

AIPLA

AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

2001 JEFFERSON DAVIS HIGHWAY ▪ SUITE 203 ▪ ARLINGTON, Virginia 22202

Statement of

Michael K. Kirk

Executive Director

American Intellectual Property Law Association

Before the

Subcommittee on Intellectual Property

United States Senate

Washington, D.C.

On

Perspectives on Patents

April 25, 2005

Mr. Chairman:

I am pleased to have the opportunity to present the views of the American Intellectual Property Law Association (AIPLA) on the need to improve the United States patent system and the legislative reforms AIPLA proposes to address this need. AIPLA expresses its appreciation to you for holding this hearing to identify the important problems confronting the U.S. patent system and to identify appropriate solutions to address these problems.

AIPLA is a national bar association of more than 16,000 members engaged in private and corporate practice, in government services, and in the academic community. The AIPLA represents a wide and diverse spectrum of individuals involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Since our members represent inventors before the PTO, as well as both plaintiffs and defendants in patent litigation, we have a keen interest in reforms that further an efficient, effective, and balanced patent system.

The Need for Reform

The U.S. patent system has, in certain respects, functioned remarkably well. Its successes today are in significant part attributable to a number of reforms that have been made by Congress during the past 25 years. The creation of the Federal Circuit, the passage of the Patent Law Amendments Act of 1984, the adoption of reexamination, and the enactment of the American Inventors Protection Act have made the patent system more open and much stronger as an incentive to invest in innovation. However, there are

aspects of the U.S. patent system that are not working well today. Over the past decade, some of these elements of the patent system have, in fact, come to work less well.

This conclusion is shared by others. Two recent studies of the U.S. patent system have produced lengthy reports that have largely come to the same conclusion. The Federal Trade Commission report, (*To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy*, Report by the Federal Trade Commission, (October 2003)), found that while most of the patent system works well, some modifications are needed to maintain a proper balance between competition and patent law and policy. The FTC made ten recommendations that focused on tuning the balance between patent owners' rights to effective exclusivity in valid patents and the public's right to be free from the competition-limiting effects of invalid patents.

The report of the National Academies of Sciences' Committee on Intellectual Property Rights in the Knowledge-Based Economy (NAS) was published just one year ago, in April 2004. Like the FTC effort, it was the culmination of a multi-year study of the patent system. The NAS report found that the U.S. patent system played an important role in stimulating technological innovation by providing legal protection to inventions and by disseminating useful technical information. Moreover, with the growing importance of technology to the nation's well-being, it found that patents are playing an even more prominent role in the economy. It concluded with seven principal recommendations to ensure the vitality and improve the functioning of the U.S. patent system, several of which overlap those made by the FTC.

AIPLA has also studied the effectiveness of the patent system. Former AIPLA President Rick Nydegger recognized the need to review the functioning of the patent

system almost two years ago and established a Special AIPLA Committee on Patent Legislative Strategies in an effort to provide more concrete and coordinated ideas for needed reforms to the patent law. The Special Committee was co-chaired by two other former AIPLA Presidents, Don Martens and Bob Armitage, and its membership was drawn from a diverse cross-section of AIPLA members. It included former senior officials of the United States Patent and Trademark Office, a retired federal district court judge, some of the nation's leading patent litigators including Past Presidents of our Association, and in-house IP counsel drawn from several industry sectors.

In efforts paralleling that of our Special Committee on Legislative Strategies, AIPLA undertook an exhaustive analysis of the recommendations in both the FTC and NAS reports and offered replies. These parallel and sometimes intersecting efforts stimulated us to take a closer look at a number of issues and push to further develop and refine concrete proposals for reforms.

After developing these reform proposals that were ultimately approved following several meetings of AIPLA's Board of Directors, we concluded that it would be highly desirable to take them to a broader public. After discussions with the officials responsible for developing similar recommendations in the FTC and NAS reports, we agreed with FTC and NAS to jointly sponsor three "Town Hall" meetings across the country. These were open forums to explain to all stakeholders the proposed reforms to the patent system and to allow them to offer their reactions and suggestions. We have planned a fourth and final meeting for Washington, D.C., on June 9. This final meeting will allow us to distill the work of the three previous meetings.

These parallel efforts by three quite different organizations with quite distinct missions are especially striking because of their similar diagnosis of what needs improving in the patent system and, especially as between AIPLA and NAS, the convergence in the recommendations for doing so.

