

the fact that they employ nearly 40 percent of America's scientists and engineers, produce more than 14 times more patents than large businesses and universities, and produce patents that are of higher quality and are more than twice as likely to be cited. Unlike large businesses, which tend to focus more on improving existing product lines, and university research, which leans toward education and publications, America's small businesses and entrepreneurs are the ones willing to take on the high-risk, high-reward research that truly drives innovation.

The SBIR and STTR programs are two of the very few Federal programs that tap into the scientific and technical community found in America's small businesses. These programs foster government-industry partnerships by making competitive awards to firms with the best scientific proposals in response to the research needs of our agencies and by helping to move technologies from the lab to the marketplace or from the lab to insertion in a government program or system.

Since the inception of the SBIR program in 1982, recipients of SBIR and STTR awards have gone on to produce more than 84,000 patents and to generate millions of well-paying jobs across all 50 States. Both programs have garnered high praise from well-respected sources, including from the National Academy of Sciences, which completed its comprehensive assessment of SBIR last year. Governments around the world are increasingly adopting SBIR-type programs to encourage innovation in their countries.

Among the technologies pioneered by SBIR-funded small businesses are a machine that uses lasers and computer cameras to sort and inspect bullets at a much finer level than the human eye can manage, the technology that creates the "invisible" condensation trail of the B-2 bomber, a therapeutic drug to treat chronic inflammatory disease, and a nerve gas protection system. With regard to the bullet sorting technology, developed by CyberNet Systems, a small, women-owned business located in Ann Arbor, MI, and currently in use in Iraq and Afghanistan, that SBIR technology is estimated to have saved taxpayers more than \$300 million. Those are real cost savings and tangible technological improvements and we could have more such technologies if we increased the SBIR and STTR allocations, as the legislation that passed Committee proposed to do.

S. 3362 is the result of much deliberation and compromise and reflects a truly bipartisan effort to strengthen and improve the SBIR and STTR programs. I am proud that Senator SNOWE, Senator BOND, myself, and others were able to come together to reach agreement on a number of very difficult issues, including on the involvement of firms majority-owned and controlled by multiple venture capital companies in the SBIR program, and that we

unanimously passed this legislation out of committee. And as I said at the start of my remarks, I am also proud that we were able to resolve our differences with the administration to craft a bill that would keep these programs going strong.

It is truly a shame that one Republican in this Chamber has blocked this bill from passing, and that all of the effort and all of the compromises that went into getting the legislation to this point will be lost. I ask my colleagues to be aware that the SBIR program is temporarily authorized through March 20, 2009, that the STTR program expires on September 30, 2009, and that we should act fast in the new year to extend or comprehensively authorize these programs to help keep our country ahead in technology.

#### INTEREST ON LAWYERS' TRUST ACCOUNT PROGRAM

Mr. LEAHY. Mr. President, last week, I joined Senator CARDIN and Senators SPECTER, and others in sending a letter to the Federal Deposit Insurance Corporation, FDIC, in an effort to preserve the viability of the Interest on Lawyers' Trust Account program, IOLTA. We have asked the FDIC to ensure that the Transaction Account Guarantee Program, TGLP, through which the FDIC guarantees funds in bank accounts, will also cover lawyer trust accounts. The IOLTA program, which distributes interest on client funds held in lawyer trust accounts to legal aid programs, has been an enormous success in securing legal representation for lower-income Americans. All 50 States have IOLTA programs, and many States mandate participation by practicing attorneys. This program provides funding to important legal aid programs and helps ensure that no person goes without legal representation because of a lack of resources.

Our concern stems from the fact that the TGLP Interim Rule concerning account insurance issued on October 23 would not extend unlimited FDIC insurance to interest bearing lawyer trust accounts, ultimately hurting the public benefit generated by these accounts. According to the FDIC's proposed rules for the TGLP, noninterest-bearing accounts would be insured to protect an unlimited amount of funds. But the insurance for interest-bearing accounts would be limited to \$250,000. The lack of an exception for lawyer trust accounts threatens the IOLTA program because it poses a potential conflict for attorneys. Many lawyer trust accounts contain pooled client funds, often in excess of \$250,000. As a result of the FDIC's proposed rules, there is legitimate concern that attorneys would move client funds in excess of \$250,000 to noninterest-bearing accounts in order to gain the insurance protection, and in an effort to manage client funds as responsibly as possible. This potential ethical dilemma could

be prevented by a modification of the proposed rules.

Senator CARDIN, Senator SPECTER, and I have suggested to the FDIC that it modify its proposed rules to make an exception for lawyer trust accounts and provide unlimited insurance on interest bearing accounts containing client funds. This would be an important step towards preserving the success of the IOLTA program, and would remove any potential ethical dilemma for attorneys. Such a modification would ensure that the interest generated by IOLTA accounts continues to be distributed through local nonprofit organizations in each State to fund invaluable legal aid services for low-income families.

