

THE AMERICA INVENTS ACT

PROMOTING AMERICAN INNOVATION, CREATING AMERICAN JOBS, GROWING AMERICA'S ECONOMY

The America Invents Act – Support for the Transition to First-Inventor-to-File

The America Invents Act will transition the United States to a “first-inventor-to-file” system. Every industrialized nation in the world uses a patent priority system commonly referred to as “first-to-file” – except the United States. As business and competition becomes more global, patent applicants are increasingly filing patent applications in other countries for protection of their inventions. The “first-to-invent” filing system in the United States differs from that in other patent-issuing jurisdictions, causing confusion and inefficiencies for American companies and innovators.

The Obama administration and stakeholders from across the spectrum – from high-tech and life sciences, to universities and small inventors – support the transition to the first-to-file system, including the National Association of Manufacturers, the Small Business & Entrepreneurship Council, the Native American Intellectual Property Enterprise Council, small and independent inventors, the Intellectual Property Owners Association, the Coalition for 21st Century Patent Reform (a coalition of 50 companies from 18 different industry sectors such as General Electric, Procter & Gamble, 3M, Pfizer and Cargill), universities and higher education associations, the American Bar Association, and the American Intellectual Property Law Association.

Administration Support for the Transition to First-Inventor-to-File

“By moving the United States to a first-to-file system, the [America Invents Act] simplifies the process of acquiring rights. **This essential provision will reduce legal costs, improve fairness, and support U.S. innovators** seeking to market their products and services in a global marketplace.” – [Statement of Administration Policy](#), February 28, 2011

“[P]atent reform adopts the ‘first-inventor-to-file’ standard as opposed to the current ‘first-to-invent’ standard. First inventor to file is used by the rest of the world, and **would be good for U.S. business, providing a more transparent and cost-effective process that puts them on a level playing field with their competitors around the world.** There is some concern among some small, independent inventors, who feel like the current system is better for them, but it’s our strong opinion that the opposite is true.” – *Commerce Secretary Gary Locke*, [“Delivering innovation and jobs through patent reform,”](#) The Hill, March 2, 2011

National Association of Manufacturers Support for the Transition to First-Inventor-to-File

“The [National Association of Manufacturers] supports transitioning the United States from a ‘first-to-invent’ system to a ‘first-to-file’ system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies.” – [National Association of Manufacturers](#), March 2, 2011

Small Business and Independent Inventor Support for the Transition to First-Inventor-to-File

“[P]atent harmonization among nations will make it easier, including less costly, for small firms and inventors to gain patent protection in other nations, which is critical to being able to compete internationally. **By moving to a first-inventor-to-file system, small firms will in no way be disadvantaged, while opportunities in international markets will expand.**” – [Small Business & Entrepreneurship Council](#), February 28, 2011

"I share my personal experiences as an inventor to tell you that [the] price of proving who is the 'First to Invent' comes at a cost that is too great for most inventors and does not offer certainty to protect one's invention...I urge you to [] consider that **the First Inventor to File provides a much needed bright line of predictability for independent inventors and small entities.**" – *T. David Petite, [The Native American Intellectual Property Enterprise Council](#), March 1, 2011*

"From my perspective, the Judiciary Committee-passed bill helps independent inventors across the country by strengthening the current system for entrepreneurs and small businesses...**First-Inventor-to-File protections [will] harmonize U.S. law with our competitors abroad while providing independent inventors with certainty.**" – *Louis J. Foreman, independent inventor and Chief Executive Officer of Enventys, joined by nearly 50 small inventors from more than 20 states, February 14, 2011*

"The low cost and ease of filing a provisional patent application (a placeholder for the first to invent) should render any discussion of fairness moot. I believe that **first to file is both fair and beneficial to all inventors**; and is an important change to correctly position the U.S.P.T.O. as the leader in what will become a worldwide patent system." – *Independent inventor [Gary K. Michelson, M.D.](#), February 27, 2011*

Cross Sector Manufacturer & Innovator Support for the Transition to First-Inventor-to-File

"BASF likes S. 23 because we feel it will preserve the incentives necessary to sustain America's global innovation and spur the creation of high-wage, high-value jobs in our nation's economy. In particular, **the shift to a 'first to file' system...enhance[s] the patent system in ways that would benefit all sectors of the U.S. economy.**" – *[BASF, The Chemical Company](#), February 28, 2011*

