

under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition."

(b) CONFORMING AMENDMENT.—Section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) is amended by striking "an alien who," and inserting "subject to section 214(c)(2), an alien who,".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Florida (Mr. WEXLER) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2278.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this bill is a companion bill to H.R. 2277, just passed. Just as H.R. 2277 provides employment authorization to spouses of E visa recipients, this bill provides employment authorization to spouses of L visa recipients.

L visas are available for intracompany transferees. They allow employees working at a company's overseas branch to be shifted to the company's work site in the United States.

An L visa is available to an alien who "within 3 years preceding the time of his application for admission into the United States has been employed continuously for one year by a firm or an affiliate or subsidiary and who seeks to enter the United States temporarily in order to continue to render his services to the same employer in a capacity that is managerial, executive or involves specialized knowledge."

To make the L visa program more convenient for established and frequent users of the program, blanket L visas are available. If an employer meets certain qualifications, such as having received approval for at least 10 L visa professionals during the past year or having U.S. subsidiaries or affiliates with an annual combined sales of at least \$25 million or having a workforce of at least 1,000 employees, the employer can receive preapproval for an unlimited number of L visas from the Immigration Service.

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Individual aliens seeking visas to work for the companies simply have to show that the job they will be employed in qualifies for the L visa program and that they are qualified to do the job.

In fiscal year 1998, 38,307 aliens, along with 44,176 dependents, were granted L visas.

While the current law allows spouses and minor children to come to the U.S. with the L visa recipients, spouses are not allowed to work in this country. As I stated in regard to H.R. 2277, working spouses are now becoming the rule rather than the exception in the U.S. and in many foreign countries, and multinational companies are finding it increasingly difficult to persuade their employees abroad to relocate to the United States if it means their spouses will have to forgo employment. This factor places an impediment in the way of these employers' use of the L visa program and their competitiveness in the international economy.

There is no good reason why we should put an impediment in the way of business and academia's efforts to attract talented people. There is also no good reason why husbands and wives should have to ask their spouses to forgo employment as a condition of joining them in America. Thus, H.R. 2278 would allow the spouses of L visa recipients to work in the United States while accompanying the primary visa recipients.

Additionally, the current law requires that the beneficiary of an L visa have been employed for at least 1 year overseas by the petitioning employer. In many situations, this is an overly restrictive requirement. For example, consulting agencies often recruit and hire individuals overseas with specialized skills to meet the needs of particular clients. The 1-year-prior-employment requirement can result in long delays before they can bring such employees into the United States on an L visa. A shorter prior employment period would allow companies to more expeditiously meet the needs of their clients.

Madam Speaker, H.R. 2278 would allow aliens to qualify for L visas after having worked for 6 months overseas for employers if the employers have filed blanket L petitions and have met the blanket petition's requirements. There is a high level of fraud in the L visa program, especially involving "front companies" set up purely to procure visas; and lowering the across-the-board qualifications for the L visas might encourage more fraudulent petitions. With a company that has been prescreened and approved for the "blanket" L visa status, the risk of fraud is much lower.

Thus, I urge my colleagues to support this bill.

Madam Speaker, I reserve the balance of my time.

Mr. WEXLER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 2278. This is a positive bill because it allows work authorization for non-immigrant spouses of intracompany transferees.

Not only will spouses be able to accompany their husband or wife who is in the United States in a non-immigrant capacity, but these spouses

will now be afforded the opportunity to be employed. It makes no sense to allow spouses to accompany their loved ones to the United States and then deny them the opportunity to be employed.

Global companies are finding it increasingly difficult to relocate foreign nationals to the United States. This bill makes relocation easier since spouses will not have to forgo their career, ambitions or a second income, which is increasingly necessary.

This bill is also positive since it contains a 6-month reduction in the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States. Without this bill, companies who recruit and hire individuals overseas with specialized skills to meet the needs of their clients will be able to bring these employees more expeditiously.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. BIGGERT). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 2278.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

DETERMINATION OF SUBSTANTIAL NEW QUESTIONS OF PATENTABILITY IN REEXAMINATION PROCEEDINGS

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1866) to amend title 35, United States Code, to clarify the basis for granting requests for reexamination of patents, as amended.

The Clerk read as follows:

H. R. 1866

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

SECTION 1. DETERMINATION OF SUBSTANTIAL NEW QUESTION OF PATENTABILITY IN REEXAMINATION PROCEEDINGS.

Sections 303(a) and 312(a) of title 35, United States Code, are each amended by adding at the end the following: "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."

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and

the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 1866, as amended, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, Congress established the patent reexamination system in 1980. The 1980 reexamination statute was enacted with the intent reexamination of patents by the Patent and Trademark Office would achieve three principal benefits, first, to settle validity disputes more quickly and less expensively than litigation; second, to allow courts to refer patent validity questions to an agency with expertise in both the patent law and technology; and third, to reinforce investor confidence in the certainty of patent rights by affording an opportunity to review patents of doubtful validity.

