

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,

Mr. SMITH, deserves credit for bringing these issues to the forefront through numerous hearings on patent quality. In addition, I would especially like to thank Congressman BOUCHER with whom I have been working on patent reform for the past few years. Also deserving of thanks are the many constitutional scholars, policy advocates, private parties, and government agencies that continue to contribute their time, thoughts, and drafting talents to this effort. I am pleased that, finally, at least a consensus has emerged among the various collaborators in support of the basic "post grant opposition" approach embodied in the legislation. This bill is the latest iteration of a process we started over four years ago.

Though we developed this bill in a highly collaborative and deliberative manner, I do not want to suggest that it is a "perfect" solution. Thus, I remain open to suggestions for amending the language to improve its efficacy or rectify any unintended consequences.

As I have said previously, "The bottom line in this: there should be no question that the U.S. patent system produces high quality patents. Since questions have been raised about whether this is the case, the responsibility of Congress is to take a close look at the functioning of the patent system." High patent quality is essential to continued innovation. Litigation abuses, especially those which thrive on low quality patents, impede the promotion of the progress of science and the useful arts. Thus, we must act during the 109th Congress to maintain the integrity of the patent system.

#### PERSONAL EXPLANATION

### HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 8, 2005*

Mr. KENNEDY of Rhode Island. Mr. Speaker, on the evening of June 7, I missed 3 roll-call votes.

It was my intention to vote: "yes" on rollcall No. 228, H. Con. Res. 44—Recognizing the historical significance of the Mexican holiday of Cinco de Mayo; "yes" on rollcall No. 229, H. Res. 282—Expressing the sense of the House of Representatives regarding manifestations of anti-Semitism by United Nations member states and urging action against anti-Semitism by United Nations officials, United Nations member states, and the Government of the United States.

#### INTRODUCTION OF CANCER SCREENING ACT

### HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 8, 2005*

Mrs. MALONEY. Mr. Speaker, today I am reintroducing the Cancer Screening Coverage Act, a bill that will ensure that a greater number of Americans are covered for breast, cervical, prostate, and colorectal cancer screening. This legislation will increase the access to cancer screening exams for patients of private insurance and the Federal Employees Health Benefits plan.

Cancer is the second leading cause of death among Americans. According to the

American Cancer Society, more than 1,500 Americans die of cancer everyday. Cancer screening allows for the detection of cancer in its earliest form, when the cost of treatment is the least.

Many advances have been made, but the key to survival is early detection. It is estimated that the rate of survival would increase from 80 percent to 95 percent if all Americans participated in regular cancer screening. By providing increased access to screening procedures, the Cancer Screening Coverage Act would help save the lives of many Americans from this deadly disease.

#### REGARDING JOYCE McMILLIN AND HER LEGACY TO THE TRI-CITIES COMMUNITY

### HON. DOC HASTINGS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 8, 2005*

Mr. HASTINGS of Washington. Mr. Speaker, I rise today to pay tribute to Joyce McMillin, a constituent of mine who dedicated so much of her time and energy to honoring the brave men and women who have served our Nation in uniform. Honoring our veterans was a priority for Joyce—as it should be for all Americans.

Along with her husband Tom, who himself is a veteran of the Korean War, Joyce made it one of her final missions in life to create a memorial to those who have fought to protect our Nation. It is because of her vision, hard work and perseverance that the Regional Veterans Memorial now stands in Kennewick's Columbia Park.

Creating the Regional Veterans Memorial was not an easy process. After coming up with the idea, Joyce and Tom had to sell their vision to the community, secure a location and raise the funds necessary to build it.

Tragically, Joyce lost her battle with cancer shortly before the Regional Veterans Memorial ribbon cutting ceremony, which she had organized. I recently had the opportunity to visit the Memorial, and it is an impressive and fitting monument to American soldiers—past and present. It is a special place for current and future generations to reflect on the sacrifices made by those who have served in our Armed Forces. This Memorial is truly Joyce McMillin's legacy to the Tri-Cities. Our community is a better place because of her.

I would like to conclude by noting how proud I am to live in a community that is so committed to our veterans. I commend the McMillin family, the Tri-Cities Memorial Committee and everyone who helped make the new Regional Veterans Memorial a reality.

#### RECOGNIZING THE IMPORTANCE OF SUN SAFETY

SPEECH OF

### HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, June 7, 2005*

Ms. ESHOO. Madam Speaker, I'm proud to be an original cosponsor of H. Res. 196, which encourages the importance of sun safe-

ty and supports the designation of June 5th to June 11th as Sun Safety Week.

Skin cancer is the most commonly occurring cancer in the U.S. and 90 percent of all skin cancers can be attributed to the sun. This year it's estimated that there will be 1.3 million skin cancer cases in the U.S., exceeding the number of breast, lung, prostate and colon cancers combined.

More alarming is that 50 percent of lifetime exposure to UV light occurs during childhood and adolescence, and it can take less than 10 minutes for a child's skin to burn. Failing to take appropriate steps such as using sunscreen, wearing protective clothing, and limiting sun exposure can have serious and deadly consequences, especially for children. Practicing sun safe behaviors during childhood is the first step in reducing the chances of getting skin cancer later in life.

A new survey released on Monday by the nonprofit Sun Safety Alliance shows a 12-point decline in the percentage of Americans who report using sunscreen when outdoors, from 72 percent to 60 percent.

H. Res. 169 recognizes that skin cancer is highly preventable and urges parents to practice good sun safety for their children, which will dramatically reduce its risk.

I urge the entire House to vote yes on this important Resolution.

#### RECOGNIZING LIVE OAK HIGH SCHOOL ORCHESTRA

### HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 8, 2005*

Ms. ZOE LOFGREN of California. Mr. Speaker, I rise today to recognize the Live Oak High School orchestra for its award of Best Student Orchestra in the 11th annual High School Music Theatre HONORS awards in San Jose.

This year, over 25 Bay Area High Schools competed in 10 unique categories. Judges from the American Musical Theatre were sent to each school to watch and evaluate performances. Judges were instructed to evaluate the 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.

The Live Oak High School Orchestra is conducted by Greg Bergantz. Live Oak High School won the Best Student Orchestra award for its performance 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 program's 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 the Live Oak High School orchestra for its accomplishments. I urge all students to continue to take interest in the performing arts.