H.R. 1540, Rollcall Vote No. 341, had I been present I would have voted "yes."

On agreeing to the Resolution, H. Res. 276, Providing for further consideration of H.R. 1540, Rollcall Vote No. 342, had I been present I would have voted "yes."

On the Amendment of Ms. WOLSELEY of California, Amendment No. 2 to H.R. 1540, Rollcall Vote No. 343, had I been present I would have voted "no."

On the amendment of Mr. Hunter of California, Amendment No. 12 to H.R. 1540, Rollcall Vote No. 344, had I been present I would have voted "no."

On the Amendment of Mr. WOLSELEY of California, Amendment No. 2 to H.R. 1540, Rollcall Vote No. 345, had I been present I would have voted "no."

On the amendment of Mr. SARBANES of Maryland, Amendment No. 24 to H.R. 1540, Rollcall Vote No. 346, had I been present I would have voted "no."

On the amendment of Mr. GARAMENDI of California, Amendment No. 28 to H.R. 1540, Rollcall Vote No. 348, had I been present I would have voted "no."

On the amendment of Ms. MALLOWNEY of New York, Amendment No. 26 to H.R. 1540, Rollcall Vote No. 349, had I been present I would have voted "no."

On the amendment of Mr. HIMES of Connecticut, Amendment No. 30 to H.R. 1540, Rollcall Vote No. 350, had I been present I would have voted "yes."

On the amendment of Ms. JACKSON LEE of Texas, Amendment No. 31 to H.R. 1540, Rollcall Vote No. 351, had I been present I would have voted "no."

On the amendment of Mr. ANDREW of New Jersey, Amendment No. 32 to H.R. 1540, Rollcall Vote No. 352, had I been present I would have voted "no."

On the amendment of Mr. RICHMOND of Louisiana, Amendment No. 37 to H.R. 1540, Rollcall Vote No. 353, had I been present I would have voted "yes."

On the amendment of Mr. MICA of Florida, Amendment No. 38 to H.R. 1540, Rollcall Vote No. 354, had I been present I would have voted "yes."

On the amendment of Mr. FLAKE of Arizona, Amendment No. 40 to H.R. 1540, Rollcall Vote No. 355, had I been present I would have voted "yes."

On the amendment of Mr. SMITH of Washington, Amendment No. 42 to H.R. 1540, Rollcall Vote No. 356, had I been present I would have voted "yes."

On the amendment of Mr. BUCHANAN of Florida, Amendment No. 43 to H.R. 1540, Rollcall Vote No. 357, had I been present I would have voted "yes."

On the amendment of Mr. MELNEY of New York, Amendment No. 47 to H.R. 1540, Rollcall Vote No. 358, had I been present I would have voted "no."

On the amendment of Mr. MACK of Florida, Amendment No. 48 to H.R. 1540, Rollcall Vote No. 359, had I been present I would have voted "yes."

On the amendment of Mr. LANGEVIN of Rhode Island, Amendment No. 49 to H.R. 1540, Rollcall Vote No. 360, had I been present I would have voted "no."

In the House of Representatives Wednesday, June 22, 2011

The House in Committee of the Whole on the State of the Union had under consideration the bill (H.R. 1249) to amend title 35, United States Code, to provide for patent reform:

Mr. SMITH of Texas. Madam Chair, I submit: (1) Manager's Statement on Supplemental Examination; (2) Manager's Statement on Geographical Indications; (3) Statement on the codification of the Weldon amendment; (4) Statement on the business method patent transitional program; (5) Statement on the PTO fee compromise provision in the Manager's amendment; (6) Amendment No. 2003 on the 2003 letter on the Weldon amendment from PTO Director James Rogan; (7) Information on the Weldon amendment from the Family Research Council.

CHAIRMAN'S FLOOR REMARKS/MANAGER'S STATEMENT: SUPPLEMENTAL EXAMINATION IN H.R. 1249.