"I have heard it said that the current first to invent law is working. I disagree. In today's fast moving world, Caterpillar researchers have to work around the current first to invent law, as it gets in the way of effective collaboration between individuals, small businesses, universities, suppliers, and Caterpillar researchers. [The America Invents Act] will **provide the certainty needed for investments by conforming current patent law to first-inventor-to-file, long acknowledged as being best in class.**" – *Dennis Skarvan, Deputy General Counsel, [Caterpillar Inc.](#), February 28, 2011*

"**First-inventor-to-file... is central to modernization and simplification of patent law** and is very widely supported by U.S. companies." – *[Intellectual Property Owners Association](#), February 25, 2011*

"[First-inventor-to-file] is a building block for the other provisions in the bill, and it must be included unconditionally in the legislation. **It will encourage practices that will facilitate protecting U.S. inventions in foreign markets** and provide more certainty for all inventors." – *[The Coalition for 21st Century Patent Reform](#), February 28, 2011*

University Support for the Transition to First-Inventor-to-File

"Adopting a first-inventor-to-file system will harmonize the U.S. patent law with that of our trading partners, **add greater clarity to the US system by replacing the subjective determination of the first inventor with the objective identification of the first filer**, and eliminate the costs of interferences and litigation associations with determining the first-inventor." – *[Joint Letter from the Association of American Universities, American Council on Education, Association of American Medical Colleges, Association of Public and Land-grant Universities, Association of University Technology Managers, Council on Governmental Relations](#), February 28, 2011*

High Tech Support for the Transition to First-Inventor-to-File

"The **U.S. should join the rest of the world by moving to a 'first inventor to file' system** for granting patents." – *[Business Software Alliance](#), February 24, 2011*

“By moving forward with a first inventor to file system, our members stand a better chance at becoming the ‘Next Big Thing’ in the global technology arena.” – [Association for Competitive Technology](#), February 15, 2011

Bar Association Support for the Transition to First-Inventor-to-File

“Some have long thought that small and independent inventors would be disadvantaged in a first-inventor-to-file environment and that competitors with more resources might learn of their inventions and get to the U.S. Patent Office first with an application. This current legislation, however, **makes it clear that the award goes to the first inventor to file and not merely to the first person to file.**” – [American Bar Association](#), February 28, 2011

“The legislation will also allow the USPTO to make necessary operational improvements and, **by moving the U.S. to a first-inventor-to-file system, give small inventors greater opportunities to compete in a global environment,** while reducing workload at the USPTO.” – [American Intellectual Property Law Association](#), February 24, 2011

Biotechnology and Life Science Support for the Transition to First-Inventor-to-File

“AdvaMed is also pleased with the retention of the transition to a **first-inventor-to-file system because it will promote international harmonization and generate efficiencies.**” – [AdvaMed](#), February 25, 2011

“The [America Invents Act] would also change our patent system to a first-to-file model. This is another important feature of the bill, as it **will promote early disclosure of innovation and allow the U.S. to more efficiently share the work of examining patents with authorities of other countries.** We believe the first-to-file system being proposed in S. 23 also addresses past concerns over a change to ‘first-to-file’ by including important new safeguards for inventors.” – [Genentech](#), February 25, 2011

The Washington Post: First-Inventor-to-File Creates “A Bright Line”

“The Patent Reform Act” **...would recognize the ‘first inventor’ to file’ standard, creating a bright line** – the date on which a patent application was filed – and bringing certainty to the process. Yet the bill is not inflexible and wisely keeps in place protections for academics who share their ideas with outside colleagues or preview them in public seminars.” – *The Washington Post*, “[Patenting Innovation](#),” February 26, 2011

Background on The America Invents Act

The America Invents Act was introduced in the Senate on [January 25, 2011](#), by Senator Patrick Leahy (D-Vt.), Senator Orrin Hatch (R-Utah) and Senator Chuck Grassley (R-Iowa). The legislation is cosponsored by Senators Jon Kyl (R-Ariz.), Amy Klobuchar (D-Minn.), Jeff Sessions (R-Ala.), Al Franken (D-Minn.), Joe Lieberman (D-Conn), Christopher Coons (D-Del.), Richard Blumenthal (D-Conn.), Kirsten Gillibrand (D-N.Y.), Herb Kohl (D-Wis.), Tom Harkin (D-Iowa), Sheldon Whitehouse (D-R.I.), and Chuck Schumer (D-N.Y.). **The Senate Judiciary Committee unanimously approved the legislation by a 15-0 vote on February 3, 2011.** Congressional efforts to reform the nation’s patent system first began in 2005. The Senate Judiciary Committee has reported patent reform legislation to the full Senate in each of the last three Congresses.