm. Why should we place ourselves in the position of choosing winners and losers in something as important as patent law, with the excuse that we have to harmonize and we have to adopt Asian and European standards of patent law? What is wrong with the American system? We are the innovators, we are the ones with the great minds. It is our system that is placed, in effect, in the entire world, all the products and the processes and the ideas that have made us free.

I would therefore ask the Members, even if you lean towards this bill, to vote against it as a matter of free speech principle. The American people are entitled to more debate, because they need to know more about this bill.

Mr. CONYERS. Mr. Chairman, I yield myself 10 seconds.

I just want to tell the previous speaker that we have had to accommodate about 20 different parts of our American industry and society, and, of course, everybody is not equally happy. Apparently you are one of those.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Georgia (Mr. JOHNSON).

(Mr. JOHNSON of Georgia asked and was given permission to revise and extend his remarks.)

Mr. JOHNSON of Georgia. I thank the chairman.

Mr. Chairman, I rise in support of H.R. 1908, the Patent Reform Act of 2007. I want to commend the Chair of the Judiciary Committee, JOHN CONYERS, as well as all the members of the Subcommittee on Courts, the Internet and Intellectual Property, especially Chairman HOWARD BERMAN, and also Ranking Member HOWARD COBLE, for their hard work in bringing this important piece of legislation to the floor. It is a bipartisan effort.

Although I am a new member to this subcommittee, I am well aware that Congress has been debating patent reform for several years. This area of the law has not been updated for 55 years, yet patents touch upon so many different sectors, from agriculture to biotechnology to manufacturing and computer technology.

In order to continue to stimulate growth and reward inventors in these various sectors, we in Congress are charged with finding the right balances between protecting inventions and stimulating innovation. Our Founding Fathers realized it was so important to protect inventions and promote innovation that they wrote that protection into our Constitution in article I, section 8.

For more than half a century, the United States has led the world in research and innovation, partly due to the fact that the U.S. rewards its inventors and protects their ideas. But since the last update to our system over 55 years ago, technology has rapidly changed and has revolutionized our economy. In order to keep up with these changes, Congress has stepped forward to update this important body of law.

This bill makes several important changes, including moving from a first-to-invent to a first-to-file system. It places certain limitations on willful infringement, it creates a new process of post-grant review, and it addresses changes of venue to address the issue of forum shopping.

This bill is not perfect, but I ask that the Members of this body pass this bill.

Now this bill is not perfect, and Members as well as many representatives from various industries have come to my office with their concerns about the damages section of HR 1908.

During the House Judiciary Committee markup, Congressman FEENEY and I were able to craft an amendment that I believe struck a balance, giving juries the ability to come to a deliberate decision while giving them the flexibility within the law to assess damages.

Our intent is also included in the CONGRESSIONAL RECORD; the case law used in assessing damages, also known as the fifteen Georgia Pacific factors, may still be considered when courts are assessing damages. We have diligently tried to meet the concerns of a wide spectrum of industries and while this bill is not perfect, it is a bipartisan effort to update the patent system.

Mr. Chairman, it is my hope that although there are continued concerns, we can work on them through the conference committee process in a continued bi-partisan fashion and we can all come to a compromise.

Mr. SMITH of Texas. Mr. Chairman, I yield 2 minutes to my friend and colleague, the gentleman from Texas (Mr.

GOHMERT), the deputy ranking member of the Crime Subcommittee of the Judiciary Committee.

(Mr. GOHMERT asked and was given permission to revise and extend his remarks.)

Mr. GOHMERT. I thank the ranking member.

Mr. Chairman, there are some things that need repair in the U.S. patent system, but something about this bill kept troubling me. When I read the provision regarding the transfer of venue, I began to realize something was very wrong. The provision said the court may transfer an action only to a district where ''the defendant had substantial evidence or witnesses.''

I could not believe it. That provision did not even allow a judge to consider fairness or justice or caseloads or time delays or whether the plaintiff was a small entrepreneur with only a few patents who could be led to bankruptcy by being forced to file in a court where it had a 5-year delay. I would have been absolutely staggered during my years as a judge to see a venue provision like this. Many agreed and realized that was grossly overreaching and proponents of the bill immediately recognized that and were willing to work.

But patent cases increased in the Eastern District of Texas when companies like Texas Instruments realized they could get a trial within 18 months in front of some of the best judges in the country and get fairness. Initially, there were more plaintiff victories, but, as I understand, the last year or so it has been 50–50, which there is nowhere in the country comparable to that.

I began to realize something was very wrong and one-sided when something like that could get into a bill, and especially the manager's amendment, without being noticed. And who would want something like that? Then you realize, it is big companies who do not want others to have the opportunities that they did.

So that made me look again at the damage provision that was being completely changed. I realized to whom that was helping and whom that would destroy, and I realized that the language for that must have come from the same type source who did not want anything but a small cookie cutter or mold to consider damages when, for years now, there have been many more factors that needed to be considered. You have drug cases. You have objects that are patented. You have concepts.

The Comprehensive Patent Reform bill being pushed at this time has some good features.

There are some things that need repair in the U.S. patent system. But, something about this bill kept troubling me.

When I read the provision regarding the transfer of venue, I began to realize something was very wrong. The provision said that the court may transfer an action only to a district where ''the defendant has substantial evidence or witnesses.'' That provision did not even allow the judge to consider fairness, or justice, or case loads and time delays of other courts or whether the plaintiff was a small entrepreneur with only a few patents who will be destroyed if the case is transferred to a court with a 5-year wait to trial. In my days as a trial judge, I would have been absolutely staggered to see a venue rule so incredibly one-sided. It was grossly overreaching and proponents of the bill immediately recognized that when it was pointed out, but they just had not noticed that. They then agreed to changes that prevent the language from being quite so egregious.

As our colleague from the high tech area of California pointed out moments ago, there have been patent cases filed in the Eastern District of Texas in my district. That began happening when Texas Instruments, not some small patent troll, along with others who had patents being infringed, could not get a prompt trial elsewhere, realized the Eastern District of Texas had some of the best judicial minds who were rarely ever reversed, and they could receive a trial within 2 years instead of 5. So lawsuits were filed there. As far as the rates of victories by plaintiffs to defendants, she cited old data and the new data shows that the district being excoriated in the past year probably has had more equality of verdicts than anywhere else in the country, which means the issue is a red herring for something else to get passed that is potentially deadly to invention.

I agreed we needed to do something about patent trolls who buy patents so they can sue to try to hold up a company for cash. I agreed that's not right. I was willing to help fix it. But after proposing solutions to that which were met by a desire to use that issue only as an excuse to make comprehensive, devastating changes to two centuries of patent law, I realized something inappropriate was at work here.

I began to realize something was very wrong for a terribly one-sided provision to make its way into the official bill being considered as a Manager's Amendment at the full Judiciary Committee. I began to think about who must have written or at least pushed to get that type of totally one-sided provision in there. It was not anyone interested in fairness. It was someone interested in really tilting the playing field completely one way. That had to be from huge defendants who wanted to drag small entrepreneurs into dilatory situations so that their invention or component could be usurped without proper compensation, even though it might mean the bankruptcy of the inventor and the destruction of the opportunity for the little guys with the inventive vision and spirit, which actually spurred some of the greatest developments and wealth we know and have in this country.

So when I looked again at the damage provision that was being completely changed, I realized whom that was helping and whom that would destroy and I realized that language came from the same type source. It is extremely one-sided and completely abrogates the ability of a court to use factors or standards that are applicable in the vast variety of patent cases which arise. Patents are obtained for so many different types of objects, drugs, and even concepts. To try to force such a huge spectrum of patents into one small specific type of cookie cutter or mold is of great concern to so many.

Then, I remembered also something about this ''comprehensive'' type approach—that's what was being said about immigration reform!! In the case of Immigration, ''Comprehensive Reform'' was being used to make some changes most of us could probably agree on in order to mask within those acceptable provisions other problematic provisions unacceptable to most Americans which could probably not pass by themselves. After finding examples of inappropriately oppressive language that was being stuffed or hidden in a large comprehensive bill, I am left wondering why not just fix the limited areas that are agreeable and not shove a brand new comprehensive, revolutionary change—that some say will absolutely set over 200 years of patent law on its head—that may give some of the largest corporations in the country the ability to prevent others from having the same opportunities they had to become large.

It is real easy to continue to excoriate these horrid ''patent trolls'', which could easily be addressed by very small changes to a very limited provision. If you want to limit patent trolls, then restrict the abilities of those who purchase the patents or rights to sue as secondary holders of patents. If that is not enough, there are other limited ways to handle it, though one must be careful not to destroy principal patent assets after a company is bought out by another. But I would humbly submit that when an easy fix is rejected to such a problem because some desire the issue to mask an effort that may well denigrate or destroy the adequate ability to preserve such assets—something is amiss in Washington, DC.

As objections from many areas have grown, the private interests pushing this bill have realized they may have pushed too far too fast, so have sought to appear less draconian, but we must review what this bill does. The bill before us today completely changes: The damages or compensation that may be obtained from a wrongdoer for stealing or usurping someone else's patent; the law on where such suits for infringement may be filed; the effect of a patent; the law on administrative review of patents and privacy issues of the patent before it is final. Is it any wonder that the worst thieves nationally and internationally of U.S. intellectual property are hoping we pass this bill.

It is also important to point out that we have heard here today promises about things that will be fixed between now and when the law were to become law. We've been told that our input is welcome toward such fixes. The trouble is, we were told the same thing at the full committee. I was one who was called by name to help the group work on fixes to major problems. Though I am not questioning motivation at this juncture, I have made myself available to meet and have offered suggestions, but the group that was going to meet and work on the changes before today never met that I was advised. My staff says they were never advised. So much for getting in that valuable input.

The question remains: do we need this much of a complete change to a system that has spurred, nurtured and protected the greatest advancements in the history of mankind. I would submit that it is imperative that we back up, vote this down, and come back with non-comprehensive provisions that do not include provisions that will tilt the playing field and so dramatically change our laws to protect intellectual property rights. We should borrow from the old Code in Medicine to first do no harm!

Mr. CONYERS. Mr. Chairman, I yield 2¼ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

□ 1315

Ms. JACKSON-LEE of Texas. Mr. Chairman, let me first of all thank the toiling committee chaired by Chairman CONYERS and Ranking Member SMITH. This has been a long journey. As a new member of the Subcommittee on Intellectual Property, let me also thank both the chairman and ranking member for a tough, tough challenge.

It is important to express that this is a significant change in patent law, but it is done to protect, if you will, the very treasure that has propelled America into an economic engine and that we must insist continue.

I think the changes that have been made certainly to some may be startling, but the effort was to bring all parties together. I am delighted that even though there are questions about, for example, the first-to-file over the first-to-invent, this committee saw fit to add my amendment which means that there will be periodic review so Congress will be instructed on whether or not this works on behalf of all inventors big and small.

Then when we look at the workings in section 5 dealing with first-to-file and dealing with damages. Rather than passing this law forever and ever, an amendment I added will give us an opportunity to study it to assess who is it helping and who is it hurting. We certainly want to ensure that all are given an opportunity.

I am very glad that the manager's amendment has impacted the damages provision. The original bill seemed to require all apportionment in all cases. But in this instance the manager's amendment has made it as one of the factors. Therefore, when you look at a Post-it sticker, you can determine how much the glue has helped the Post-it sticker. This is apportionment of damages in case there was a lawsuit.

I know that there are many groups, such as Innovation Alliance, that I look forward to working with as we make our way through to ensure that this bill answers the questions big and small and fuels the economic engine of manufacturing, universities, pharmaceuticals and others, like small inventors. I ask my colleagues to consider this bill and support it. It has a meaningful response to changing patent law for all involved.

Mr. Chairman, as an original co-sponsor and member of the Judiciary Subcommittee on the Courts, Intellectual Property, and the Internet, I rise in strong support of H.R. 1908, the Patent Reform Act of 2007. I am proud to Support this legislation because in many ways the current patent system is flawed, outdated, and in need of modernization. Under the visionary leadership of Chairman CONYERS and Subcommittee Chairman BERMAN, joined by Mr. SMITH and Mr. COBLE, their counterparts on the minority side, the Judiciary Committee labored long and hard to produce legislation that reforms the American patent system so that it continues to foster innovation and be the jet fuel of the American economy and remains the envy of the world.

Mr. Chairman, Article I, Section 8, clause 8 of the Constitution confers upon the Congress the 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.

In order to fulfill the Constitution's mandate, we must examine the patent system periodically. The legislation before us represents the first comprehensive review of the patent system in more than a generation. It is right and good and necessary that the Congress now reexamine the patent system to determine whether there may be flaws in its operation that may hamper innovation, including the problems described as decreased patent quality, prevalence of subjective elements in patent practice, patent abuse, and lack of meaningful alternatives to the patent litigation process.

On the other hand, Mr. Chairman, we must always be mindful of the importance of ensuring that small companies have the same opportunities to innovate and have their inventions patented and that the laws will continue to protect their valuable intellectual property.

The role of venture capital is very important in the patent debate, as is preserving the collaboration that now occurs between small firms and universities. We must ensure that whatever improvements we make to the patent laws are not done so at the expense of innovators and to innovation. The legislation before us, while not perfect, does a surprisingly good job at striking the right balance.

Mr. Chairman, the subject of damages and royalty payments, which is covered in Section 5 of the bill, is a complex issue. The complexity stems from the subject matter itself but also interactive effects of patent litigation reform on the royalty negotiation process and the future of innovation. Important innovations come from universities, medical centers, and smaller companies that develop commercial applications from their basic research. These innovators must rely upon the licensing process to monetize their ideas and inventions.

Mr. Chairman, the innovation ecosystem we create and sustain today will produce tomorrow's technological breakthroughs. That ecosystem is comprised of many different operating models. It is for that reason that we evaluated competing patent reform proposals thoroughly to ensure that sweeping changes in one part of the system do not result in unintended consequences to other important parts.

Let me discuss briefly some of the more significant features of this legislation, which I will urge all members to support.

SECTION 3: RIGHT OF THE FIRST INVENTOR TO FILE

H.R. 1908 converts the U.S. patent system from a first-to-invent system to a first-inventor-to file system. The U.S. is alone in granting priority to the first inventor as opposed to the first inventor to file a patent. H.R. 1908 will inject needed clarity and certainty into the system. While cognizant of the enormity of the change that a ''first inventor to file'' system may have on many small inventors and universities, a grace period is maintained to substantially reduce the negative impact to these inventors.

Moreover, the legislation incorporates an amendment that I offered during the full committee markup that requires the Department of Commerce Undersecretary for Intellectual Property and Director of the Patent and Trademark Office director to conduct a study every seven years on the effectiveness of revisions made in the bill to the patent derivation litigation system and submit the report to the House and Senate Judiciary committees. In embracing this constructive addition to the bill, the Committee Report notes:

> [T]he amendments in section 3 of the bill serve to implement a fundamental change in the operation of the United States patent system. Such change, while well-reasoned, requires a mechanism for monitoring its long-term effects.

SECTION 5: FORMULA FOR CALCULATING FAIR AND EQUITABLE REMEDIES

Section 5 of the bill provides useful clarification to courts and juries designed to ensure inventors are compensated fairly, while not discouraging innovation with arbitrary or excessive damage awards. While preserving the right of patent owners to receive appropriate damages, the bill provides a formula to ensure that the patent owner be rewarded for the actual value of the patented invention.

Computing damages in patent cases is an exceedingly complex task. The complexity stems not from the unwillingness of competing interests to find common ground but from the interactive effects of patent litigation reform on the royalty negotiation process and the future of innovation.

To illustrate, consider this frequently cited hypothetical. A new turbine blade for a jet engine is invented which enables the plane to achieve a 40 percent increase in gas mileage. What is fair compensation for the holder of the patent? Damages could fairly be based on the number of turbine blades used, the number of jet engines employing those turbine blades, or on a percentage of the savings of the cost of jet fuel used, or the number of miles flown by aircraft using engines employing the turbine blades, or even, if the higher efficiency of aircraft using the turbine blades was the basis for the market demand for the jet, the jet itself.

The original version of the bill was susceptible to a reasonable interpretation that apportionment would be required in all cases. But as marked up and amended, apportionment is only one of the several methods a court can use in awarding damages, including the use of the current approach established in *Georgia-Pacific* v. *United States Plywood Corp.*, 318 F.Supp. 116 (S.D.N.Y. 1970), which provides that reasonable royalty damages are ascertained by looking to what the infringer would have paid, and what the patent owner would have accepted, for a license, had one been negotiated at the time the infringement began.

Moreover, apportionment no longer applies to damages based on lost profits. Another change allows plaintiff to recover the enhanced value of previously known elements where their combination in the invention adds value or functionality to the prior art. This is a very important and helpful compromise on the issue of patent case damages. We must keep in mind that important innovations come from universities, medical centers, and smaller companies that develop commercial applications from their basic research. These innovators must rely upon the licensing process to monetize their ideas and inventions.

Thus, it is very important that we take care not to harm this incubator of tomorrow's technological breakthroughs. The bill before us strikes the proper balance.

In addition, it should also be pointed out that included in the bill is another of my amendments adopted during the full committee markup requiring the PTO Director to conduct a study on the effectiveness and efficiency of the amendments to section 5 of the bill, and submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the results of the study. The report must include any recommendations the Director may have on amendments to the law add any other recommendations the Director may have with respect to the right of the inventor to obtain damages for patent infringement. The study must be done not later than the end of the 7-year period beginning on the date of enactment of this Act and at the end of every 7-year period after the date of the first study. In adopting this amendment, the Judiciary Committee reported that:

[T]he amendments in section 5 of the bill will have many positive effects on the patent system, but that the changes are sufficiently significant to require periodic monitoring. By examining the effects of these changes on a regular basis, and by paying attention to such feedback as may be obtained through these studies, Congress can ensure that any unforeseen negative consequences that may arise can be dealt with through future legislation or other mechanisms.

WILLFUL INFRINGEMENT AND PRIOR USE RIGHTS

The legislation also contains certain limitations on willful infringement. A court may only find willful infringement if the patent owner shows, by clear and convincing evidence, that (1) the infringer, after receiving detailed written notice from the patentee, performed the acts of infringement, (2) the infringer intentionally copied the patented invention with knowledge that it was patented, or (3) after having been found by a court to have infringed a patent, the infringer engaged in conduct that again infringed on the same patent. An allegation of willfulness is subject to a ''good faith'' defense. H.R. 1908 also expands the ''prior user rights'' defense to infringement, where an earlier inventor began using a product or process (although unpatented) before another obtained a patent for it.

POST-GRANT PROCEDURES AND OTHER QUALITY ENHANCEMENTS

Another beneficial feature of H.R. 1908 is that it cures the principal deficiencies of re-examination procedures and creates a new, post-grant review that provides an effective and efficient system for considering challenges to the validity of patents. Addressing concerns that one seeking to cancel a patent could abuse a post -grant review procedure, the bill establishes a single opportunity for challenge that must be initiated within 12 months of the patent being granted. It also requires the PTO Director to prescribe rules for abuse of discovery or improper use of the proceeding, limits the types of prior art which may be considered, and prohibits a party from reasserting claims in court that it raised in post-grant review.

VENUE AND JURISDICTION

Finally, the bill also addresses changes to venue, to address extensive forum shopping and provides for interlocutory appeals to help clarify the claims of the inventions early in the litigation process. H.R. 1908 would restore balance to this statute by allowing cases to be brought in a variety of locales—including where the defendant is incorporated or has its principal place of business or has committed a substantial portion of the acts of infringement and has a physical facility controlled by the defendant. H.R. 1908 makes patent reform litigation more efficient by providing the Federal Circuit jurisdiction over interlocutory decisions, known as Markman orders, in which the district court construes the claims of a patent as a matter of law.

CONCLUSION

In short, Mr. Chairman, the argument for supporting H.R. 1908 can be summed up as follows: For those who are confident about the future, the bill, as amended, offers vindication. For those who are skeptical that the new changes will work, the Jackson-Lee amendments added to the bill will provide the evidence they need to prove their case. And for those who believe that maintaining the status quo is intolerable, the legislation before us offers the best way forward.

I urge all members to join me in supporting passage of this landmark legislation.

Mr. SMITH of Texas. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I am pleased to call on my neighbor and friend, MARCY KAPTUR from Toledo, Ohio; and I recognize her for 2 minutes.

Ms. KAPTUR. Mr. Chairman, I thank my good friend from the great State of Michigan, the chairman of the committee, for yielding.

Unfortunately, I have to disagree with him on this bill and urge my colleagues to vote ''no'' on H.R. 1908 because we don't want to weaken the U.S. patent system. This is surely not the time with a trillion-dollar trade deficit to do more selling out of America and to try to harmonize our standards down to some of the worst intellectual property pirates like China.

This bill essentially makes it easier for infringers to steal U.S. inventions, and it is truly sad that we are only given a few seconds to talk about this. That alone should tell our colleagues, vote ''no,'' give us a chance to open this up and talk about how this is going to affect jobs in America.

This bill affects two-thirds to 80 percent of the asset value of all U.S. firms. Most industrial companies in this country oppose it. Over 200 organizations across this country oppose it, including the electronics industry, pharmaceuticals, small inventors, and universities. And, yet, we just get a few seconds here.

Let me tell you what is going on. Mr. EMANUEL was down here earlier reading a list of the big semiconductor companies, the high-tech firms. This bill does heavily benefit them because they are some of the worst intellectual property infringers.

What this bill does is it supports those large transnational corporations that repeatedly infringe on the patents of others, and they are looking to reduce what they have to pay in the courts. Now, they have had to pay about $3.5 billion in fines over the last couple of years, and it was deserved. But that represents less than 1 percent of their revenues. What they are trying to do is use this bill to make it harder for small inventors and others to file.

What does this bill change? It says to an inventor, unlike since 1709 in this country, when we say if you are first to invent, that patent belongs to us, they want to change it to first-to-file. In other words, they can file it anywhere else in the world and someone else can take that and infringe on that invention. It is not first-invention anymore, it is first-to-file. Boy, there is a lot more to say and our time should not be squashed in this House on an issue of such vital importance to the industrial and the commercial base of this country.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Maine (Mr. MICHAUD).

Mr. MICHAUD. Mr. Chairman, I thank the gentleman for yielding. Today I rise in strong opposition to the Patent Reform Act of 2007. While I appreciate all of the hard work that Chairman BERMAN did on this bill, I think this bill is bad for our manufacturing industry.

We have been told that the manager's amendment significantly improves the bill. It actually is worse than the underlying bill, especially with respect to the damages section in the bill. This bill is fundamentally flawed. It can't be fixed by the manager's amendment.

This bill will weaken patent protection by making patents less reliable, easier to challenge, and cheaper to infringe. This bill severely threatens American innovation, jobs and competitiveness and ought to be opposed.

Hundreds of companies and organizations around the country have written Congress to raise their strong opposition and their strong objections to certain provisions of this bill. Manufacturers, organized labor, biotech, nanotech, pharmaceuticals, small businesses, universities, and economic development organizations have serious concerns about this legislation.

Foreign companies are watching this legislation and are eager to attack U.S. patents. The Economic Times reports that Indian companies see an opportunity to challenge our patents; and by doing so, they will leave our businesses in a litigation crisis.

We are compromising many of our industries by passing this bill. We are creating a litigation nightmare. We need to proceed to get a better bill, and I urge my colleagues to defeat this legislation so we can move forward on legislation with more people who will support patent reform which has to be changed. I urge my colleagues to defeat this legislation.

Mr. CONYERS. Mr. Chairman, I take 5 seconds to assure my distinguished friend from Maine that I have more industry in my State than he does, and I am protecting them pretty much.

Mr. SMITH of Texas. Mr. Chairman, I yield the balance of my time to Mr.

ISSA, a member of the Judiciary Committee and the holder of 37 U.S. patents.

Mr. ISSA. Mr. Chairman, for those who may be interested, some of my patents have expired and more will.

I am no longer a day-to-day inventor; but I will always have the soul of an inventor, the belief that in fact if you have an idea, you can go to the Patent Office and for a relative de minimis amount of money you can in fact protect that idea for a period of 20 years from the time you ask the Patent Office to protect your invention and give you an opportunity to make a small or not-so-small fortune off of it.

I don't think there is anyone in the Congress who owes their reason for being here to the success of patents more than myself. My company grew and thrived because we were able to protect our intellectual property, patents, copyrights and trademarks. So since I have been here as a non-attorney coming to the Congress and asking to be on the Judiciary Committee, a little bit like Sonny Bono, that is where the things he knew about were legislated. He knew about copyrights and songs; I know a little bit about patents, and a lot about the flaws in the system.

And, Mr. Chairman, there are many flaws in the system. This bill has been the best work by the best minds, both by Members of Congress, but also by staff, trade associations and industry, to bring out those mistakes and to try to find solutions.

Today you have heard a lot of anger and rancor about China. Nobody could want America to prosper more than I do. But, in fact, by next year more than half of all patents in the U.S. will be granted to non-U.S. companies. This is not a debate about protecting patents against foreigners. Foreigners are patenting in our country, and we invite that innovation. It has often led to prosperity in all aspects of America.

I include a long letter from UCSD CONNECT, an organization founded by Bill Otterson and the University of California at San Diego, in which they, along with California Healthcare Institute, BIOCOM, Gen-Probe, Invitrogen, Pfizer, Qualcomm and others who all say this is a good bill, but we have some additional areas we would like to find compromise on. Some of the things in this letter of yesterday are included in the manager's amendment. Some will be included in amendments that will be heard on the floor in a few minutes.

CONNECT®,
*September 5, 2007.*

Hon. DARRELL ISSA,
*Washington, DC.*

DEAR REPRESENTATIVE ISSA: We greatly appreciate the time you spent meeting with CONNECT last week to discuss the Patent Reform Act, H.R. 1908. Thank you for your efforts to improve the bill and, in particular, your ongoing work on the post-grant review provision.

Given the immediacy of the House floor consideration, this letter and ensuing draft language serves as a follow-up to our recent meeting. On behalf of the San Diego innovation community and CONNECT members, we request your continued leadership and strongly urge your consideration of the following improvements to the bill.