For any organization putting together an effort at patent law reform, a critically most important task is to make a clear separation between what is right with our patent laws – and does not requiring tinkering – and what is wrong with our patent laws – and, therefore, should be the subject of focused attention. Where, for example, could reforms have the biggest benefits for all users of the patent system? What is actually ready for reform today, because a sufficient consensus already exists or could be developed, or because sufficient study and scholarship have taken place? And where might more study and reflection be needed before forging ahead with changes to the patent system? Our assessment is that our work with the NAS and the FTC in large part validates our reform proposals as a possible way forward to near-term patent reforms.

We have been especially mindful that patent law reform is never easy because of the diversity of the constituencies with a stake in the patent system. However, AIPLA believes that successful patent law reform has been and always will be an effort at inclusion. This comes naturally to us because our membership reflects the diversity of stakeholders in the patent system – clients of our members both obtain patents and challenge patents.

Our notion of inclusion means, therefore, that reforms work to make a better patent system not only for inventors with adequate resources – more often than not inventors connected with so-called “large entities” such as corporations – but also for the

least financially able inventors – which includes many “independent inventors,” not-for-profit institutions, and small businesses.

Another equally important aspect of inclusion relates to the manner in which the patent system works to protect the interests both of those who seek patents, those who challenge patents, and the public. The patent system works best when standards for patentability are rigorously applied and mistakes – that will inevitably be made when patents are issued that should not have – can be readily corrected. While much emphasis is understandably placed on making the patent system work better for inventors, a fair and balanced patent system needs to work equally well when a member of the public seeks to have a mistake made in issuing a patent quickly and inexpensively corrected.

Funding: An Essential Prerequisite for Patent Law Reform

Before discussing our legislative proposals for patent law reform, we cannot overlook the most fundamental problem in need of a solution – adequate and stable funding and operational flexibility for the PTO. Any careful study of the U.S. patent system today would reach this conclusion – indeed, both the NAS and FTC recommended providing adequate funding for the PTO. The Office must be afforded the resources and capabilities to deal with a workload that has grown dramatically – both in size and complexity. As patent rights have become more important, it has become much more important that the quality of PTO’s work improve. Important patents take too long to issue. Technologies new to patenting require building new capabilities for examining them, sometimes almost from scratch.

The need for a more efficient and effective PTO will require adequate funding, but it will also require long-range planning, oversight, and accountability. AIPLA

supported the PTO's development of the Strategic Plan requested by Congress. For the Office to be able to build new capabilities, improve its quality, become more efficient, and serve all its constituencies, it must anticipate, plan for, and invest in new capabilities. This requires on-going efforts at long-term planning that must include long-range financial and operational planning.

Of course, PTO planning and Congressional oversight will mean nothing without adequate funding. Many of the reforms that AIPLA and others are proposing will require the PTO to play a greater role in the overall patent system. AIPLA is dedicated to working with the Congress, both this Committee and the Appropriations Committee, to secure a financing structure that will allow the patent law reforms which we propose to be achieved. However, we cannot emphasize enough the importance of this goal: the most significant patent law reforms absolutely depend on the PTO having the financing and operational flexibility to carry them out effectively and efficiently.

AIPLA's Proposed Patent Law Reforms

Turning now to substantive proposals for patent law reform, AIPLA believes that the time is right for Congress to adopt a coordinated and interrelated set of reforms to the patent system as recommended by the NAS and which we support:

- Adopt a first-inventor-to file system with an objective definition of "prior art" – the information used to determine if an invention is new and non-obvious.
- Limit or eliminate the subjective elements in patent litigation, i.e., "inequitable conduct," "willful infringement," and "best mode."
- Complete the desirable legislative enhancements originally proposed in what became the American Inventors Protection Act.

- Adopt a fair and balanced post-grant opposition system that takes advantage of the elimination of the subjective elements in patentability criteria that accompany adoption of the first-inventor-to-file principle.

Adopt first-inventor-to-file system and simplify patent law determinations of validity

AIPLA supports the principle that the first inventor to file an application for patent containing an adequate disclosure (35 U.S.C. §112) of an invention should have the right to patent the invention. This change in U.S. patent law would bring a much needed simplification of the process and reduce the legal costs imposed on U.S. inventors. It would also improve the fairness of our patent system, and would significantly enhance the opportunity to make real progress toward a more global, harmonized patent system in general.

The current system is based on complex proofs of invention and is fundamentally unfair to independent inventors and small entities due to its costs and complexities. It frequently does *not* award patents to the first to invent. It uniformly awards patents to the first-inventor-to-file for a patent except where sufficient, corroborated invention date proofs can be marshaled to demonstrate that a second-to-file inventor can overcome the *presumption* currently afforded under our patent law in favor of the first inventor who filed.