Mr. Speaker, this bill also contains a very important new administrative proceeding available to patent owners, to help improve the quality of issued patents. This new "Supplemental Examination" procedure encourages the voluntary and proactive disclosure of information that may be relevant to patent prosecution for the Office to consider, re-examine, or correct. The voluntary disclosure by patentees serves to strengthen valid patents, while narrowing or eliminating patents or claims that should not have been issued. Both of these outcomes promote investment in innovation by removing uncertainty about the scope, validity or enforceability of patents, and thus the use of this new proceeding by patent owners is to be encouraged.

Subparagraph (C) relating to Supplemental Examination is intended to address the circumstance where, during the course of a supplemental examination or reexamination proceeding ordered under this section, a court or administrative agency advises the PTO that it has made a determination that a fraud on the Office may have been committed in connection with the patent that is the subject of the supplemental examination. In such a circumstance, subparagraph (C) provides that, in addition to any other actions the Director is authorized to take, including the cancellation of claims found to be invalid under section 307 as a result of the reexamination ordered under this section, the Director shall also refer the matter to the Attorney General. In such a circumstance where, during the course of a supplemental examination or reexamination proceeding ordered under this section, a court or administrative agency advises the PTO that it has made a determination that a fraud on the Office may have been committed in connection with the patent that is the subject of the supplemental examination. In such a circumstance, subparagraph (C) provides that, in addition to any other actions the Director is authorized to take, including the cancellation of claims found to be invalid under section 307 as a result of the reexamination ordered under this section, the Director shall also refer the matter to the Attorney General.

Paraphraph (C) is neither an investigatory nor an adjudicative provision, and, as such, is not intended to expand the authority or obligations of the PTO to investigate or adjudicate allegations of fraud lodged by private parties.

Further, any referral under this subsection is not meant to relieve the Director from his obligation to conclude the supplemental examination or reexamination proceeding ordered under this section. It is important for the process to proceed through conclusion of reexamination, so that any claims that are invalid can be properly cancelled.

The decision to make referrals under subparagraph (C) is not meant to be determined by examiners or other agents of the PTO, but rather is a determination that should only be made by the Director himself or herself.

Supplemental Examination has the potential to play a powerful role in improving patent quality and boosting investment in innovation, economic growth, and job creation. The Director should implement this new authority in a way that maximizes this potential.
Mr. Speaker, Section 27 of H.R. 1249 requires the Director of the U.S. Patent and Trademark Office to conduct a study on the availability of confirmatory genetic diagnostic testing services in the domestic market, and whether changes to existing patent law might promote such availability more effectively. Consistent with current law, the genetic inventions that form the basis for such diagnostic tests are eligible for patent protection and may be exclusively licensed by such patent holders for genetic diagnostic purposes.

This study is intended to provide unbiased, reliable information about the current availability of confirmatory genetic diagnostic testing services, and the demand for such services, in situations where genetic diagnostic tests are indeed patented and exclusively licensed. Nothing in this section shall be construed as undermining existing patent law in this regard.

This study is intended to include, but is not limited to, several specific aspects of this issue. Paragraph (1) of subsection (b) requires an assessment of whether the existing level of availability of confirmatory genetic diagnostic testing has an impact on the ability or incentives to provide the appropriate standard of medical care to recipients of genetic diagnostic testing, and includes an assessment of the use of patents play an integral role in service availability and investment in the genetic diagnostic marketplace. The assessment required by this paragraph also should include empirical information about the extent to which patents have actually been enforced or asserted against the unauthorized practice of confirmatory genetic testing services. Paragraph (3) requires an evaluation of the continued exclusive licensing of genetic diagnostic tests on the practice of medicine, including, but not limited to, the ability of medical professionals to interpret test results, and the ability of licensed or unlicensed test providers to provide confirmatory genetic diagnostic tests. The Director's assessment should provide information on the frequency at which confirmatory genetic diagnostic testing currently is performed by medical professionals in instances where an absence of patent protection or nonexclusive licensing permits multiple independent test providers. Paragraph (4) requires an assessment of the role that cost and insurance coverage arrangements play in the availability of confirmatory genetic diagnostic tests today, whether patented or not or exclusively licensed or not, and should include an assessment of the impact on patient access to and provision of confirmatory genetic diagnostic tests today, whether patented or not or exclusively licensed or not.