APPORTIONMENT OF DAMAGES

As you well know, the damages provision in the patent statute is a critical part of patent law and a vital part of strong patent protection, which CONNECT supports. We believe our patent system must have appropriate consequences that serve as a deterrent for stealing intellectual property. However, we do not want the law modified to the point where patent infringement is simply a cost of doing business. Per our meeting, we have worked with your staff to develop the draft language at the end of this letter to address this important matter.

Further, the courts must have flexibility in the assessment of damages. The bill takes away this flexibility. The judicial system is working. A judge either accepts a jury decision or not, and the appeals system is in place to handle additional grievances. We encourage you to avoid binding the court with a prescribed mechanism and ask you to consider the language following this letter that preserves judges' flexibility.

RULEMAKING

The existing rulemaking language in the bill is too expansive and gives the U.S. Patent and Trademark Office (PTO) unparalleled authority. Congress is expressly given authority in the U.S. Constitution to safeguard intellectual property. In addition, we believe this excessively broad rulemaking power could lead to instability in the patent system. Congress is better equipped to develop standards through legislative means. As such, we urge you to follow the Senate's lead and remove the PTO rulemaking provision from the House bill.

USER FEES

The diversion of user fees has long been a concern because it hinders the PTO's ability to hire examiners and eliminate the backlog of patents. It now takes approximately 31 months for a patent to be issued, and a 2005 congressional report stated that without fee diversion the patent backlog would lower to about 22 months.

Given this, we respectfully ask that you include language, identical to Senator Coburn's amendment to S. 1145, to prevent the diversion of fees collected by the PTO for general revenue purposes by cancelling the appropriations account for PTO fees and creating a new account in the U.S. Treasury for the fees to be deposited.

VENUE

We favor balanced venue language with respect to the parties that is also symmetrical in terms of transfer. Venue should be proper in a district or division: (1) in which either party resides or (2) where the defendant has committed acts of infringement and has a regular and established place of business. Specifically, we urge a return to the pre-markup venue provision in H.R. 1908.

Thank you, again, for your consideration of our views and the accompanying draft language. Though we do not support the bill as currently written, we want to work with you to make the legislation a means to strengthen the patent system to advance innovation, promote entrepreneurship and boost job growth. We look forward to continuing to work with you to achieve these goals.

Sincerely,

CONNECT, AMN Healthcare, California Healthcare Institute, BIOCOM, Gen-Probe, Invitrogen, Pfizer, QUALCOMM, San Diego State University Research Foundation Tech Transfer Office, Tech Coast Angels, Townsend and Townsend and Crew.

DRAFT DAMAGES LANGUAGE

**SEC. 5. RIGHT OF THE INVENTOR TO OBTAIN DAMAGES.**

(a) DAMAGES.—Section 284 is amended—

(1) in the first paragraph—

(A) by striking ''Upon'' and inserting ''(a) IN GENERAL.—Upon'';

(B) by designating the second undesignated paragraph as subsection (c); and

(C) by inserting after subsection (a) (as designated by subparagraph (A) of this paragraph) the following:

''(b) RESONABLE ROALTY.—

''(1) IN GENERAL.—An award pursuant to subsection (a) that is based upon a reasonable royalty shall be determined in accordance with this subsection. Based on the facts of the case, the court shall consider the applicability of paragraph (2), (3) and (5) in calculating a reasonable royalty. The court shall identify the factors that are relevant to the determination of a reasonable royalty under the applicable paragraph, and the court or jury, as the case may be, shall consider only those factors in making the determination.

''(2) RELATIONSHIP OF DAMAGES TO CONTRIBUTIONS OVER PRIOR ART.—If an infringer shows evidence that features not covered by the claimed invention contribute economic value to the accused product or process, an analysis may be conducted to ensure that a reasonable royalty under subsection (a) is applied only to that economic value properly attributable to the claimed invention. The court, or the jury, as the case may be, may exclude from the analysis the economic value properly attributable to features not covered by the claimed invention that contribute economic value to the infringing product or process.

''(3) ENTIRE MARKET VALUE.—If the claimant shows that the claimed invention is the predominant basis for market demand for a product or process that has a functional relationship with the claimed invention, damages may be based upon the entire market value of the products or professes involved that satisfy that demand.

''(4) COMBINATION INVENTIONS.—For purposes of paragraphs (2) and (3), in the case of a combination product or process the elements of which are present individually in the prior art, the patentee may show that the economic value attributable to the infringing product includes the value of the additional function resulting from the combination, as well as the enhanced value, if any, of some or all of the prior art elements resulting from the combination.

''(5) OTHER FACTORS.—In determining a reasonable royalty, the court may also consider, or direct the jury to consider, the terms of any nonexclusive marketplace licensing of the invention, where appropriate, as well as any other relevant factors under applicable law.''

Mr. Chairman, this is a work in process; but since when does this body say that in fact the good will be sacrificed in search of the perfect? We have never done that. Every bill that goes through here is by definition the best work we can do as a continuous body, one that will come back after this bill becomes law and continue working on refinements.

I would like to quickly say there will be amendments that will be offered that will deal with some of the very issues that people have said today are an outrage because they are not there. I hope that my colleagues, even if they

do not vote for the final bill, will come and support the amendments that make this bill better because as a body what we do best is we take the best ideas from the best places we can get them, we bring them together and we create the best bill we possibly can.

That is what we have done here today. It is the best work available. People who are dissenting today, we welcome on a bipartisan basis their input to find language that will make it better.

Mr. Chairman, in closing, the one thing I would say is we are past the point of compromise. What we are into is finding win/wins. We are looking to take issues in which one side is for and one side is against and find real middle ground, and we have done that in a couple of areas, and we will continue to want to do that.

I am a small inventor. I want to make sure that the small inventor is protected. That is why this bill is going to maintain the right of the small inventor, or any inventor, to retain the secrecy of their invention if they are not granted a patent. That is why we are going to limit the regulatory authority of the PTO so that for a time, as long as we need to, every time they propose a rule, we will have a right and an obligation to consider it and if even one Member of this body opposes it, to bring to a vote that opposition to the rule.

These kinds of compromises and win/wins and thoughtful legislation are unusual in this body. That is why I believe that this will win overwhelming support here. We will continue to work to find an even better bill in conference with the Senate because, in fact, we are a bicameral body. We have to, in fact, get something that both sides can live with.

In closing, I want to thank Mr. BERMAN, Mr. CONYERS, and certainly Mr. SMITH and Mr. COBLE because they have made this the best bill we can possibly have.

Mr. Chairman, I rise in support of H.R. 1908, the Patent Reform Act of 2007. While we will continue to improve the bill as this process moves forward, I support the product before us and look forward to ongoing efforts to strengthen this legislation.

As the holder of 37 United States patents, I came to Congress with the desire to tackle elements I found awry in our patent laws. While in the private sector, I litigated several patent cases before our district courts and the United States Court of Appeals for the Federal Circuit. Through these experiences, I learned a great deal about patent law, both what was right with the law and areas that could use improvement.

One area in need of improvement is in the ability of district court judges to hear patent cases effectively. I am gratified that the House passed legislation I authored to address this problem in the last two congresses. However, we are here today to deal with the substance of patent law, not our judges' ability to master it.

There are strong arguments in favor of reform, as well as strong arguments in favor of caution as we move forward. Our patent laws have not had an overhaul in many decades, while technology has advanced exponentially. Not all of our patent laws fit today with the advancements we have seen in electronics, biotechnology, and many other areas. Importantly, many commentators and practitioners are concerned with the preponderance of over-zealous litigation and what some deem exaggerated damages awards.

Both of these issues are addressed in part in this bill. The creation of a post grant review procedure at the Patent Office will help direct some conflicts away from court to an administrative remedy, hopefully saving vast resources in time and money. Damages awards are addressed in encouraging courts to look toward apportioning damages more often, or allowing damages that represent the value of an infringed invention in a product into which the invention is incorporated.

With damages and several other issues in this legislation, there is still work to be done. But to keep this process moving, to keep parties negotiating in good faith, I believe we must support this bill today and commit to improving it in the weeks to come.

I am offering two amendments today to help address issues that opponents of this legislation have highlighted over the forgoing negotiation process. The first maintains the ability of patent applicants to keep their application from going public until action is taken by the patent office. Opponents of the current bill argue that, because the legislation before us eliminates this option, entities at home and abroad will steal an applicant's ideas. My amendment solves this problem.

The second amendment focuses on the ability of the United States Patent and Trademark Office to promulgate rules. The PTO currently has limited ability to do so, and opponents of this legislation argue that the very ability of the United States to compete in a global economy could be adversely affected by a bad rule put forth by the PTO. My amendment requires a 60-day delay before PTO rules take effect so that Congress may have the opportunity to review these rules. If Congress finds the rule unacceptable, it has the ability to vote on a Joint Resolution of Disapproval nullifying the PTO's action. If Congress does nothing, the rule takes effect. Therefore, this amendment helps to ameliorate concerns over possible PTO action that could harm innovation in the United States.

Even opponents of the underlying bill should support these amendments. While my amendments do not cure all ills in the legislation as seen by its opponents, they do address two very controversial problems in the bill.

I thank Judiciary Committee Ranking Member LAMAR SMITH and Subcommittee Chairman HOWARD BERMAN for all of their effort on this legislation, and I especially thank them for their indulgences in hearing my thoughts on these issues as we have worked over the years on patent reform. We have worked long and hard on this bill, and I have the full intention to continue our work together after today's votes.

Mr. CONYERS. Mr. Chairman, I now introduce for our closing speaker the distinguished gentleman from Florida, Mr. BOB WEXLER, to have the balance of our time.

Mr. WEXLER. Mr. Chairman, a co-chair of the Congressional Caucus on Intellectual Property Promotion, I rise in strong support of this patent reform legislation because it is critical for the continued growth of American businesses and the creation of high-paying jobs in America.

This bill will nurture and protect inventors, thereby promoting future Alexander Graham Bells and tomorrow's Microsofts.

For more than 200 years, strong patent protection, along with timely examination of patent applications, has helped secure the economic success of the United States by empowering inventors and encouraging the development of American business both large and small.

□ 1330

Every day, Americans rely on the innovation that comes from our patent system. From new computer technologies to medicines for America's seniors, the American patent system provides the fuel for our most important technological accomplishments.

In America today, our capacity to come up with new ideas actually outstrips the value of the goods we make. The licensing of U.S. patents contributes approximately $150 billion to our annual economy, and intellectual property, including patents, is the only economic area where the United States maintains a solid trade surplus with the rest of the world.

A well-functioning patent system is vital to America's commercial and scientific entrepreneurs and preserves the incentives for innovation guaranteed under the United States Constitution.

This legislation will make America more competitive in the global marketplace, not less. We need to support Mr. BERMAN and Mr. CONYERS in their effort to produce what I would respectfully suggest is the most important economic legislation that this House will pass. This is excellent for America's workers; it's excellent for America's universities and our economy at large.

Ms. HIRONO. Mr. Chairman, I rise in reluctant opposition to H.R. 1908, the Patent Reform Act.

I applaud the House Judiciary Committee and the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property for their efforts in putting together this comprehensive bill. However, I cannot in good conscience support the Patent Reform Act in its current form given the concerns that continue to be raised from organizations in my district and at least 100 companies nationwide.

Organizations in my district, such as the Hawaii Science & Technology Council and University of Hawaii's Office of Technology Transfer and Economic Development, have raised concerns regarding the provisions on mandatory publication, prior user rights, apportionment of damages, and post-grant review, which may discourage investment in innovative technologies, harm inventors, and reduce publication and collaborative activities among academic scientists. I want to make sure that the final bill that becomes law protects the interests of Hawaii's burgeoning high technology industry and small inventors.

This bill remains a work-in-progress that certainly requires more debate. Our patent system serves as the basis for America's innovation. It is my hope that the concerns and needs of our inventors will be addressed in conference should this bill pass the House as I very much want to be able to support the final conference report.

Mr. ETHERIDGE. Mr. Chairman, I rise in opposition to H.R. 1908, Patent Reform Act of 2007.

While I recognize the need for some reform of the United States' patent process, I believe we must proceed carefully and with the goal of improvement for the many stakeholders affected by the patent system. We should continue to work towards an efficient system that issues high-quality patents and places reasonable limits on patent challenges. Although there are some provisions in H.R. 1908 that could prove beneficial, this far-reaching bill could do serious harm to many of the important employers in my district.

North Carolina benefits greatly from its strong university system. Institutions including the University of North Carolina at Chapel Hill and North Carolina State University in my district serve as engines for research and innovation that help to drive the state's economy. In addition, the 2nd Congressional District of North Carolina contains a number of pharmaceutical companies and biotechnology companies that provide thousands of jobs and are helping to transform our economy. Along with many of the traditional manufacturing companies in North Carolina, the lifeblood of these institutions is the value of the patents they hold. These entities have expressed opposition to any measure that would weaken their patent portfolios. H.R. 1908 in its current form would endanger the value of their patents and harm their ability to continue fueling our economy.

Our patent system has long been a wonderful tool that has helped to foster innovation and reward American ingenuity. Patents, and their value and validity, serve as the backbone for thousands of companies and help form the basis of our economy. Congress should continue to work to reform the system in a way that benefits all of the varied interests that keep our economy strong. I hope the conference committee on H.R. 1908 can correct its shortcomings so I can support and Congress can enact comprehensive reform of our patent process.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I rise today to commend Chairman CONYERS and the House Leadership for their diligence in addressing the issue of patent reform, and to express why I unfortunately must oppose this bill in its current form.

There is an overwhelming need to move patents through the approval process quickly, fairly, and economically. I commend this bill on many of the positive changes it makes to the reform system, but I remain concerned about provisions that may dramatically restrict damages payable by infringers. It is my fear that this bill will alter the current system in favor of defendants resulting in further backlogs. These changes to the current system would ultimately hurt existing patent owners.

In addition, this bill implements a post grant review process that will lead to duplicative challenges, resulting in an increase to the cost of patent ownership and significantly decreasing the enforceability, predictability and value of all patents.

Numerous technology firms, both large and small are opposed to this bill, as well as, many universities. These are the people on the forefront of our technological future and their voice and opposition need to be heard.

Innovation and advancement are key to the future of America. It is my concern that this bill will tilt the legal balance in favor of patent infringers and discourage innovation and investment in research and development. We must protect our innovators and allow them to pursue concise and necessary action in the court of law.

Ms. MATSUI. Mr. Chairman, I rise today in support of the progress to our Nation's competitiveness that the Patent Reform Act represents. Patents are vital to our universities, our large and small companies, our entrepreneurs, and our economy. Our advances in technology are clearly demonstrated by the vast increase in patent applications submitted. Our policies and procedures governing the United States patent process must be updated to keep pace with our inventors. The Patent Reform Act takes significant steps towards that goal.

I appreciate the extensive patent portfolio that is generated by the cutting-edge research at the University of California. These innovations provide the intellectual property that businesses depend on to develop new products. I have heard from numerous constituents in my district on this issue who benefit from the technology transfer process. I am happy to represent their interests by supporting patent reform. This is an incredibly complex topic, as we face the challenge of legislating a single patent system to meet the needs of many industries.

I commend Subcommittee Chairman BERMAN, Chairman CONYERS, Ranking Member SMITH, and the entire House Judiciary Committee for their diligence. They have worked tirelessly with hundreds of stakeholders to reach the carefully crafted bill that we have on the floor today. I thank the committee and its staff for their long commitment to patent reform. The product of their years of work, the Patent Reform Act, will improve our nation's competitiveness and start moving our country's patent system into the 21st century.

Mrs. BONO. Mr. Chairman, today I rise in support of the Patent Reform Act of 2007. I would like to commend Congressman BERMAN, Congressman SMITH and the many Members of the House, on both sides of the aisle, who have worked diligently to bring this legislation before us. As one who cares deeply about the importance of strong legal protections for copyright and other intellectual property rights, I look forward to supporting this bill today.

My experience with the importance of intellectual property rights has been in the field of entertainment, specifically music. The greatest protection that the innovators of these songs and performances have is their ability to copyright. To continue encouraging involvement and growth in the area of entertainment and the myriad of jobs that are tied to the industry, it is critical that patents are protected, in order to support the many creative individuals who bring music to the masses.

Many of the issues that we address in Congress from telecommunications to energy to health care advancements all have their basis in a few core concepts—the ability for small and large inventors to pursue a unique idea through the patent process. With that pursuit brings the need for related capital that is often required from outside investors to further the research and development that brings the patent holder's idea to consumers across the world. California is home to some of the most impressive and entrepreneurial high-tech, biotech and entertainment industries that rely heavily on patent protection and copyright laws. Each of these industries, and their hundreds of thousands of employees, will be greatly impacted by these changes.

This basic concept of innovation is as critical in the high-tech field as it is in the health sciences and biotech realm. However, as many of my colleagues have pointed out today, the interaction between competitors and the role of patent protections differs greatly between fields. There is no one-size-fits-all solution. As this legislation moves forward and is considered in conference, it is my hope that the conferees will be aware of the concerns that have been expressed by the biotech industry and take these concerns into consideration.

Again, I would like to reiterate my support of this long awaited legislation. There has been remarkable bipartisan work on this legislation over the past several years and I am proud to cast my vote in support of it.

Mr. UDALL of Colorado. Mr. Chairman, while I have some concerns about this bill, I will vote for it because I think on balance it deserves to be approved as a necessary step toward needed improvements in the current law.

I am far from expert in the intricacies of patent law, so I have listened carefully to those with more knowledge, including several companies employing substantial numbers of Coloradans that utilize patents in various fields. While they are not unanimous, most of them have urged support for the legislation.

I have also noted that the passage of the legislation, as a step toward needed improvements in the current law, is supported by the Consumers Federation of America, Consumers Union, the Electronic Frontier Foundation, and other groups including the Financial Services Roundtable.

At the same time, I have listened to the concerns expressed by others who have raised a number of objections to the bill and think that its defects are so serious as to merit rejection of the legislation in its current form.

I take those objections seriously, but I have decided that nonetheless the better outcome today is for the House to pass the bill and for further discussion of the points they raise to occur in the context of debate in the Senate and then a conference between that body and the House of Representatives.

Mrs. MCCARTHY of New York. Mr. Chairman, I will support H.R. 1908 with some reservations.

Our patent laws need to be updated to address the concerns of a 21st Century global economy. For decades, the law has reacted to innovation rather than anticipating it. H.R. 1908 contains many positive provisions that will make it easier for us to compete. I, therefore, want the process to move forward.

The American economy is strong in part because it is diverse. We do not depend on only one segment for our income. Some countries grow crops. Others rely on tourism. Still other countries depend on finite natural resources. Some specialize in manufacturing or providing specific services. We are fortunate enough to

be able to conduct all these businesses and more.

A revised patent law must protect and encourage all segments of our economy. We cannot favor high tech over manufacturing. We cannot discourage biotech research while encouraging financial services.

If our economic foundation remains strong and diversified, we will be able to retain our preeminent role in the world's economy. However, if our patent laws inhibit invention and innovation in manufacturing and basic research, then we would be undermining the very strength of our national economy.

As the legislative process continues, I hope that the authors of H.R. 1908 and the members of the other body will remember one important point. The purpose of our patent law is to protect and promote American innovation. Innovation by Americans and for Americans is the keystone to our domestic economic vitality and strength.

The final version of patent reform must address the legitimate interests of manufacturing, biotech, and small inventors. My vote on a final patent reform bill will depend on how well those interests are met.

Ms. ESHOO. Mr. Chairman, I rise in strong support of this legislation which I am proud to cosponsor, and I congratulate Chairman BERMAN for his exceptional leadership and on this complex issue.

I am proud to represent Silicon Valley, which is known worldwide for the innovation and developing technologies that continue to change and improve our lives. Nowhere in America—nowhere in the world—are ideas, invention, and intellectual property more important.

Patents and IP are the cornerstone of the Information Economy, and it is essential that the United States patent system continue to foster the ideas and innovation which fuel our economy and keep America competitive.

The patent system, unfortunately, has been subject to abuse, and unscrupulous opportunists have exploited the rights granted to legitimate patent holders to target innovative companies and file groundless lawsuits based on dubious patents.

The rapid pace of innovation and increasingly complex patent filings have strained the Patent and Trademark Office and patent claims of questionable validity have been granted.

Loopholes and shortcomings in the disposition of patent cases also allow baseless claims of infringement to create unnecessary litigation and extort nuisance settlements, sapping billions from economic growth, and creating a drag on real innovation.

Technology companies have become particularly enticing targets for this litigation because of the broad importance of patents to technology products. Just a single piece of high-tech equipment can contain hundreds of patents, and any one of them can now be used to sue for the value of the entire product.

One company in Silicon Valley—Cisco Systems—spent $45 million this year to defend patent infringement cases.

It is time to implement reforms to the patent system and ensure that we reward truly novel ideas and cutting edge innovation, not successful litigation strategies.

This bipartisan legislation enjoys broad support throughout the technology industry, major universities including the University of California, as well as major consumer groups such as Consumer Federation of America, Consumers Union, and U.S. PIRG.

I urge my colleagues to support this bill which will restore balance to our patent system.

Ms. WOOLSEY. Mr. Chairman, the patent reform bill before us today is a necessary step to modernize and streamline our patent process to ensure American innovation will keep our country competitive. It's been over 50 years since we have updated our patent process. That's before the Internet, before personal computers, and before digital music. Actually, it's 5 years before they launched Sputnik. So, there can be no doubt that reforming the system to accommodate a new era of innovation is needed.

Although this bill isn't perfect, I think that it does move the ball forward in terms of reforming the system. Clearly, additional patent reform is needed in the pharmaceutical and biomedical industry as there are many issues left unresolved by H.R. 1908. Hopefully these issues can be addressed in conference with the Senate.

Mr. Chairman, I commend my colleagues on the Judiciary committee for all of their hard work on this bill, it's been fifty-five years in the making, and it's time for an update.

Mr. CANNON. Mr. Chairman, I urge you to support the Patent Reform Act of 2007, H.R. 1908.

Certain aspects of our patent system have not been amended since 1954, but our economy has changed dramatically since then and it's time our patent system caught up.

H.R. 1908 was introduced and is supported by the bipartisan leadership of the Judiciary Committee and was approved by the committee in a unanimous voice vote.

For the sake of our Nation's ability to innovate, grow and compete, we must pass this legislation.

The danger of not reforming our patent system is real and we are witnessing its effects today.

Patents of questionable validity are limiting competition and raising prices for consumers—a fact noted by the Federal Trade Commission in a 2003 report.

In addition, current interpretations of patent law by district and appellate courts have veered far from what Congress originally intended.

The result is that companies are diverting resources from R&D to pay for legal defense.

Because interpretations of patent law are so off-course, the U.S. Supreme Court has had to intervene in an unusually high number of patent cases in recent years.

In one case, the Court explicitly called for Congress to take action.

We have been debating patent reform for years. Such issues as post-grant review and damages apportionment have been components of various patent reform bills in the House and Senate over the course of the last several sessions and have been discussed at length in nearly every forum, from Congressional hearings to the media.

One issue that generated the most debate in previous Congresses—injunctions—was resolved by the U.S. Supreme Court in 2006 in much the same way as proposed legislation would have done.

Yet despite predictions from some that reforming the standards for granting injunctions would grind innovation to a halt, patent holders still are granted injunctions today to protect their intellectual property. In fact, the patent system is healthier as a result.

H.R. 1908 will restore fairness and common sense to the standards for awarding reasonable damages.

Today, patent holders regularly are awarded damages based on the value of an entire product, even if the patent in question is one of literally thousands of other patented components comprising the product.

Additionally, H.R. 1908 will give trained patent examiners greater ability to review patents and enhance patent quality.

Innovation is indeed threatened not by changes to the system, but by the status quo.

After years of debate, it's time for action.

One area of particular interest to me is the language in the manager's amendment dealing with venue reform.

I am pleased the Chairman included venue reform language in the manager's amendment.

At the Judiciary Committee, Representative ZOE LOFGREN of California offered an amendment that I cosponsored that would inject sanity into the patent litigation system.

The venue reform language will create a real and substantial relationship between the parties and the acts of infringement by denying the ability to manufacture venue for hopes of gaming the judicial system.

During years of efforts on litigation reform, we have learned about what some have referred to as Judicial Hell Holes.

These locations are where judges apply laws and procedures in an unfair and unbalanced manner.

The underlying legislation's intent is to bring fairness and balance into the patent system.

And the venue language will bring fairness and balance to patent litigation.

This amendment will not close the court house door on any plaintiff.

But it will require legitimate nexus for where claims may be brought.

The nexus requirements of the amendment will prevent groups or entities from artificially manipulating presence in a judicial district just to game the system to file suit.

Swift passage of H.R. 1908 will stimulate innovation, competition and growth—great news for consumers, workers and our global economic leadership.

I urge support of H.R. 1908.

Mrs. TAUSCHER. Mr. Chairman, I rise today to commend the work of my colleague, Chairman HOWARD BERMAN, on the Patent Reform Act of 2007.

This bill is a necessary step forward in the modernization of a patent system that has not been meaningfully updated for decades.

I urge my colleagues to show their support for reform by casting a vote for this bill.

This bill will result in higher quality patents emerging from the Patent and Trademark Office.

It will harmonize our patent system with that of our major trading partners.

And it will improve fairness in litigation by preventing ''patent trolls'' from shopping around for friendly courts.

At the same time, I look forward to working with Congressman BERMAN to fine-tune a number of provisions in this bill.

In my State of California, our economy is based on the incredible advances made by

university researchers, the high-tech sector, and the life sciences industry.

Innovations in all sectors must be afforded the strongest possible protection.

This has particular importance for small venture-backed firms whose patents are their only asset.

With this in mind, I look forward to seeing improvements to provisions governing the way damage awards are calculated in patent suits.

The inequitable conduct defense and the issue of continuations also deserve further review and revision.

I again applaud Chairman BERMAN for his efforts, and urge my colleagues to support H.R. 1908.

