quality of each production and performance, while keeping in mind each school's budget and available resources. This annual competition awarded four students who reside within California's 16th district.

Tommy is a student from Live Oak High School. He won the Best Student Lighting Design award for his work in "Fiddler on the Roof".

The High School Music Theatre HONORS awards promote artistic creativity in a way that is vital to a youth's development. The performances that these youth stage are extremely labor intensive, and promote discipline, team work, and dedication. High School Performing Arts programs are generally underfunded and have been greatly reduced in recent years. I recognize the hard work, time, and energy that these students and teachers put into these productions.

I am proud to stand here today and recognize Tommy for his accomplishments. I urge him and all students to continue to take interest in the performing arts.

FINANCING DRUG RESEARCH: WHAT ARE THE ISSUES?

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 8, 2005

Mr. KUCINICH. Mr. Speaker, I would like to bring the following article to the attention of my colleagues. The article details the reasons that the U.S. pays excessively high prices for prescription drugs. The Free Market Drug Act gets at the heart of the problem outlined below.

[From the Center for Economic and Policy Research, Sept. 21, 2004.

FINANCING DRUG RESEARCH: WHAT ARE THE ISSUES?

(By Dean Baker)

EXECUTIVE SUMMARY

Rising drug prices are placing an ever larger burden on family budgets and the economy. The Center for Medicare and Medicaid Services estimates 2004 expenditures at $207 billion (more than $700 per person), and projects that annual spending will grow to more than $500 billion by 2013 (more than $1,600 per person). The immediate cause of high drug prices is government granted patent monopolies, which allow drug companies to charge prices that are often 400 percent, or more, above competitive market prices.

Patent monopolies are one possible mechanism for financing prescription drug research. Rapidly increasing drug costs, and the economic distortions they imply, have led researchers to consider alternative mechanisms for financing drug research. This paper outlines some of the key issues in evaluating patents and other mechanisms for financing prescription drug research. It then assesses how four proposed alternatives to the patent system perform by these criteria.

The most obvious problem stemming from patent protection for prescription drugs is the huge gap it creates between the cost of producing drugs and the price. In addition, to making drugs unaffordable in many cases, high drug prices also lead to enormous economic inefficiency.

Patent monopolies cause economic distortions in the same way that trade tariffs or quotas lead to economic distortions, but the size of the distortions are far greater. While trade barriers rarely increase prices by more than 10 to 20 percent, drug patents increase prices by an average of 300–400 percent above the competitive market price, and in some cases the increase is more than 1000 percent. Simple calculations suggest that the deadweight efficiency losses from patent protection are roughly comparable in size to the amount of research currently supported by the patent system—approximately $25 billion in 2004. Projections of rapidly rising research costs, and therefore a growing gap between price and marginal cost, imply that the deadweight loss due to drug patents will exceed $100 billion a year by 2013.

As economic theory predicts, government granted patent monopolies lead not only to deadweight efficiency losses due to the gap between the patent protected price and the competitive market price, but also to a variety of other distortions. Among these distortions are:

(1) Excessive marketing expenses, as firms seek to pursue the monopoly profits associated with patent protection—data from the industry suggests that marketing costs are currently comparable to the amount of money spent on research; (2) wasted research spending into duplicative drugs—industry data indicates that roughly two thirds of research spending goes to developing duplicative drugs rather than drugs that represent qualitative breakthroughs over existing drugs; (3) the neglect of research that is not likely to lead to patentable drugs; (4) concealing research findings in ways that impede the progress of research, and prevent the medical profession and the public from becoming aware of evidence that some drugs may not be effective, or could even be harmful.

In addition, the patent system for financing prescription drug research poses large and growing problems in an international context. Disputes over patent rules have increasingly dominated trade negotiations. Furthermore, problems of enforcement have persisted even after agreements have been reached. These problems are likely to worsen through time, as the pharmaceutical industry seeks to increase the amount of money it extracts from other countries through patent rents.

This paper examines four alternatives to the patent system:

(1) A proposal by Tim Hubbard and James Love for a mandatory employer-based research fee to be distributed through intermediaries to researchers (Love 2003); (2) A proposal by Aidan Hollis for zero-cost compulsory licensing patents, in which the patent holder is compensated based on the rated quality of life improvement generated by the drug, and the extent of its use (Hollis 2004); (3) A proposal by Michael Kremer for an auction system in which the government purchases most drug patents and places them in the public domain (Kremer 1998); and (4) A proposal by Representative Dennis Kucinich to finance pharmaceutical research through a set of competing publicly supported research centers (Kucinich 2004).

All four of these proposals finance prescription drugs in ways that allow most drugs to be sold in a competitive market, without patent monopolies. These proposals also would eliminate many of the economic distortions created by the patent system.

These proposals, along with other plausible alternatives to the patent system, deserve serious consideration. Current projections for drug spending imply that patent supported prescription drug research will lead to ever larger distortions through time. For this reason, it is important to consciously select the best system for financing prescription drug research, not to just accept the patent system due to inertia.

