

(1) IN GENERAL.—Section 3(b)(1) of title 35, United States Code, is amended in the first sentence—

(A) by striking “be vested with the authority to act in the capacity of the” and inserting “serve as Acting.”; and

(B) by inserting before the period “or in the event of a vacancy in the office of the Director.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to appointments and vacancies occurring before, on, or after the date of enactment of this Act.

#### SEC. 15. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act, and shall apply to any patent issued, or any action filed, on or after that date.

#### SEC. 16. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision or amendment to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

Mr. LEAHY. Mr. President, I am proud to introduce legislation with Senators GRASSLEY, CORNYN, SCHUMER, LEE, HATCH and KLOBUCHAR. As members of the Senate Judiciary Committee, we have been working for almost 2 years to address abusive conduct in our patent system. Our legislation will deter abusive practices while preserving the strength of America's patent system. After months of negotiations, we have achieved a strong and fair balance that I strongly support.

America's patent system has fueled our Nation's greatest technological advances, creating jobs and spurring innovation. By promoting investment in new products and designs, our patent system drives developments that benefit us all. In recent years, however, bad actors have abused the patent system to extract money from unsuspecting companies through broad threats of patent litigation. Coffee shops have been threatened with patent suits simply for using a Wi-Fi router they purchased off the shelf, and website owners have faced costly litigation for using basic software in e-commerce. Instead of using patents to drive new creations, some entities are holding up main street businesses and innovative companies simply to extort financial settlements.

The PATENT Act addresses this behavior through several important reforms. It will promote transparency to hold bad actors accountable; curb misleading demand letters; and empower customers who have been improperly targeted for simply using a product when the product's manufacturer should defend the suit instead. I have heard about the urgent need for these measures from businesses in Vermont and across the country, which is why I included them in the bipartisan legislation on patent abuses that Senator LEE and I introduced last Congress. This provision has earned widespread support and I am glad it is part of the bill we introduce today.

The legislation also addresses imbalances in patent litigation that make it unusually difficult and expensive to defend against frivolous lawsuits. These measures would require detailed allegations in legal complaints for patent infringement, establish reasonable parameters for document discovery to save costs, and ensure that litigants can be held accountable for the other side's attorneys' fees if their conduct or position is found by a court to be objectively unreasonable.

Drafting legislation that involves the enforcement of patent rights is a complex problem that requires time and balance. Congress spent multiple years developing what ultimately became the Leahy-Smith America Invents Act of 2011, and we were able to come together to find common ground and enact that major piece of legislation into law. Throughout our negotiations on this bill, I have emphasized the need to address concerns from major manufacturers, inventors, universities, and patent law practitioners who warned that, if taken too far, patent litigation reform proposals would harm legitimate patent holders' ability to protect their rights in court. The legislation we have introduced today is greatly improved as a result of their input.

It is worth highlighting some of the changes that have been made to the bill to respond to those concerns, changes which were personally important to me as we negotiated this legislation. The language in the PATENT Act provides for fee shifting only in cases where the court finds that the losing party was not “objectively reasonable.” This is an important change from the approach of “presumptive loser pays” contained in the House's patent reform bill, the Innovation Act. It promotes judicial discretion and ensures the burden is on the party seeking fees to show that fees should be awarded. An additional exception allows the court to refrain from awarding fees if such an award would be unjust—for example, because it would cause undue financial harm to an individual inventor or a public institution of higher education.

The PATENT Act simplifies the pleading requirements that are contained in the Innovation Act, and ensures that a plaintiff is not required to plead information if it is not accessible to them. I am grateful that the other authors of this bill worked with me to ensure that the standard of what a plaintiff is required to plead about infringement of their patent claims tracks Rule 8 of the Federal Rules of Civil Procedure, without creating a higher standard for plaintiffs to prove a plausible claim for relief.

I am also grateful for the significant work that was done to streamline the discovery provisions of the bill, to protect litigants from costly discovery while ensuring that legitimate plaintiffs are not prejudiced by unreasonable limitations on their ability to access information. Under the PATENT

Act, discovery is stayed while the court resolves early, pre-answer motions about whether the case has been brought in the correct venue, against the correct defendants, and whether the complaint states a plausible claim for relief. Discovery is permitted if necessary to resolve those motions, to resolve a motion for preliminary relief, or if failure to allow discovery would cause specific prejudice to a party.

