EXTENSIONS OF REMARKS

PERSONAL EXPLANATION

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 31, 2012

Mr. VISCLOSKY. Mr. Speaker, on December 30, 2012, I was absent from the House and missed rollcall votes 649, 650, and 651.

Had I been present for rollcall vote 649, on the motion to suspend the rules and pass, as amended, H.R. 3159, the Foreign Aid Transparency and Accountability Act, I would have voted ''yes.''

Had I been present for rollcall vote 650, on the motion to suspend the rules and concur in the Senate Amendment to H.R. 4057, to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to develop a comprehensive policy to improve outreach and transparency to veterans and members of the Armed Forces through the provision of information on institutions of higher learning, I would have voted ''yes.''

Had I been present for rollcall vote 651, on the motion to suspend the rules and pass S. 3203, the Dignified Burial and Other Veterans' Benefits Improvement Act, I would have voted ''yes.''

HONORING THE REPUBLIC OF CYPRUS

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, December 31, 2012

Mr. ROTHMAN of New Jersey. Mr. Speaker, I rise today to honor the Republic of Cyprus as it finishes out its first rotation of the European Union Presidency. For a small country like Cyprus, this is a significant event in their history and I want to recognize one of their Presidency's major accomplishments.

I would like to thank Cyprus for successfully overseeing the implementation of new European Union sanctions that were imposed on Iran to target their nuclear and ballistic missile program. Iran continues to be a threat to the United States, Europe, and our closest ally in the Middle East—the Jewish State of Israel. These sanctions will go a long way towards ensuring further stability in the Middle East and helping Israel to maintain its security. These are the toughest sanctions yet to be imposed by the EU and I believe they will work in concert with those imposed by the U.S. Congress. Again, I'd like to congratulate the Republic of Cyprus for its oversight of this implementation and overall for a successful first rotation as EU President.

PERSONAL EXPLANATION

HON. JIM GERLACH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 31, 2012

Mr. GERLACH. Mr. Speaker, on December 30, 2012, I unfortunately missed three recorded votes on the House floor. Had I been present, I would have voted AYE on Rollcall 649, AYE on Rollcall 650, and AYE on Rollcall 651.

COMPETITIVENESS AND ADVANCED MANUFACTURING

HON. HANSEN CLARKE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, December 31, 2012

Mr. CLARKE of Michigan. Mr. Speaker, after decades of decline, American manufacturing is now on the rebound. The United States created nearly half a million manufacturing jobs between 2010 and 2012. This recovery is critical for cities like my hometown of Detroit and for America's economy as a whole, but sustaining it will require coordinated comprehensive action.

Thankfully, the nation can count on inspired and visionary leadership from both the public and private sectors to sustain the development of advanced manufacturing industries that create high-quality exports and well-paying jobs.

I commend President Obama's commitment to creating a million new manufacturing jobs by 2016 through new investments in technological research and development as well as sensible policies like the elimination of tax deductions for companies that outsource manufacturing overseas. I also commend important private sector voices who are leading the way to America's manufacturing renaissance.

Andrew Liveris, the head of Dow Chemical and author of Make It in America: The Case for Re-Inventing the Economy has argued persuasively for a new national economic strategy that rests on a range of innovative ideas. In particular, he calls for a more coherent and comprehensive approach to national energy policy and greater reliance on alternative energy sources. This is essential because the cost and volatility of traditional energy sources like imported oil are a major drag on the nation's industrial productivity. Mr. Liveris additionally calls for new investments in workers' skills in order to boost the nation's productivity and guarantee world-class living standards. An intellectual leader and prominent figure in American business, Mr. Liveris and his proposals should command respect and attention across the political spectrum.

The Council on Competitiveness—a nonprofit non-partisan coalition composed of CEOs, labor leaders, and university presidents—has likewise developed a vital and comprehensive proposal to spur American economic renewal. Their new report, ''A Clarion Call for Competitiveness,'' is a roadmap for Congress and the Administration to boost manufacturing and create well-paying jobs in the decades ahead. Among other recommendations, the Council urges federal leaders to double investments in technological research, increase efforts to commercialize America's scientific discoveries, strengthen apprenticeship programs for advanced manufacturing, speed-up the development of manufacturing ''clusters'' built around leading research centers around the nation, and ensure the quality of America's roads, bridges, and digital connections by authorizing the Export-Import Bank to fund domestic infrastructure projects.

These ideas—which come from both Democrats and Republicans and both private and public sectors—are unique in today's civic debate for a simple reason: they offer hope. I call on Congress to implement these innovative proposals in the 113th Congress for the sake of our workers, our businesses, and our nation's long-term economic future.

TRIBUTE TO RETIRED REAR ADMIRAL JAMES LLOYD ABBOT, JR.

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 31, 2012

Mr. BONNER. Mr. Speaker, I rise to pay tribute to the devoted service and the remarkable life of an American patriot and a great Alabamian, retired Rear Admiral James Lloyd Abbot, Jr., who passed away on August 10, 2012, at the age of 94.

