

THE PATENT REFORM ACT

SECURING AMERICAN INNOVATION – CREATING AMERICAN JOBS

A well functioning and efficient patent system is critical to American invention and innovation. The bipartisan Patent Reform Act is the product of more than five years of consideration in Congress, and would make the first significant reforms to the nation's patent system in more than 50 years. Addressing needed reforms to our patent system will help bolster economic development, sustain American innovation, and protect American jobs. On [March 4, 2010](#), Senate Judiciary Committee leaders, including Senator Patrick Leahy and Senator Orrin Hatch, unveiled compromise legislation addressing outstanding concerns involving first-window post-grant review, inter partes review, willfulness, interlocutory appeals, PTO funding, and supplemental examinations.

Transition to First-Inventor-to-File System

The Patent Reform Act **transitions the United States to a first-inventor-to-file system**. This will simplify the application system and bring it in line with the nation's trading partners. It will reduce costs and improve the competitiveness of American inventors seeking protection in the global marketplace.

Improving Patent Quality

The Patent Reform Act **establishes the opportunity for third parties to submit information related to a pending application** for consideration by a patent examiner. By allowing prior art to be submitted and explained, patent examiners will have a valuable tool to use to grant only high quality patents. The Patent Reform Act also creates a "first window" post-grant opposition proceeding, open for nine months after the grant of the patent, to allow challengers to weed out patents that should not have been issued.

Improves Administrative Challenges of Patent Validity

Inefficiencies in the system are bad for challengers who have meritorious challenges but cannot get a final decision from the Patent and Trademark Office. They are also bad for patent owners who can have their patents tied up in review for years, even if the challenge is not ultimately going to be successful. The Patent Reform Act would **improve the current system for administratively challenging the validity of a patent at the Patent and Trademark Office throughout the life of the patent**; would create a more meaningful alternative to litigation by establishing an adversarial inter partes review, conducted by Administrative Patent Judges; and would curb harassment of patent owners.

Provides More Certainty In Damages Calculations

The Patent Reform Act **includes a rigorous gate keeping role for the court**, under which judges will assess the legal basis for the specific damages theories and jury instructions sought by the parties. This provision will ensure consistency, uniformity and fairness in the way the courts administer patent damages law.

Creates a Supplemental Examination Process

The Patent Reform Act **creates a supplemental examination process** to incentivize patent owners to commercialize their inventions despite flaws in the application process.

Provides PTO Fee Setting Authority

The Patent Reform Act **provides fee setting authority for the Patent and Trademark Office Director to ensure the PTO is properly funded** and can reduce the backlog of patent applications. The bill mandates a reduction of fees by 50 percent for small entities and 75 percent for micro-entities.

Support for the Patent Reform Act

The manager's amendment to the Patent Reform Act has support from: Microsoft, IBM, Bose Corp., The Coalition for 21st Century Patent Reform, PhRMA, BIO, Genentech, American Intellectual Property Law Association (AIPLA), Intellectual Property Owners Association (IPO), 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, the Council on Government Relations, the President of Yale University and former co-Chair of the relevant National Academies of Sciences Committee, the California Healthcare Institute, 3M, Boston Scientific, Cargill, Caterpillar, Ecolab, Medtronic, Zimmer, the Dow Chemical Company, and the United Steelworkers.