

I urge my colleagues to support H.R. 6029 as it was amended by the Senate. The original bill was developed in a bipartisan manner and was unanimously reported by both the Judiciary Committee and this House. This is a common sense and much-needed measure that deserves our full support.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Senate amendment to H.R. 6029, the Foreign and Economic Espionage Penalty Enhancement Act of 2012. The House passed this legislation by voice vote in August, and the Senate recently passed a bill with amendment by unanimous consent.

Mr. Speaker, H.R. 6029 will increase the maximum fines that may be imposed for engaging in the Federal offense of economic espionage. The crime of economic espionage consists of knowingly misappropriating trade secrets with the intent or knowledge that the offense will benefit a foreign government.

As reported by the U.S. intellectual property enforcement coordinator, economic espionage is a serious threat to American businesses by foreign governments.

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Economic espionage represents a significant cost to victim companies and threatens the economic security of the United States. This crime inflicts costs on companies, such as the loss of unique intellectual property, the loss of expenditures related to research and development, and the loss of future revenues and profits. Many companies are unaware when their sensitive data is pilfered, and those that find out are often reluctant to report the losses, fearing potential damage to their reputations with investors, customers, and employees.

The pace of the foreign collection of economic information and industrial espionage activities against major United States corporations is accelerating. For example, in fiscal year 2011, the Justice Department and the FBI saw an increase of 29 percent in economic espionage and trade secret theft investigations compared to those in fiscal year 2010.

Details related to recent Federal investigations and prosecutions suggest that economic espionage and trade secret theft on behalf of companies located in China is an emerging trend. For example, at least 34 companies were reportedly victimized by a set of attacks originating in China in 2010. In the attacks, computer viruses were spread via emails to corporate employees, allowing the attackers to have access to emails and sensitive documents.

Foreign hackers constantly target U.S. companies in such ways in order to get every piece of competitive intelligence information they can. We simply cannot allow this to continue to happen. In response to this growing threat, in her 2011 annual report, the

U.S. Intellectual Property Coordinator called upon Congress to increase the penalties for economic espionage, and this bill is consistent with that recommendation.

I would like to commend Members on both sides of the aisle for their work on this bill, particularly the gentleman from Texas, the chair of the committee, Mr. SMITH; the ranking member, the gentleman from Michigan (Mr. CONYERS); the incoming chair of the Judiciary Committee, my colleague from Virginia (Mr. GOODLATTE); and the gentleman from North Carolina (Mr. WATT), who all worked very diligently on this bill. I also want to recognize the leadership of Senator LEAHY.

I urge my colleagues to support the Senate amendment to H.R. 6029, and I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 6029.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. SCOTT of Virginia. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

CORRECTING AND IMPROVING THE LEAHY-SMITH AMERICA INVENTS ACT

Mr. SMITH of Texas. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 6621) to correct and improve certain provisions of the Leahy-Smith America Invents Act and title 35, United States Code.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. TECHNICAL CORRECTIONS.

(a) *ADVICE OF COUNSEL*.—Notwithstanding section 35 of the Leahy-Smith America Invents Act (35 U.S.C. 1 note), section 298 of title 35, United States Code, shall apply to any civil action commenced on or after the date of the enactment of this Act.

(b) *TRANSITIONAL PROGRAM FOR COVERED BUSINESS METHOD PATENTS*.—Section 18 of the Leahy-Smith America Invents Act (35 U.S.C. 321 note) is amended—

(1) in subsection (a)(1)(C)(i), by striking “of such title” the second place it appears; and

(2) in subsection (d)(2), by striking “subsection” and inserting “section”.

(c) *JOINDER OF PARTIES*.—Section 299(a) of title 35, United States Code, is amended in the

matter preceding paragraph (1) by striking “or counterclaim defendants only if” and inserting “only if”.

(d) *DEAD ZONES*.—

(1) *INTER PARTES REVIEW*.—Section 311(c) of title 35, United States Code, shall not apply to a petition to institute an inter partes review of a patent that is not a patent described in section 3(n)(1) of the Leahy-Smith America Invents Act (35 U.S.C. 100 note).

(2) *REISSUE*.—Section 311(c)(1) of title 35, United States Code, is amended by striking “or issuance of a reissue of a patent”.

(e) *CORRECT INVENTOR*.—

(1) *IN GENERAL*.—Section 135(e) of title 35, United States Code, as amended by section 3(i) of the Leahy-Smith America Invents Act, is amended by striking “correct inventors” and inserting “correct inventor”.

(2) *EFFECTIVE DATE*.—The amendment made by paragraph (1) shall be effective as if included in the amendment made by section 3(i) of the Leahy-Smith America Invents Act.