I am hopeful that the FDIC will recognize the national importance and success of this program, and will create the exception we have proposed. I would like to particularly thank the Vermont Bar Association for its advocacy in this regard, as well as the American Bar Association for its attention to this issue. Legal representation for everyone is an imperative for a fair and effective judicial system. The IOLTA program has been successful in helping to ensure legal representation for more Americans, and where these goals can be accomplished without the use of tax dollars, such a program should be preserved.

#### REMEMBERING COLONEL JOHN W. RIPLEY

Mr. LEAHY. Mr. President, I regret to have to inform the Senate of the passing of a truly great American: John W. Ripley, a retired Marine Corps colonel and hero of the Vietnam war.

Colonel Ripley will be best known for his achievements and self-sacrifice during the Vietnam war—particularly on April 2, 1972, when he singlehandedly blew up the Dong Ha bridge. That bridge over the Cua Viet River was a major thoroughfare for an invasion force from North Vietnam. Colonel Ripley, serving with a marine unit from South Vietnam, moved around the bridge like it was a trapeze and hung charges that would blow it up and prevent the enemy's advance.

That story is the subject of innumerable books and articles. It is an absolutely incredible feat, showing us how an act of individual bravery can have a large strategic impact that affects an entire force. Indeed, the removal of that bridge created a bottleneck that allowed allied forces to apply overwhelming air power and blunt that invasion.

After Vietnam, Colonel Ripley had a distinguished career that included going through some of the most challenging training programs among the world's militaries, including U.S. Army Ranger School. In his willingness to undergo the arduous of combat and training, he emerged a marine's marine, a steely and strong individual always ready to put his country and his fellow marines before himself.

John Ripley is a symbol for the vibrancy of the Marine Corps, one of the most storied military forces in the globe's history, and a testament to how—amid the enormity and vast confusion of war—a single person can make a difference.

I will miss seeing him at various events, including those of the Marine Corps Law Enforcement Foundation. We will continue to honor his service through support of the Marine Corps and of all of our soldiers, sailors, airmen, and marines.

I ask unanimous consent that an obituary on Colonel Ripley, which appeared in the November 4 edition of the *New York Times*, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the *New York Times*, Nov. 4, 2008]

COL. JOHN W. RIPLEY, MARINE WHO HALTED  
VIETNAMESE ATTACK, DIES AT 69

(By Dennis Hevesi)

John W. Ripley, a highly decorated former colonel who entered Marine Corps lore when he single-handedly blunted a major North Vietnamese offensive during the Vietnam War by blowing up a strategically placed bridge, died Oct. 28 at his home in Annapolis, Md. He was 69.

The cause has not been determined, his son Stephen said.

Colonel Ripley, who at the time was a captain and a military adviser to a South Vietnamese Marine unit, blew up the southern end of the Dong Ha Bridge over the Cua Viet River on Easter Sunday, April 2, 1972. On the north side of the bridge, which was several miles south of the demilitarized zone, some 20,000 North Vietnamese troops and 200 tanks were poised to sweep into Quang Tri Province, which was sparsely defended.

Going back and forth for three hours while under fire, Captain Ripley swung hand over hand along the steel I-beams beneath the bridge, securing himself between girders and placing crates holding a total of 500 pounds of TNT in a diagonal line from one side of the structure to the other. The I-beam wings were just wide enough to form pathways along which he could slide the boxes.

When the boxes were in place on the bridge, Captain Ripley attached blasting caps to detonate the TNT, then connected them with a timed-fuse cord that eventually extended hundreds of feet.

"He had to bite down on the blasting caps to attach them to the fuses," John Grider Miller, author of *"The Bridge at Dong Ha,"* said on Monday. "If he bit too low on the blasting cap, it could come loose; if he bit too high, it could blow his head apart."

Captain Ripley bit safely, and the timed-fuse cord gave him about half an hour to clamber off the bridge. Moments later, his work paid off with a shock wave that tossed him into the air but otherwise left him unharmed.

By placing the crates diagonally along the bridge, Mr. Miller said, Captain Ripley had created "a twisting motion that ripped the bridge apart from its moorings so it couldn't fall back in place, but collapsed into the river."

There were about 600 South Vietnamese marines near the south end of the bridge. "South Vietnam would have been in big trouble," said Fred Schultz, senior editor of *Naval History Magazine*, a publication of the United States Naval Institute. "The force numbers defending on that side could not

have held against that North Vietnamese force."

The destruction of the bridge created a bottleneck for the North Vietnamese, allowing American bombers to blunt what became known as the Easter offensive.

Captain Ripley was awarded the Navy Cross for his actions at the bridge. He served two tours in Vietnam and remained on active duty until 1992, eventually rising to colonel. Among other decorations, he received the Silver Star, two Bronze Stars and a Purple Heart.