The Acting CHAIRMAN (Mr. ROSS). All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1908

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

*(a) SHORT TITLE.—This Act may be cited as the ''Patent Reform Act of 2007''.*

*(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:*

*Sec. 1. Short title; table of contents.*
*Sec. 2. Reference to title 35, United States Code.*
*Sec. 3. Right of the first inventor to file.*
*Sec. 4. Inventor's oath or declaration.*
*Sec. 5. Right of the inventor to obtain damages.*
*Sec. 6. Post-grant procedures and other quality enhancements.*
*Sec. 7. Definitions; patent trial and appeal board.*
*Sec. 8. Study and report on reexamination proceedings.*
*Sec. 9. Submissions by third parties and other quality enhancements.*
*Sec. 10. Tax planning methods not patentable.*
*Sec. 11. Venue and jurisdiction.*
*Sec. 12. Additional information; inequitable conduct as defense to infringement.*
*Sec. 13. Best mode requirement.*
*Sec. 14. Regulatory authority.*
*Sec. 15. Technical amendments.*
*Sec. 16. Study of special masters in patent cases.*
*Sec. 17. Rule of construction.*

***SEC. 2. REFERENCE TO TITLE 35, UNITED STATES CODE.***

*Whenever in this Act a section or other provision is amended or repealed, that amendment or repeal shall be considered to be made to that section or other provision of title 35, United States Code.*

***SEC. 3. RIGHT OF THE FIRST INVENTOR TO FILE.***

*(a) DEFINITIONS.—Section 100 is amended by adding at the end the following:*

*''(f) The term 'inventor' means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of an invention.*

*''(g) The terms 'joint inventor' and 'coinventor' mean any one of the individuals who invented or discovered the subject matter of a joint invention.*

*''(h) The 'effective filing date of a claimed invention' is—*

*''(1) the filing date of the patent or the application for patent containing the claim to the invention; or*

*''(2) if the patent or application for patent is entitled to a right of priority of any other application under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c), the filing date of the earliest such application in which the claimed invention is disclosed in the manner provided by section 112(a).*

*''(i) The term 'claimed invention' means the subject matter defined by a claim in a patent or an application for a patent.*

*''(j) The term 'joint invention' means an invention resulting from the collaboration of inventive endeavors of two or more persons working toward the same end and producing an invention by their collective efforts.''.*

*(b) CONDITIONS FOR PATENTABILITY.—*

*(1) IN GENERAL.—Section 102 is amended to read as follows:*

***''§ 102. Conditions for patentability; novelty***

*''(a) NOVELTY; PRIOR ART.—A patent for a claimed invention may not be obtained if—*

*''(1) the claimed invention was patented, described in a printed publication, in public use, or on sale—*

*''(A) more than one year before the effective filing date of the claimed invention; or*

*''(B) one year or less before the effective filing date of the claimed invention, other than through disclosures made by the inventor or a joint inventor or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or*

*''(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.*

*''(b) EXCEPTIONS.—*

*''(1) PRIOR INVENTOR DISCLOSURE EXCEPTION.—Subject matter that would otherwise qualify as prior art based upon a disclosure under subparagraph (B) of subsection (a)(1) shall not be prior art to a claimed invention under that subparagraph if the subject matter had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.*

*''(2) DERIVATION, PRIOR DISCLOSURE, AND COMMON ASSIGNMENT EXCEPTIONS.—Subject matter that would otherwise qualify as prior art only under subsection (a)(2) shall not be prior art to a claimed invention if—*

*''(A) the subject matter was obtained directly or indirectly from the inventor or a joint inventor;*

*''(B) the subject matter had been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor before the date on which the application or patent referred to in subsection (a)(2) was effectively filed; or*

*''(C) the subject matter and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.*

*''(3) JOINT RESEARCH AGREEMENT EXCEPTION.—*

*''(A) IN GENERAL.—Subject matter and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of paragraph (2) if—*

*''(i) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;*

*''(ii) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and*

*''(iii) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.*

*''(B) For purposes of subparagraph (A), the term 'joint research agreement' means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.*

*''(4) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVELY FILED.—A patent or application for patent is effectively filed under subsection (a)(2) with respect to any subject matter described in the patent or application—*

*''(A) as of the filing date of the patent or the application for patent; or*

*''(B) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b) or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon one or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.''.*

*(2) CONFORMING AMENDMENT.—The item relating to section 102 in the table of sections for chapter 10 is amended to read as follows:*

*''102. Conditions for patentability; novelty.''.*

*(c) CONDITIONS FOR PATENTABILITY; NON-OBVIOUS SUBJECT MATTER.—Section 103 is amended to read as follows:*

***''§ 103. Conditions for patentability; non-obvious subject matter***

*''A patent for a claimed invention may not be obtained though the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.''.*

*(d) REPEAL OF REQUIREMENTS FOR INVENTIONS MADE ABROAD.—Section 104, and the item relating to that section in the table of sections for chapter 10, are repealed.*

*(e) REPEAL OF STATUTORY INVENTION REGISTRATION.—*

*(1) IN GENERAL.—Section 157, and the item relating to that section in the table of sections for chapter 14, are repealed.*

*(2) REMOVAL OF CROSS REFERENCES.—Section 111(b)(8) is amended by striking ''sections 115, 131, 135, and 157'' and inserting ''sections 131 and 135''.*

*(f) EARLIER FILING DATE FOR INVENTOR AND JOINT INVENTOR.—Section 120 is amended by striking ''which is filed by an inventor or inventors named'' and inserting ''which names an inventor or joint inventor''.*

*(g) CONFORMING AMENDMENTS.—*

*(1) RIGHT OF PRIORITY.—Section 172 is amended by striking ''and the time specified in section 102(d)''.*

*(2) LIMITATION ON REMEDIES.—Section 287(c)(4) is amended by striking ''the earliest effective filing date of which is prior to'' and inserting ''which has an effective filing date before''.*

*(3) INTERNATIONAL APPLICATION DESIGNATING THE UNITED STATES: EFFECT.—Section 363 is amended by striking ''except as otherwise provided in section 102(e) of this title''.*

*(4) PUBLICATION OF INTERNATIONAL APPLICATION: EFFECT.—Section 374 is amended by striking ''sections 102(e) and 154(d)'' and inserting ''section 154(d)''.*

*(5) PATENT ISSUED ON INTERNATIONAL APPLICATION: EFFECT.—The second sentence of section 375(a) is amended by striking ''Subject to section 102(e) of this title, such'' and inserting ''Such''.*

*(6) LIMIT ON RIGHT OF PRIORITY.—Section 119(a) is amended by striking ''; but no patent shall be granted'' and all that follows through ''one year prior to such filing''.*

*(7) INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Section 202(c) is amended—*

(A) in paragraph (2)—

(i) by striking ''publication, on sale, or public use,'' and all that follows through ''obtained in the United States'' and inserting ''the 1-year period referred to in section 102(a) would end before the end of that 2-year period''; and

(ii) by striking ''the statutory'' and inserting ''that 1-year''; and

(B) in paragraph (3), by striking ''any statutory bar date that may occur under this title due to publication, on sale, or public use'' and inserting ''the expiration of the 1-year period referred to in section 102(a)''.

(h) REPEAL OF INTERFERING PATENT REMEDIES.—Section 291, and the item relating to that section in the table of sections for chapter 29, are repealed.

(i) ACTION FOR CLAIM TO PATENT ON DERIVED INVENTION.—

(1) IN GENERAL.—Section 135(a) is amended to read as follows:

''(a) DISPUTE OVER RIGHT TO PATENT.—

''(1) INSTITUTION OF DERIVATION PROCEEDING.—

''(A) REQUEST FOR PROCEEDING.—An applicant may request initiation of a derivation proceeding to determine the right of the applicant to a patent by filing a request that sets forth with particularity the basis for finding that another applicant derived the claimed invention from the applicant requesting the proceeding and, without authorization, filed an application claiming such invention. Any such request—

''(i) may only be made within 12 months after the earlier of—

''(I) the date on which a patent is issued containing a claim that is the same or substantially the same as the claimed invention; or

''(II) the date of first publication of an application containing a claim that is the same or is substantially the same as the claimed invention; and

''(ii) must be made under oath, and must be supported by substantial evidence.

''(B) DETERMINATION OF DIRECTOR.—Whenever the Director determines that patents or applications for patent naming different individuals as the inventor interfere with one another because of a dispute over the right to patent under section 101 on the basis of a request under subparagraph (A), the Director shall institute a derivation proceeding for the purpose of determining which applicant is entitled to a patent.

''(2) DETERMINATION BY PATENT TRIAL AND APPEAL BOARD.—In any proceeding under this subsection, the Patent Trial and Appeal Board—

''(A) shall determine the question of the right to patent;

''(B) in appropriate circumstances, may correct the naming of the inventor in any application or patent at issue; and

''(C) shall issue a final decision on the right to patent.

''(3) DERIVATION PROCEEDING.—The Patent Trial and Appeal Board may defer action on a request to initiate a derivation proceeding for up to three months after the date on which the Director issues a patent to the applicant that filed the earlier application.

''(4) EFFECT OF FINAL DECISION.—The final decision of the Patent Trial and Appeal Board in a derivation proceeding, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office on the claims involved. The Director may issue a patent to an applicant who is determined by the Patent Trial and Appeal Board to have the right to a patent. The final decision of the Board, if adverse to a patentee, shall, if no appeal or other review of the decision has been or can be taken or had, constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office.''.

(2) CONFORMING AMENDMENTS.—(A) Section 135 is further amended—

(i) in subsection (b)—

(I) by striking ''(b)(1) A claim'' and inserting the following:

''(b) SAME CLAIMS.—

''(1) ISSUED PATENTS.—A claim''; and

(II) by striking ''(2) A claim'' and inserting the following:

''(2) PUBLISHED APPLICATIONS.—A claim''; and

(III) moving the remaining text of paragraphs (1) and (2) 2 ems to the right;

(ii) in subsection (c)—

(I) by striking ''(c) Any agreement'' and inserting the following:

''(c) AGREEMENTS TO TERMINATE PROCEEDINGS.—

''(1) IN GENERAL.—Any agreement'';

(II) by striking ''an interference'' and inserting ''a derivation proceeding'';

(III) by striking ''the interference'' each place it appears and inserting ''the derivation proceeding'';

(IV) in the second paragraph, by striking ''The Director'' and inserting the following:

''(2) NOTICE.—The Director'';

(V) by amending the third paragraph to read as follows:

''(3) JUDICIAL REVIEW.—Any discretionary action of the Director under this subsection shall be reviewable under chapter 7 of title 5.''; and

(VI) by moving the remaining text of paragraphs (1) and (2) of subsection (c) 2 ems to the right; and

(iii) in subsection (d)—

(I) by striking ''(d) Parties'' and inserting ''(d) ARBITRATION.—Parties'';

(II) by striking ''a patent interference'' and inserting ''a derivation proceeding''; and

(III) by striking ''the interference'' and inserting ''the derivation proceeding''.

(j) ELIMINATION OF REFERENCES TO INTERFERENCES.—(1) Sections 41(a)(6), 134, 141, 145, 146, 154, 305, and 314 are each amended by striking ''Board of Patent Appeals and Interferences'' each place it appears and inserting ''Patent Trial and Appeal Board''.

(2) Section 141 is amended—

(A) by striking ''an interference'' and inserting ''a derivation proceeding''; and

(B) by striking ''interference'' each additional place it appears and inserting ''derivation proceeding''.

(3) Section 146 is amended—

(A) in the first paragraph—

(i) by striking ''Any party'' and inserting ''(a) IN GENERAL.—Any party'';

(ii) by striking ''an interference'' and inserting ''a derivation proceeding''; and

(iii) by striking ''interference'' each additional place it appears and inserting ''derivation proceeding''; and

(B) in the second paragraph, by striking ''Such suit'' and inserting ''(b) PROCEDURE.—A suit under subsection (a)''

(4) The section heading for section 134 is amended to read as follows:

***''§ 134. Appeal to the Patent Trial and Appeal Board''.***

(5) The section heading for section 135 is amended to read as follows:

***''§ 135. Derivation proceedings''.***

(6) The section heading for section 146 is amended to read as follows:

***''§ 146. Civil action in case of derivation proceeding''.***

(7) Section 154(b)(1)(C) is amended by striking ''INTERFERENCES'' and inserting ''DERIVATION PROCEEDINGS''.

(8) The item relating to section 6 in the table of sections for chapter 1 is amended to read as follows:

''6. Patent Trial and Appeal Board.''.

(9) The items relating to sections 134 and 135 in the table of sections for chapter 12 are amended to read as follows:

''134. Appeal to the Patent Trial and Appeal Board.

''135. Derivation proceedings.''.

(10) The item relating to section 146 in the table of sections for chapter 13 is amended to read as follows:

''146. Civil action in case of derivation proceeding.''.

(11) CERTAIN APPEALS.—Subsection 1295(a)(4)(A) of title 28, United States Code, is amended to read as follows:

''(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to patent applications, derivation proceedings, and post-grant review proceedings, at the instance of an applicant for a patent or any party to a patent interference (commenced before the effective date provided in section 3(k) of the Patent Reform Act of 2007), derivation proceeding, or post-grant review proceeding, and any such appeal shall waive any right of such applicant or party to proceed under section 145 or 146 of title 35;''.

(k) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section—

(A) shall take effect 90 days after the date on which the President transmits to the Congress a finding that major patenting authorities have adopted a grace period having substantially the same effect as that contained under the amendments made by this section; and

(B) shall apply to all applications for patent that are filed on or after the effective date under subparagraph (A).

(2) DEFINITIONS.—In this subsection:

(A) MAJOR PATENTING AUTHORITIES.—The term ''major patenting authorities'' means at least the patenting authorities in Europe and Japan.

(B) GRACE PERIOD.—The term ''grace period'' means the 1-year period ending on the effective filing date of a claimed invention, during which disclosures of the subject matter by the inventor or a joint inventor, or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor, do not qualify as prior art to the claimed invention.

(C) EFFECTIVE FILING DATE.—The term ''effective filing date of a claimed invention'' means, with respect to a patenting authority in another country, a date equivalent to the effective filing date of a claimed invention as defined in section 100(h) of title 35, United States Code, as added by subsection (a) of this section.

(l) REVIEW EVERY 7 YEARS.—Not later than the end of the 7-year period beginning on the effective date under subsection (k), and the end of every 7-year period thereafter, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall—

(1) conduct a study on the effectiveness and efficiency of the amendments made by this section; and

(2) submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the results of the study, including any recommendations the Director has on amendments to the law and other recommendations of the Director with respect to the first-to-file system implemented under the amendments made by this section.

***SEC. 4. INVENTOR'S OATH OR DECLARATION.***

(a) INVENTOR'S OATH OR DECLARATION.—

(1) IN GENERAL.—Section 115 is amended to read as follows:

***''§ 115. Inventor's oath or declaration***

''(a) NAMING THE INVENTOR; INVENTOR'S OATH OR DECLARATION.—An application for patent that is filed under section 111(a), that commences the national stage under section 363, or that is filed by an inventor for an invention for which an application has previously been filed under this title by that inventor shall include, or be amended to include, the name of the inventor of any claimed invention in the application. Except as otherwise provided in this section, each individual who is the inventor or a

*joint inventor of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.*

*''(b) REQUIRED STATEMENTS.—An oath or declaration by an individual under subsection (a) shall contain statements that—*

*''(1) the application was made or was authorized to be made by individual; and*

*''(2) the individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.*

*''(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).*

*''(d) SUBSTITUTE STATEMENT.—*

*''(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.*

*''(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—*

*''(A) is unable to file the oath or declaration under subsection (a) because the individual—*

*''(i) is deceased;*

*''(ii) is under legal incapacity; or*

*''(iii) cannot be found or reached after diligent effort; or*

*''(B) is under an obligation to assign the invention and has refused to make the oath or declaration required under subsection (a).*

*''(3) CONTENTS.—A substitute statement under this subsection shall—*

*''(A) identify the individual with respect to whom the statement applies;*

*''(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and*

*''(C) contain any additional information, including any showing, required by the Director.*

*''(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation of assignment of an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual, in lieu of filing such statements separately.*

*''(f) TIME FOR FILING.—A notice of allowance under section 151 may be provided to an applicant for patent only if the applicant for patent has filed each required oath or declaration under subsection (a) or has filed a substitute statement under subsection (d) or recorded an assignment meeting the requirements of subsection (e).*

*''(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—The requirements under this section shall not apply to an individual with respect to an application for patent in which the individual is named as the inventor or a joint inventor and that claims the benefit of an earlier filing date under section 120 or 365(c), if—*

*''(1) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;*

*''(2) a substitute statement meeting the requirements of subsection (d) was filed in the earlier filed application with respect to the individual; or*

*''(3) an assignment meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.*

*''(h) SUPPLEMENTAL AND CORRECTED STATEMENTS; FILING ADDITIONAL STATEMENTS.—*

*''(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time. If a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, such additional statements shall be filed in accordance with regulations established by the Director.*

*''(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration under subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the Director may not thereafter require that individual to make any additional oath, declaration, or other statement equivalent to those required by this section in connection with the application for patent or any patent issuing thereon.*

*''(3) SAVINGS CLAUSE.—No patent shall be invalid or unenforceable based upon the failure to comply with a requirement under this section if the failure is remedied as provided under paragraph (1).*

*''(i) ACKNOWLEDGMENT OF PENALTIES.—Any declaration or statement filed under this section must contain an acknowledgment that any willful false statement is punishable by fine or imprisonment, or both, under section 1001 of title 18.''.*

*(2) RELATIONSHIP TO DIVISIONAL APPLICATIONS.—Section 121 is amended by striking ''If a divisional application'' and all that follows through ''inventor.''.*

*(3) REQUIREMENTS FOR NONPROVISIONAL APPLICATIONS.—Section 111(a) is amended—*

*(A) in paragraph (2)(C), by striking ''by the applicant'' and inserting ''or declaration'';*

*(B) in the heading for paragraph (3), by striking ''AND OATH''; and*

*(C) by striking ''and oath'' each place it appears.*

*(4) CONFORMING AMENDMENT.—The item relating to section 115 in the table of sections for chapter 11 is amended to read as follows:*

*''115. Inventor's oath or declaration.''.*

*(b) FILING BY OTHER THAN INVENTOR.—Section 118 is amended to read as follows:*

***''§ 118. Filing by other than inventor***

*''A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.''.*

*(c) SPECIFICATION.—Section 112 is amended—*

*(1) in the first paragraph——*

*(A) by striking ''The specification'' and inserting ''(a) IN GENERAL.—The specification''; and*

*(B) by striking ''of carrying out his invention'' and inserting ''or joint inventor of carrying out the invention''; and*

*(2) in the second paragraph—*

*(A) by striking ''The specification'' and inserting ''(b) CONCLUSION.—The specification''; and*

*(B) by striking ''applicant regards as his invention'' and inserting ''inventor or a joint inventor regards as the invention'';*

*(3) in the third paragraph, by striking ''A claim'' and inserting ''(c) FORM.—A claim'';*

*(4) in the fourth paragraph, by striking ''Subject to the following paragraph,'' and inserting ''(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e),'';*

*(5) in the fifth paragraph, by striking ''A claim'' and inserting ''(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim''; and*

*(6) in the last paragraph, by striking ''An element'' and inserting ''(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element''.*

*(d) EFFECTIVE DATE.—The amendments made by this section—*

*(1) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act; and*

*(2) shall apply to any application for patent, or application for reissue patent, that is filed on or after the effective date under paragraph (1).*

***SEC. 5. RIGHT OF THE INVENTOR TO OBTAIN DAMAGES.***

*(a) DAMAGES.—Section 284 is amended—*

*(1) in the first paragraph, by striking ''Upon'' and inserting ''(a) IN GENERAL.—Upon'';*

*(2) by designating the second undesignated paragraph as subsection (c);*

*(3) by inserting after subsection (a) (as designated by paragraph (1) of this subsection) the following:*

*''(b) REASONABLE ROYALTY.—*

*''(1) IN GENERAL.—An award pursuant to subsection (a) that is based upon a reasonable royalty shall be determined in accordance with this subsection. Based on the facts of the case, the court shall determine whether paragraph (2), (3), or (5) will be used by the court or the jury in calculating a reasonable royalty. The court shall identify the factors that are relevant to the determination of a reasonable royalty under the applicable paragraph, and the court or jury, as the case may be, shall consider only those factors in making the determination.*

*''(2) RELATIONSHIP OF DAMAGES TO CONTRIBUTIONS OVER PRIOR ART.—The court shall conduct an analysis to ensure that a reasonable royalty under subsection (a) is applied only to that economic value properly attributable to the patent's specific contribution over the prior art. The court shall exclude from the analysis the economic value properly attributable to the prior art, and other features or improvements, whether or not themselves patented, that contribute economic value to the infringing product or process.*

*''(3) ENTIRE MARKET VALUE.—Unless the claimant shows that the patent's specific contribution over the prior art is the predominant basis for market demand for an infringing product or process, damages may not be based upon the entire market value of the products or processes involved that satisfy that demand.*

*''(4) COMBINATION INVENTIONS.—For purposes of paragraphs (2) and (3), in the case of a combination invention the elements of which are present individually in the prior art, the patentee may show that the contribution over the prior art may include the value of the additional function resulting from the combination, as well as the enhanced value, if any, of some or all of the prior art elements resulting from the combination.*

*''(5) OTHER FACTORS.—In determining a reasonable royalty, the court may also consider, or direct the jury to consider, the terms of any nonexclusive marketplace licensing of the invention, where appropriate, as well as any other relevant factors under applicable law.'';*

*(4) by amending subsection (c) (as designated by paragraph (1) of this subsection) to read as follows:*

*''(c) WILLFUL INFRINGEMENT.—*

*''(1) INCREASED DAMAGES.—A court that has determined that the infringer has willfully infringed a patent or patents may increase the damages up to three times the amount of damages found or assessed under subsection (a), except that increased damages under this paragraph shall not apply to provisional rights under section 154(d).*

*''(2) PERMITTED GROUNDS FOR WILLFULNESS.—A court may find that an infringer has willfully infringed a patent only if the patent owner presents clear and convincing evidence that—*

*''(A) after receiving written notice from the patentee—*

*''(i) alleging acts of infringement in a manner sufficient to give the infringer an objectively reasonable apprehension of suit on such patent, and*

''(ii) identifying with particularity each claim of the patent, each product or process that the patent owner alleges infringes the patent, and the relationship of such product or process to such claim,

the infringer, after a reasonable opportunity to investigate, thereafter performed one or more of the alleged acts of infringement;

''(B) the infringer intentionally copied the patented invention with knowledge that it was patented; or

''(C) after having been found by a court to have infringed that patent, the infringer engaged in conduct that was not colorably different from the conduct previously found to have infringed the patent, and that resulted in a separate finding of infringement of the same patent.

''(3) LIMITATIONS ON WILLFULNESS.—(A) A court may not find that an infringer has willfully infringed a patent under paragraph (2) for any period of time during which the infringer had an informed good faith belief that the patent was invalid or unenforceable, or would not be infringed by the conduct later shown to constitute infringement of the patent.

''(B) An informed good faith belief within the meaning of subparagraph (A) may be established by—

''(i) reasonable reliance on advice of counsel;

''(ii) evidence that the infringer sought to modify its conduct to avoid infringement once it had discovered the patent; or

''(iii) other evidence a court may find sufficient to establish such good faith belief.

''(C) The decision of the infringer not to present evidence of advice of counsel is not relevant to a determination of willful infringement under paragraph (2).

''(4) LIMITATION ON PLEADING.—Before the date on which a court determines that the patent in suit is not invalid, is enforceable, and has been infringed by the infringer, a patentee may not plead and a court may not determine that an infringer has willfully infringed a patent. The court's determination of an infringer's willfulness shall be made without a jury.''; and

(5) in the third undesignated paragraph, by striking ''The court'' and inserting ''(d) EXPERT TESTIMONY.—The court''.

(b) DEFENSE TO INFRINGEMENT BASED ON EARLIER INVENTOR.—Section 273 is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''of a method''; and

(ii) by striking ''review period;'' and inserting ''review period; and'';

(B) in paragraph (2)(B), by striking the semicolon at the end and inserting a period; and

(C) by striking paragraphs (3) and (4);

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''for a method''; and

(ii) by striking ''at least 1 year before the effective filing date of such patent, and'' and all that follows through the period and inserting ''and commercially used, or made substantial preparations for commercial use of, the subject matter before the effective filing date of the claimed invention.'';

(B) in paragraph (2)—

(i) by striking ''The sale or other disposition of a useful end product produced by a patented method'' and inserting ''The sale or other disposition of subject matter that qualifies for the defense set forth in this section''; and

(ii) by striking ''a defense under this section with respect to that useful end result'' and inserting ''such defense'';

(C) in paragraph (3)—

(i) by striking subparagraph (A); and

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(D) in paragraph (7), by striking ''of the patent'' and inserting ''of the claimed invention''; and

(3) by amending the heading to read as follows:

***''§ 273. Special defenses to and exemptions from infringement''.***

(c) TABLE OF SECTIONS.—The item relating to section 273 in the table of sections for chapter 28 is amended to read as follows:

''273. Special defenses to and exemptions from infringement.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any civil action commenced on or after the date of the enactment of this Act.

(e) REVIEW EVERY 7 YEARS.—Not later than the end of the 7-year period beginning on the date of the enactment of this Act, and the end of every 7-year period thereafter, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall—

(1) conduct a study on the effectiveness and efficiency of the amendments made by this section; and

(2) submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the results of the study, including any recommendations the Director has on amendments to the law and other recommendations of the Director with respect to the right of the inventor to obtain damages for patent infringement.

***SEC. 6. POST-GRANT PROCEDURES AND OTHER QUALITY ENHANCEMENTS.***

(a) CITATION OF PRIOR ART.—

(1) IN GENERAL.—Section 301 is amended to read as follows:

***''§ 301. Citation of prior art***

''(a) IN GENERAL.—Any person at any time may cite to the Office in writing—

''(1) prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent; or

''(2) written statements of the patent owner filed in a proceeding before a Federal court or the Patent and Trademark Office in which the patent owner takes a position on the scope of one or more patent claims.

''(b) SUBMISSIONS PART OF OFFICIAL FILE.—If the person citing prior art or written submissions under subsection (a) explains in writing the pertinence and manner of applying the prior art or written submissions to at least one claim of the patent, the citation of the prior art or written submissions (as the case may be) and the explanation thereof shall become a part of the official file of the patent.