(f) *INVENTOR'S OATH OR DECLARATION*.—Section 115 of title 35, United States Code, as amended by section 4 of the Leahy-Smith America Invents Act, is amended—

(1) by striking subsection (f) and inserting the following:

“(f) *TIME FOR FILING*.—The applicant for patent shall provide each required oath or declaration under subsection (a), substitute statement under subsection (d), or recorded assignment meeting the requirements of subsection (e) no later than the date on which the issue fee for the patent is paid.”; and

(2) in subsection (g)(1), by striking “who claims” and inserting “that claims”.

(g) *TRAVEL EXPENSES AND PAYMENT OF ADMINISTRATIVE JUDGES*.—Notwithstanding section 35 of the Leahy-Smith America Invents Act (35 U.S.C. 1 note), the amendments made by section 21 of the Leahy-Smith America Invents Act (Public Law 112-29; 125 Stat. 335) shall be effective as of September 16, 2011.

(h) *PATENT TERM ADJUSTMENTS*.—Section 154(b) of title 35, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)(i)(II), by striking “on which an international application fulfilled the requirements of section 371 of this title” and inserting “of commencement of the national stage under section 371 in an international application”; and

(B) in subparagraph (B), in the matter preceding clause (i), by striking “the application in the United States” and inserting “the application under section 111(a) in the United States or, in the case of an international application, the date of commencement of the national stage under section 371 in the international application”;

(2) in paragraph (3)(B)(i), by striking “with the written notice of allowance of the application under section 151” and inserting “no later than the date of issuance of the patent”; and

(3) in paragraph (4)(A)—

(A) by striking “a determination made by the Director under paragraph (3) shall have remedy” and inserting “the Director’s decision on the applicant’s request for reconsideration under paragraph (3)(B)(ii) shall have exclusive remedy”; and

(B) by striking “the grant of the patent” and inserting “the date of the Director’s decision on the applicant’s request for reconsideration”.

(i) *IMPROPER APPLICANT*.—Section 373 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 37 of such title, are repealed.

(j) *FINANCIAL MANAGEMENT CLARIFICATIONS*.—Section 42(c)(3) of title 35, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking “sections 41, 42, and 376,” and inserting “this title,”; and

(B) by striking “a share of the administrative costs of the Office relating to patents” and inserting “a proportionate share of the administrative costs of the Office”; and

(2) in subparagraph (B), by striking “a share of the administrative costs of the Office relating to trademarks” and inserting “a proportionate share of the administrative costs of the Office”.

(k) DERIVATION PROCEEDINGS.—

(1) IN GENERAL.—Section 135(a) of title 35, United States Code, as amended by section 3(i) of the Leahy-Smith America Invents Act, is amended to read as follows:

“(a) INSTITUTION OF PROCEEDING.—

“(1) IN GENERAL.—An applicant for patent may file a petition with respect to an invention to institute a derivation proceeding in the Office. The petition shall set forth with particularity the basis for finding that an individual named in an earlier application as the inventor or a joint inventor derived such invention from an individual named in the petitioner’s application as the inventor or a joint inventor and, without authorization, the earlier application claiming such invention was filed. Whenever the Director determines that a petition filed under this subsection demonstrates that the standards for instituting a derivation proceeding are met, the Director may institute a derivation proceeding.

“(2) TIME FOR FILING.—A petition under this section with respect to an invention that is the same or substantially the same invention as a claim contained in a patent issued on an earlier application, or contained in an earlier application when published or deemed published under section 122(b), may not be filed unless such petition is filed during the 1-year period following the date on which the patent containing such claim was granted or the earlier application containing such claim was published, whichever is earlier.

“(3) EARLIER APPLICATION.—For purposes of this section, an application shall not be deemed to be an earlier application with respect to an invention, relative to another application, unless a claim to the invention was or could have been made in such application having an effective filing date that is earlier than the effective filing date of any claim to the invention that was or could have been made in such other application.

“(4) NO APPEAL.—A determination by the Director whether to institute a derivation proceeding under paragraph (1) shall be final and not appealable.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective as if included in the amendment made by section 3(i) of the Leahy-Smith America Invents Act.

(3) REVIEW OF INTERFERENCE DECISIONS.—The provisions of sections 6 and 141 of title 35, United States Code, and section 1295(a)(4)(A) of title 28, United States Code, as in effect on September 15, 2012, shall apply to interference proceedings that are declared after September 15, 2012, under section 135 of title 35, United States Code, as in effect before the effective date under section 3(n) of the Leahy-Smith America Invents Act. The Patent Trial and Appeal Board may be deemed to be the Board of Patent Appeals and Interferences for purposes of such interference proceedings.