John Walter Ripley was born on June 29, 1939, and grew up in Radford, Va., the son of Bud and Verna Holt Ripley. He enlisted in the Marines out of high school in 1956, and a year later received approval from the secretary of the Navy to attend a preparatory school leading to his appointment to the Naval Academy, from which he graduated in 1962.

Besides his son Stephen, Colonel Ripley is survived by his wife of 44 years, the former Moline Blaylock; a sister, Susan Goodykoontz; two other sons, Thomas and John; a daughter, Mary Ripley; and eight grandchildren.

"Colonel Ripley is well known in marine circles," Mr. Schultz said, "but he's the most revered war hero no one's ever heard of."

"This was 1972," he added, "and people didn't pay too much attention to war heroes at that time."

#### INTELLECTUAL PROPERTY RIGHTS CHALLENGES

Mr. LEAHY. Mr. President, I have long been a champion of the intellectual property rights enshrined in the Constitution, and have sponsored much of the significant legislation in that realm over the decades I have served in the Senate. On October 24, 2008, Judge Richard Linn of the Court of Appeals for the Federal Circuit, the court entrusted exclusively with Federal appeals involving patent issues, gave the keynote address before the American Intellectual Property Law Association's annual meeting. In that address, Judge Linn discusses the challenges facing the intellectual property system in the coming years, offers advice on moving forward as a nation to meet those challenges, and provides food for thought for anyone interested in this important part of our national economy.

I ask unanimous consent that the statement of Judge Richard Linn from October 24, 2008, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### CHALLENGES AHEAD

I would like to thank the AIPLA for the invitation to speak before you today. I am truly honored to speak before the AIPLA, an organization I have belonged to since the late 60's. I see in the audience many of my friends and former colleagues of the patent bar. I feel very much at home here, and it is nice to be asked to speak before this distinguished group.

Before I begin, I would like to take a moment to personally recognize someone who has played a unique role in the progress of the U.S. patent system for over 40 years, someone who has led this organization for the past decade and a half, someone who has

been a special friend to so many of us, and someone who is now moving on to a well deserved retirement—Mike Kirk. Please join me in a round of applause to show our appreciation for Mike and all that he has done.

We all know that Mike has done some very special things for the AIPLA. But the best thing he did was to bring his wife, Mary Catherine, into our AIPLA family. I think she, too, deserves to be recognized for all she has done.

One measure of a leader is the caliber of the person selected to replace him. And here again, the AIPLA has risen to the challenge of Mike Kirk's departure in selecting one of the few members of our profession who has the character, knowledge, and recognized leadership skills to honor Mike's legacy of accomplishment. That person is, of course, Q. Todd Dickenson, and I think he deserves a vote of confidence with a round of applause.

The program lists my topic as "Challenges Ahead." I selected that topic intentionally to give me lots of latitude in what I might say. If that phrase was a limitation in a patent claim, the meaning would be hard to discern with specificity and no doubt would generate considerable litigation. In a way, it's the perfect topic. So, what is it that I am going to talk about?

John Whealan yesterday focused on recent history and ended with a few comments on the future. Instead, I will focus on some of the challenges I see for the future and will begin with a few comments on the changes of the recent past.

We hear a lot about change these days. Change in our economy, global climate change, and of course, change in our government. Change has been in the air for some time. It seems like the only thing we have heard, or seen, or read in the media for the past 20 months or so has been about change. And intellectual property law has been no stranger to it in the past few years. While one can debate the extent of the changes and the reasons underlying them, there is no question that the rights of patentees have been impacted in one way or the other by a number of recent decisions. And while the pace of change may slow down at least for a while, the fallout of all of this change will directly impact all of us. This is evident, for example, from an examination of three key decisions: *KSR v. Teleflex*, dealing with the test for obviousness; *eBay v. MercExchange*, dealing with the test for injunctive relief; and *In re Seagate*, dealing with the standard applicable to prove willful infringement. There have been others, such as *MedImmune v. Genentech*, which made it easier to challenge patents in declaratory judgment actions, and *DSU v. JMS*, requiring proof of specific intent for induced infringement, but I will limit my remarks to the holdings and possible implications of *KSR*, *eBay*, and *Seagate*.

In *KSR*, the Supreme Court reviewed the test for obviousness under 35 U.S.C. §103. The Supreme Court began by emphasizing that its 1966 decision in *Graham v. John Deere* informed the obviousness inquiry. It went on to reject what it perceived to be a rigid approach taken by our court in applying the teaching, suggestion and motivation test. The Supreme Court observed that "when it first established the requirement of demonstrating a teaching, suggestion, or motivation to combine known elements in order to show that the combination is obvious, the Court of Customs and Patent Appeals captured a helpful insight." It then noted, however, that helpful insights need not become rigid and mandatory formulas, and "when a court transforms a general principle into a rigid rule that limits the obviousness inquiry, as the Court of Appeals did here, it errs."