''(c) PROCEDURES FOR WRITTEN STATEMENTS.—

''(1) SUBMISSION OF ADDITIONAL MATERIALS.—A party that submits written statements under subsection (a)(2) in a proceeding shall include any other documents, pleadings, or evidence from the proceeding that address the patent owner's statements or the claims addressed by the written statements.

''(2) LIMITATION ON USE OF STATEMENTS.—Written statements submitted under subsection (a)(2) shall not be considered for any purpose other than to determine the proper meaning of the claims that are the subject of the request in a proceeding ordered pursuant to section 304 or 313. Any such written statements, and any materials submitted under paragraph (1), that are subject to an applicable protective order shall be redacted to exclude information subject to the order.

''(d) IDENTITY WITHHELD.—Upon the written request of the person citing prior art or written statements under subsection (a), the person's identity shall be excluded from the patent file and kept confidential.''.

(b) REEXAMINATION.—Section 303(a) is amended to read as follows:

''(a) Within three months after the owner of a patent files a request for reexamination under section 302, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On the Director's own initiative, and at any time, the Director may determine whether a substantial new question of patentability is raised by patents and publications discovered by the Director, is cited under section 301, or is cited by any person other than the owner of the patent under section 302 or section 311. The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.''.

(c) CONDUCT OF INTER PARTES PROCEEDINGS.—Section 314 is amended—

(1) in the first sentence of subsection (a), by striking ''conducted according to the procedures established for initial examination under the provisions of sections 132 and 133'' and inserting ''heard by an administrative patent judge in accordance with procedures which the Director shall establish'';

(2) in subsection (b), by striking paragraph (2) and inserting the following:

''(2) The third-party requester shall have the opportunity to file written comments on any action on the merits by the Office in the inter partes reexamination proceeding, and on any response that the patent owner files to such an action, if those written comments are received by the Office within 60 days after the date of service on the third-party requester of the Office action or patent owner response, as the case may be.''; and

(3) by adding at the end the following:

''(d) ORAL HEARING.—At the request of a third party requestor or the patent owner, the administrative patent judge shall conduct an oral hearing, unless the judge finds cause lacking for such hearing.''.

(d) ESTOPPEL.—Section 315(c) is amended by striking ''or could have raised''.

(e) REEXAMINATION PROHIBITED AFTER DISTRICT COURT DECISION.—Section 317(b) is amended—

(1) in the subsection heading, by striking ''FINAL DECISION'' and inserting ''DISTRICT COURT DECISION''; and

(2) by striking ''Once a final decision has been entered'' and inserting ''Once the judgment of the district court has been entered''.

(f) POST-GRANT OPPOSITION PROCEDURES.—

(1) IN GENERAL.—Part III is amended by adding at the end the following new chapter:

***''CHAPTER 32—POST-GRANT REVIEW PROCEDURES***

''Sec.
''321. Petition for post-grant review.
''322. Timing and bases of petition.
''323. Requirements of petition.
''324. Prohibited filings.
''325. Submission of additional information; showing of sufficient grounds.
''326. Conduct of post-grant review proceedings.
''327. Patent owner response.
''328. Proof and evidentiary standards.
''329. Amendment of the patent.
''330. Decision of the Board.
''331. Effect of decision.
''332. Settlement.
''333. Relationship to other pending proceedings.
''334. Effect of decisions rendered in civil action on post-grant review proceedings.
''335. Effect of final decision on future proceedings.
''336. Appeal.

***''§ 321. Petition for post-grant review***

''Subject to sections 322, 324, 332, and 333, a person who is not the patent owner may file with the Office a petition for cancellation seeking to institute a post-grant review proceeding to cancel as unpatentable any claim of a patent on any ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to invalidity of the patent or any claim). The Director shall establish, by regulation, fees to be paid

by the person requesting the proceeding, in such amounts as the Director determines to be reasonable.

**''§ 322. Timing and bases of petition**

''A post-grant proceeding may be instituted under this chapter pursuant to a cancellation petition filed under section 321 only if—

''(1) the petition is filed not later than 12 months after the grant of the patent or issuance of a reissue patent, as the case may be; or

''(2) the patent owner consents in writing to the proceeding.

**''§ 323. Requirements of petition**

''A cancellation petition filed under section 321 may be considered only if—

''(1) the petition is accompanied by payment of the fee established by the Director under section 321;

''(2) the petition identifies the cancellation petitioner; and

''(3) the petition sets forth in writing the basis for the cancellation, identifying each claim challenged and providing such information as the Director may require by regulation, and includes copies of patents and printed publications that the cancellation petitioner relies upon in support of the petition; and

''(4) the petitioner provides copies of those documents to the patent owner or, if applicable, the designated representative of the patent owner.

**''§ 324. Prohibited filings**

''A post-grant review proceeding may not be instituted under section 322 if the petition for cancellation requesting the proceeding identifies the same cancellation petitioner and the same patent as a previous petition for cancellation filed under such section.

**''§ 325. Submission of additional information; showing of sufficient grounds**

''(a) IN GENERAL.—The cancellation petitioner shall file such additional information with respect to the petition as the Director may require. For each petition submitted under section 321, the Director shall determine if the written statement, and any evidence submitted with the request, establish that a substantial question of patentability exists for at least one claim in the patent. The Director may initiate a post-grant review proceeding if the Director determines that the information presented provides sufficient grounds to believe that there is a substantial question of patentability concerning one or more claims of the patent at issue.

''(b) NOTIFICATION; DETERMINATIONS NOT REVIEWABLE.—The Director shall notify the patent owner and each petitioner in writing of the Director's determination under subsection (a), including a determination to deny the petition. The Director shall make that determination in writing not later than 60 days after receiving the petition. Any determination made by the Director under subsection (a), including whether or not to institute a post-grant review proceeding or to deny the petition, shall not be reviewable.

**''§ 326. Conduct of post-grant review proceedings**

''(a) IN GENERAL.—The Director shall prescribe regulations, in accordance with section 2(b)(2)—

''(1) establishing and governing post-grant review proceedings under this chapter and their relationship to other proceedings under this title;

''(2) establishing procedures for the submission of supplemental information after the petition for cancellation is filed; and

''(3) setting forth procedures for discovery of relevant evidence, including that such discovery shall be limited to evidence directly related to factual assertions advanced by either party in the proceeding, and the procedures for obtaining such evidence shall be consistent with the purpose and nature of the proceeding.

''(b) POST-GRANT REGULATIONS.—Regulations under subsection (a)(1)—

''(1) shall require that the final determination in a post-grant proceeding issue not later than one year after the date on which the post-grant review proceeding is instituted under this chapter, except that, for good cause shown, the Director may extend the 1-year period by not more than six months;

''(2) shall provide for discovery upon order of the Director;

''(3) shall provide for publication of notice in the Federal Register of the filing of a petition for post-grant review under this chapter, for publication of the petition, and documents, orders, and decisions relating to the petition, on the website of the Patent and Trademark Office, and for filings under seal exempt from publication requirements;

''(4) shall prescribe sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or unnecessary increase in the cost of the proceeding;

''(5) may provide for protective orders governing the exchange and submission of confidential information; and

''(6) shall ensure that any information submitted by the patent owner in support of any amendment entered under section 329 is made available to the public as part of the prosecution history of the patent.

''(c) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the effect on the economy, the integrity of the patent system, and the efficient administration of the Office.

''(d) CONDUCT OF PROCEEDING.—The Patent Trial and Appeal Board shall, in accordance with section 6(b), conduct each post-grant review proceeding authorized by the Director.

**''§ 327. Patent owner response**

''After a post-grant proceeding under this chapter has been instituted with respect to a patent, the patent owner shall have the right to file, within a time period set by the Director, a response to the cancellation petition. The patent owner shall file with the response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response.

**''§ 328. Proof and evidentiary standards**

''(a) IN GENERAL.—The presumption of validity set forth in section 282 shall not apply in a challenge to any patent claim under this chapter.

''(b) BURDEN OF PROOF.—The party advancing a proposition under this chapter shall have the burden of proving that proposition by a preponderance of the evidence.

**''§ 329. Amendment of the patent**

''(a) IN GENERAL.—In response to a challenge in a petition for cancellation, the patent owner may file one motion to amend the patent in one or more of the following ways:

''(1) Cancel any challenged patent claim.

''(2) For each challenged claim, propose a substitute claim.

''(3) Amend the patent drawings or otherwise amend the patent other than the claims.

''(b) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted only for good cause shown.

''(c) SCOPE OF CLAIMS.—An amendment under this section may not enlarge the scope of the claims of the patent or introduce new matter.

**''§ 330. Decision of the Board**

''If the post-grant review proceeding is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged and any new claim added under section 329.

**''§ 331. Effect of decision**

''(a) IN GENERAL.—If the Patent Trial and Appeal Board issues a final decision under section 330 and the time for appeal has expired or any appeal proceeding has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable and incorporating in the patent by operation of the certificate any new claim determined to be patentable.

''(b) NEW CLAIMS.—Any new claim held to be patentable and incorporated into a patent in a post-grant review proceeding shall have the same effect as that specified in section 252 for reissued patents on the right of any person who made, purchased, offered to sell, or used within the United States, or imported into the United States, anything patented by such new claim, or who made substantial preparations therefor, before a certificate under subsection (a) of this section is issued.

**''§ 332. Settlement**

''(a) IN GENERAL.—A post-grant review proceeding shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Patent Trial and Appeal Board has issued a written decision before the request for termination is filed. If the post-grant review proceeding is terminated with respect to a petitioner under this paragraph, no estoppel shall apply to that petitioner. If no petitioner remains in the proceeding, the panel of administrative patent judges assigned to the proceeding shall terminate the proceeding.

''(b) AGREEMENT IN WRITING.—Any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in the agreement or understanding, that is made in connection with or in contemplation of the termination of a post-grant review proceeding, must be in writing. A post-grant review proceeding as between the parties to the agreement or understanding may not be terminated until a copy of the agreement or understanding, including any such collateral agreements, has been filed in the Office. If any party filing such an agreement or understanding requests, the agreement or understanding shall be kept separate from the file of the post-grant review proceeding, and shall be made available only to Government agencies on written request, or to any person on a showing of good cause.

**''§ 333. Relationship to other pending proceedings**

''(a) IN GENERAL.—Notwithstanding subsection 135(a), sections 251 and 252, and chapter 30, the Director may determine the manner in which any reexamination proceeding, reissue proceeding, interference proceeding (commenced before the effective date provided in section 3(k) of the Patent Reform Act of 2007), derivation proceeding, or post-grant review proceeding, that is pending during a post-grant review proceeding, may proceed, including providing for stay, transfer, consolidation, or termination of any such proceeding.

''(b) STAYS.—The Director may stay a post-grant review proceeding if a pending civil action for infringement addresses the same or substantially the same questions of patentability.

**''§ 334. Effect of decisions rendered in civil action on post-grant review proceedings**

''If a final decision is entered against a party in a civil action arising in whole or in part under section 1338 of title 28 establishing that the party has not sustained its burden of proving the invalidity of any patent claim—

''(1) that party to the civil action and the privies of that party may not thereafter request a post-grant review proceeding on that patent claim on the basis of any grounds, under the provisions of section 321, which that party or the privies of that party raised or could have raised; and

''(2) the Director may not thereafter maintain a post-grant review proceeding that was requested, before the final decision was so entered, by that party or the privies of that party on the basis of such grounds.

**''§ 335. Effect of final decision on future proceedings**

''If a final decision under section 330 is favorable to the patentability of any original or new claim of the patent challenged by the cancellation petitioner, the cancellation petitioner may not thereafter, based on any ground that the cancellation petitioner raised during the post-grant review proceeding—

''(1) request or pursue a reexamination of such claim under chapter 31;

''(2) request or pursue a derivation proceeding with respect to such claim;

''(3) request or pursue a post-grant review proceeding under this chapter with respect to such claim; or

''(4) assert the invalidity of any such claim in any civil action arising in whole or in part under section 1338 of title 28.

**''§ 336. Appeal**

''A party dissatisfied with the final determination of the Patent Trial and Appeal Board in a post-grant proceeding under this chapter may appeal the determination under sections 141 through 144. Any party to the post-grant proceeding shall have the right to be a party to the appeal.''.

(g) CONFORMING AMENDMENT.—The table of chapters for part III is amended by adding at the end the following:

**''32. Post-Grant Review Proceedings ... 321''.**

(h) REPEAL.—Section 4607 of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is repealed.

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments and repeal made by this section shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

(2) APPLICABILITY TO EX PARTE AND INTER PARTES PROCEEDINGS.—Notwithstanding any other provision of law, sections 301 and 311 through 318 of title 35, United States Code, as amended by this section, shall apply to any patent that issues before, on, or after the effective date under paragraph (1) from an original application filed on any date.

(3) APPLICABILITY TO POST-GRANT PROCEEDINGS.—The amendments made by subsection (f) shall apply to patents issued on or after the effective date under paragraph (1).

(j) REGULATIONS.—

(1) REGULATIONS.—The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall, not later than the date that is 1 year after the date of the enactment of this Act, issue regulations to carry out chapter 32 of title 35, United States Code, as added by subsection (f) of this section.

(2) PENDING INTERFERENCES.—The Director shall determine the procedures under which interferences under title 35, United States Code, that are commenced before the effective date under subsection (i)(1) are to proceed, including whether any such interference is to be dismissed without prejudice to the filing of a cancellation petition for a post-grant opposition proceeding under chapter 32 of title 35, United States Code, or is to proceed as if this Act had not been enacted. The Director shall include such procedures in regulations issued under paragraph (1).

**SEC. 7. DEFINITIONS; PATENT TRIAL AND APPEAL BOARD.**

(a) DEFINITIONS.—Section 100 (as amended by this Act) is further amended by adding at the end the following:

''(k) The term 'cancellation petitioner' means the real party in interest requesting cancellation of any claim of a patent under chapter 32 of this title and the privies of the real party in interest.''.

(a) PATENT TRIAL AND APPEAL BOARD.—Section 6 is amended to read as follows:

**''§ 6. Patent Trial and Appeal Board**

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

''(b) DUTIES.—The Patent Trial and Appeal Board shall—

''(1) on written appeal of an applicant, review adverse decisions of examiners upon application for patents;

''(2) on written appeal of a patent owner, review adverse decisions of examiners upon patents in reexamination proceedings under chapter 30;

''(3) review appeals by patent owners and third-party requesters under section 315;

''(4) determine priority and patentability of invention in derivation proceedings under section 135(a); and

''(5) conduct post-grant opposition proceedings under chapter 32.

Each appeal and derivation proceeding shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings. The Director shall assign each post-grant review proceeding to a panel of 3 administrative patent judges. Once assigned, each such panel of administrative patent judges shall have the responsibilities under chapter 32 in connection with post-grant review proceedings.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

**SEC. 8. STUDY AND REPORT ON REEXAMINATION PROCEEDINGS.**

The Under Secretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office shall, not later than 2 years after the date of the enactment of this Act—

(1) conduct a study of the effectiveness and efficiency of the different forms of proceedings available under title 35, United States Code, for the reexamination of patents; and

(2) submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the results of the study, including any of the Director's suggestions for amending the law, and any other recommendations the Director has with respect to patent reexamination proceedings.

**SEC. 9. SUBMISSIONS BY THIRD PARTIES AND OTHER QUALITY ENHANCEMENTS.**

(a) PUBLICATION.—Section 122(b)(2) is amended—

(1) by striking subparagraph (B); and

(2) in subparagraph (A)—

(A) by striking ''(A) An application'' and inserting ''An application''; and

(B) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively.

(b) PREISSUANCE SUBMISSIONS BY THIRD PARTIES.—Section 122 is amended by adding at the end the following:

''(e) PREISSUANCE SUBMISSIONS BY THIRD PARTIES.—

''(1) IN GENERAL.—Any person may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other publication of potential relevance to the examination of the application, if such submission is made in writing before the earlier of—

''(A) the date a notice of allowance under section 151 is mailed in the application for patent; or

''(B) either—

''(i) 6 months after the date on which the application for patent is published under section 122, or

''(ii) the date of the first rejection under section 132 of any claim by the examiner during the examination of the application for patent,

whichever occurs later.

''(2) OTHER REQUIREMENTS.—Any submission under paragraph (1) shall—

''(A) set forth a concise description of the asserted relevance of each submitted document;

''(B) be accompanied by such fee as the Director may prescribe; and

''(C) include a statement by the submitter affirming that the submission was made in compliance with this section.''.

(c) EFFECTIVE DATE.—The amendments made by this section—

(1) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act; and

(2) shall apply to any application for patent filed before, on, or after the effective date under paragraph (1).

**SEC. 10. TAX PLANNING METHODS NOT PATENTABLE.**

(a) IN GENERAL.—Section 101 is amended—

(1) by striking ''Whoever'' and inserting ''(a) PATENTABLE INVENTIONS.—Whoever''; and

(2) by adding at the end the following:

''(b) TAX PLANNING METHODS.—

''(1) UNPATENTABLE SUBJECT MATTER.—A patent may not be obtained for a tax planning method.

''(2) DEFINITIONS.—For purposes of paragraph (1)—

''(A) the term 'tax planning method' means a plan, strategy, technique, or scheme that is designed to reduce, minimize, or defer, or has, when implemented, the effect of reducing, minimizing, or deferring, a taxpayer's tax liability, but does not include the use of tax preparation software or other tools used solely to perform or model mathematical calculations or prepare tax or information returns;

''(B) the term 'taxpayer' means an individual, entity, or other person (as defined in section 7701 of the Internal Revenue Code of 1986) that is subject to taxation directly, is required to prepare a tax return or information statement to enable one or more other persons to determine their tax liability, or is otherwise subject to a tax law;

''(C) the terms 'tax', 'tax laws', 'tax liability', and 'taxation' refer to any Federal, State, county, city, municipality, or other governmental levy, assessment, or imposition, whether measured by income, value, or otherwise; and

''(D) the term 'State' means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

(b) APPLICABILITY.—The amendments made by this section—

(1) shall take effect on the date of the enactment of this Act;

(2) shall apply to any application for patent or application for a reissue patent that is—

(A) filed on or after the date of the enactment of this Act; or

(B) filed before that date if a patent or reissue patent has not been issued pursuant to the application as of that date; and

(3) shall not be construed as validating any patent issued before the date of the enactment of this Act for an invention described in section 101(b) of title 35, United States Code, as amended by this section.

**SEC. 11. VENUE AND JURISDICTION.**

(a) VENUE FOR PATENT CASES.—Section 1400 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) Notwithstanding section 1391 of this title, in any civil action arising under any Act of Congress relating to patents, a party shall not manufacture venue by assignment, incorporation, or otherwise to invoke the venue of a specific district court.

''(c) Notwithstanding section 1391 of this title, any civil action for patent infringement or any action for declaratory judgment may be brought only in a judicial district—

''(1) where the defendant has its principal place of business or in the location or place in which the defendant is incorporated, or, for foreign corporations with a United States subsidiary, where the defendant's primary United States subsidiary has its principal place of business or in the location or place in which the defendants primary United States subsidiary is incorporated;

''(2) where the defendant has committed a substantial portion of the acts of infringement and has a regular and established physical facility that the defendant controls and that constitutes a substantial portion of the operations of the defendant;

''(3) where the primary plaintiff resides, if the primary plaintiff in the action is an institution of higher education as defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

''(4) where the plaintiff resides, if the plaintiff or a subsidiary of the plaintiff has an established physical facility in such district dedicated to research, development, or manufacturing that is operated by full-time employees of the plaintiff or such subsidiary, or if the sole plaintiff in the action is an individual inventor who is a natural person and who qualifies at the time such action is filed as a micro entity under section 124 of title 35.

''(d) If the plaintiff brings a civil action for patent infringement in a judicial district under subsection (c), the district court may transfer that action to any other district or division where—

''(1) the defendant has substantial evidence or witnesses; and

''(2) venue would be appropriate under section 1391 of this title, if such transfer would be appropriate under section 1404 of this title.''.

(b) INTERLOCUTORY APPEALS.—Subsection (c) of section 1292 of title 28, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following:

''(3) of an appeal from an interlocutory order or decree determining construction of claims in a civil action for patent infringement under section 271 of title 35.

Application for an appeal under paragraph (3) shall be made to the court within 10 days after entry of the order or decree. The district court shall have discretion whether to approve the application and, if so, whether to stay proceedings in the district court during pendency of the appeal.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any action commenced on or after the date of the enactment of this Act.

**SEC. 12. ADDITIONAL INFORMATION; INEQUITABLE CONDUCT AS DEFENSE TO INFRINGEMENT.**

(a) DISCLOSURE REQUIREMENTS FOR APPLICANTS.—

(1) IN GENERAL.—Chapter 11 is amended by adding at the end the following new section:

***''§ 123. Additional information***

''(a) IN GENERAL.—The Director shall, by regulation, require that applicants submit a search report and other information and analysis relevant to patentability. An application shall be regarded as abandoned if the applicant fails to submit the required search report, information, and analysis in the manner and within the time period prescribed by the Director.

''(b) EXCEPTION FOR MICRO ENTITIES.—Applications from micro-entities shall not be subject to the requirements of regulations issued under subsection (a).

***''§ 124. Micro entities***

''(a) DEFINITION.—For purposes of this title, the term 'micro entity' means an applicant for patent who makes a certification under either subsection (b) or (c).

''(b) UNASSIGNED APPLICATION.—A certification under this subsection is a certification by each inventor named in the application that the inventor—

''(1) qualifies as a small entity as defined in regulations issued by the Director;

''(2) has not been named on five or more previously filed patent applications;

''(3) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or any other ownership interest in the application; and

''(4) does not have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 2.5 times the median household income, as reported by the Bureau of the Census, for the most recent calendar year preceding the calendar year in which the examination fee is being paid.

''(c) ASSIGNED APPLICATION.—A certification under this subsection is a certification by each inventor named in the application that the inventor—

''(1) qualifies as a small entity as defined in regulations issued by the Director and meets the requirements of subsection (b)(4);

''(2) has not been named on five or more previously filed patent applications; and

''(3) has assigned, granted, conveyed, or is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application to an entity that has five or fewer employees and has a gross taxable income, as defined in section 61(a) of the Internal Revenue Code of 1986, that does not exceed 2.5 times the median household income, as reported by the Bureau of the Census, for the most recent calendar year preceding the calendar year in which the examination fee is being paid.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 11 is amended by adding at the end the following new items:

''123. Additional information.
''124. Micro entities.''.

(b) INEQUITABLE CONDUCT AS DEFENSE TO INFRINGEMENT.—Section 282 is amended—

(1) in the first undesignated paragraph, by striking ''A patent'' and inserting ''(a) IN GENERAL.—A patent'';

(2) in the second undesignated paragraph—

(A) by striking ''The following'' and inserting ''(b) DEFENSES.—The following''; and

(B) by striking the comma at the end of each of paragraphs (1), (2), and (3) and inserting a period;

(3) in the third undesignated paragraph—

(A) by striking ''In actions'' and inserting ''(d) NOTICE OF ACTIONS; PLEADING.—In actions'';

(B) by inserting after the second sentence the following: ''In an action involving any allegation of inequitable conduct under subsection (c), the party asserting this defense or claim shall comply with the pleading requirements set forth in Rule 9(b) of the Federal Rules of Civil Procedure.''; and

(C) by striking ''Invalidity'' and inserting ''(e) EXTENSION OF PATENT TERM.—Invalidity''; and

(4) by inserting after subsection (b), as designated by paragraph (2) of this subsection, the following:

''(c) INEQUITABLE CONDUCT.—

''(1) DEFENSE.—A patent may be held to be unenforceable, or other remedy imposed under paragraph (3), for inequitable conduct only if it is established, by clear and convincing evidence, that—

''(A) the patentee, its agents, or another person with a duty of disclosure to the Office, with the intent to mislead or deceive the patent examiner, misrepresented or failed to disclose material information concerning a matter or proceeding before the Office; and

''(B) in the absence of such deception, the Office, acting reasonably, would, on the record before it, have made a prima facie finding of unpatentability.

''(2) INTENT.—In order to prove intent to mislead or deceive under paragraph (1), specific facts beyond materiality of the information submitted or not disclosed must be proven that support an inference of intent to mislead or deceive the Patent and Trademark Office. Facts support an inference of intent if they show circumstances that indicate conscious or deliberate behavior on the part of the patentee, its agents, or another person with a duty of disclosure to the Office, to not disclose material information or to submit materially false information.

''(3) REMEDY.—Upon a finding of inequitable conduct, the court shall balance the equities to determine which of the following remedies to impose:

''(A) Denying equitable relief to the patent holder and limiting the remedy for infringement to damages.

''(B) Holding the claims-in-suit, or the claims in which inequitable conduct occurred, unenforceable.

''(C) Holding the patent unenforceable.

''(D) Holding the claims of a related patent unenforceable.

''(4) ATTORNEY MISCONDUCT.—Upon a finding of inequitable conduct, if there is evidence that the conduct can be attributable to a person or persons authorized to practice before the Office, the court shall refer the matter to the Office for appropriate disciplinary action under section 32, and shall order the parties to preserve and make available to the Office any materials that may be relevant to the determination under section 32.''.

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendments made by subsection (a)—

(A) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act; and

(B) shall apply to any application for patent filed on or after the effective date under subparagraph (A).

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to any civil action commenced on or after the date of the enactment of this Act.

**SEC. 13. BEST MODE REQUIREMENT.**

Section 282(b) (as designated by section 12(b) of this Act) is amended by striking paragraph (3) and inserting the following:

''(3) Invalidity of the patent or any claim in suit for failure to comply with—

''(A) any requirement of section 112 of this title, other than the requirement that the specification shall set forth the best mode contemplated by the inventor of carrying out his invention; or

''(B) any requirement of section 251 of this title.''.

**SEC. 14. REGULATORY AUTHORITY.**

(a) REGULATORY AUTHORITY.—Section 2(c) is amended by adding at the end the following:

''(6) The powers granted under paragraph (2) of subsection (b) include the authority to promulgate regulations to ensure the quality and timeliness of applications and their examination, including specifying circumstances under which an application for patent may claim the benefit under sections 120, 121 and 365(c) of the filing date of a prior filed application for patent.''.