More than 20 years after the original enactment of the reexamination statute, the Committee on the Judiciary still endorses these goals and encourages third parties to pursue reexamination as an efficient way of settling patent disputes.

Reexamination worked well until recently when it was severely limited by a Federal Court of Appeals decision. H.R. 1866 is intended to overturn the 1997 *In re Portola Packaging* case by the United States Court of Appeals for the Federal circuit. That decision severely impairs the patent reexamination process. Reexamination was intended to be an important quality check on defective patents. Unfortunately, this decision severely limits its use.

The *Portola* case is criticized for establishing an illogical and overly strict bar concerning the scope of reexamination requests. The bill permits a broader range of cases to be the subject of a request, as was the case for the first 16 years since the law was enacted. The bill that we consider today preserves the "substantial new question standard" that is an important safeguard to protect all inventors against frivolous action and against harassment, while allowing the process to continue as originally intended. It also preserves the discretion of the Patent and Trademark Office in evaluating these cases.

The bill has been amended since its introduction by the full committee. I wish to take a moment to explain this to my colleagues.

Since its introduction, we heard from the public members of the bar and critics of the *Portola* decision who have

recommended that we make an additional change to ensure the result that we seek. The text is clarified to permit the use of relevant evidence that was "considered" by the PTO, but not necessarily "cited." Some would say this is redundant, but I prefer to clarify precisely when reexamination is an available procedure. This will ensure that the system is flexible and efficient. While many believe the base text is satisfactory to meet that goal, I hope that the amendment removes any doubt.

I believe that adding this one sentence to the Patent Act will help prevent the misuse of defective patents in all fields, especially those concerning business methods. An efficient patent system is important for inventors, investors and consumers. I urge Members to support H.R. 1866.

Madam Speaker, I reserve the balance of my time.

Mr. BERMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 1866, and I urge my colleagues to vote for it.

The Committee on the Judiciary favorably reported this legislation by voice vote on June 20. Prior to that, the Subcommittee on Courts, the Internet and Intellectual Property passed the bill by a voice vote on May 22. It is a good step forward on the road of making reexamination a more attractive and effective option for challenging a patent's validity.

The bill overturns, as the gentleman from Wisconsin mentioned, the 1997 Federal circuit decision *In re Portola Packaging*. In that case, the Federal circuit narrowly construed the term "substantial new question of patentability" to mean prior art that was not before the examiner during an earlier examination. Because the PTO director can only order a reexamination if a "substantial new question of patentability" exists, the Federal court's decision in *Portola* effectively bars the PTO from conducting a reexamination based on prior art that was cited in the patent application.

The *Portola* decision is troublesome because it prevents reexaminations from correcting mistakes made by examiners. Ideally, a reexamination could be requested based on prior art cited by an applicant that the examiner failed to adequately consider. However, after *Portola*, such prior art could not be the basis of the reexamination.

By overturning the *Portola* decision, H.R. 1866 will allow reexamination to correct some examiner errors. Thus, this bill will accomplish an important, if narrow, objective.

Madam Speaker, as far as I know, H.R. 1866 has not engendered any controversy, and I urge my colleagues to support it.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield 3 minutes to the gen-

tleman from North Carolina (Mr. COBLE), the chairman of the Subcommittee on Courts, the Internet and Intellectual Property.

Mr. COBLE. Madam Speaker, I thank the gentleman for yielding me this time. I will be very brief, because the gentleman from Wisconsin has thoroughly stated the matter, as has the gentleman from California.

As the gentleman from Wisconsin has indicated, H.R. 1866, Madam Speaker, consists of adding a single sentence to the law in order to improve the patent reexamination system. It is based upon testimony that was offered before our subcommittee earlier this year. With this single sentence, we stab at the heart of defective business method and other inappropriately issued patents. At the same time, we protect small businesses and small inventors from harassing conduct in these proceedings.

I want to thank the distinguished gentleman from California (Mr. BERMAN), my friend and the ranking member of the subcommittee, for his work, as well, on this bill, and for that matter, all of the members of the subcommittee.

In closing, I want to thank the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the full committee, for having expeditiously moved this legislation along, because it is important legislation. I urge my colleagues to support H.R. 1866.

Mr. SENSENBRENNER. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1866, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROVIDING FOR APPEALS BY THIRD PARTIES IN CERTAIN PATENT REEXAMINATION PROCEEDINGS

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1886) to amend title 35, United States Code, to provide for appeals by third parties in certain patent reexamination proceedings.

The Clerk read as follows:

H.R. 1886

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

SECTION 1. APPEALS IN INTER PARTES REEXAMINATION PROCEEDINGS.

(a) APPEALS BY THIRD-PARTY REQUESTER IN PROCEEDINGS.—Section 315(b) of title 35, United States Code, is amended to read as follows:

“(b) THIRD-PARTY REQUESTER.—A third-party requester—