Additional Legislative History for the Section 27 Opinion Confirmation Test Study in Managers (H.R. 1249): Additional Information for the Record— Congressional Record — Extensions of Remarks E1183

GENETIC TEST STUDY IN MANAGER'S AMENDMENT (DWS)

Mr. Speaker, Section 27 of H.R. 1249 requires the Director of the U.S. Patent and Trademark Office to conduct a study on the availability of confirmatory genetic diagnostic testing services in the domestic market, and whether changes to existing patent law might promote such availability more effectively. Consistent with current law, the genetic inventions that form the basis for such diagnostic tests are eligible for patent protection and may be exclusively licensed by such patent holders for genetic diagnostic purposes.

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Additional Legislative History for the Section 27 Opinion Confirmation Test Study in Managers (H.R. 1249): Additional Information for the Record — Congressional Record — Extensions of Remarks E1183

"Section 27 requires USPTO to conduct a study on the impact that a lack of independent second opinion testing has on providing medical care to patients and recipients of genetic diagnostic testing, the effect that providing such tests would have on patient health, and the extent to which such availability more effectively. Consistent with current law, the genetic inventions that form the basis for such diagnostic tests are eligible for patent protection and may be exclusively licensed by such patent holders for genetic diagnostic purposes.

This study is intended to provide unbiased, reliable information about the current availability of confirmatory genetic diagnostic testing services, and the demand for such services, in situations where genetic diagnostic tests are indeed patented and exclusively licensed. Nothing in this section shall be construed as undermining existing patent law in this regard.

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Additional Legislative History for the Section 27 Opinion Confirmation Test Study in Managers (H.R. 1249): Additional Information for the Record — Congressional Record — Extensions of Remarks E1183
for initiating the proceeding. It is a necessary program to allow the PTO to fix mistakes that occurred in light of an activist judicial decision in the 1996 State Street decision. This will prevent the patenting of subject matter without Congress’ approval.

This bill will provide the patent office with a fast, precise vehicle to review low quality business methods patents, which the Supreme Court has acknowledged are often abstract and overly broad. And it bears repeating that defendants in the Wall Street bailout are just plain wrong.

Specifically, this bill’s provision applies to patents that describe a series of steps used to conduct every day business applications in the financial products and retail service space. These are patents that can be and have been asserted against all types of businesses—from community banks and credit unions to retailers like Walmart. Bed Bath & Beyond, Office Max to other companies like Dr. Pepper Snapple Group, UPS, Hilton, AT&T, Facebook, Frito-Lay, Google, Marriott, Walt Disney, and Apple’s iTouch and YouTube.

This provision is not tied to one industry or sector of the economy—it affects everyone. For example, this program would allow the PTO to decide whether to review patents for business methods related to:

- Printing ads at the bottom of billing statements
- Buying something online and picking it up in the store
- Re-ordering checks online
- Converting a IRA to a Roth IRA
- Getting a text message when you use your credit card
- Those who argue that this provision is a Wall Street bailout are just plain wrong. This is about questionable patents and the frivolous litigation that results from them. This provision is important legal reform, supported by the U.S. Chamber of Commerce and is important for American job creators.

PTO FIRE DIVERSION PROMISE (H.R. 1249 MANAGERS)

By giving USPTO access to all its funds, the Manager’s Amendment supports the USPTO’s efforts to improve patent quality and remove the backlog of patent applications. To carry out the new mandates of the legislation and reduce delays in the patent application process, the USPTO must be able to use all the fees it collects.

