

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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STATEMENT OF SENATOR PATRICK LEAHY,
RANKING MEMBER, SUBCOMMITTEE ON INTELLECTUAL PROPERTY
"THE PATENT SYSTEM TODAY AND TOMORROW"
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Today the Intellectual Property Subcommittee begins its public examination of the myriad issues faced by our patent system. The spirit of American innovation has made the United States the world's leader in intellectual property. Yet the expressions of American innovation - in the form of patented goods and processes - are only as good as the system that fosters and protects innovation.

I share the growing concern about our patent system's ability to address the many challenges it faces. I had looked forward to hearing from Jonathan Dudas, the Undersecretary for Intellectual Property and Director of the U.S. Patent and Trademark Office, at a hearing last Thursday. That hearing was cancelled at the last minute, and I am grateful that Mr. Dudas was gracious enough to rearrange his schedule to be with us this afternoon. We worked with Mr. Dudas to get him confirmed and before that when he staffed Republican leadership in the House and on the House Judiciary Committee. I look forward to continuing our collaboration as we tackle the patent system in the 21st Century.

I am also very pleased to welcome President Richard Levin of Yale University and Professor Mark Myers from the Wharton School of Business. They are the authors of the acclaimed National Academy of Sciences report on patent reform, and I have no doubt that their continued assistance in this project will be most useful.

The size of the project we are undertaking seems to be reflected in the number of witnesses we have at this hearing, and I do want to thank all the witnesses - people who actually live with the intricacies of our patent system every day - for appearing today. Let me draw attention to one of those witnesses, for it is particularly fitting that in discussing creativity and innovation we have with us someone who we know understands both and is a Vermonter to boot. I thank Bill Parker for traveling to Washington today to share his thoughts with us as an inventor and a spokesperson for inventors. He is part of our wonderful tradition of invention, exemplified by the fact that the first U.S. patent issued, and signed by George Washington, was to a Vermonter.

In 2002, the House and Senate directed the Patent and Trademark Office to develop a five-year plan, the result of which was the PTO's 21st Century Strategic Plan, designed to modernize, expedite, and improve the process by which patent applications are processed. Parts of that plan are being implemented, and last year I supported a compromise in the Appropriations Committee that will - for one year - prevent PTO user fees from being diverted to other government programs. I am interested in hearing more from our witnesses about the implementation of the PTO's plan, but I am also very interested in discussing the proposals we have all been hearing that suggest improvements to the quality of the patents the PTO is issuing.

We know that the PTO faces a Herculean task. The volume of patent applications has increased roughly three-fold since the 1980s. The PTO receives more than 350,000 patent applications annually, and the office approved 187,000 applications in 2004 alone. That works out to more than 500 approved patents daily. Some say that the high number of approved patent applications is itself a concern. When non-innovative inventions are patented, some patent-holders fear they will spend more time litigating than they do innovating as a result of predatory tactics. This is a real problem, and we ought to explore ways to alter the patent examination process in order to allow for patent challenges before costly, highly technical litigation is required.

In this vein, I am especially interested in the suggestions that we find ways to allow outsiders with prior art to present information at the examination stage and also that we look into the need for improved post-grant review procedures. With careful safeguards, both suggestions may help reduce unnecessary and costly litigation.

At the same time, we are hearing calls to reform the very ways in which these cases are being litigated. One criticism I have heard is that the standards which courts use to determine whether a patent violation is "willful" has been applied in a way that encourages patent holders to wear blinders to what others invent. We have also heard about abusive litigation practices of "patent trolls," described to me as companies that neither invent anything new nor produce anything at all, but simply acquire patent rights and then push the bounds of their patents, suing patent holders who actually do innovate. I am interested in hearing more about these concerns, as well as proposed solutions from our witnesses.

The concerns I mention are just a few of the many we have heard about, and I am pleased that patent reform ranks high on the legislative agenda of the 109th Congress. Today marks the first hearing of this newly-formed subcommittee and I can think of no better issue to kick off our work this year than patent reform.

As we get started, I look forward to working with the Chairman and other members of the Subcommittee. Last week the House finally granted final passage to the Family Entertainment and Copyright Act. This legislative package was sponsored by a number of us, including Senators Hatch, Feinstein, Cornyn and myself. We approved it last year and passed it, again, in February of this year. Chairman Hatch and I worked cooperatively on that legislative package last year with the result that it has now been enacted by the Congress. The Family Entertainment and Copyright Act is an example of a legislative package built through bipartisan compromise. I look forward to additional legislative accomplishments through this Subcommittee, as we proceed in a bipartisan manner.