HONORING ANN LOWRY MURPHEY

HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 8, 2005

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Ann Lowry Murphey, a tireless public servant who lost her struggle with cancer last month.

Ann truly left no stone unturned in her quest to improve the Tampa Bay community. She energetically led a host of charitable and community organizations, and in attempting to highlight Ann's causes, any tribute will inevitably fail to recognize all of her contributions.

A faithful servant of God, Ann was a longtime parishioner and member of the vestry of St. John's Episcopal Church. A supporter of the arts, Ann was active with The Tampa Philharmonic and The Museum Society at the University of Tampa. As a successful businesswoman, she served on the board of First Citizens Bank and Barnett Bank of Tampa and as Vice President of Murphey Capital. Ann worked on the Judicial Nominating Commission for the 13th Circuit and was on the board of governors of the Greater Tampa Chamber of Commerce. And Ann never just participated in any activities—she was a supreme doer and always a leader.

Throughout her years, she was president and Sustainer of the Year of The Junior League of Tampa, president of the Lowry Family Foundation and served on the board of directors for The H. Lee Moffitt Cancer Center & Research Institute. And in 1992, for all her hard work, the Tampa Civitan Club gave her the Citizen of the Year Award.

But above all these contributions, Ann will be best remembered for her work on behalf of children—in particular, her efforts to transform The Children's Home. Whether she was serving as the organization's president of the board of directors, chairwoman of the board of trustees, associate director or director of development, Ann was constantly working not only to improve the quality of care that The Children's Home provides, but also to spend as much time as she could with the children who depend on these services. For all her efforts, it was fitting that last year Voices for Children chose Ann as the first recipient of its Guardian Angel Award.

Through all her work, Ann was an unstoppable, passionate force for change. There were no bounds to her compassion and generosity. She was truly a blessing to the whole community.

On behalf of all of those who benefited so greatly from her tireless efforts, I would like to extend my deepest sympathies to Ann's loved ones. Ann shared so much with us. We can only try to follow in her footsteps and do our best to live up to her very high standards.

HONORING MS. BETTY B. MICHALIGA

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 8, 2005

Mr. MORAN of Virginia. Mr. Speaker, I rise today to honor Ms. Betty B. Michaliga, a resident of Virginia's 8th Congressional District

that I am proud to represent. Ms. Michaliga has contributed greatly to our high quality of life in Northern Virginia. Specifically, she has distinguished herself with exceptionally meritorious achievements in public service to this Nation by serving the United States Army for over thirty-four years.

In 1971, Ms. Michaliga began her superior career as a United States Army Civil Service employee in the Headquarters, United States Army Corps of Engineers. Because of her demonstrated abilities, she moved in 1983 to the Army Secretariat in the Office of the Deputy Assistant Secretary of the Army (Installations and Housing), Assistant Secretary of the Army (Installations and Environment). Currently Ms. Michaliga is a Program Analyst responsible for developing and monitoring the legislative process and Congressional reporting requirements for Army installations.

Throughout her career, Ms. Michaliga has provided outstanding advice, and sound professional judgment on significant issues that affected both the Army and the Congress. Her actions and counsel were invaluable to Army leaders as they considered the impact of important issues, and her dedication to accomplishing the Army's mission has been extraordinary. Mr. Speaker, Ms. Michaliga has been a truly outstanding career civil servant and will be missed by the United States Army.

THE PATENT ACT OF 2005

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 8, 2005

Mr. BERMAN. Mr. Speaker, today I join Representative SMITH (TX), BOUCHER, GOODLATTE, LOFGREN and SCHIFF in introducing the Patent Act of 2005 (PA Act). Introduction of this legislation follows the acknowledgment by multiple sources that the current patent system is flawed. The release of the Patent and Trademark Office's Twenty-First Century Strategic Plan, the Federal Trade Commission's report entitled ''To Promote Innovation: the Proper Balance of Competition and Patent Law and Policy,'' the National Research Council's compilation of articles ''A Patent System for the 21st Century'' and an economic analysis of patent law in a book titled Innovation and Its Discontents all speak to the challenges facing the patent system today. These accounts make a number of recommendations for increasing patent quality and ensuring that patent protection promotes, rather than inhibits, economic growth and scientific progress. Consistent with the goals and recommendations of those reports, the PA Act contains a number of provisions designed to improve patent quality, deter abusive practices by unscrupulous patent holders, and provide meaningful, low-cost alternatives to litigation for challenging the patent validity. Additionally, the PA Act begins to harmonize U.S. patent law with those of foreign countries.

I firmly believe that robust patent protection promotes innovation. However, I also believe that the patent system is strongest, and that incentives for innovation are greatest, when patents protect only those patents that are truly inventive. When functioning properly, the patent system should encourage and enable inventors to push the boundaries of knowledge and possibility. If the patent system allows questionable patents to issue and does not provide adequate safeguards against patent abuses, the system may stifle innovation and interfere with competitive market forces.