A distinguished World War II veteran, a much-decorated Naval officer and leader in American exploration of Antarctica, James Lloyd Abbot, Jr., was born in Mobile on June 26, 1918. He attended Murphy High School, Spring Hill College and the U.S. Naval Academy. He graduated and was commissioned Ensign on June 1, 1939.

In 1939, he first reported for duty aboard the aircraft carrier USS Enterprise (CV–6), later transferring to the destroyer USS Gilmer (DD–233). In 1943, he assumed command of Scouting Squadron 66 and was awarded the Air Medal for meritorious achievement in action against enemy Japanese forces in the vicinity of the Gilbert and Marshall Islands from November 1943 through January 1944.

In May 1961, he became Commanding Officer of the USS Intrepid (CVA–11), which, under his command, won the Air Force, Atlantic Fleet Battle Efficiency Pennant for the fiscal year 1962. Under his command, the USS Intrepid was the recovery ship for Astronaut Scott Carpenter after his 3-orbit flight in May 1962.

In February 1967, shortly before advancing in rank to Rear Admiral, he assumed command of the U.S. Naval Support Force, Antarctica; charged with the responsibility of insuring the success and safety of all United

States operations on that continent. Under his command the first oceanographic study was conducted far into the ice-covered Weddell Sea. Furthermore, Palmer Station, which was successfully completed and opened by Rear Admiral Abbot on schedule in 1968, was the first permanent United States presence in the Antarctica Peninsula. The Abbot Ice Shelf in Antarctica was named in his honor.

His exemplary service, spanning nearly four decades, garnered him many medals commendations. In addition to the Legion of Merit with Gold Star, the Air Medal and the Navy Commendation Medal, Rear Admiral Abbot was awarded the American Defense Service Medal; American Campaign Medal; Asiatic-Pacific Campaign Medal; World War II Victory Medal; Navy Occupation Service Medal, Europe Clasp; the National Defense Service Medal with bronze star; and the Antarctica Service Medal.

After his retirement from the Navy in 1974, he returned to an active life in Mobile where he was a member of the USS Alabama Battleship Commission and Foundation and served on the Mobile Area Chamber of Commerce. In 2011, Rear Admiral Abbot was named Patriot of the Year by the Mobile Bay Area Veterans Day Commission. He was also the first inductee into the Murphy High School Hall of Fame.

On behalf of the people of Alabama, I wish to extend condolences to his sons, Retired U.S. Navy Captain J. Lloyd Abbot III, and retired U.S. Navy Admiral Steve Abbot, his five grandchildren, extended family and many friends. We will be forever indebted to his exemplary devotion to and service of our nation.

CORRECTING AND IMPROVING THE LEAHY-SMITH AMERICA INVENTS ACT

SPEECH OF

HON. LAMAR SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 30, 2012

Mr. SMITH of Texas. Mr. Speaker, I submit the following.

SECTION-BY-SECTION SUMMARY

(a) Advice of Counsel. The AIA's section 17 created a new §298 of title 35 that bars the use of evidence of an accused infringer's failure to obtain advice of counsel, or his failure to waive privilege and introduce such opinion, to prove either willfulness or intent to induce infringement. Section 17, however, neglected to specify when this new authority became effective. As a result, §298 is subject to the default effective date at section 35 of the AIA, and applies only to patents issued one year or later after enactment of the AIA. This subsection makes §298 applicable to all civil actions commenced after the enactment of this Act.

(b) Transitional Program for CBMs. This subsection corrects two scrivener's errors in section 18 of the AIA. These changes have no substantive effect.

(c) Joinder of Parties. This subsection corrects a scrivener's error in the new §299 of title 35. This change has no substantive effect.

(d) Dead Zones. This subsection fixes two provisions that inadvertently make it impossible to seek either post-grant or inter partes review of a patent during certain time periods. Section 311(c) of title 35 bars anyone from seeking inter partes review of a patent during the first nine months after the patent issues, or until a post-grant review of a patent is completed if such review is instituted. Section 311(c) was intended to preclude challengers from using IPR during the period when they can instead use PGR. The problem with the provision is that, during Senate floor consideration of the AIA in March 2011, another provision was added to the bill via the managers' amendment that allows only first-to-file patents to be challenged in PGR. This provision, at section 6(f)(2)(A) of the AIA, was intended to allow USPTO a longer period to prepare to conduct PGR proceedings, and to exclude patents that raise discovery-intensive invention-date and loss-of-right-to-patent issues from PGR. However, §311(c) takes effect and applies to all petitions for IPR that are filed on or after September 16, 2012. Yet for several years thereafter, almost all patents that are issued will still be first-to-invent patents. And under §311(c) of title 35, these patents cannot be challenged in IPR during the first 9 months after their issuance, while under section 6(f)(2) of the AIA, these patents cannot be challenged in PGR. Paragraph (1) eliminates this nine month ''dead zone'' by making §311(c) inapplicable to patents that are first-to-invent patents and are thus ineligible for PGR.