The language in the Manager’s Amendment reflects the intent of the Judiciary Committee, the Appropriations Committee, and the White House to end this diversion. USPTO is 100% funded by fees paid by inventors and trademark filers who are entitled to receive the services they are paying for. The language makes clear the intention not only to appropriate to the USPTO at least the level requested for the fiscal year but also to appropriate to the USPTO any fees collected in excess of such appropriation.

Providing USPTO access to all fees collected means providing access at all points during that year, including in case of a continuing resolution. Access also means that reprogramming requests will be acted on within a reasonable time period and on a reasonable basis. It means that future appropriations will not be cut off to the long-standing USPTO policy that guarantees USPTO access to all of its fee collections.

The Weldon Amendment provides the USPTO with additional discretionary funds above and beyond those provided in annual appropriations bills to carry out the new mandates of the legislation and reduce delays in the patent application process. The USPTO must be able to provide a fast, precise vehicle to review low quality business methods patents, which the Supreme Court has acknowledged are often abstract and overly broad.

The Weldon Amendment restricts funds under the Commerce, Justice, and Science Appropriations bill from being used by the U.S. Patent and Trademark Office (USPTO) to issue patents directed to “human organisms.” Congress has each year since 2004 passed the Weldon Amendment to prevent any profiling from patents on humans. The Weldon Amendment restricts funds under the Commerce, Justice, Science Appropriations bill from being used by the U.S. Patent and Trademark Office (USPTO) to issue patents directed to “human organisms.” The America Invents Act (H.R. 1249) may authorize the USPTO to pay for the issuance of patents with “user fees” instead of with Congressionally appropriated funds. If this funding mechanism continues the Weldon Amendment restriction would not apply since it only covers funds appropriated under the Commerce, Justice, Science Appropriations bill. The USPTO could, thereby, issue patents directed to human beings with non-appropriated funds.

Patenting human beings at any stage of development would overturn the long-standing USPTO policy against issuing such patents. As the Quigg Memo stated in 1987 (see below) a grant of a property right in a human being is unconstitutional and patents on humans are grounds for rejection.

As indicated in Representative Weldon’s remarks in the Congressional Record of November 5, 2003, the referenced language predates the patenting of humans. Congress has passed it most recently as part of the FY2010 Omnibus spending bill (H.R. 3288, P.L. 111–117) and extended by the FY2011 Omnibus spending bill (Department of Commerce, Justice, and Science Appropriations Act, 2011 (H.R. 1475, P.L. 112–10)).

Weldon Amendment, Section 518: “None of the friends appropriated or otherwise made available under this Act may be used by the USPTO to make any issue of patents on claims directed to or encompassing a human organism.”

CODY THE WELDON AMENDMENT—ADD IT TO YOUR PROPOSAL.

Given that the scope of Representative Weldon’s remarks in the Congressional Record of November 5, 2003, the referenced language prior to the patenting of humans. Congress has passed it most recently as part of the FY2010 Omnibus spending bill (H.R. 3288, P.L. 111–117) and extended by the FY2011 Omnibus spending bill (Department of Commerce, Justice, and Science Appropriations Act, 2011 (H.R. 1475, P.L. 112–10)).

The Weldon Amendment’s use of the term “human organism” does include human embryos, human fetuses, human-animal chimeras, and human organisms created with genetic material from more than one embryo.

The Weldon Amendment’s use of “human organism” does not alter the USPTO policy on the non-patentability of human life-forms at any stage of development, including embryos or fetuses, by preventing patents on claims directed to “human organisms.” The Weldon Amendment’s use of the term “human organism” does include human embryos, human fetuses, human-animal chimeras, and human organisms created with genetic material from more than one embryo.

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species Homo sapiens at any stage of development. It has long been USPTO practice to reject any claim in a patent application that encompasses a human life-form at any stage of development involving a human embryo or human fetus; hence claims directed to living "organisms" are to be rejected unless they include the adjective "nonhuman.