(l) PATENT AND TRADEMARK PUBLIC ADVISORY COMMITTEES.—

(1) IN GENERAL.—Section 5(a) of title 35, United States Code, is amended—

(A) in paragraph (1), by striking “Members of” and all that follows through “such appointments.” and inserting the following: “In each year, 3 members shall be appointed to each Advisory Committee for 3-year terms that shall begin on December 1 of that year. Any vacancy on an Advisory Committee shall be filled within 90 days after it occurs. A new member who is appointed to fill a vacancy shall be appointed to serve for the remainder of the predecessor’s term.”;

(B) by striking paragraph (2) and inserting the following:

“(2) CHAIR.—The Secretary of Commerce, in consultation with the Director, shall designate a Chair and Vice Chair of each Advisory Committee from among the members appointed under paragraph (1). If the Chair resigns before the completion of his or her term, or is otherwise unable to exercise the functions of the Chair, the Vice Chair shall exercise the functions of the Chair.”; and

(C) by striking paragraph (3).

(2) TRANSITION.—

(A) IN GENERAL.—The Secretary of Commerce shall, in the Secretary’s discretion, determine the time and manner in which the amendments made by paragraph (1) shall take effect, except that, in each year following the year in which this Act is enacted, 3 members shall be appointed to each Advisory Committee (to which such amendments apply) for 3-year terms that begin on December 1 of that year, in accordance with section 5(a) of title 35, United States Code, as amended by paragraph (1) of this subsection.

(B) DEEMED TERMINATION OF TERMS.—In order to implement the amendments made by paragraph (1), the Secretary of Commerce may determine that the term of an existing member of an Advisory Committee under section 5 of title 35, United States Code, shall be deemed to terminate on December 1 of a year beginning after the date of the enactment of this Act, regardless of whether December 1 is before or after the date on which such member’s term would terminate if this Act had not been enacted.

(m) CLERICAL AMENDMENT.—Section 123(a) of title 35, United States Code, is amended in the matter preceding paragraph (1) by inserting “of this title” after “For purposes”.

(n) EFFECTIVE DATE.—Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the date of enactment of this Act, and shall apply to proceedings commenced on or after such date of enactment.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SMITH) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on the matter currently under consideration.

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

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

The Leahy-Smith America Invents Act, or AIA, was signed into law on September 16, 2011. It was the first major patent reform bill in over 60 years and the most substantial reform of U.S. patent law since the 1836 Patent Act. The Leahy-Smith AIA reestablishes the United States patent system as the global standard.

Over the past year, the Patent Office has worked diligently to implement the provisions of the Leahy-Smith AIA in order to ensure that the bill realizes its full potential to promote innovation and create jobs. The bill that we consider today includes several technical

corrections and improvements that ensure that the implementation of the bill can proceed efficiently and effectively. The bill is supported by all sectors of our economy from all across the United States, including manufacturers, universities, technology, pharmaceutical and biotech companies, and innovators.

As the provisions of the Leahy-Smith AIA continue to take effect, our Nation’s innovation infrastructure becomes much stronger, unleashing the full potential of American innovators and job creators, so I urge my colleagues to support this bill.

I reserve the balance of my time.

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The bill that we consider today includes several technical corrections and improvements that ensure that the implementation of the bill can proceed efficiently and effectively.

The bill is supported by all sectors of our economy from all across the United States, including manufacturers, universities, technology, pharmaceutical and biotech companies and innovators.

I have also received letters in support from the Coalition for 21st Century Patent Reform, which represents manufacturers, pharmaceutical, technology, defense companies and universities; the Innovation Alliance, which represents high tech companies and licensors; and the BSA: The Software Alliance, which represents a range of high technology and software companies.

The Leahy-Smith AIA fundamentally changes our nation’s innovation infrastructure. With any such substantive and wide-ranging legislation, unforeseen issues may arise as implementation occurs.

H.R. 6621 corrects many of these issues. This package consists of several technical corrections to the AIA that are essential to the effective implementation of the Act.

Other technical corrections and improvements may arise in the future; for example, the issue surrounding the correction of the Post-Grant Review estoppel provision in the Leahy-Smith AIA.

This was the result of an inadvertent “scrivener’s error,” an error that was made by legislative counsel. That technical error has resulted in an estoppel provision with a higher threshold than was intended by either house of Congress.

Additionally, we must remain watchful as we examine ways to deal with the abusive and frivolous litigation that American innovators face from patent assertion entities or patent trolls.

The modified bill passed by the Senate takes out the report on pre-GATT patents. Even though the report is no longer mandated, it is within PTO’s existing authority to conduct such a study, and I would call on them to do so.

As the provisions of the Leahy-Smith AIA continue to take effect, our nation's innovation infrastructure becomes much stronger, unleashing the full potential of American innovators and job creators.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the Senate amendment to H.R. 6621 because the measure improves the America Invents Act—the most significant reform to the Patent Act since 1952—that was signed into law by President Obama last year. Earlier this month, the House passed H.R. 6621 by a vote of 308–89. The Senate subsequently passed the legislation with an amendment by unanimous consent. Now that the America Invents Act is law, our focus should be on how it can be improved, which is why I support H.R. 6621, because it accomplishes that very goal in several respects.