(b) CLARIFICATION.—The amendment made by subsection (a) clarifies the scope of power granted to the United States Patent and Trademark

*Office by paragraph (2) of section 2(b) of title 35, United States Code, as in effect since the enactment of Public Law 106–113.*

***SEC. 15. TECHNICAL AMENDMENTS.***

*(a) JOINT INVENTIONS.—Section 116 is amended—*

*(1) in the first paragraph, by striking ''When'' and inserting ''(a) JOINT INVENTIONS.—When'';*

*(2) in the second paragraph, by striking ''If a joint inventor'' and inserting ''(b) OMITTED INVENTOR.—If a joint inventor''; and*

*(3) in the third paragraph, by striking ''Whenever'' and inserting ''(c) CORRECTION OF ERRORS IN APPLICATION.—Whenever''.*

*(b) FILING OF APPLICATION IN FOREIGN COUNTRY.—Section 184 is amended—*

*(1) in the first paragraph, by striking ''Except when'' and inserting ''(a) FILING IN FOREIGN COUNTRY.—Except when'';*

*(2) in the second paragraph, by striking ''The term'' and inserting ''(b) APPLICATION.—The term''; and*

*(3) in the third paragraph, by striking ''The scope'' and inserting ''(c) SUBSEQUENT MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS.—The scope''.*

*(c) REISSUE OF DEFECTIVE PATENTS.—Section 251 is amended—*

*(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever'';*

*(2) in the second paragraph, by striking ''The Director'' and inserting ''(b) MULTIPLE REISSUED PATENTS.—The Director'';*

*(3) in the third paragraph, by striking ''The provisions'' and inserting ''(c) APPLICABILITY OF THIS TITLE.—The provisions''; and*

*(4) in the last paragraph, by striking ''No reissued patent'' and inserting ''(d) REISSUE PATENT ENLARGING SCOPE OF CLAIMS.—No reissued patent''.*

*(d) EFFECT OF REISSUE.—Section 253 is amended—*

*(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever''; and*

*(2) in the second paragraph, by striking ''In like manner'' and inserting ''(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a),''.*

*(e) CORRECTION OF NAMED INVENTOR.—Section 256 is amended—*

*(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) CORRECTION.—Whenever''; and*

*(2) in the second paragraph, by striking ''The error'' and inserting ''(b) PATENT VALID IF ERROR CORRECTED.—The error''.*

*(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.*

***SEC. 16. STUDY OF SPECIAL MASTERS IN PATENT CASES.***

*(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall conduct a study of, and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on, the use of special masters in patent litigation who are appointed in accordance with Rule 53 of the Federal Rules of Civil Procedure.*

*(b) OBJECTIVE.—In conducting the study under subsection (a), the Director shall consider whether the use of special masters has been beneficial in patent litigation and what, if any, program should be undertaken to facilitate the use by the judiciary of special masters in patent litigation.*

*(c) FACTORS TO CONSIDER.—In conducting the study under subsection (a), the Director, in consultation with the Federal Judicial Center, shall consider—*

*(1) the basis upon which courts appoint special masters under Rule 53(b) of the Federal Rules of Civil Procedure;*

*(2) the frequency with which special masters have been used by the courts;*

*(3) the role and powers special masters are given by the courts;*

*(4) the subject matter at issue in cases that use special masters;*

*(5) the impact on court time and costs in cases where a special master is used as compared to cases where no special master is used;*

*(6) the legal and technical training and experience of special masters;*

*(7) whether the use of special masters has an impact on the reversal rate of district court decisions at the Court of Appeals for the Federal Circuit; and*

*(8) any other factors that the Director believes would assist in gauging the effectiveness of special masters in patent litigation.*

***SEC. 17. RULE OF CONSTRUCTION.***

*The enactment of section 102(b)(3) of title 35, United States Code, under section (3)(b) of this Act is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ''CREATE Act''), the amendments of which are stricken by section 3(c) of this Act. The United States Patent and Trademark Office shall administer section 102(b)(3) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the Patent and Trademark Office.*

The Acting CHAIRMAN. No amendment to the committee amendment is in order except those printed in House Report 110–319. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. CONYERS

The Acting CHAIRMAN. It is now in order to consider amendment No. 1 printed in House Report 110–319.

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. CONYERS:

Page 3, strike lines 22 through 25.

Page 3, line 21, insert quotation marks and a second period after ''patent.''.

Page 10, strike line 24 and all that follows through page 11, line 2, and insert the following:

(i) ACTION FOR CLAIM TO PATENT ON DERIVED INVENTION.—Section 135 is amended to read as follows:

**''§ 135. Derivation proceedings''.**

Page 11, lines 14 and 15, strike ''Any such request—'' and insert the following:

''(B) REQUIREMENTS FOR REQUEST.—Any request under subparagraph (A)—''.

Page 12, line 3, strike ''(B)'' and insert ''(C)''.

Page 12, line 8, strike ''under section 101''.

Page 13, line 16, strike the quotation marks and second period.

Page 13, insert the following after line 16:

''(b) SETTLEMENT.—Parties to a derivation proceeding may terminate the proceeding by filing a written statement reflecting the agreement of the parties as to the correct inventors of the claimed invention in dispute. Unless the Patent Trial and Appeal Board finds the agreement to be inconsistent with the evidence of record, it shall take action consistent with the agreement. Any written settlement or understanding of the parties shall be filed with the Director. At the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents or applications, and shall be made available only to Government agencies on written request, or to any person on a showing of good cause.

''(c) ARBITRATION.—Parties to a derivation proceeding, within such time as may be specified by the Director by regulation, may determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9 to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Director, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Director from determining patentability of the invention involved in the derivation proceeding.''.

Page 13, strike line 17 and all that follows through page 15, line 8.

Page 17, line 10, insert ''with respect to an application for patent filed'' after ''commenced''.

Page 17, lines 21 and 22, strike ''transmits to the Congress a finding'' and insert ''issues an Executive order containing the President's finding''.

Page 18, insert the following after line 23:

(3) RETENTION OF INTERFERENCE PROCEDURES WITH RESPECT TO APPLICATIONS FILED BEFORE EFFECTIVE DATE.—In the case of any application for patent that is filed before the effective date under paragraph (1)(A), the provisions of law repealed or amended by subsections (h), (i), and (j) shall apply to such application as such provisions of law were in effect on the day before such effective date.

Page 21, lines 24 and 25, strike ''is under an obligation of assignment of'' and insert ''has assigned rights in''.

Page 24, strike line 23 and all that follows through page 25, line 13 and redesignate the succeeding subsections accordingly.

Page 27, line 13, strike ''(5)'' and insert ''(4)''.

Page 27, line 21, strike ''The court'' and insert ''Upon a showing to the satisfaction of the court that a reasonable royalty should be based on a portion of the value of the infringing product or process, the court''.

Page 28, lines 5 and 6, strike ''Unless the claimant shows'' and insert ''Upon a showing to the satisfaction of the court''.

Page 28, line 9, strike ''may not'' and insert ''may''.

Page 28, strike line 12 and all that follows through page 29, line 2, and insert the following:

''(4) OTHER FACTORS.—If neither paragraph (2) or (3) is appropriate for determining a reasonable royalty, the court may consider, or direct the jury to consider, the terms of any nonexclusive marketplace licensing of the invention, where appropriate, as well as any other relevant factors under applicable law.

''(5) COMBINATION INVENTIONS.—For purposes of paragraphs (2) and (3), in the case of a combination invention the elements of which are present individually in the prior art, the patentee may show that the contribution over the prior art may include the value of the additional function resulting

from the combination, as well as the enhanced value, if any, of some or all of the prior art elements resulting from the combination.'';

Page 31, line 17, strike ''The court's'' and all that follows through ''jury.'' on line 19.

Page 31, strike line 23 and all that follows through the matter following line 17 on page 33 and insert the following:

(b) REPORT TO CONGRESSIONAL COMMITTEES.—Not later than June 30, 2009, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the findings and recommendations of the Director on the operation of prior user rights in selected countries in the industrialized world. The report shall include the following:

(1) A comparison between the patent laws of the United States and the laws of other industrialized countries, including the European Union, Japan, Canada, and Australia.

(2) An analysis of the effect of prior user rights on innovation rates in the selected countries.

(3) An analysis of the correlation, if any, between prior user rights and start-up enterprises and the ability to attract venture capital to start new companies.

(4) An analysis of the effect of prior user rights, if any, on small businesses, universities, and individual inventors.

(5) An analysis of any legal or constitutional issues that arise from placing elements of trade secret law, in the form of prior user rights, in patent law.

In preparing the report, the Director shall consult with the Secretary of State and the Attorney General of the United States.

Page 33, line 18, strike ''(d)'' and insert ''(c)''.

Page 33, line 21, strike ''(e)'' and insert ''(d)''.

Page 36, lines 22 and 23, strike ''cited by or to the Office or''.

Page 39, line 10, strike ''grant of the patent or issuance of'' and insert ''issuance of the patent or''.

Page 39, strike line 21 and all that follows through page 40, line 2 and insert the following:

''(3) for each claim sought to be canceled, the petition sets forth in writing the basis for cancellation and provides the evidence in support thereof, including copies of patents and printed publications, or written testimony of a witness attested to under oath or declaration by the witness, or any other information that the Director may require by regulation.; and

Page 40, lines 3 and 4, strike ''those documents'' and insert ''the petition, including any evidence submitted with the petition and any other information submitted under paragraph (3),''.

Page 41, add the following after line 25:

In carrying out paragraph (3), the Director shall bear in mind that discovery must be in the interests of justice.

Page 44, lines 23 and 24, strike ''with respect to'' and insert ''addressing''.

Page 46, line 1, strike ''of administrative patent judges''.

Page 46, line 18, strike ''**pending**''.

Page 46, line 23, insert ''with respect to an application for patent filed'' after ''commenced''.

Page 47, line 5, insert ''of a patent'' after ''infringement''.

Page 47, line 7, insert after ''patentability'' the following: ''raised against the patent in a petition for post-grant review''.

Page 47, insert the following after line 7:

''(c) EFFECT OF COMMENCEMENT OF PROCEEDING.—The commencement of a post-grant review proceeding—

''(1) shall not limit in any way the right of the patent owner to commence an action for infringement of the patent; and

''(2) shall not be cited as evidence relating to the validity of any claim of the patent in any proceeding before a court or the International Trade Commission concerning the patent.

Page 48, line 14, strike ''or''.

Page 48, line 17, strike the period and insert ''; or''.

Page 48, insert the following after line 17:

''(5) assert the invalidity of any such claim in defense to an action brought under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Page 49, line 18, strike ''subsection (f)'' and insert ''subsections (f) and (g)''.

Page 49, strike lines 21 and 22 and insert the following:

(j) REGULATIONS.—The Under Secretary of

Page 49, lines 23 through 25, and page 50, lines 1 through 4, move the text 2 ems to the left.

Page 50, strike lines 5 through 15.

Page 51, lines 3 through 5, strike ''The Director, the Deputy, the Commissioner for Patents, and the Commissioner for Trademarks, and the'' and insert ''The''.

Page 51, line 9, strike ''Director'' and insert ''Secretary of Commerce''.

Page 54, line 18, strike ''and''.

Page 54, line 21, strike the 2 periods and quotation marks and insert ''; and''.

Page 54, insert the following after line 21:

''(D) identify the real party-in-interest making the submission.''.

Page 57, strike line 12 and all that follows through page 59, line 7, and insert the following:

''(b) In any civil action arising under any Act of Congress relating to patents, a party shall not manufacture venue by assignment, incorporation, joinder, or otherwise primarily to invoke the venue of a specific district court.

''(c) Notwithstanding section 1391 of this title, except as provided in paragraph (3) of this subsection, any civil action for patent infringement or any action for declaratory judgment relating to a patent may be brought only in a judicial district—

''(1) where the defendant has its principal place of business or is incorporated, or, for foreign corporations with a United States subsidiary, where the defendant's primary United States subsidiary has its principal place of business or is incorporated;

''(2) where the defendant has committed a substantial portion of the acts of infringement and has a regular and established physical facility that the defendant controls and that constitutes a substantial portion of the defendant's operations;

''(3) for cases involving only foreign defendants with no United States subsidiary, according to section 1391(d) of this title;

''(4) where the plaintiff resides, if the plaintiff is—

''(A) an institution of higher education as defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. section 1001(a)); or

''(B) a nonprofit organization that—

''(i) is described in section 501(c)(3) of the Internal Revenue Code of 1986;

''(ii) is exempt from taxation under section 501(a) of such Code; and

''(iii) serves primarily as the patent and licensing organization for an institution of higher education as defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

''(5) where the plaintiff or a subsidiary has a place of business that is engaged in substantial—

''(A) research and development,

''(B) manufacturing activities, or

''(C) management of research and development or manufacturing activities,

related to the patent or patents in dispute;

''(6) where the plaintiff resides if the plaintiff is named as inventor or co-inventor on the patent and has not assigned, granted, conveyed, or licensed, and is under no obligation to assign, grant, convey, or license, any rights in the patent or in enforcement of the patent, including the results of any such enforcement; or

''(7) where any of the defendants has substantial evidence and witnesses if there is no other district in which the action may be brought under this section.''.

Page 60, strike lines 1 through 3 and insert the following:

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section—

(A) shall take effect on the date of the enactment of this Act; and

(B) shall apply to any civil action commenced on or after such date of enactment.

(2) PENDING CASES.—Any case commenced in a United States district court on or after September 7, 2007, in which venue is improper under section 1400 of title 28, United States Code, as amended by this section, shall be transferred pursuant to section 1404 of such title, unless—

(A) one or more substantive rulings on the merits, or other substantial litigation, has occurred; and

(B) the court finds that transfer would not serve the interests of justice.

Page 60, line 10, strike ''shall'' and insert ''may''.

Page 60, line 12, insert after ''patentability.'' the following: ''If the Director requires a search report to be submitted by applicants, and an applicant does not itself perform the search, the search must be performed by one or more individuals who are United States citizens or by a commercial entity that is organized under the laws of the United States or any State and employs United States citizens to perform such searches.''.

Page 60, line 14, strike ''the required search report, information, and'' and insert ''a search report, information, or an''.

Page 60, line 16, add after the period the following: ''Any search report required by the Director may not substitute in any way for a search by an examiner of the prior art during examination.''.

Page 63, strike line 19 and all that follows through line 15 on page 65 and insert the following:

''(1) DEFENSE.—One or more claims of a patent may be held to be unenforceable, or other remedy imposed under paragraph (4), for inequitable conduct only if it is established, by clear and convincing evidence, that a person with a duty of disclosure to the Office, with the intent to mislead or deceive the patent examiner, misrepresented or failed to disclose material information to the examiner during examination of the patent.

''(2) MATERIALITY.—

''(A) IN GENERAL.—Information is material under this section if—

''(i) a reasonable examiner would have made a prima facie finding of unpatentability, or maintained a finding of unpatentability, of one or more of the patent claims based on the information, and the information is not cumulative to information already of record or previously considered by the Office;or

''(ii) information that is otherwise material refutes or is inconsistent with a position the applicant takes in opposing a rejection of the claim or in asserting an argument of patentability.

''(B) PRIMA FACIE FINDING.—A prima facie finding of unpatentability under this section is shown if a reasonable examiner, based on

a preponderance of the evidence, would conclude that the claim is unpatentable based on the information misrepresented or not disclosed, when that information is considered alone or in conjunction with other information or record. In determining whether there is a prima facie finding of unpatentability, each term in the claim shall be given its broadest reasonable construction consistent with the specification, and rebuttal evidence shall not be considered.

''(3) INTENT.—To prove a person with a duty of disclosure to the Office intended to mislead or deceive the examiner under paragraph (1), specific facts beyond materiality of the information misrepresented or not disclosed must be proven that establish the intent of the person to mislead or deceive the examiner by the actions of the person. Facts support an intent to mislead or deceive if they show circumstances that indicate conscious or deliberate behavior on the part of the person to not disclose material information or to submit false material information in order to mislead or deceive the examiner. Circumstantial evidence may be used to prove that a person had the intent to mislead or deceive the examiner under paragraph (1).

''(4) REMEDY.—Upon a finding of inequitable conduct, the court shall balance the equities to determine which of the following remedies to impose:

''(A) Denying equitable relief to the patent holder and limiting the remedy for infringement to reasonable royalties.

''(B) Holding the claims-in-suit, or the claims in which inequitable conduct occurred, unenforceable.

''(C) Holding the patent unenforceable.

''(D) Holding the claims of a related patent unenforceable.

''(5) ATTORNEY MISCONDUCT.—Upon a finding of inequitable conduct, if there is evidence that the conduct is attributable to a person or persons authorized to practice before the Office, the court shall refer the matter to the Office for appropriate disciplinary action under section 32, and shall order the parties to preserve and make available to the Office any materials that may be relevant to the determination under section 32.''.

Page 69, line 17, strike ''180 days'' and insert ''1 year''.

Page 71, insert the following after line 6 and redesignate the succeeding section accordingly:

**SEC. 17. STUDY ON WORKPLACE CONDITIONS.**

The Comptroller General shall, not later than 2 years after the date of the enactment of this Act—

(1) conduct a study of workplace conditions for the examiner corps of the United States Patent and Trademark Office, including the effect, if any, of this Act and the amendments made by this Act on—

(A) recruitment, retention, and promotion of employees; and

(B) workload, quality assurance, and employee grievances; and

(2) submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the results of the study, including any suggestions for improving workplace conditions, together with any other recommendations that the Comptroller General has with respect to patent reexamination proceedings.

Page 71, add the following after line 19:

**SEC. 19. SEVERABILITY.**

If any provision of this Act or of any amendment or repeals made by this Act, or the application of such a provision to any person or circumstance, is held to be invalid or unenforceable, the remainder of this Act and the amendments and repeals made by this Act, and the application of this Act and such amendments and repeals to any other person or circumstance, shall not be affected by such holding.

The Acting CHAIRMAN. Pursuant to House Resolution 636, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Michigan.

PARLIAMENTARY INQUIRY

Mr. ROHRABACHER. Mr. Chairman, parliamentary inquiry.

The Acting CHAIRMAN. Does the gentleman from Michigan yield for a parliamentary inquiry?

Mr. CONYERS. Yes, of course.

The Acting CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. ROHRABACHER. Does the person who controls the time against the manager's amendment have to be against the manager's amendment?

The Acting CHAIRMAN. It is reserved for a Member in opposition to the amendment.

Mr. ROHRABACHER. Who controls the time in opposition?

The Acting CHAIRMAN. No one has claimed time in opposition to the amendment yet.

Mr. ROHRABACHER. I would suggest that whoever does control the time should be in opposition, and if Mr. SMITH, who I respect greatly, does not oppose the manager's amendment, he should not be in control of the debate against the manager's amendment, and I would note that there are others of us who would like to have that.

The Acting CHAIRMAN. The gentleman from Michigan is recognized.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

I rise in support of the manager's amendment which is, of course, very bipartisan and which makes further changes to the underlying bill.

Now, this is a work in progress. The reason it came up so late in the afternoon yesterday in the Rules Committee is we were making changes to accommodate the minority side, and so even now the manager's amendment is a piece of work that will not be concluded until we come out of conference, and I'm sure Mr. BERMAN will have some comments to make about that.

I want anyone who has not seen the manager's amendment or wants to review it, even as it's discussed on the floor today, to please come to my seat, and I will be happy to provide them with a copy of it.

Well, what does it do? We deal with damages, the most controversial provision of the bill, with labor, with the universities, with inequitable conduct, and additional changes that will be made.

For workers and inventors, how do we help them? Well, there was concern that in our attempt to simplify the assignment procedures, we cut the inventor out of the process. We've ensured that changes to applications will require inventor involvement.

And also, there was a fear about working environment at the PTO. We inquired of the Government Accountability Office to conduct a study of examining work conditions.

And finally, the examiners themselves were concerned about the quality submission requirements, that their job would be outsourced. We ensured that that will not happen.

Now, damages. We made further changes to explain clearly that a portion that is not mandatory in the calculations of damages can be considered under a similar formula that courts use today.

Universities, we spent enormous time, and I have as many universities in Michigan as anybody has in any other State in the Union, and to address their concern, we spent unbelievable amounts of time negotiating with them individually and collectively about the expansion of prior user rights which might reduce the value of their patents and harm their ability to license invention.

We've eliminated the expansion. Instead, we're calling for a study of the operation of prior user rights in countries where they already exist to determine their effects.

It allows universities to sue in districts where they are located but does not extend that right to universities' associated nonprofit organizations.

We deal with inequitable conduct by tightening the standards for pleading and finding inequitable conduct as a defense to infringement.

We continue to operate in good faith with additional changes. We've adopted suggestions made by outside groups to improve our post-grant opposition provision, changed the discovery standard to interest of justice and ensured that a patent owner can bring a patent suit, even if a post-grant suit is instituted.

So we've addressed every concern that has been brought to our attention. No concern was too small or too technical, and we continue even now to listen to the parties in other ways to continue to enhance the bill.

So now is the time for patent reform.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I rise to claim the time in opposition to the manager's amendment.

The Acting CHAIRMAN. The gentleman from California is recognized for 10 minutes.

Mr. ROHRABACHER. Mr. Chairman, I ask unanimous consent to yield 5 minutes of the 10 minutes in opposition to the gentlewoman from Ohio (Ms. KAPTUR) for her to control that time.

The Acting CHAIRMAN. Without objection, the gentlewoman from Ohio is recognized for 5 minutes.

There was no objection.

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume. I thank the gentleman kindly for yielding me this time.

On the manager's amendment, you know what's really sad about this bill is that it is very complicated, and it's a work in progress as we sit here on the floor. It's too important for America and for the future of our industrial and economic base to be treated this way, and I know that the Chair of the subcommittee and the full committee are listening as I speak today. We shouldn't be drafting this in a manager's amendment on the floor.

There's been some inference that the AFL–CIO supports this bill. The AFL–CIO does not support this bill. They support the fact that it is being improved but they do not support the bill.

In addition to that, there's something very important I was not able to address earlier, and that is that this bill prematurely reveals inventors' secrets. In 1999, the Patent Act required the Patent Office to publish on the Internet a patent application 18 months from the date of filing, but the act also allowed inventors to opt out from that if they agreed not to file for patent in another nation. That's the so-called opt-out provision.

Now, between 20 and 33 percent of U.S.-origin patents opt out of the system. They're small people. They're trying to get the venture capital to start up their company and so forth, and the average time the Patent Office takes to process a patent is 31 months. Thus, all the secrets in all patent applications will be made available to every pirate in the world for more than a year before a small inventor, any inventor has a chance for patent protection.

Now, we're going to be told, well, Mr. ISSA's amendment will fix this. No, it will not, and we will argue against that a little bit more down the road.

Several speakers this morning, Mr. WELCH of Vermont and Mr. JOHNSON of Georgia, said, well, we need this reform because we haven't had patent reform since 1952. That's not true. There have been 17 amendments in major bills before this Congress that deal with patent reform in the last 15 years.

The problem with this bill is that it tries to harmonize to lower standards in the world rather than cause other countries to harmonize up to our standards. It takes away the right of first to invent, and it transfers it to first to file. That means an inventor who come here to the Patent Office here in the United States, no matter how small, and file a patent and got the right as an inventor first to invent could be superseded in the international market by someone who happened to catch that invention on the Internet or elsewhere and file it in China first. So it changes it from a first-to-invent to a first-to-file system. This is a substantial change from the system that has been in place in this country since the early 1700s.

You know what I said earlier what's going on here is the big proponents of this, the semiconductor companies, and Mr. EMANUEL read some of their names, have been fined substantially for patent infringement over the last several years, about $3.5 billion, and they're trying to get the law changed to make it easier for them. You know what, they have a right to exist. They have a right to function. The problem is they have been taken to court, and there are 15 standards the courts use to ascertain damages. They want to reduce it to one and make the 14 optional. You know what, the Federal judges are saying don't do that; we like the current system. It gives the courts the flexibility that they use.

Why should a few transnational corporations, sort of the big tech companies, have this much power in this Congress? Why don't we have the right of others to be heard here fully rather than having to condense such a serious debate into a few seconds here on the floor?

Why am I opposed to this bill? I'm opposed to this bill because it gives too much power to the big tech transnationals, and it takes away power from the universities that are opposed to this; although, some in California, where so many of these big tech companies are located, are happy. But come to Ohio, come to Wisconsin, come to New York. There are lots of universities that are opposed to this. So it's giving too much advantage to a few companies.

In addition to that, it totally turns upside down the first-to-invent system to a first-to-file system, and it would permit lots of infringements internationally.

It does eliminate the opt-out provision where, if a small inventor doesn't want their invention put up on the Internet, it takes away the opt-out provision from them. Mr. ISSA's amendment does not fix it. We want an opportunity to fix that, because we want to protect the third of inventors that do not file internationally, that do not want their patents put out there like that, and they are not the big companies. They're the smaller companies. And why force them to go into court? They don't have the money to defend themselves anyway.

There's broad-based opposition to this bill. There are lots of organizations, including the Institute of Electronic Engineers, Medical College of Wisconsin. There are many, many others, Cornell University, all opposed to this.

I thank the gentleman for yielding me the time and allowing me to broaden the record here in the very few short seconds we have been allowed.

□ 1345

Mr. CONYERS. I can't help but take 6 seconds in rebuttal.

The universities support this measure. Small inventors support this measure. This bill is to create jobs in America. How could anybody think that I would be supporting a bill that didn't do this in patent law reform?

I yield 2 minutes to the ranking member of the Judiciary Committee, Mr. LAMAR SMITH.

Mr. SMITH of Texas. I want to thank the chairman of the Judiciary Committee for yielding me time.

Mr. Chairman, I want to be unequivocal, first of all, in saying that I support this manager's amendment.

I yield to my friend from California (Mr. HERGER) for purposes of a colloquy.

Mr. HERGER. I would like to thank the ranking member for engaging in this colloquy.

As you know, the manager's amendment was released yesterday afternoon, and it contains language concerning section 337 proceedings before the U.S. International Trade Commission.