Second, as early as 2003 U.S. researchers announced that they created human male-female embryos and reportedly wanted to patent this research (http://www.thenewatlantis.com/publications/my-mother-the-embryo?). Though researchers transplanted cells from male embryos into female embryos and allowed them to grow for six days.

Because of the possibility of court challenges to USPTO policy, Rep. Dave Weldon offered an amendment on July 22, 2003 to the CJS Appropriations bill to prevent funding for patents directed to "human organisms." The Weldon amendment was adopted by voice vote, and was included as Section 634, Title VI of Division B, in the Consolidated Appropriations Act, 2004 (P.L. 108-199). The accompanying report language clarified its scope: "The conference agreement includes a provision prohibiting funds to process patents of human organisms. The conferences concur with the intent of this provision as expressed in the colloquy between the provisions sponsor and Ranking Minority Member of the House Committee on Appropriations as occurred on July 22, 2003, with respect to any entity that is living or synthetic organs, including but not limited to claims directed to or encompassing the following: cells, tissues, organs, or other bodily components that are not themselves human organisms (including, but not limited to, stem cells, stem cell lines, genes, synthetic organisms, hormones, proteins or other substances produced by human organisms; methods for creating, modifying, or treating human organisms, including but not limited to methods for creating human embryos through in vitro fertilization, somatic cell nuclear transfer, or parthenogenesis; drugs or devices (including prosthetic devices) which may be used in or on human organisms.

The Weldon amendment does not ban human stem cell patents, including patents on human embryonic stem cells. "Stem cells" are not "organisms."

On December 2, 1998, several scientists supporting federal funding of human embryonic stem cell research testified before the Senate Subcommittee on Labor, Health and Human Services, and Education Committee on Appropriations that "stem cells" are not "human organisms." When asked, Dr. James Thomson who first obtained human embryonic stem cells, and has patents on those stem cell lines, responded: "They are not organisms, not embryos."

Despite claims in 2003 that the Weldon amendment in 2003 would ban stem cell patents, the USPTO has maintained several embryonic stem cell patents issued previously. The USPTO has also issued several new patents on human embryonic stem cells since 2003, and has issued roughly 300 new patents on plant and yeast cells. The Weldon amendment only affects patents on human organisms. (Note, the EU recently reaffirmed its rejection of patents on embryonic stem cells, e.g., the Weldon amendment does not follow suit).

HISTORICAL BACKGROUND

Longstanding United States Patent and Trademark Office (USPTO) policy states that any stage of development are not patentable subject matter under 35 U.S.C. Section 101. In 1980, the U.S. Supreme Court in Diamond v Chakrabarty expanded the scope of patentable subject matter claiming Congress intended statutory subject matter to include anything under the sun that is made by man. The USPTO eventually issued patents directed to non-human organisms, including animals. However, the USPTO rejected patents on humans (see below).

As a leader in the civil rights movement, C. Frederick's list of landmark cases is extensive. He initiated the complaint that led the Flint Board of Education practice of separate screening committees for black and white teachers. He initiated the suit that ended the Flint Memorial Park Cemetery practice of not allowing blacks to be buried at the cemetery. He participated in the lawsuit that declared the local loitering ordinance unconstitutional. He led the effort to have the first black to be elected to the Flint Board of Education and the fight to have the first black female elected to the same body. He was instrumental in the election of the first black Secretary of State in Michigan. He participated in the lawsuit to allow the NAACP to erect a platform that would bring a human organism into existence (e.g., somatic cell nuclear transfer; in vitro fertilization). If a patent examiner determines that a claim is directed to a human life-form at any stage of development, the claim is rejected as non-statutory subject matter and will not be issued in a patent as such.

Mr. KILDEE. Mr. Speaker, it is with a profound sadness that I rise today to pay tribute to a dear friend, Attorney C. Frederick Robinson, who passed away on Saturday, June 18th in Flint Michigan.