This bill represents our latest perspectives in an ongoing discussion about legislative solutions to patent quality concerns, patent litigation abuses and patent harmonization. We have considered the multitude of comments received on prior patent bills as well as the more recent subcommittee print. We acknowledge that the problems are difficult and, as yet, without agreed-upon solutions. It is clear, however, that introduction of this legislation will focus and advance the discussion. It is also clear that the problems with the patent system have been exacerbated by a decrease in patent quality and an increase in litigation abuses. With or without consensus, Congress must act soon to address these problems.

Thus, we introduce this bill in the beginning of this Congress with the intent of framing the debate and with every intention of passing legislation in the 109th Congress.

The bill contains a number of initiatives designed to improve patent quality, limit litigation abuses, and harmonize U.S. patent law with those of foreign countries, thereby ensuring that patents are positive forces in the marketplace. I will highlight a number of them below.

Section 3 alters the conditions for patentability. Currently, the U.S. grants patents to whomever is ''first to invent.'' The bill amends this standard so that the ''first inventor to file'' is entitled to the ownership of a patent. This distinction encourages inventors to file immediately, enabling the invention to enter the public realm more quickly. Additionally, this modification will bring U.S. patent laws into harmony with the patent law in many foreign countries.

Section 6 addresses the unfair incentives currently existing for patent holders who indiscriminately issue licensing letters. Patent holders frequently assert that another party is using a patented invention and for a fee, offer to grant a license for such use. Current law does little to dissuade patent holders from mailing such licensing letters. Frequently these letters are vague and fail to identify the patent being infringed and the manner of infringement. In fact, the law tacitly promotes this strategy since a recipient, upon notice of the letter, may be liable for treble damages as a willful infringer. Section 6 addresses this situation by ensuring that recipients of licensing letters will not be exposed to liability for willful infringement unless the letter specifically states the acts of infringement and identifies each particular claim and each product that the patent owners believes have been infringed.

Section 7 is designed to address the negative effect on innovation created by patent ''trolls.'' We have learned of countless situations in which patent holders, making no effort to commercialize their inventions, lurk in the shadows until another party has invested substantial resources in a business or product that may infringe on the unutilized invention. The patent troll then steps out of the shadows and demands that the alleged infringer pay a significant licensing fee to avoid an infringement suit. The alleged infringer often feels compelled to pay almost any price named by the patent troll because, under current law, a permanent injunction issues automatically upon a finding of infringement. Issuance of a permanent injunction would, in turn, cause the alleged infringer to lose the substantial investment made in the allegedly infringing business or product.

While we may question their motives, we do not question the right of patent trolls to sue for patent infringement, obtain damages, and seek a permanent injunction. However, the issuance of a permanent injunction should not be granted automatically upon a finding of infringement. Rather, when deciding whether to issue a permanent injunction, courts should weigh all the equities, including for example, the ''unclean hands'' of the patent trolls, the failure to commercialize the patented invention, the social utility of the infringing activity, and the loss of invested resources by the infringer. After weighing the equities, the court may still decide to issue a permanent injunction, but at least the court will have ensured that the injunction serves the public interest. Section 7 accomplishes this goal.

Section 8 allows the Director of the USPTO to establish regulations limiting the circumstances under which a patent applicant may file a continuation application. Unfortunately, current practice guiding continuation applications is prone to abuse. There are limited restrictions specifying the circumstances under which an applicant can broaden the claims described in the patent application and still retain the original filing date. This practice may enable the applicant to claim the priority rights to another's invention by appropriating that new invention as an expansion of the claims in the original application. By authorizing the Director to change current policy on continuation applications, the bill tasks the PTO with tackling current abuses in the application process.

Section 9 creates a post-grant opposition procedure. In certain limited circumstances, opposition allows parties to challenge a granted patent through an expeditious and less costly alternative to litigation. In addition, Section 9 provides a severely needed fix for the inter partes re-examination procedure, which provides third parties a limited opportunity to request that the PTO Director re-examine an issued patent. The current limitations on the inter partes re-examination process restricts its utility so drastically that it has been employed only a handful of times. Section 9 increases the utility of this re-examination process by relaxing its estoppel provisions. Further, it expands the scope of the re-examination procedure to include redress for all patent applications regardless of when filed.

Section 10 permits patent examiners, to consider certain materials within a limited time frame submitted by third parties regarding a pending patent application. Allowing such third party submissions will increase the likelihood that examiners are cognizant of the most relevant ''prior art,'' thereby constituting a front-end solution for strengthening patent quality.

Other provisions include an expansion of prior user rights, publication of all application at 18 months, limitation on the calculation of damages to the value of the invention, and changes to the duty of candor defense and elimination of the best mode requirement.

When considering these provisions together, we believe that this bill provides the comprehensive reform necessary for the patent system to achieve its primary goal of promoting innovation.

The Chairman of the Subcommittee on Courts, the Internet and Intellectual Property,