

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
March 10, 2009

Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing on "Patent Reform in the 111th Congress:  
Legislation and Recent Court Decisions"  
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Intellectual property is critical to our Nation's economy. It is an engine that drives our contemporary economy and will fuel our future. Industries that rely on intellectual property protection accounted for roughly half of all U.S. exports and represented an estimated 40% of U.S. economic growth in 2006, the last year in which our economy grew in all four quarters. Many of the jobs and expansion that can help us begin to recover from the costly economic recession will have their origin in our patent and copyright based industries. These range from computers and software programs, to new agriculture products, to our movies and music.

I am an ardent supporter of strong protection and enforcement of intellectual property rights. Last year, I led the bipartisan effort to pass the Prioritizing Resources and Organization for Intellectual Property Act to enforce laws against stealing America's intellectual property. The Chamber of Commerce estimates that IP theft costs American companies \$250 billion a year, and our economy 750,000 jobs.

As a former prosecutor, I know first-hand how important it is to have a full arsenal of legal tools to ensure that justice is done. In Vermont, Hubbardton Forge makes beautiful, trademarked lamps. The Vermont Teddy Bear Company, like IBM, also relies heavily on its patented products. Likewise, SB Electronics needs patents for its film capacitor products. Burton's snowboards and logo are protected by trademarks and patents. Every state in the Nation has such companies and every community in the United States is home to creative, inventive and productive people. Americans suffer when their intellectual property is stolen, they suffer when counterfeit goods displace sales of the legitimate products, and they suffer when counterfeit products actually harm them, as is sometimes the case with fake pharmaceuticals and faulty electrical products.

Working together with 21 Senate cosponsors and our House counterparts, we moved that bill from introduction in July to the President's desk in October. I look forward to the new leadership of the Justice Department being confirmed and in place so that they may utilize the resources and tools we provided.

This year, we are working to make additional progress by modernizing the United States patent system. Last week, I joined with Senator Hatch, Chairman Conyers and Mr. Smith to reintroduce

the bipartisan, bicameral Patent Reform Act of 2009 (S.515). This Committee was able to report patent reform legislation in the last Congress, and the House passed a companion bill. This year we need to enact it to help bolster our economy.

It has been more than 50 years since significant reforms were made to the Nation's patent system. Our legislation makes needed updates to the system that will improve patent quality and increase certainty among parties in litigation. Patent reform is ultimately about economic development. It is about jobs, it is about innovation, and it is about consumers. All benefit under a patent system that reduces unnecessary costs, removes inefficiencies, and holds true to the vision of our Founders that Congress should establish a national policy that promotes the progress of science and the useful arts. Our bill is intended to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party's access to court is denied. I thank our bipartisan group of cosponsors, Senators Schumer, Crapo, Whitehouse, Risch and Gillibrand.

The legislation we introduced last week grows out of our work over several years. We have made some changes from the last Committee-approved bill in response to concerns we heard from groups ranging from labor unions to small inventors to manufacturers. We have removed the requirement that all patent applications be published 18 months after they are filed and we have removed the requirement for Applicant Quality Submissions. We have also adopted the House approach to improving the current inter partes reexamination process, rather than creating a new second window post-grant review.

Today's hearing is the eighth this Committee has held on patent reform issues since 2005. There have been several positive developments. Recent decisions by the United States Supreme Court and the Federal Circuit have moved the law in the direction of our legislation and reflect the growing sense that questionable patents are too easily obtained and are too difficult to challenge. The Supreme Court's Quanta decision may offer a useful way of describing the truly inventive feature of a patent. Senator Specter has made constructive suggestions about a "gate keeping" role for the court in damage calculations. There is much work to do, but I am optimistic that by continuing to work together, we will find the right language. We may be closer to reaching consensus on language regarding damages and venue than ever before.

The Patent Reform Act of 2009 promotes innovation, and will improve our economy. As we work with the Obama administration to help pull the economy out of the recession, Congress cannot afford to sit idly by while innovation - the engine of our economy - is impeded by outdated laws. Nor can we rely on the courts to do our work. Congress writes our laws.

Our legislation ensures that, in the Information Age, we have the legal landscape necessary for our innovators to flourish. It will improve the quality of patents and remove the ambiguity from the process of litigating patent claims. As innovation is encouraged, and excessive litigation costs are removed, competition will increase and the consumer cost of products will fall. In this way, the bill directly benefits both creators and consumers of inventive products.

When Thomas Jefferson issued that first American patent in 1790 - a patent that went to a Vermonter - no one could have predicted how the American economy would develop and what

changes would be needed for the law to keep pace, but the purpose then remains the purpose today-- promoting progress. Now is the time-- bolster our role as the world leader in innovation. Now is the time to create jobs at home. Now is the time for Congress to act on patent reform.

I ask unanimous consent to put the full text of my statement in the record.

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