Taken together, these provisions will help promote efficiency in patent suits while ensuring that patent holders can fairly protect their rights in court. While the provisions are not perfect, they strike a meaningful balance that I am happy to support given the unusual complexities of patent litigation.

As this legislation proceeds to mark-up in the Senate Judiciary Committee next month, I look forward to considering additional amendments that will improve this bill. For example, in recent months, some companies and inventors have raised concerns about unfair practices that are taking place in the post-grant review proceedings through which patents can be challenged at the Patent and Trademark Office. Those proceedings were created by the Leahy-Smith America Invents Act as an important tool to improve patent quality, but if they are being misused or creating inaccurate perceptions in the marketplace, we should address those concerns. I look forward to working with the stakeholders who have already contributed meaningfully to this bill.

Abusive practices by bad actors are a discredit to our strong patent system, and it is in no one's interest that they continue. Businesses, innovators and customers that are victims of abusive conduct need us to come together to enact reform. I look forward to this bill's swift consideration in the Judiciary Committee.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 154—DESIGNATING MAY 16, 2015, AS “KIDS TO PARKS DAY”

Mr. WYDEN (for himself, Mr. PORTMAN, Mr. BOOKER, Ms. HIRONO, and Mr. HEINRICH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 154

Whereas the 5th annual Kids to Parks Day will be celebrated on May 16, 2015;

Whereas the goal of Kids to Parks Day is to promote healthy outdoor recreation and environmental stewardship, empower young people, and encourage families to get outdoors and visit the parks and public land of the United States;

Whereas on Kids to Parks Day, individuals from rural and urban areas of the United States can be reintroduced to the splendid national, State, and neighborhood parks located in their communities;

Whereas communities across the United States offer a variety of natural resources and public land, often with free access, to individuals seeking outdoor recreation;

Whereas the people of the United States, young and old, should be encouraged to lead more healthy and active lifestyles;

Whereas Kids to Parks Day is an opportunity for families to take a break from their busy lives and come together for a day of active, wholesome fun; and

Whereas Kids to Parks Day will broaden an appreciation for nature and the outdoors in young people: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates May 16, 2015, as “Kids to Parks Day;”

(2) recognizes the importance of outdoor recreation and the preservation of open spaces to the health and education of the young people of the United States;

(3) encourages the people of the United States to observe the day with appropriate programs, ceremonies, and activities; and

(4) encourages the President to issue a proclamation for Kids to Parks Day, calling on the people of the United States to observe Kids to Parks Day with appropriate programs, ceremonies, and activities.

**SENATE RESOLUTION 155—ESTABLISHING MAY 2, 2015, AS A DAY OF RECOGNITION FOR EBOLA ORPHANS TO EXPRESS SUPPORT FOR THE CHILDREN AND FAMILIES AFFECTED BY THE 2014 EBOLA OUTBREAK IN WEST AFRICA BY PROMOTING AWARENESS OF THE CHILDREN OF WEST AFRICA WHO HAVE BEEN ORPHANED BY THE 2014 EBOLA EPIDEMIC, CELEBRATING THOSE WHO HAVE RECOGNIZED AND ARE WORKING TO FULFILL THE NEEDS OF CHILDREN, AND ENCOURAGING THE PEOPLE OF THE UNITED STATES TO CONTINUE TO SUPPORT THE PEOPLE OF WEST AFRICA**

Mr. INHOFE (for himself and Ms. KLOBUCHAR) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 155

Whereas the 2014 Ebola outbreak in West Africa reached epidemic proportions;

Whereas the World Health Organization reports that there have been over 14,800 laboratory-confirmed cases of Ebola in Guinea, Liberia, and Sierra Leone as of April 19, 2015;

Whereas the World Health Organization reports that there have been over 10,800 deaths from Ebola in Guinea, Liberia, and Sierra Leone as of April 19, 2015;

Whereas the United Nations Children's Fund (UNICEF) estimates that as of February 2015, nearly 11,000 children in West Africa have lost 1 or both parents due to the 2014 Ebola outbreak;

Whereas some families reject Ebola orphans out of fear of the disease;