To begin with, H.R. 6621 clarifies and improves the provisions to help implement the America Invents Act. The bill clarifies provisions dealing with patent term adjustments, derivation proceedings, inventor's oath, and the terms of the Patent Public Advisory Committee.

The Senate amendment to this bill makes one change to the House-passed bill by removing the provision requiring the Patent Office to prepare a report on pre-GATT patent applications that have now been pending before the Patent Office for over 18 years. Although this provision has been removed, we must continue to study ways to improve the patent system and make sure that there are not delays to receiving patent protection.

The bill clarifies the act's advice of counsel section as it applies to civil actions commenced on or after the date of this legislation's enactment. This is important because the original bill created a new section 298 of title XXXV that prevents 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. The provision, however, failed to specify when the new authority would go into effect, and it would be unfair to apply the new rule retroactively to pending cases which anticipate using such evidence.

In addition, H.R. 6621 makes a series of other technical clarifications to the act. In some, the bill makes necessary constructive technical corrections to the America Invents Act and avoids including any substantive revisions to the act.

It is my hope that the Judiciary Committee will continue its oversight of the act into the next Congress and consider ways in which it can be further improved. I urge my colleagues to support the bill.

I yield back the balance of my time. Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by

the gentleman from Texas (Mr. SMITH) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 6621.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. SCOTT of Virginia. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

INTERCOUNTRY ADOPTION UNIVERSAL ACCREDITATION ACT OF 2012

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and pass the bill (S. 3331) to provide for universal intercountry adoption accreditation standards, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 3331

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Inter-country Adoption Universal Accreditation Act of 2012”.

SEC. 2. UNIVERSAL ACCREDITATION REQUIREMENTS.

(a) IN GENERAL.—The provisions of title II and section 404 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 et seq.), and related implementing regulations, shall apply to any person offering or providing adoption services in connection with a child described in section 101(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(F)), to the same extent as they apply to the offering or provision of adoption services in connection with a Convention adoption. The Secretary of State, the Secretary of Homeland Security, the Attorney General (with respect to section 404(b) of the Intercountry Adoption Act of 2000 (42 U.S.C. 14944)), and the accrediting entities shall have the duties, responsibilities, and authorities under title II and title IV of the Intercountry Adoption Act of 2000 and related implementing regulations with respect to a person offering or providing such adoption services, irrespective of whether such services are offered or provided in connection with a Convention adoption.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 18 months after the date of the enactment of this Act.

(c) TRANSITION RULE.—This Act shall not apply to a person offering or providing adoption services as described in subsection (a) in the case of a prospective adoption in which—

(1) an application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for a child is filed before the date that is 180 days after the date of the enactment of this Act; or

(2) the prospective adoptive parents of a child have initiated the adoption process with the filing of an appropriate application in a foreign country sufficient such that the Secretary of State is satisfied before the date that is 180 days after the date of the enactment of this Act.

SEC. 3. AVAILABILITY OF COLLECTED FEES FOR ACCREDITING ENTITIES.

(a) Section 403 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14943) is amended by striking subsection (c).

(b) REPORT REQUIREMENT.—Section 202(b) of the Intercountry Adoption act of 2000 (42 U.S.C. 14922(b)) is amended by adding at the end the following:

“(5) REPORT ON USE OF FEDERAL FUNDING.—Not later than 90 days after an accrediting entity receives Federal funding authorized by section 403, the entity shall submit a report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives that describes—

“(A) the amount of such funding the entity received; and

“(B) how such funding was, or will be, used by the entity.”.

SEC. 4. DEFINITIONS.

In this Act, the terms “accrediting entity”, “adoption service”, “Convention adoption”, and “person” have the meanings given those terms in section 3 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14902).

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida.

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material in the RECORD on this bill.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of S. 3331, the Intercountry Adoption Universal Accreditation Act of 2012. This bipartisan bill, which recently received unanimous consideration in the Senate, is the Senate-side companion to H.R. 6027, which is the bipartisan House bill introduced by my good friend from New Jersey (Mr. SIREN).

This bill requires that all intercountry adoption providers in the U.S. meet the same accreditation standards regardless of whether the adoption is from a Hague Convention signatory country.

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Mr. Speaker, before I close, I would like to direct attention to yet another outrage perpetrated by Russian strongman Vladimir Putin, one that he has knowingly directed at innocent Russian children awaiting adoption. His action was a shameful response to legislation overwhelmingly adopted by the Congress that targets Russian officials engaged in human rights abuses, specifically those regarding Sergei Magnitsky.

Magnitsky was a Russian lawyer killed in prison after having uncovered massive government corruption, including senior officials in Putin's regime. Instead of prosecuting those