However, this language was not considered by the Committee on Ways and Means, even though it is squarely in our jurisdiction. I am aware that Chairman RANGEL and Chairman CONYERS have exchanged letters in which Chairman CONYERS has acknowledged that this issue is within the jurisdiction of the Ways and Means committee. I will support a request for conferees to be named from the Ways and Means committee.

As you know, section 337 proceedings are very complex, and we must ensure that the full ramifications of this language are clearly understood.

As ranking member of the Ways and Means Trade Subcommittee, I hope that you would agree with me that these provisions warrant further analysis and ask that you would work with me and other members of the committee in conference to ensure that these provisions are thoroughly understood as the bill moves through the legislative process.

Mr. SMITH of Texas. Mr. Chairman, I want to thank my friend from California for pointing these provisions out, and I certainly do agree with them, and we will work towards that goal.

Mr. CONYERS. Would the ranking member yield to me?

Mr. SMITH of Texas. I yield to the chairman of the committee.

Mr. CONYERS. Thank you. I want to assure the gentleman.

Mr. Chairman, I would submit for the RECORD a letter dated September 7, 2007, between myself and the chairman of Ways and Means, CHARLES RANGEL.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
*Washington, DC, September 7, 2007.*

Hon. JOHN CONYERS, Jr.,
*Chairman, Judiciary Committee,*
*Washington, DC.*

DEAR JOHN: I am writing regarding H.R. 1908, the Patent Reform Act of 2007. During consideration of the bill by the Rules Committee, a manager's amendment was made in order that includes provisions affecting section 337 of the Tariff Act of 1930.

As you know, section 337 falls within the jurisdiction of the Committee on Ways and Means. The Ways and Means Committee has jurisdiction over all issues concerning import trade matters.

In order to expedite this legislation for floor consideration, the Committee will forgo action on this bill, and will not oppose the inclusion of this provision relating to

section 337 of the Tariff Act within H.R. 1908. This is being done with the understanding that it does not in any way prejudice the Committee with respect to its jurisdictional prerogatives on this bill or similar legislation in the future.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1908, and would ask that a copy of our exchange of letters on this matter be included in the RECORD.

Sincerely,

CHARLES B. RANGEL,
*Chairman.*

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HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, September 7, 2007.*

Hon. CHARLES B. RANGEL,
*Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your recent letter regarding your committee's jurisdictional interest in H.R. 1908, the Patent Reform Act of 2007.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the CONGRESSIONAL RECORD during consideration of the bill on the House floor. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

JOHN CONYERS, Jr.
*Chairman.*

I completely agree that it was totally inadvertent, and we want the Ways and Means Committee to assert, and we will help them assert, their full rights in terms of jurisdiction in this matter. I thank him for bringing it to our attention.

Mr. ROHRABACHER. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Chairman, while I was in the Rules Committee yesterday, the gentleman from California said with regard to the types of damages and the standard for damages that could be used that the judge would have the discretion to determine that.

Well, taking a look at the manager's amendment. That discretion has been taken away, and now there is a presumption in favor of the most onerous provision dealing with damages, and that really would impact the small inventor.

Let's take a look at what would happen with the majority's view on patent damage reform. The Wright brothers' airplane, here is the patent, I have got a picture of it right here.

The flying machine, if it had been patented today, or, no, if the rules that the majority is suggesting now were in effect at the time that the Wright brothers got their patent, the amount that they recovered would have been limited to the fractional value of the surface controls alone, that's it, even though everything else went on what was called an airplane, but the thing never flew.

That's what this does to innovation. If you want to get something for your trim tab and your ailerons and whatever else they put on an aircraft, that's fine.

But this is an example, nobody else in the entire debate has given one example except me. This is the only opportunity that the people opposed to this bill have had to talk about the actual impact of the law upon a factual situation.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. MANZULLO. I yield 20 seconds to the gentleman from California.

Mr. BERMAN. Under the entire market value rule, which is in this bill, the Wright brothers, every value of what was created was those surface controls.

Mr. MANZULLO. But under your manager's amendment, the judge would have to say that that does not apply.

Mr. ROHRABACHER. How much time do I have left?

The Acting CHAIRMAN. The gentleman from California has 3 minutes remaining.

Mr. ROHRABACHER. And the time on the other side?

The Acting CHAIRMAN. The gentleman from Michigan has 2¼ minutes remaining.

Mr. ROHRABACHER. I yield myself 3 minutes.

Let's just note when we are talking, Ms. KAPTUR and Mr. MANZULLO talk about one of the horrible provisions of the bill, which changes the whole concept of how damages are assessed, and who has benefited by this.

We have to ask ourselves, we talk about the Wright brothers, the little guys who actually made all the difference in whether or not America has a high standard of living, the damages that these inventors have when people violate their rights and how those damages are assessed. That's right in this legislation.

Yes, they are changing it to the benefit of the infringers. They are beating down the little guys, making it more difficult for the Wright brothers and for all the other little guys who have come up with these ideas in order to help the big corporations.

By the way, let me just add this thought: we are not just talking about American corporations here. We are not talking about making inventors just vulnerable to the big American corporations. We are talking about multinational corporations, and we are talking about foreign corporations.

Our little guys, with just this change, are going to be dramatically damaged. Their ability, in order to protect their rights, will be dramatically reduced.

This is just one example of the type of diminishing of the rights of the inventor in this bill. Yet, we aren't able to discuss it fully. One hour of debate for a bill that's being described here as one of the most important pieces of legislation in the century? One hour of debate in which the opposition was not given a chance to control any time in opposition? This is a disgrace. What's going on?

This alone should raise the red flag to all of our Members saying something is going on here; there is a power play people in our legislation aren't being able to control their time. What's happening here? We have a manager's amendment now that was permitted to be changed after it left committee. There wasn't even a proper debate on this bill then and this manager's amendment in the committee, much less the subcommittee.

So what we have here is a power play by somebody. The rules don't count when it comes to the bill, because somebody out there really wants it really bad in order to not give us a chance to give the other side, not give the full committee a chance even to discuss these details that are changed in the manager's amendment, not to let the subcommittee play its role.

Now, all I am suggesting is this should raise a red flag for all of our Members. All of us should be aware that when these types of shenanigans are being played, something is going on, that the legislation that's being pushed through probably is not good legislation, but, instead, helps a small group of powerful people.

Mr. CONYERS. How much time remains?

The Acting CHAIRMAN. The gentleman from Michigan has 2¼ minutes remaining.

The gentleman from California, his time has expired.

Mr. CONYERS. I yield myself 6 seconds before I yield the rest of the time to Mr. BERMAN.

This is curious, here I am a son of Labor, out of Labor, represents Labor all my life, being told publicly that I don't represent the little guy from people whose connection with working people in collective bargaining movements is unknown.

With that, I yield to my dear friend, Mr. BERMAN, for the remainder of our time.

Mr. BERMAN. I thank the gentleman for yielding, and I would like to yield to the gentleman from Oregon for purposes of a colloquy.

Mr. WU. I thank the chairman.

As both Chairman CONYERS and Chairman BERMAN are aware, the version of the legislation in the other body contains a section that ends the diversion of fees from the Patent and Trademark Office.

Absent a compelling consideration, would the chairman be amenable to working to keep that provision in conference?

Mr. BERMAN. That is a provision that I have supported, it is legislation I have introduced, it embodies and enacts a philosophy I completely agree with. All PTO fees should be kept within the PTO office to reduce backlogs, to hire qualified people, and to come to better operations of that critical office.

Mr. WU. I thank the chairman.

Mr. BERMAN. The chairman of the committee obviously will be a key

member of the conference committee and indicates that he feels the same way.

Reclaiming my time, I just want to make a couple of points.

First, I have never said, quote, Labor supports this bill. What I said was Labor thinks a number of improvements have been made, particularly in this manager's amendment. There are other issues that concern them, that they believe we are moving in the right direction, and that they have no opposition to the passage of this bill, understanding they have other concerns that want to be addressed.

The same applies for a number of pharmaceutical companies. The major institution, and they are not small guys, Mr. ROHRABACHER. Opposition to this, concerns about this bill, come from large and important—

The Acting CHAIRMAN. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. BERMAN. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. ISSA

The Acting CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 110–319.

Mr. ISSA. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. ISSA:

Page 53, strike lines 9 through 15 and insert the following:

(a) PUBLICATION.—Section 122(b)(2)(B)(i) is amended by striking ''published as provided in paragraph (1).'' and inserting the following: ''published until the later of—

''(I) three months after a second action is taken pursuant to section 132 on the application, of which notice has been given or mailed to the applicant; or

''(II) the date specified in paragraph (1).''.

The Acting CHAIRMAN. Pursuant to House Resolution 636, the gentleman from California (Mr. ISSA) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. ISSA. Mr. Chairman, I rise in support of this amendment.

In short, this amendment simply seeks to maintain our historic and important American-only right for an inventor who was denied a patent to keep that patent a secret.

Additionally, it allows sufficient time in the process for a patent holder to know that his patent, his or her patent, either will or will not likely be granted significant claims.

For that reason, we struck a balance between the rest of the world that recognizes that patents are normally published after 18 months. We said, no, it will be the greater of the second office action, which can be anywhere from 3 to 5 years or 18 months, and we did so because we believe somebody should know when they receive significant claims or not before they are forced to decide whether or not to retain a trade secret.

It's an important issue; it's one that I believe will allow us a final and lasting way for a secret to be balanced with the interest to not have submarine patents and unknown information.

I yield to the chairman of the full committee.

Mr. CONYERS. We have reviewed the amendment. It's an important contribution. We are prepared to accept the amendment.

Mr. ISSA. I yield to the chairman of the subcommittee.

Mr. BERMAN. I thank the gentleman, I also agree with the amendment. I would like to use the time, if you would allow me to finish the sentence, which is with respect to these important companies, that, in the biotechnology and pharmaceutical field, I just want to repeat, a number of things they want, first-inventor-to-file, not first-to-file, first-inventor-to-file, repeal of the best-mode defense, reform of the inequitable-conduct defense, are in this bill, and we intend to work with them on the damages issue between now and a final conference report to try to come to a better understanding on that very important, but very complicated, field.

□ 1400

Mr. ISSA. I yield to the ranking member of the full committee.

Mr. SMITH of Texas. I thank my friend from California for yielding. I certainly endorse his amendment and thank him for offering it.

Mr. ISSA. Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. ROHRABACHER. First and foremost, let us note that over and over again we hear, well, they are not opposing the bill. Well, the labor unions and others, many of them are opposing the bill. But the ones you're describing, you're just saying they aren't necessarily supporting the bill. What we are saying, they are not supporting the bill. This has been reconfirmed by what my colleagues have said in the last 10 minutes.

Also, let us note, over and over again we hear, we're going to work this out. We're going to work all these things out in the bill as it moves through the process, which means to all of us there are major flaws in this bill, huge flaws in this bill, and we have to take it just on faith that they're going to work out all these flaws as it goes through the process.

I would suggest that we take this, we vote ''no'' on this bill, and then let's correct those flaws and come back to the floor when you've got a bill that isn't flawed. Let's go back to the floor when you can support a bill with an honest debate and not be so afraid of a debate that you'll neuter the chances and mute our opposition voices by giving us almost no time to discuss the issues.

I would yield to my friend, Ms. KAPTUR.

Ms. KAPTUR. Mr. Chairman, I just want to place on the record that Issa's amendment, Issa's choice, is would you rather have the inventor shot with a pistol or a rifle? In either case, he or she ends up dead.

Now, why is that? Because the 1999 Patent Act required the Patent Office to publish on the Internet a patent application 18 months from the date of filing. But the issue really is, it takes an average of 31 months for patent review. Mr. ISSA, I think, brings it up to 24 months. Thus, what happens is there's a gap between when it's filed and when it's approved, and you have to go up on the Internet. Under current law, you can opt out of that so you can protect your invention and not have some pirate in China or Japan or somewhere else take it from you. That is not in this bill.

The elimination of the opt-out provision is a terrible, terrible omission and a major change from existing law, and the Issa amendment does not make it better.

Mr. ROHRABACHER. Reclaiming my time, Ms. KAPTUR has made a really important observation here, and that is, at the end of the day, yeah, the Issa amendment does make some changes, but at the end of the day, there will be American patent applications in which the inventor would like to keep secret until he gets the patent issued to him, which will be published for all of the thieves in China and India and Japan and Korea and elsewhere who would like to have all of that information before the patent is issued. There will still be a significant number of patent applications published for the whole world to see, and the patent applicant doesn't want that.

Ms. KAPTUR. Will the gentleman yield further?

Mr. ROHRABACHER. I certainly will.

Ms. KAPTUR. I just would point out, in the area of biology and microbiology, the average amount of time for patent approval is over 40 months. So, in other words, your invention is out there, and you have no way to protect it globally.

Mr. ROHRABACHER. So in the end, where Mr. ISSA's amendment does take things one or two steps forward, the fact is it doesn't come anywhere close to offering the protection that currently exists in the law that is being destroyed by the language in the Steal American Technologies Act, H.R. 1908.

Let me just note, for my own situation, in terms of the chairman asking

me about my credentials in terms of being associated with labor, I was a member of a labor union. I actually scrubbed toilets at times in my life. I have had menial jobs. I care about the working people. My family comes from working class farmers, poor farmers and people who went off to defend this country.

The American people, the standard of living of ordinary people depends on technology. This bill that's being proposed will give our technological secrets to our competitors which undermines the working people's chances here of competing with cheap labor overseas.

Ms. KAPTUR. Will the gentleman yield on that?

Mr. ROHRABACHER. I certainly will.

Ms. KAPTUR. I would like to defend your labor credentials. You voted against NAFTA on this floor. You were a leader on your side of the aisle. That vote was proven to be right.

What this is going to do, this is going to ''NAFTAtize'' the patent system and allow China to infringe on more of our inventions. We should not permit this to happen. We should be allowed to fully debate this for the people of this country.

Two-thirds of the value of companies, up to 80 percent of our industrial companies value, relate to their patents, and we should be given more respect. We should give our constituents more respect than compressing this debate into such a narrow time slot.

Mr. ROHRABACHER. If this bill passes, those people who will be our competitors overseas, even if Mr. ISSA's amendment passes, they will have our secrets before the patent is issued and be outcompeting us with our own technologies.

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN. Members are reminded to direct their comments to the Chair.

Mr. CONYERS. Could the gentleman from California (Mr. ISSA) yield briefly?

Mr. ISSA. I would yield to the full committee chairman.

Mr. CONYERS. I'm glad we've all proved our working class credentials in support of working people, and I'm very impressed, if not surprised. And so I want to describe this debate that's currently going on on this second provision.

Here is the one man in Congress with more patents as a small-time inventor than anybody in the House and the Senate being explained to why this is contrary to the interests of small-time inventors. Very interesting.

Mr. ISSA. Reclaiming my time, I yield myself such time as I may consume.

I guess as a machinist union worker and a mechanic, I'll get that out there so that I get my claim to union membership and to having gotten a lot of grease under fingernails, for Ms. KAPTUR's understanding, because I think what she brought up is crucial, and full understanding is essential as to this amendment.

This amendment, if it takes 10 years to get a second office action, will give the inventor 10 years of no one else seeing it. It is an infinite period of time, subject to the 20-year expiration. It is, in fact, an infinite period of time. And as an inventor, I chose the second office action, even though small inventors had said the first office action was good enough, because I was aware that the first office action is most often a rejection over which you overcome most of the objections. The second rejection, if there is one, they usually accept some, and if they give you a rejection, you usually don't overcome them, and the venture community, if you've had a second rejection, tends to discount potential additional claims. So that's the reason I chose those because, in fact, it gives you unlimited time to pursue your patent up to and through a second and, usually, final rejection.

Ms. KAPTUR. Would the gentleman kindly yield to me?

Mr. ISSA. I would be glad to yield to the gentlelady.

Ms. KAPTUR. Does your amendment preserve the opt-out provision of existing law?

Mr. ISSA. It does. Under this provision, if you receive your second and usually final rejection and you say, okay, I'm going to take my, within 90 days, I'm going to discard my patent, that wrapper is not available to anyone. It remains a secret and you're allowed to keep your trade secrets.

Ms. KAPTUR. And how many months or years do you have to wait before you get that opt-out provision? Can you do it immediately?

The Acting CHAIRMAN. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from California (Mr. ISSA).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. ROHRABACHER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. ISSA

The Acting CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 110–319.

Mr. ISSA. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. ISSA

Page 67, insert the following after line 7:

(c) EFFECTIVE DATE OF REGULATIONS.—

(1) REVIEW BY CONGRESS.—A regulation promulgated by the United States Patent and Trademark Office under section 2(b)(2) of title 35, United States Code, with respect to any matter described in section 2(c)(6) of such title, as added by subsection (a) of this section, may not take effect before the end of a period of 60 days beginning on the date on which the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office submits to each House of Congress a copy of the regulation, together with a report containing the reasons for its adoption. The regulation and report so submitted shall be referred to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

(2) JOINT RESOLUTION OF DISAPPROVAL.—If a joint resolution of disapproval with respect to the regulation is enacted into law, the regulation shall not become effective or continue in effect.

(3) JOINT RESOLUTION DEFINED.—For purposes of this subsection, the term a ''joint resolution of disapproval'' means a joint resolution, the matter after the resolving clause of which is as follows: ''That Congress disapproves the regulation submitted by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office on _____ relating to _____, and such regulation shall have no force or effect.'', with the first space being filled with the appropriate date, and the second space being filled with a description of the regulation at issue.

(4) REFERRAL.—A joint resolution of disapproval shall be referred in the House of Representatives to the Committee on the Judiciary and in the Senate to the Committee on the Judiciary.

(5) FLOOR CONSIDERATION.—A vote on final passage of a joint resolution of disapproval shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee of that House to which it was referred or after such committee has been discharged from further consideration of the joint resolution of disapproval.

(6) NO INFERENCES.—If the Congress does not enact a joint resolution of disapproval, no court or agency may infer therefrom any intent of the Congress with regard to such regulation or action.

(7) CALCULATION OF DAYS.—The 60-day period referred to in paragraph (1) and the 15-day period referred to in paragraph (5) shall be computed by excluding—

(A) the days on which either House of Congress is not in session because of an adjournment of the Congress sine die; and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(8) RULEMAKING AUTHORITY.—This subsection is enacted by the Congress as an exercise of the rulemaking power of the Senate and House of Representatives respectively, and as such it is deemed a part of the rules of each House, respectively.

The Acting CHAIRMAN. Pursuant to House Resolution 636, the gentleman from California (Mr. ISSA) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. ISSA. Mr. Chairman, I'll briefly explain the amendment. Almost every single agency of the Federal Government has rule-making authority. But, quite frankly, rules are, in fact, laws made by agencies. So when the Patent and Trademark Office repeatedly has asked us for rule-making authority, it has been a long process to figure out the best way to allow them to make rules but to retain our genuine constitutional obligation over the effects

of those laws. So, in doing so, what we did was we crafted a constitutional review. We're not allowed to veto these agencies, but we are allowed to overrule them. And in doing so, what we have decided to do is to allow any Member of the House or the Senate to bring a motion in opposition to any rule produced or proposed by the Patent and Trademark Office, and we will, in fact, within 60 days, hear that rule, that opposition and make a decision. This is designed specifically to stop any overreaching under this underlying bill from potentially causing things which we would not have legislated to, in fact, be legislated, while recognizing that we want the Patent and Trademark Office to have the ability to move swiftly and accurately to the conclusion of patents on behalf of our economy.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. ROHRABACHER. This is yet another example of why this overall bill should be defeated. The fact is that we shouldn't be changing the provision and permitting outside agencies and taking authority away from us from setting the basic ground rules about patents in the first place. This idea that, well, let me put it this way. This bill is so filled with this type of imperfection, and as we have had our guarantee from those people who brought this bill to the floor so precipitously, they will work really hard to make sure all the flaws are out. I would suggest that that statement alone should have all these red flags going up for all of us. And then the muting of the opposition and not permitting us an adequate amount of time to actually discuss the provisions of the bill and not giving us time to control our own opposition, again, should be the red flags for all of us who's listening to this debate.

I yield 1½ minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, I appreciate so much my friend from California. And, in fact, I like Mr. ISSA so much, I want more people like DARRELL ISSA. I want more people to have the opportunity to create patents, to use ingenuity, to do well based on their thought processes. And I'm afraid now this bill will prevent us from having the opportunity to have more DARRELL ISSAS.

The amendment works on one of the problems, well, gee, we'll look at the regulations. But, my goodness, this is a comprehensive bill. We keep hearing, you know, we need comprehensive bills. And red flags went up in my mind. And where have I heard that? Oh, yes, on immigration reform. We had to have a comprehensive bill because there were some things that needed to be passed, some people thought, that they knew could not pass if they had the bright enough light of day shown on them, and so we have a comprehensive bill to put some things in there that do more damage than good.

We need more time to look at these provisions so that we can ensure that there are more DARRELL ISSAS that get to have the same opportunities to do as well and make us as proud as our good friend from California.

Mr. ROHRABACHER. Mr. Chairman, how much time do I have?

The Acting CHAIRMAN. The gentleman from California has 2½ minutes remaining.

The other gentleman from California has 3½ minutes remaining.

Mr. ROHRABACHER. I yield 1 minute to Ms. KAPTUR.

Ms. KAPTUR. Mr. Chairman, I just wanted to place on the record opposition to Mr. ISSA's amendment to try to politicize decision making that is done by professionals over at the Patent Office. But in doing so, also to place on the record who's financing the expensive lobbying campaign on behalf of the bill that is before us today. They are a coalition of companies including transnational corporations: Adobe, Microsoft, Cisco, Intel, eBay, Lenovo, Dell and Oracle.

□ 1415

During the period of 1993–2005, four of them alone paid out more than $3.5 billion in patent settlements. And in the same period, their combined revenues were over $1.4 trillion, making their patent settlements only about one-quarter of 1 percent of those revenues. Now they wish to reduce even those costs, not by changing their obviously unfair and often illegal business practices, but by persuading Congress and also the Supreme Court to weaken U.S. patent protections.

We ought to stand up for American inventors. We should not allow this bill to go forward. It should have sunlight. I know my colleagues are doing the best they can, but they can surely do better than this.

Mr. ISSA. Mr. Chairman, I am proud to yield 1 minute to the chairman of the full committee, Mr. CONYERS.

Mr. CONYERS. Ladies and gentlemen, I keep noticing that the opponents to the bill, opponents to the rule, opponents to the manager's amendment, opponents to the amendments to include it in this are all opposed to everything, anything. And I am glad these great sons of Labor, like the gentleman from California who knows his voting record on Labor and so, unfortunately, do I, recognize how he is supporting the working people and the person who has invented more inventions than all of us put together is opposing the small inventors. What a debate this is.

I just rise to let you know, sir, that on this side of the aisle, we are proud to support this amendment.

ANNOUNCEMENT BY THE ACTING CHAIRMAN

Mr. Acting CHAIRMAN. All Members are reminded to address their comments to the Chair.

Mr. ROHRABACHER. Mr. Chairman, I yield myself such time as I may consume.

Let me just note I think it is really much more important to talk about provisions of the bill rather than trying to point out things about each other, and that is one of the reasons we needed more time in this debate so that we could actually get into the provisions of this bill.

The fact that no matter what happens with Mr. ISSA's first amendment, that still there will be patent applications that will be published for the world to see even before the patent is issued; that our overseas competitors will then have information that they will be able to use to outcompete us even before our patents are issued to those inventors who have applied for patents. Those are the issues we need to talk about.

We need to talk about why the assessment of damages has been changed in a way that helps these big guys, these big companies that Ms. KAPTUR has just outlined, as well as the foreign corporations, I might add, at the expense of the small inventor. The inventor is just trying to prevent theft of his lifetime of work. We have to know why we have had different ways of determining the validity of a patent and opening up challenges in the front of the patent as well as afterwards so that we add cost after cost after cost to the little guy.

We need to discuss these things in detail. Instead we have 1 hour in which the opposition, I think, had 12 minutes in order to discuss these issues. This should raise a flag to everyone listening to this debate. Why is Congress trying to stampede the rest of the Members of Congress into voting for an act that could be so damaging to the American people?

The Acting CHAIRMAN. The time of the gentleman has expired.

Mr. ISSA. Mr. Chairman, I yield myself such time as I may consume.

Both of my amendments are intended to improve this bill. I don't stand before the Committee of the Whole to say that this bill will become perfect. As a matter of fact, in the general debate, I named companies like BIOCOM and GenProbe and Invitrogen, who are part of UCSD CONNECT, who have specific areas we are including in the material that they want continued work done on. They are, in fact, dissatisfied with the bill because it hasn't done everything it could do. But this amendment on rulemaking which would stop an arbitrary decision by the Patent Office on something it may want to do such as eliminate continuations, et cetera, is there for a reason. And I would hope that people who are going to perhaps oppose the bill as not yet good enough would recognize that it is crucial for this amendment to get into it if we are going to protect against arbitrary action by the Patent and Trademark Office.

And last but not least, Ms. KAPTUR was kind enough to ask one more question during the previous amendment that couldn't be answered, and I just want to make it clear on the previous amendment, you will be able to keep your secret through an unlimited period of debate back and forth with the Patent Office up to two full rejections and then 90 days in which to close. And I would hope the gentlewoman would recognize that that is an improvement even if nothing is perfect.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. ISSA. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman very much for yielding.

As I said with ISSA's choice, it is either being shot with a pistol or a rifle. It does not guarantee that once the patent is granted that that person can keep their intellectual property, can opt out and not have it published for that 18-month period. So we are taking away that intellectual property protection.

Mr. ISSA. Reclaiming my time, Mr. Chairman, under the current law when your patent claims are granted, you have an obligation to make available to the world and to people of ordinary skill in the art how to knock off your product. That's current law. That has been around since the founding. The deal between the Patent Office, the American people, if you will, and the inventor is that you have disclosed to the world if you are given those claims for a limited period of time. We are not changing that in 200 years. We are protecting your right if you are not granted a patent. That is what current law does; that is what this amendment does.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ISSA).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. ROHRABACHER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California will be postponed.