Whereas the United States authorized \$750,000,000 to support up to 3,000 United States troops in Monrovia, Liberia to respond to the Ebola crisis; and

Whereas United States citizens have given time and resources to assist the people of West Africa, including Ebola orphans: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes May 2, 2015, as a Day of Recognition for Ebola Orphans, to promote awareness of the children of West Africa orphaned by the 2014 Ebola outbreak;

(2) supports the goals and work of those who are addressing the developing Ebola orphan crisis in West Africa; and

(3) encourages the people of the United States to consider the needs of the children of West Africa who were orphaned by the 2014 Ebola epidemic.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 1194. Mr. RISCH (for himself and Mr. RUBIO) submitted an amendment intended to be proposed to amendment SA 1179 proposed by Mr. CORKER (for himself and Mr. CARDIN) to the amendment SA 1140 proposed by Mr. CORKER (for himself and Mr. CARDIN) to the bill H.R. 1191, to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act; which was ordered to lie on the table.

SA 1195. Ms. AYOTTE submitted an amendment intended to be proposed by her to the bill H.R. 1191, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 1194.** Mr. RISCH (for himself and Mr. RUBIO) submitted an amendment intended to be proposed to amendment SA 1179 proposed by Mr. CORKER (for himself and Mr. CARDIN) to the amendment SA 1140 proposed by Mr. CORKER (for himself and Mr. CARDIN) to the bill H.R. 1191, to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act; which was ordered to lie on the table; as follows:

On page 1, line 3, of the amendment, insert after “, and annexes” the following: “, and a certification that the Government of Iran has released to the United States—

(i) Saeed Abedini of Idaho, who has been detained in Iran on charges related to his religious beliefs since September 2012;

(ii) Amir Hekmati of Michigan, who has been imprisoned in Iran on false espionage charges since August 2011;

(iii) Jason Rezaian of California, who, as an Iranian government credentialed reporter for the Washington Post, has been unjustly held in Iran on vague charges since July 2014; and

(iv) Robert Levinson of Florida, who was abducted on Kish Island in March 2007;

**SA 1195.** Ms. AYOTTE submitted an amendment intended to be proposed by her to the bill H.R. 1191, to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act; which was ordered to lie on the table; as follows:

On page 28, strike line 1 and insert the following:

“(h) SENSE OF CONGRESS ON INTERCONTINENTAL BALLISTIC MISSILE PROGRAM.—

“(1) FINDINGS.—Congress makes the following findings:

“(A) The Islamic Republic of Iran continues to advance its intercontinental ballistic missile (ICBM) program.

“(B) On February 2, 2015, the Islamic Republic of Iran successfully launched its Safir

long-range missile system to send a satellite into orbit.

“(C) In 2013, the National Air and Space Intelligence Center concluded that Iran could use space launch technology as a ‘test bed’ for ICBM technology development, stating, ‘Iran could develop and test an ICBM capable of reaching the United States by 2015. Since 2008, Iran has conducted multiple successful launches of the two-stage Safir space launch vehicle (SLV) and has also revealed the larger two-stage Simorgh SLV, which could serve as a test bed for developing ICBM technologies.’

“(D) On January 29, 2014, the Director of National Intelligence, James Clapper, testified, ‘We judge that Iran would choose a ballistic missile as its preferred method of delivering nuclear weapons. . . .’

“(E) Iran continues to violate United Nations Security Council resolution 1929 (2010) by developing ICBM capabilities that could deliver a nuclear weapon.

“(2) SENSE OF CONGRESS.—Congress—

“(A) remains concerned about the threat posed by Iran’s ballistic missile development program to the security of the United States and its allies; and

“(B) calls on the President to urge the Government of Iran to comply with United Nations Security Council resolution 1929 regarding their intercontinental ballistic missile program.

“(i) DEFINITIONS.—In this section:

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BARRASSO. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on April 29, 2015, at 9:30 a.m., in room SR-253 of the Russell Senate Office Building to conduct a hearing entitled “Five Years After Deepwater Horizon: Improvements and Challenges in Prevention and Response.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BARRASSO. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on April 29, 2015.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON FINANCE

Mr. BARRASSO. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on April 29, 2015, at 9:35 a.m., in room SD-215 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. BARRASSO. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on April 29, 2015, at 9 a.m. to conduct a