Paragraph (2) addresses another dead zone that is unique to reissue patents. Under §311(c) of title 35, IPR cannot be sought during the nine months after a patent is reissued. This limit was imposed in order to force challengers to bring a PGR challenge (rather than IPR) against what is, in effect, a new patent. However, §325(f) of title 35 then bars a challenge to any claim in a reissue patent that is ''identical'' to or ''narrower'' than the claims in the original patent. As a result, such ''identical'' or ''narrower'' claims could not be reviewed in either a PGR or an IPR during the nine months after a reissue. Paragraph (2) eliminates this dead zone by repealing section 311(c)(1)'s limit on filing a petition for inter partes review after a patent has been reissued.

(e) Correct Inventor. This subsection amends the authorization of settlement in derivation proceedings to refer to ''correct inventor'' in the singular, out of recognition of the fact that it is the entire inventive entity that must be named in the settlement agreement. This change has no substantive effect.

(f) Required Oath. Paragraph (1) liberalizes the time allowed for an applicant to file the required oath or alternative statement, allowing him to file as late as payment of the issue fee (rather than requiring filing prior to allowance). Paragraph (2) corrects §115(g)(1) by using ''that claims'' rather than ''who claims,'' since the antecedent for these words is ''application'' rather than ''inventor.'' Paragraph (2)'s change has no substantive effect. (USPTO requests.)

(g) Travel Expenses and Payment of Administrative Judges. Section 21 of the AIA, which makes minor changes to the law regarding the compensation of USPTO employees for travel and the payment of APJs, was not given its own effective date. This subsection makes these provisions effective upon enactment of the AIA.

(h) Patent Term Adjustments. This subsection clarifies and improves certain requirements for seeking patent-term adjustments. These changes allow USPTO to provide notice of its PTA determination at the same time as the grant of a patent, and effectively require an applicant who wishes to pursue a civil action under paragraph (4)(A) of §154(b) to exhaust remedies provided under paragraph 3(B)(ii). These changes are minor, and only apply prospectively to PTAs that are determined and to §154(b)(4)(A) actions that are commenced after the enactment of this Act. (USPTO request.)

The Committee is aware that the district court for the Eastern District of Virginia, on November 1 of this year, issued a decision in the case of Exelixis v. Kappos that appears to have adopted a highly problematic interpretation of the patent term adjustment allowed by §154(b)(1)(B). For reasons that remain unclear, the court concluded that continuations and other events described in the ''not including'' clauses of that subparagraph should not be excluded from the subparagraph's calculation of patent term adjustment, but instead must be read only to toll the three-year clock that determines when patent term adjustment begins to accrue under subparagraph (B). The district court's interpretation of subparagraph (B) thus would allow patent term adjustment to accrue for any continued examination sought after the three-year clock has run. Such a result, of course, would allow applicants to postpone their patent's expiration date through dilatory prosecution, the very submarine-patenting tactic that Congress sought to preclude in 1994 when it adopted a 20-year patent term that runs from an application's effective filing date.

Despite the absurd and undesirable results that would appear to flow from the district court's interpretation, the Committee declines to address this matter at this time. This case was brought to the Committee's attention only very recently, precluding the thorough consideration and consultation that is appropriate before legislation is enacted. Moreover, Congress is not in the business of immediately amending the United States Code in response to every nonfinal legal error made by a trial court. The Committee, of course, reserves the right to address this matter in the future. In the meantime, the fact that the present bill does not amend §154(b) to address the Exelixis decision should not be construed as congressional acquiescence in or agreement with the reasoning of that decision.

(i) Improper Applicant. This subsection repeals an unnecessary limitation on who may file an international application designating the United States. (USPTO request.)

(j) Financial Management Clarifications. This subsection makes several technical changes to §42 of title 35, concerning USPTO funding. These changes: (1) ensure that the rule requiring that patent fees be spent for patent purposes also applies to RCE fees; and (2) ensure that all USPTO administrative costs will be covered by either patent fees or trademark fees. (USPTO request.)

(k) Derivation Proceedings. Currently, the third sentence of §135(a) will allow a derivation proceeding to be sought only within the year after the victim's claim that has been the target of derivation has published. It is possible, however, that a deriver could file first, but delay claiming the derived material until more than a year has elapsed after the victim's claims have published, in other words, until after the current deadline has lapsed. The changes made by this subsection preclude such a scenario by requiring the proceeding to be sought during the year after the publication of the deriver's claim to the invention. These changes also add a definition of ''earlier application'' to §135(a), correct inconsistencies in the AIA's version of §135(a), and authorize the PTAB to conduct, and the courts to hear appeals of, interferences commenced after the effective date of the AIA's amendments to §135(a). (USPTO request.)

(l) Terms of Public Advisory Committee Members. This subsection makes the terms of PPAC and TPAC members run for 3 years