AMENDMENT NO. 4 OFFERED BY MS. JACKSON-LEE OF TEXAS

The Acting CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 110–319.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Ms. JACKSON-LEE of Texas:

At the end of the bill insert the following new section:

**SEC. 18. STUDY ON PATENT DAMAGES.**

(a) IN GENERAL.—The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this section referred to as the ''Director'') shall conduct a study of patent damage awards in cases where such awards have been based on a reasonable royalty under section 284 of title 35, United States Code. The study should, at a minimum, consider cases from 1990 to the present.

(b) CONDUCT.—In conducting the study under subsection (a), the Director shall investigate, at a minimum, the following:

(1) Whether the mean or median dollar amount of reasonable-royalty-based patent damages awarded by courts or juries, as the case may be, has significantly increased on a per case basis during the period covered by the study, taking into consideration adjustments for inflation and other relevant economic factors.

(2) Whether there has been a pattern of excessive and inequitable reasonable-royalty-based damages during the period covered by the study and, if so, any contributing factors, including, for example, evidence that Federal courts have routinely and inappropriately broadened the scope of the ''entire market value rule'', or that juries have routinely misapplied the entire market value rule to the facts at issue.

(3) To the extent that a pattern of excessive and inequitable damage awards exists, measures that could guard against such inappropriate awards without unduly prejudicing the rights and remedies of patent holders or significantly increasing litigation costs, including legislative reforms or improved model jury instructions.

(4) To the extent that a pattern of excessive and inequitable damage awards exists, whether legislative proposals that would mandate, or create a presumption in favor of, apportionment of reasonable-royalty-based patent damages would effectively guard against such inappropriate awards without unduly prejudicing the rights and remedies of patent holders or significantly increasing litigation costs.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit to the Congress a report on the study conducted under this section.

The Acting CHAIRMAN. Pursuant to House Resolution 636, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I started out in this debate to say that we worked very hard for a long period of time to be able to look at the small and the big, the big inventor and the little man inventor. All of them have been great to America, and we have benefited from their inventions and their intellect.

This patent bill preserves the intellectual property, the art, the invention, the minds of America. And it does, in fact, protect us against those who would undermine this very viable economic engine, and that is our mind, our talent.

But I believe that all voices should be heard. And throughout this whole process there is probably no one who focused on the damages issue as much as I did, the proportionality issue. And I worked with Mr. BERMAN and Mr. CONYERS and our bipartisan friends.

So this gives us an opportunity, and my amendment is very simple. And it doesn't wait 7 years or 10 years to give us answers. It's 1 year. It provides us with the opportunity in this landmark legislation to study the patent damage awards in cases where such awards have been based on a reasonable royalty under section 84 of title 35 of the United States Code. The study should at a minimum consider cases from 1990 to the present. It has a very detailed analysis, and what that will do is it will find its way to this Congress and we will have a better way of assessing the impact.

We are concerned. Proportionality is an issue. But we are not ignoring your concerns, and this particular study helps to bring us along.

Let me just quickly suggest the entities that will be impacted in a positive way: the American Intellectual Property Law Association, a number of universities that will be impacted from the University of Illinois to Massachusetts to the University of Iowa, Maryland, Michigan, Minnesota, New Hampshire, North Carolina, Texas A&M. Small inventors will be impacted by this study because it will give us more information.

I would ask my colleagues to support this amendment.

Thank you, Mr. Chairman for affording me this opportunity to explain my amendment to H.R. 1908, the ''Patent Reform Act of 2007.'' Let me also thank the distinguished Chairman of the Judiciary Committee, Mr. CONYERS, and the Ranking Member, Mr. SMITH, for the example of bipartisan leadership coming together to address the real problems of the American people and the economy.

I especially wish to thank Mr. BERMAN and Mr. COBLE, the chair and ranking member of the Judiciary Subcommittee on Courts, Intellectual Property, and the Internet for their hard work, perseverance, and visionary leadership in producing landmark legislation that should ensure that the American patent system remains the envy of the world. I am proud to have joined with all of them as original cosponsor of H.R. 1908, the Patent Reform Act of 2007.

On behalf of the small business enterprises, technology firms, and academics I am privileged to represent, I want to publicly thank them for working with me on two other amendments to the bill offered by me which were adopted during the full committee markup.

Mr. Chairman, my amendment is a simple but important addition to this landmark legislation, which I believe can be supported by every member of this body. My amendment calls for a study of patent damage awards in cases where such awards have been based on a reasonable royalty under Section 284 of Title 35 of the United States Code. The study should, at a minimum, consider cases from 1990 to the present. The results of this study shall be reported to the House and Senate Judiciary Committees.

I have attached to my statement a partial listing of groups, organizations, institutions, and industries that will benefit from the study called for in my amendment.

Mr. Chairman, Article I, Section 8, clause 8 of the Constitution confers upon the Congress the 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.''

In order to fulfill the Constitution's mandate, we must examine the patent system periodically to determine whether there may be flaws in its operation that may hamper innovation, including the problems described as decreased patent quality, prevalence of subjective elements in patent practice, patent abuse, and lack of meaningful alternatives to the patent litigation process.

On the other hand, we must be mindful of the importance of ensuring that small companies have the same opportunities to innovate and have their inventions patented and that the laws will continue to protect their valuable intellectual property.

Chairman BERMAN is to be commended for his yeoman efforts in seeking to broker a consensus on the subject of damages and royalty payments, which is covered in Section 5 of the bill. But as all have learned by now, this is an exceedingly complex issue. The complexity stems not from the unwillingness of competing interests to find common ground but from the interactive effects of patent litigation reform on the royalty negotiation process and the future of innovation.

Important innovations come from universities, medical centers, and smaller companies that develop commercial applications from their basic research. These innovators must rely upon the licensing process to monetize their ideas and inventions. Thus, it is very important that we take care not to harm this incubator of tomorrow's technological breakthroughs. It is for that reason that we need to study whether patent damage awards in cases where such awards have been based on a reasonable royalty under 35 U.S.C. 284 have and are hindering technological innovation.

And it is important to emphasize Mr. Chairman, that this evaluation will be based on empirical data rigorously analyzed.

Among the matters to be studied and reviewed are the following: Whether the mean or median dollar amount of reasonably royalty-based patent damages awarded by courts or juries, as the case may be, has significantly increased on a per case basis during the period covered by the study, taking into consideration adjustments for inflation and other relevant economic factors; Whether there has been a pattern of excessive and inequitable reasonable-royalty based damages during the period covered by the study and, if so, any contributing factors; To the extent that a pattern of excessive and inequitable damage awards exists, measures that could guard against such inappropriate awards without unduly prejudicing the rights and remedies of patent holders or significantly increasing litigation costs; and To the extent that a pattern of excessive and inequitable damage awards exists, whether legislative proposals that would mandate, or create a presumption in favor of, apportionment of reasonable royalty-based patent damages would effectively guard against such inappropriate awards without unduly prejudicing the rights and remedies of patent holders or significantly increasing litigation costs.

In short, Mr. Chairman my amendment can be summed up as follows: For those who are confident of the future, my amendment offers vindication. For those who are skeptical that the new changes will work, my amendment will provide the evidence they need to prove their case. And for those who believe that maintaining the status quo is intolerable, my amendment offers a way forward.

I urge all members to support my amendment.

APPENDIX

AmberWave Systems Aware, Inc., Canopy Venture Partners, LLC, Cantor Fitzgerald, LP, Cryptography Research, Cummins-Allison Corp., Digimarc Corporation, Fallbrook Technologies, Inc., Helius, Inc, Immersion Corporation, Inframat Corporation, InterDigital Communications Corporation, Intermolecular, Inc., LSI Metabolix.

QUALCOMM, Inc., Symyx, Tessera, US Nanocorp. 3M, Abbott, Accelerated Technologies, Inc., Acorn Cardiovascular Inc., Adams Capital Management, Adroit Medical Systems, Inc., AdvaMed, Advanced Diamond Technologies, Inc., Advanced Medical Optics, Inc., Advanced Neuromodulation Systems, Inc., Aero-Marine Company.

AFL–CIO, Air Liquide, Air Products, ALD NanoSolutions, Inc., ALIO Industries, Allergan, Inc., Almyra, Inc., AmberWave Systems Corporation, American Intellectual Property Law Association (AIPLA), American Seed Trade, Americans for Sovereignty, Americans for the Preservation of Liberty, Amylin Pharmaceuticals, AngioDynamics, Inc. Applied Medical, Applied Nanotech, Inc.

Argentis Pharmaceuticals, LLC, Arizona BioIndustry Association, ARYx Therapeutics, Ascenta Therapeutics, Inc., Association of University Technology Managers (AUTM), Asthmatx, Inc., AstraZeneca, Aware, Inc., Baxa Corporation, Baxter Healthcare Corporation, BayBio, Beckman Coulter, BIO—Biotechnology Industry Organization, BioCardia, Inc.

BIOCOM, Biogen Idec. Biomedical Association, BioOhio, Bioscience Institute, Biotechnology Council of New Jersey, Blacks for Economic Security Trust Fund, BlazeTech Corporation, Boston Scientific, Bridgestone Americas Holding, Inc., Bristol-Myers Squibb, BuzzLogic, California Healthcare Institute, Canopy Ventures, Carbide Derivative Technologies, Cardiac Concepts, Inc.

CardioDynamics, Cargill, Inc., Cassie-Shipherd Group, Caterpillar, Celgene Corporation, Cell Genesys, Inc., Center 7, Inc. Center for Small Business and the Environment, Centre for Security Policy, Cephalon, CheckFree, Christian Coalition of America, Cincinnati Sub-Zero Products, Coalition for 21st Century Patent Reform, Coalitions for America.

CogniTek Management Systems, Inc., Colorado Bioscience Association, Conceptus, Inc., CONNECT, Connecticut United for Research Excellence, Cornell University, Corning, Coronis Medical Ventures, Council for America, CropLife America, Cryptography Research, Cummins Inc.

Cummins-Allison Corporation, CVRx Inc., Dais Analytic Corporation, Dartmouth Regional Technology Center, Inc., Declaration Alliance

Deltanoid Pharmaceuticals, Digimarc Corporation, DirectPointe, Dow Chemical Company, DuPont, Dura-Line Corporation, Dynatronics Co., Eagle Forum, Eastman Chemical Company.

Economic Development Center, Edwards Lifesciences, Elan Pharmaceuticals, Inc., Electronics for Imaging, Eli Lilly and Company, Ellman Innovations LLC, Enterprise Partners Venture Capital, Evalve, Inc. Exxon Mobil Corporation, Fallbrook Technologies Inc., FarSounder, Inc., Footnote.com, Gambro BCT, General Electric.

Genomic Health, Inc., Gen-Probe Incorporated, Genzyme, Georgia Biomedical Partnership, Glacier Cross, Inc.

GlaxoSmithKline, Glenview State Bank, Hawaii Science & Technology Council, HealthCare Institute of New Jersey, HeartWare, Inc., Helius, Inc., Henkel Corporation.

Hoffman-LaRoche, Inc., iBIO, Imago Scientific Instruments, Impulse Dynamics (USA), Inc., Indiana Health Industry Forum, Indiana University, Innovation Alliance, Institute of Electrical and Electronics Engineers (IEEE)–USA.

InterDigital Communications Corporation, Intermolecular, Inc., International Association of Professional and Technical Engineers (IFPTE), Invitrogen Corporation, Iowa Biotechnology Association, ISTA Pharmaceuticals, Jazz Pharmaceuticals, Inc., Johnson & Johnson, KansasBio, Leadership Institute, Let Freedom Ring, Life Science Alley, LITMUS, LLC, LSI Corporation, Lux Capital Management, Luxul Corporation, Maryland Taxpayers' Association.

Masimo Corporation, Massachusetts Biotechnology Council, Massachusetts Medical Device Industry Council (MassMEDIC), Maxygen Inc., MDMA—Medical Device Manufacturer's Association, Medical College of Wisconsin, Medlmmune, Inc., Medtronic, Merck, Metabasis Therapeutics, Inc., Metabolex, Inc., Metacure (USA), Inc., MGI Pharma Inc., MichBio.

Michigan Small Tech Association, Michigan State University, Millennium Pharmaceuticals, Inc., Milliken & Company, Mohr, Davidow Ventures, Monsanto Company, NAM—National Association of Manufacturers, NanoBioMagnetics, Inc. (NBMI), NanoBusiness Alliance, Nanolnk, Inc., Nanolntegris, Inc., Nanomix, Inc., Nanophase Technologies, NanoProducts Corporation, Nanosys, Inc., Nantero, Inc., National Center for Public Policy Research, Nektar Therapeutics, Neoconix, Inc.

Neuro Resource Group (NRG), Neuronetics, Inc., NeuroPace, New England Innovation Alliance, New Hampshire Biotechnology Council, New Hampshire Department of Economic Development, New Mexico Biotechnical and Biomedical Association, New York Biotechnology Association.

Norseman Group, North Carolina Biosciences Organization, North Carolina State University, North Dakota State University, Northrop Grumman Corporation, Northwestern University, Novartis, Novartis Corporation.

Novasys Medical Inc., NovoNordisk, NUCRYST Pharmaceuticals, Inc., NuVasive, Inc., Nuvelo, Inc., Ohio State University, OpenCEL, LLC, Palmetto Biotechnology Alliance, Patent Café.com, Inc., Patent Office Professional Association, Pennsylvania Bio, Pennsylvania State University, PepsiCo, Inc., Pfizer, PhRMA—Pharmaceutical Research and Manufacturers of America, Physical Sciences Inc., PointeCast Corporation.

Power Innovations International, Power Metal Technologies, Inc., Preformed Line Products, Procter & Gamble, Professional Inventors' Alliance.

ProRhythm, Inc., Purdue University, Pure Plushy Inc., QUALCOMM Inc., QuantumSphere, Inc., QuesTek Innovations LLC, Radiant Medical, Inc., Rensselaer Polytechnic Institute, Research Triangle Park, NC, Retractable Technologies, Inc., RightMarch.com.

S & C Electric Company, Salix Pharmaceuticals, Inc., SanDisk Corporation, Sangamo BioSciences, Inc., Semprius, Inc, Small Business Association of Michigan—Economic Development Center, Small Business Exporters Association of the United States, Small Business Technology Council, Smart Bomb Interactive, Smile Reminder, SmoothShapes, Inc., Solera Networks, South Dakota Biotech Association, Southern California Biomedical Council, Spiration, Inc., Standup Bed Company.

State of New Hampshire Department of Resources and Economic Development, Stella Group, Ltd., StemCells, SurgiQuest, Inc., Symyx Technologies, Inc., Tech Council of Maryland/MdBio, Technology Patents & Licensing, Tennessee Biotechnology Association, Tessera, Inc., Texas A&M, Texas Healthcare, Texas Instruments, Three Arch Partners, United Technologies, University of California System, University of Illinois, University of Iowa, University of Maryland, University of Michigan, University of Minnesota, University of New Hampshire, University of North Carolina System, University of Rochester, University of Utah, University of Wisconsin-Madison.

US Business and Industry Council, US Council for International Business, USGI Medical, USW—United Steelworkers, Vanderbilt University and Medical Center, Virent Energy Systems, Inc., Virginia Biotechnology Association, Visidyne, Inc., VisionCare Opthamalogic Technologies, Inc., Washington Biotechnology & Biomedical Association.

Washington University, WaveRx, Inc., Wayne State University, Wescor, Inc., Weyerhaeuser, Wilson Sonsini Goodrich & Rosati, Wisconsin Alumni Research Foundation (WARF), Wisconsin Biotechnology and Medical Device Association, Wyeth.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I rise in opposition to the gentlewoman's amendment.

The Acting CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. ROHRABACHER. Mr. Chairman, I yield 1 minute to Mr. MANZULLO.

Mr. MANZULLO. Mr. Chairman, what is interesting about the amendment from the gentlewoman from Texas is the fact that she wants to have a study, and I agree with it, of patent damage awards from at least 1990 to the present case.

So this is very interesting because here we are about to do this massive change in law and no one has done the study. But now we are going to do the study after we have this massive change in law.

I'll tell you, this train just turned around with the caboose going forward. That is why this bill has to be ditched.

Mr. ROHRABACHER. Mr. Chairman, I yield 1 minute to Mr. GOHMERT from Texas.

Mr. GOHMERT. Mr. Chairman, our chairman of the Judiciary Committee commented that it looks like the people opposed to anything are opposed to everything.

I'm really not. I think this is a good idea, a good amendment; and I applaud my colleague from Texas for pushing this forward.

I would like to have had these results before we went forward with this so-called comprehensive bill.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. GOHMERT. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, my intent was to respond to the disparate voices.

Would you at least admit that this improves or adds to by giving us additional information?

Mr. GOHMERT. Reclaiming my time, Mr. Chairman, as I said, I think it's a good idea and I'm going to vote for it. But I would rather have this as a stand-alone before we do all of these what some have referred to as draconian comprehensive measures.

And I do not question whatsoever the sincerity or the effort on behalf of the chairman for working people and others. And I do not question the sincerity when we were told, and I was among those who were told, you could be in a group that will revise this. I just never was given that opportunity.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 30 seconds to the gentlewoman from California (Ms. ZOE LOFGREN).

Ms. ZOE LOFGREN of California. I thank the gentlewoman for yielding, and I support the amendment.

I would just like to note, however, that we have had over 21 hearings in the subcommittee and have convened several briefings on top of that. We have had reports from the National Academy, the FTC on this subject. And I think the gentlewoman's amendment to get still further information is valid. I support it. But certainly we have information today that has been gained over an extensive process over half a decade.

Mr. ROHRABACHER. Mr. Chairman, I yield 2 minutes to Mr. ROSCOE BARTLETT, Ph.D., a man who holds 20 patents, a man who is greatly respected for his scientific knowledge and who has been deeply appreciated for the advice he has given us in that endeavor in the last 15 years in Congress.

(Mr. BARTLETT of Maryland asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT of Maryland. I thank the gentleman for yielding.

I have been, for the last couple of hours, doing what is seldom done in this House. I have been listening to every minute of this debate. And I felt compelled to come to the floor.

When I was listening to the debate, I was reminded of the story of the father who was looking at the white shirt that he wore yesterday to see if he could wear it again.

□ 1430

And his daughter observed, daddy, if it's doubtful, it's dirty. And I thought of that when I was listening to this debate because obviously this bill is doubtful. We're amending it on the run. And I wonder if, Mr. Chairman, maybe the little girl isn't right, that if it's doubtful, it's dirty.

There's been a lot of talk about protecting the rights of the little guy. In a former life, I had 20 patents. And I'm really committed to protecting the rights of the little guy because I was a little guy, not just because of the little guy, but because most of our creativity and innovation comes from the little guy.

And what I would suggest is that if this bill is so flawed that we're modifying it, amending it on the run and hope to make it okay when we come to conference, wouldn't it be better just to send it back to committee and do it right the first time?

Ms. JACKSON-LEE of Texas. May I inquire as to how much time I have remaining?

The Acting CHAIRMAN. The gentlewoman from Texas has 2 minutes remaining.

Ms. JACKSON-LEE of Texas. I yield 45 seconds to the distinguished chairman, Mr. CONYERS.

Mr. CONYERS. I rise only to say to the distinguished previous speaker that this mistaken impression that this is being amended on the run is incorrect. And I'm glad you listened to the full debate, and I respect your position.

The point that you think it's being amended on the run is that we had nearly 50 organizations in which we were negotiating with up until the last moment, and even now, sir. That's why we have a manager's amendment.

Mr. BARTLETT of Maryland. Will the gentleman yield?

Mr. CONYERS. I will yield to the gentleman.

Mr. BARTLETT of Maryland. I was simply quoting what you said.

Ms. JACKSON-LEE of Texas. May I inquire as to how much time I have remaining?

The Acting CHAIRMAN. The gentlewoman from Texas has 1¼ minutes remaining.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from California.

Mr. BERMAN. I thank the gentlelady, and I support her amendment.

Just to review the bidding, my friend from California (Mr. ROHRABACHER) over and over again talks about the flaws in this bill. Other than four Gohmert amendments on the issue of venue and one amendment from the gentleman from Iowa that was an earmark amendment, no other amendments were kept from consideration here. For all the arguments about flaws, where were the amendments to correct the flaws that they talk about? For all the notions of, we're not against reform, but this one isn't perfect, and this one isn't right, and this has some flaws, and it hasn't resolved every issue to everyone's satisfaction, nothing will, where is their alternative bill?

I'm telling you, this is an issue of whether we're going to address a system that the National Academy of Sciences and so many other objective agencies have said is getting near broken or doing nothing, and I suggest doing nothing is not a good answer for a Congress that wants to keep the American economy strong.

Mr. ROHRABACHER. Mr. Chairman, I yield myself such time as I may consume.

Let's note that there are several amendments that were not permitted by the Rules Committee. I did not submit amendments because those of us who have been following this bill realize it is fundamentally flawed. The purpose of the bill is to support those large corporations that Ms. KAPTUR noted who are dramatically supporting the legislation. And it is being opposed, I might add, by a large number of universities, unions, pharmaceutical industries, biotech industries, et cetera, et cetera. So we have everybody except the electronics industry and the financial industry, who are already over in China making their profit at our expense, are opposed to the bill.

I yield my remaining 30 seconds to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. I just wanted to clarify the basis for my observation that the bill was being amended on the run. I was simply quoting the chairman, who said that they worked late last night changing the manager's amendment, that they were going to continue to work through conference so that they could change the bill to make it better. So obviously the bill is being amended and being changed on the run.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. ROHRABACHER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas will be postponed.

AMENDMENT NO. 5 OFFERED BY MR. PENCE

The Acting CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 110–319.

Mr. PENCE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. PENCE:

Page 40, line 9, strike ''identifies'' and all that follows through line 11 and insert the following:

''(1) identifies the same cancellation petitioner and the same patent as a previous petition for cancellation filed under such section; or

''(2) is based on the best mode requirement contained in section 112.

The Acting CHAIRMAN. Pursuant to House Resolution 636, the gentleman from Indiana (Mr. PENCE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Indiana.

Mr. PENCE. I yield myself such time as I may consume.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Chairman, I rise today in support of an amendment that would simply clarify patent law in what is known as ''best mode.''

Before explaining my amendment and the need for it, I want to take a brief moment to express my personal gratitude to Ranking Member Lamar Smith for his years of work on this issue, and to express my appreciation not only to Chairman CONYERS, but to Chairman BERMAN, for the bipartisan manner in which they have proceeded on this legislation, so vital as it is to our national life and to our economic vitality.

Years of countless hearings, great dedication have gone into this bill on both sides of the aisle. And while, Mr. Chairman, I'm not convinced that it's a perfect bill, I believe, as the gentleman from California said, it's a work in progress, as is all complex American law, and I think that moving forward is the right thing to do today.

With that, I would like to yield 1 minute to the distinguished ranking member of the committee, the gentleman from Texas.

Mr. SMITH of Texas. Mr. Chairman, I thank my friend from Indiana for yielding, and I want to point out that he is a member of the Intellectual Property Subcommittee of the Judiciary Committee. I know he is going to describe this amendment very well, so I will not go into that detail, but simply urge my colleagues to support it.

Mr. PENCE. I thank the gentleman for his support.

Mr. Chairman, the Constitution vests, in article I, section 8, clause 8, the power and the duty of the Congress ''to promote the progress of science and useful arts by securing for limited times to inventors the exclusive right to their discoveries.'' This is an express obligation of the Congress under the Constitution.

Our patent laws, as currently written, were essentially drafted over 50 years ago, and I believe it is time to update them to account for changes in our dynamic 21st century economy.

We need to strengthen out patent laws to make sure that patents that are issued are strong and high quality, but I would submit that we also need to reform our patent laws to eliminate lawsuit abuse that has become so prevalent. Aspects of this legislation will do that; my amendment seeks to do that further.

As I said before, I am sympathetic to those who say that further work on damages needs to be done in conference. I agree with their sentiment to that point, and I trust that will occur.

On balance, though, I have determined that this legislation is an important and useful step toward modernizing and strengthening our American patent law, and I am pleased to support it. But I encourage Members of the House not to take this step without first supporting the Pence amendment, which makes an important clarification of provisions governing what is known as best mode in patent law.

At the Judiciary Committee markup of this bill, I first supported an amendment which would have repealed best mode in full. American patent law requires that a patent application, ''set forth the best mode contemplated by the inventor of carrying out his invention'' at the time the application is filed. But providing the best mode at the time of application is not a requirement in Europe or in Japan or in any of the rest of the world, and it has become a vehicle for lawsuit abuse.

In my view, the best mode requirement of American law imposes extraordinary and unnecessary costs on the inventor and adds a subjective requirement to the application process, and I believe public interest is already adequately met in ensuring quality technical disclosures for patents.

At the Judiciary Committee, I offered a best mode relief amendment that was accepted. The Pence amendment then retained best mode as a specifications requirement for obtaining a patent, the intent to maintain in the law the idea that patent applicants

should provide extensive disclosure to the public about an invention. But the Pence amendment endeavored to remove best mode from litigation.

Increasingly in patent litigation defendants have put forth best mode as a defense and a reason to find patents unenforceable. It becomes virtually a satellite piece of litigation in and of itself, detracts from the actual issue of infringement, and literally costs American inventors millions in legal fees.

The intent of the amendment was to keep best mode in the Patent and Trademark Office. My amendment today continues this effort toward eliminating this archaic and costly provision of the law. Specifically, the amendment today makes it clear that arguments about best mode cannot serve as the basis for post-grant review proceedings. It's quite simple in that effect.

With my amendment, under the new post-grant review system, best mode will not be litigated. That will lessen the burden put on patent holders in defending their patents in post-grant review proceedings, and it will prevent the expenditure of millions of dollars in needless lawsuit abuse.

I encourage my colleagues to support the amendment.

Mr. CONYERS. Will the gentleman yield?

Mr. PENCE. I would be very pleased to yield to the distinguished Chair.

Mr. CONYERS. Not only to thank the gentleman for producing this amendment, but also to appreciate all the work that he did on helping us make this bill as good as it was. We thank you very much.

Mr. PENCE. I thank the chairman for his remarks. And I urge my colleagues to support the Pence amendment so we can further clarify the intended best mode relief.

Mr. ROHRABACHER. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. ROHRABACHER. I would, first of all, submit for the RECORD a list of several hundred organizations, including unions and universities, et cetera, all of whom have raised objections to the patent legislation, H.R. 1908, not necessarily that they're all opposed to it, but they have strong objections.

ORGANIZATIONS AND COMPANIES WHICH HAVE RAISED OBJECTIONS TO PATENT LEGISLATION (H.R. 1908)

Organizations and Companies Raising Objections to H.R. 1908, the Patent Reform Act of 2007: 3M, Abbott, Accelerated Technologies, Inc., Acorn Cardiovascular Inc., Adams Capital Management, Adroit Medical Systems, Inc., AdvaMed, Advanced Diamond Technologies, Inc., Advanced Medical Optics, Inc., Advanced Neuromodulation Systems, Inc., Aero-Marine Company, AFL–CIO, African American Republican Leadership Council.

Air Liquide, Air Products, ALD NanoSolutions, Inc., ALIO Industries, Allergan, Inc., Almyra, Inc., AmberWave Systems Corporation, American Conservative Union, American Intellectual Property Law Association (AIPLA), American Seed Trade, Americans for Sovereignty.

Americans for the Preservation of Liberty, Amylin Pharmaceuticals, AngioDynamics, Inc., Applied Medical, Applied Nanotech, Inc., Argentis Pharmaceuticals, LLC, Arizona BioIndustry Association, ARYx Therapeutics, Ascenta Therapeutics, Inc., Association of University Technology Managers (AUTM).

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Blacks for Economic Security Trust Fund, BlazeTech Corporation, Boston Scientific, Bridgestone Americas Holding, Inc., Bristol-Myers Squibb, BuzzLogic, California Healthcare Institute, Canopy Ventures, Carbide Derivative Technologies, Cardiac Concepts, Inc., CardioDynamics, Cargill, Inc., Cassie-Shipherd Group, Caterpillar, Celgene Corporation, Cell Genesys, Inc., Center 7, Inc., Center for Small Business and the Environment, Centre for Security Policy, Cephalon, CheckFree, Christian Coalition of America.

Cincinnati Sub-Zero Products, Coalition for 21st Century Patent Reform, Coalitions for America, CogniTek Management Systems, Inc., Colorado Bioscience Association, Conceptus, Inc., CONNECT, Connecticut United for Research Excellence, Cornell University, Corning, Coronis Medical Ventures, Council for America, CropLife America, Cryptography Research, Cummins Inc., Cummins-Allison Corporation.

CVRx Inc., Dais Analytic Corporation, Dartmouth Regional Technology Center, Inc., Declaration Alliance, Deltanoid Pharmaceuticals, Digimarc Corporation, DirectPointe, Dow Chemical Company, Dupont, Dura-Line Corporation, Dynatronics Co., Eagle Forum, Eastman Chemical Company, Economic Development Center, Edwards Lifesciences, Elan Pharmaceuticals, Inc., Electronics for Imaging, Eli Lilly and Company, Ellman Innovations LLC, Enterprise Partners Venture Capital, Evalve, Inc.

Exxon Mobile Corporation, Fallbrook Technologies Inc., FarSounder, Inc. Footnote.com.

Gambro BCT, General Electric, Genomic Health, Inc., Gen-Probe Incorporated, Genzyme, Georgia Biomedical Partnership, Glacier Cross, Inc., GlaxoSmithKline, Glenview State Bank, Hawaii Science & Technology Council, HealthCare Institute of New Jersey, HeartWare, Inc., Helius, Inc., Henkel Corporation, Hoffman-LaRoche, Inc.

iBIO, Imago Scientific Instruments, Impulse Dynamics (USA), Inc., Indiana Health Industry Forum, Indiana University, Innovation Alliance, Institute of Electrical and Electronics Engineers (IEEE)–USA, InterDigital Communications Corporation, Intermolecular, Inc., International Association of Professional and Technical Engineers (IFPTE), Invitrogen Corporation, Iowa Biotechnology Association, ISTA Pharmaceuticals, Jazz Pharmaceuticals, Inc., Johnson & Johnson, KansasBio, Leadership Institute, Let Freedom Ring, Life Science Alley, LITMUS, LLC.

LSI Corporation, Lux Capital Management, Luxul Corporation, Maryland Taxpayers' Association.

Masimo Corporation, Massachusetts Biotechnology Council, Massachusetts Medical Device Industry Council (MassMEDIC), Maxygen Inc., MDMA—Medical Device Manufacturer's Association, Medical College of Wisconsin, MedImmune, Inc., Medtronic, Merck, Metabasis Therapeutics, Inc., Metabolex, Inc., Metacure (USA), Inc., MGI Pharma Inc., MichBio, Michigan Small Tech Association, Michigan State University, Millennium Pharmaceuticals, Inc., Milliken & Company, Mohr, Davidow Ventures, Monsanto Company.

NAM—National Association of Manufacturers, NanoBioMagnetics, Inc. (NBMI), NanoBusiness Alliance, NanoInk, Inc., NanoIntegris, Inc., Nanomix, Inc., Nanophase Technologies, NanoProducts Corporation, Nanosys, Inc., Nantero, Inc., National Center for Public Policy Research, Nektar Therapeutics, Neoconix, Inc., Neuro Resource Group (NRG), Neuronetics, Inc., NeuroPace, New England Innovation Alliance, New Hampshire Biotechnology Council, New Hampshire Department of Economic Development, New Mexico Biotechnical and Biomedical Association, New York Biotechnology Association.

Norseman Group, North Carolina Biosciences Organization, North Carolina State University, North Dakota State University, Northrop Grumman Corporation, Northwestern University, Novartis, Novartis Corporation, Novasys Medical Inc., NovoNordisk, NUCRYST Pharmaceuticals, Inc. NuVasive, Inc., Nuvelo, Inc., Ohio State University, OpenCEL, LLC.

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QuantumSphere, Inc., QuesTek Innovations LLC, Radiant Medical, Inc., Rensselaer Polytechnic Institute, Research Triangle Park, NC, Retractable Technologies, Inc., RightMarch.com, S & C Electric Company, Salix Pharmaceuticals, Inc., SanDisk Corporation, Sangamo BioSciences, Inc., Semprius, Inc., Small Business Association of Michigan—Economic Development Center, Small Business Exporters Association of the United States.

Small Business Technology Council, Smart Bomb Interactive, Smile Reminder, SmoothShapes, Inc., Solera Networks, South Dakota Biotech Association, Southern California Biomedical Council, Spiration, Inc., Standup Bed Company, State of New Hampshire Department of Resources and Economic Development, Stella Group, Ltd., StemCells, SurgiQuest, Inc.

Symyx Technologies, Inc., Tech Council of Maryland/MdBio, Technology Patents & Licensing, Tennessee Biotechnology Association, Tessera, Inc., Texas A&M, Texas Healthcare, Texas Instruments, Three Arch Partners.

United Technologies, University of California System, University of Illinois, University of Iowa, University of Maryland, University of Michigan, University of Minnesota, University of New Hampshire, University of North Carolina System, University of Rochester, University of Utah, University of Wisconsin-Madison, US Business and Industry Council, US Council for International Business.

USGI Medical, USW—United Steelworkers, Vanderbilt University and Medical Center, Virent Energy Systems, Inc., Virginia Biotechnology Association, Visidyne, Inc., VisionCare Opthamalogic Technologies, Inc., Washington Biotechnology & Biomedical Association, Washington University, WaveRx, Inc.

Wayne State University, Wescor, Inc., Weyerhaeuser, Wilson Sonsini Goodrich &

Rosati, Wisconsin Alumni Research Foundation (WARF), Wisconsin Biotechnology and Medical Device Association, Wyeth.

And we know there are many, many people who have strong reservations, even by the wording of what we have heard from the other side of this debate, that there are people who have serious questions, even though they may not officially be in opposition.

Well, if there are so many serious questions around that we have amendments like that of Mr. PENCE and the other amendments that we've heard, we shouldn't be having this bill on this floor at this time, much less muzzling the opposition so we have only an hour to debate on the central issues of the bill. Instead, we have had to argue our case hamper-scamper here as opposition to the amendment to the bill only to get time to offer a few objections. That's not the way this system is supposed to work. And it's not supposed to work that we bring bills to the floor and ask Members to vote on it so that we can fix it later on. That should raise flags for everybody that there is something to fix in this bill. And the fact that this bill has been brought to the floor very quickly and that debate has been limited, that alone should cause people to want to vote ''no'' on H.R. 1908 and send it back to committee and see if we can have a bill that doesn't require Mr. PENCE to be up here.

And also this, before I yield to Ms. KAPTUR: Yes, there are problems with the Patent Office, as has been described. Bad patents are being issued. This bill does nothing to cure that. What this bill does is use that as a cover to fundamentally change the rules of the game that are going to help those huge corporations that Ms. KAPTUR talked about, as well as the overseas people who are waiting to steal our technology.

We can correct those problems, and I would support that. You bring a bill to the floor that gives more money to the patent examiners, more training to the patent examiners, keeps the money that goes into the Patent Office there to improve the system, you're going to have lots of support. But don't use the imperfections of the Patent Office as an excuse to change the fundamental protections for American inventors.

Mr. Chairman, I yield 2 minutes to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. I thank the gentleman for yielding and rise in opposition to the amendment.

I wanted to point out that in every year when patents are granted the very small number of lawsuits that are generated as a result of that. For example, in the year 2006, there were 183,000 patents granted; 1.47 percent actually ended up in some type of lawsuit, and most of those lawsuits were settled before trial.

The current system is working very well for the majority of inventors as lawsuits have represented that smaller percentage going back as far as the eye can see.

I would like to place on the RECORD those facts that, in fact, lawsuits are a minuscule percent of all patents reviewed and granted. And I would also like to place on the RECORD from the United States Court of Appeals the following letter from the chief judge who states that the present bill creates a new type of macroeconomic analysis that would be extremely costly and time consuming, far more so than current application of the well-settled apportionment law.

TABLE FOUR—PATENTS GRANTED AND LAWSUITS COMMENCED

[FY 1992–2006]

| Fiscal Year | Patents Granted | Patents Suits Commenced | Lawsuits as a Percent of Patents Granted |
|---|---|---|---|
| 2006 | 183,000 | 2,700 | 1.47 |
| 2005 | 165,000 | 2,720 | 1.64 |
| 2004 | 187,000 | 3,075 | 1.64 |
| 2003 | 190,000 | 2,814 | 1.48 |
| 2002 | 177,000 | 2,700 | 1.52 |
| 2001 | 188,000 | 2,520 | 1.32 |
| 2000 | 182,000 | 2,484 | 1.36 |
| 1999 | 159,000 | 2,318 | 1.45 |
| 1998 | 155,000 | 2,218 | 1.43 |
| 1997 | 123,000 | 2,112 | 1.71 |
| 1996 | 117,000 | 1,840 | 1.57 |
| 1995 | 114,000 | 1,723 | 1.51 |
| 1994 | 113,000 | 1,617 | 1.43 |
| 1993 | 107,000 | 1,553 | 1.45 |

Sources: Data from the patents Granted is from USPTO Annual Reports. Data for lawsuits commence is from the Federal Judicial Statistics. The lawsuit data is as of March 31 of each year. The patents granted data is as of the Federal Fiscal Year. While the data is skewed by the different times used for the reporting years, a long-term view is created for this 14–year period. The author calculated the ratios.

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT,
*Washington, DC, June 7, 2007.*

SHANA A. WINTERS,
*Rayburn House Office Building,*
*Washington, DC.*

DEAR MS. WINTERS: Thank you for your telephone call yesterday afternoon concerning determining damages in patent infringement cases under the reasonable royalty language of the Patent Act. As promised, I have since reviewed some of the Federal Circuit decisions that address aspects of this subject, and I have also identified and attached an article that should help you more than reading individual opinions. Significantly, it was written by a seasoned patent litigator with direct experience in how such damage theories are actually litigated in court. Lawyers employed by particular companies, like most law professors, have little or no experience from that perspective. Mr. Rooklidge, by contrast, has several decades of litigation experience in precisely these types of cases.

His article was written since late April and may be the most current available on the subject. It is certainly clear and comprehensive. In addition, it references some of the testimony before your subcommittee in April, as well as the specific language of the pending bills.

The footnotes cite other useful sources you may wish to consult, including authoritative treatises by practitioner Robert Harmon and Professor Donald Chisum, and several recent articles on the point. They provide further background, which you may find helpful.

If the House Judiciary Committee intends to continue the damages law as currently practiced, after decades of refinement in individual court decisions, it need do nothing. This body of law is highly stable and well understood by litigators as well as judges. If, on the other hand, the Congress wishes to radically change the law, I suggest that a far more carefully-crafted and lengthy provision would be required. Like the body of caselaw, such a provision would need to account for many different types of circumstances, which the present provision does not.

In my opinion, plucking limited language out of the long list of factors summarized in the Georgia Pacific case that may be relevant in various cases is unsatisfactory, particularly when cast as a rigid requirement imposed on the court, and required in every case, rather than an assignment of a burden of proof under a clear standard of proof imposed on the party that should bear that particular burden, and that would only arise in a rare case. As I said, under current caselaw, the burden of apportioning the base for reasonable royalties falls on the infringer, while the burden for application of the Entire Market Value Rule falls on the patentee. In most cases, apportionment is not an issue requiring analysis.

Further, as I also attempted to explain, the present bills require a new, kind of macroeconomic analysis that would be extremely costly and time consuming, far more so than current application of the well-settled apportionment law. Resulting additional court delays would be severe, as would additional attorneys' fees and costs. Many view current delays and costs as intolerable.

In short, the current provision has the following shortcomings. First, it requires a massive damages trial in every case and does so without an assignment of burden of proof on the proper party and articulation of a clear standard of proof associated with that burden. Second, the analysis required is vastly more complicated than that done under current law. Third, the meaning of various phrases in the bills would be litigated for many years creating an intervening period of great uncertainty that would discourage settlements of disputes without litigation or at least prior to lengthy and expensive trials.

I appreciate your call and your effort to better understand the gap between current law and practice, and what the bills would require. I am of course available if you need further assistance in understanding the reality behind my May letter to the Chairman.

Sincerely,

PAUL R. MICHEL,
*Chief Judge.*

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This gentleman's amendment, as well as the underlying bill, would result in additional court delays that could be severe and would probably result in additional attorney fees and costs, and those additional costs are intolerable. We are actually charging more for inventors to maintain their inventions. We tried to stop that several years ago and were unsuccessful in doing that.

□ 1445

And now we are, in this bill, creating a more complicated legal system that is going to cost them more money. We have a system that works. We have the best patent system in the world. We have the most innovation in the world.

I hope this bill goes down to defeat so we can make it much, much better. We had a system where we protect the inventor if they wish to opt out of having their intellectual property put up on the Internet, they have the right to do that. This bill takes that away. It is one of the most egregious parts of this bill that should be fixed.

I thank the gentleman for yielding.

Mr. ROHRABACHER. How much more time is left in this debate?

The Acting CHAIRMAN. The gentleman from California now has 30 seconds remaining. The time of the gentleman from Indiana has expired.

Mr. ROHRABACHER. I would yield myself the right to close, and this is the final, I guess, arguments in this debate.

We can correct the flaws at the Patent Office. We do not need to destroy the American patent system as it has functioned for 200 years. We do not need to make all of our inventors vulnerable to foreign theft so foreigners and large corporations can steal their creative genius and use it against us. That is what this bill does. It is being foisted off on us. The process has been flawed. As we can see, we have had limited debate. They brought this to the floor admitting there are flaws in the bill. We need to defeat the Steal American Technologies Act and go back and work on it so we can make real reform rather than a bill that is going to help America's economic adversaries.

I would ask my colleagues to join me in supporting the little guy against the big guy and demonstrating that that is the rules of the game here.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. PENCE).

The amendment was agreed to.

Mr. ROHRABACHER. Mr. Chairman, I ask unanimous consent to withdraw my requests for recorded votes on the amendments numbered 2, 3 and 4, to the end that each such amendment stand disposed of by the voice vote thereon.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT NO. 1 OFFERED BY MR. CONYERS

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on the amendment on which further proceedings were postponed.

The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. CONYERS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 263, noes 136, not voting 38, as follows:

[Roll No. 862]

AYES—263

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Bachus
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Bordallo
Boren
Boswell
Boucher
Boyda (KS)
Brady (PA)
Brady (TX)
Braley (IA)
Brown (SC)
Brown, Corrine
Butterfield
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardoza
Carson
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Conaway
Conyers
Cooper
Costa
Costello
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (IL)
Davis (KY)
Davis, Lincoln
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Edwards
Ellison
Emanuel
Engel
Eshoo
Faleomavaega
Farr
Fattah
Filner
Flake
Forbes
Fortenberry
Fossella
Frank (MA)
Gallegly
Giffords
Gilchrest
Gillibrand
Gohmert
Gonzalez
Goodlatte
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Harman
Hastings (FL)
Hastings (WA)
Heller
Hensarling
Herseth Sandlin
Higgins
Hinchey
Hinojosa
Hirono
Hoekstra
Honda
Hoyer
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Kagen
Kanjorski
Keller
Kennedy
Kilpatrick
Kind
King (NY)
Kirk
Klein (FL)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren, Zoe
Lowey
Lungren, Daniel E.
Lynch
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McGovern
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Miller (MI)
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Norton
Oberstar
Obey
Olver
Ortiz
Pascrell
Pastor
Payne
Pence
Perlmutter
Peterson (MN)
Peterson (PA)
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Rahall
Ramstad
Rangel
Reyes
Richardson
Rodriguez
Rogers (KY)
Ros-Lehtinen
Ross
Roybal-Allard
Ruppersberger
Rush
Ryan (WI)
Sali
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Sherman
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walz (MN)
Wasserman Schultz
Waters
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Wolf
Wu
Wynn
Yarmuth

NOES—136

Aderholt
Akin
Alexander
Bachmann
Bartlett (MD)
Barton (TX)
Biggert
Bilbray
Bilirakis
Blackburn
Blunt
Boehner
Bonner
Boozman
Boustany
Broun (GA)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Carnahan
Carney
Castle
Chabot
Cole (OK)
Courtney
Cramer
Crenshaw
Davis (CA)
Davis, David
Deal (GA)
Dent
Duncan
Ehlers
Emerson
English (PA)
Etheridge
Everett
Fallin
Feeney
Ferguson
Foxx
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gingrey
Goode
Graves
Hall (TX)
Hare
Hayes
Herger
Hill
Hobson
Hodes
Holt
Hunter
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jordan
Kaptur
Kildee
King (IA)
Kingston
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lamborn
Lampson
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Loebsack
Lucas
Mack
Mahoney (FL)
Manzullo
Marchant
McCotter
McCrery
McHenry
McHugh
McIntyre
Melancon
Mica
Michaud
Miller (FL)
Miller, Gary
Murphy, Tim
Nunes
Petri
Pitts
Platts
Poe
Radanovich
Regula
Rehberg
Renzi
Rogers (AL)
Rogers (MI)
Rohrabacher
Roskam
Rothman
Ryan (OH)
Saxton
Schmidt
Shadegg
Shea-Porter
Shuler
Souder
Stearns
Taylor
Terry
Tiberi
Turner
Upton
Walberg
Wamp
Weldon (FL)
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Young (FL)

NOT VOTING—38

Baker
Barrett (SC)
Bishop (UT)
Boyd (FL)
Carter
Christensen
Cubin
Davis, Jo Ann
Ellsworth
Fortuño
Granger
Hastert
Holden
Hooley
Hulshof
Inglis (SC)
Jindal
Johnson, Sam
Jones (OH)
McDermott
Pallone
Paul
Pearce
Pickering
Reichert
Reynolds
Royce
Salazar
Sanchez, Loretta
Shays
Shimkus
Sullivan
Tancredo
Walsh (NY)
Watson
Weller
Woolsey
Young (AK)

□ 1511

Messrs. AKIN, HODES, BOEHNER, POE, BURTON of Indiana, HOLT and RYAN of Ohio changed their vote from ''aye'' to ''no.''

Messrs. KIRK, MEEKS of New York, MCCARTHY of California and GILCHREST changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Mr. INGLIS of South Carolina. Mr. Chairman, on rollcall No. 862 I was unavoidably detained. Had I been present, I would have voted "no."

The Acting CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The Acting CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. POMEROY) having assumed the chair, Mr. ROSS, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1908) to amend title 35, United States Code, to provide for patent reform, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment reported from the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. ROHRABACHER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on passage of H.R. 1908 will be followed by a 5-minute vote on adopting the conference report to accompany H.R. 2669.

The vote was taken by electronic device, and there were—ayes 220, noes 175, not voting 37, as follows:

[Roll No. 863]

AYES—220

Ackerman
Allen
Andrews
Arcuri
Bachus
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Bonner
Bono
Boren
Boswell
Boucher
Boyda (KS)
Brady (PA)
Brady (TX)
Braley (IA)
Brown, Corrine
Butterfield
Campbell (CA)
Cannon
Cantor
Capito
Capps
Cardoza
Carson
Castor
Chandler
Clay
Cleaver
Clyburn
Coble
Cohen
Conyers
Cooper
Costa
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (IL)
Davis, Lincoln
Davis, Tom
DeGette
Delahunt
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Edwards
Ellison
Emanuel
Engel
Eshoo
Farr
Fattah
Filner
Forbes
Fortenberry
Fossella
Frank (MA)
Gallegly
Giffords
Gilchrest
Gillibrand
Gonzalez
Goodlatte
Gordon
Green, Al
Green, Gene
Gutierrez
Hall (NY)
Harman
Hastings (FL)
Hastings (WA)
Heller
Hensarling
Herger
Hinojosa
Honda
Hoyer
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Kagen
Keller
Kennedy
Kilpatrick
Kind
King (NY)
Klein (FL)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren, Zoe
Lowey
Lungren, Daniel E.
Lynch
Mahoney (FL)
Maloney (NY)
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McGovern
McKeon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Miller (NC)
Miller, George
Mitchell
Moore (KS)
Moran (VA)
Murphy (CT)
Murtha
Musgrave
Nadler
Napolitano
Neal (MA)
Neugebauer
Nunes
Obey
Ortiz
Pence
Perlmutter
Peterson (PA)
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Reyes
Richardson
Rodriguez
Rogers (KY)
Ross
Roybal-Allard
Ruppersberger
Rush
Ryan (WI)
Sali
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Sherman
Shuster
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Walden (OR)
Walz (MN)
Wasserman Schultz
Waters
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wicker
Wilson (NM)
Wolf
Wu
Wynn
Yarmuth

NOES—175

Abercrombie
Aderholt
Akin
Alexander
Altmire
Baca
Bachmann
Bartlett (MD)
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Blackburn
Blunt
Boehner
Boozman
Boustany
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Capuano
Carney
Castle
Chabot
Clarke
Cole (OK)
Conaway
Costello
Courtney
Cramer
Crenshaw
Davis (CA)
Davis (KY)
Davis, David
Deal (GA)
DeFazio
DeLauro
Dent
Donnelly
Duncan
Ehlers
Emerson
English (PA)
Etheridge
Everett
Fallin
Feeney
Ferguson
Flake
Foxx
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Graves
Grijalva
Hall (TX)
Hare
Hayes
Herseth Sandlin
Higgins
Hill
Hinchey
Hirono
Hobson
Hodes
Hoekstra
Holt
Hunter
Inglis (SC)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jordan
Kanjorski
Kaptur
Kildee
King (IA)
Kingston
Kirk
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lamborn
Lampson
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Loebsack
Lucas
Mack
Manzullo
McCollum (MN)
McCotter
McCrery
McHenry
McHugh
McIntyre
McNulty
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moore (WI)
Moran (KS)
Murphy, Patrick
Murphy, Tim
Myrick
Oberstar
Olver
Pascrell
Pastor
Payne
Peterson (MN)
Petri
Pitts
Platts
Poe
Price (NC)
Rahall
Ramstad
Regula
Rehberg
Renzi
Rogers (AL)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Rothman
Ryan (OH)
Saxton
Schmidt
Schwartz
Shadegg
Shea-Porter
Shuler
Sires
Smith (NE)
Souder
Stearns
Taylor
Terry
Tiberi
Tierney
Turner
Upton
Visclosky
Walberg
Wamp
Weldon (FL)
Westmoreland
Whitfield
Wilson (OH)
Wilson (SC)
Young (FL)

NOT VOTING—37

Baker
Barrett (SC)
Bishop (UT)
Boyd (FL)
Carnahan
Carter
Cubin
Davis, Jo Ann
Ellsworth
Granger
Hastert
Holden
Hooley
Hulshof
Jindal
Johnson, Sam
Jones (OH)
McDermott
Pallone
Paul
Pearce
Pickering
Rangel
Reichert
Reynolds
Royce
Salazar
Sanchez, Loretta
Shays
Shimkus
Sullivan
Tancredo
Walsh (NY)
Watson
Weller
Woolsey
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1530

Mr. OLVER and Mr. FLAKE changed their vote from ''aye'' to ''no.''

Mr. SERRANO changed his vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## CONFERENCE REPORT ON H.R. 2669, COLLEGE COST REDUCTION AND ACCESS ACT

The SPEAKER pro tempore. The unfinished business is the question on adoption of the conference report on the bill, H.R. 2669, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the conference report.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 292, nays 97, not voting 43, as follows:

[Roll No. 864]

YEAS—292

Abercrombie
Ackerman
Aderholt
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Boozman
Boren
Boswell
Boucher
Boyda (KS)
Brady (PA)
Braley (IA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Butterfield
Buyer
Camp (MI)
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Castle
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Cole (OK)
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doggett
Donnelly
Edwards
Ellison
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Fallin
Farr
Fattah
Ferguson
Filner
Forbes
Fortenberry
Fossella
Frank (MA)
Frelinghuysen
Gerlach
Giffords
Gilchrest
Gillibrand
Gohmert
Gonzalez
Gordon
Graves
Green, Al
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Hayes
Heller
Herseth Sandlin
Higgins
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Holt
Honda
Hoyer
Inglis (SC)
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
King (NY)
Kirk
Klein (FL)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lynch
Mahoney (FL)