Moreover, the expense and complexity of the first-to-invent system mean that an inventor can be first to make the invention and first to file a patent application, but still forfeit the right to a patent because the inventor cannot sustain the cost of the “proof of invention” system. According to AIPLA’s 2003 Economic Survey, the median cost to an inventor in a simple, two-party interference is \$113,000 to complete the preliminary

phase (discovery) and over \$300,000 to the final resolution. Costs of this magnitude place independent inventors, small entities and universities at a clear disadvantage.

This disadvantage has been heightened in recent years by the new right of foreign-based inventors to introduce invention date proofs. While a decade ago a U.S.-based inventor might have had some advantage because of the bar against relying on a foreign date of invention, this provision of U.S. patent law was outlawed by TRIPs. Thus, independent inventors, small entities and universities are now also subject to this kind of cost disparity from attacks brought by foreign applicants and parties.

Former PTO Commissioner Gerald J. Mossinghoff presented empirical data at our Town Hall meetings based on his earlier research. See Gerald J. Mossinghoff, *The First-to-Invent System Has Provided No Advantage to Small Entities*, 88 J. Pat & Trademark Off. Soc’y 425 (2002). His data demonstrated conclusively that independent inventors, whose right to patent their inventions depended on their ability to prove that they were “first to invent,” managed to lose more often than not. In an April 15, 2005 Working Paper published by the Washington Legal Foundation, Mossinghoff’s most recent data suggests that the rate of loss by independent inventors has only accelerated over the past several years (Gerald J. Mossinghoff, *Small Entities and the “First to Invent” System: An Empirical Analysis*, <http://www.wlf.org/upload/MossinghoffWP.pdf>).

An analysis by Professor Mark A. Lemley and Colleen V. Chien reaches an even more stunning conclusion. The Lemley and Chien findings suggest that the current first-to-invent contests “are more often used by large entities to challenge the priority of small entities, not the reverse. This evidence further supports Mossinghoff’s conclusion that the

first to invent system is not working to the benefit of small entities.” See *Are the U.S. Patent Priority Rules Really Necessary?*, 54 *Hastings Law Journal* 1 (2003).

Given the cost, complexity and demonstrable unfairness imposed by the present first-to-invent system, it is clear that a change to a first-inventor-to-file system in our patent law is justifiable simply on grounds that it is the “best practice.” With the adoption of a first-inventor-to-file rule, 35 U.S.C. §102 can be greatly simplified. Prior art would no longer be measured against a date of invention: if anticipatory information was reasonably and effectively accessible before the earliest effective filing date of a patent application, no patent issues. Similarly, the question of whether an inventor “abandoned” an invention would no longer be relevant. And, of course, proofs of conception, diligence, and reduction to practice become irrelevant.

A first-inventor-to-file system will also clearly benefit large and small businesses. It will eliminate the present delays and uncertainty associated with resolution of interferences which complicate business planning. In addition, it will remove the potential cloud over important inventions that will always be present in a first-to-invent system.

Limit the subjective elements of patent litigation

- *“Inequitable conduct”*

The National Academies singled out the “inequitable conduct” defense as one of three so-called “subjective elements” in patent litigation that should be limited or eliminated. Inventors and patent owners need for Congress to address the issue of the “inequitable conduct” unenforceability defense.

The defense of inequitable conduct applies when the patent applicant has made a material misstatement or omission with intent to deceive the PTO. Examples of conduct punishable as inequitable conduct might include the intentional failure to disclose a known prior art reference (unless cumulative), burying a material reference in a large bundle of other references, or making false or misleading statements to the PTO. Despite the salutary intent of the doctrine, it has become an overused weapon in patent litigation. As noted in *Burlington Industries v. Dayco Corp.* 849 F.2d 1418 (Fed. Cir. 1988), “[T]he habit of charging inequitable conduct in almost every major patent case has become an absolute plague.”

The heart of the AIPLA proposal for addressing the use of the “inequitable conduct” defense in patent litigation is to limit – not eliminate - the ability of an accused infringer to plead this defense to clear cases of common law fraud. But let me be clear: our proposal would not lessen the duty of candor and good faith – it would more effectively enforce it. Thus, we propose to allow this defense to be pled only in the circumstance where the court has invalidated a claim and the accused infringer has a reasonable basis for alleging that, absent the fraudulent misconduct attributable to the patent owner (“but for” the conduct of the patent owner), a reasonable patent examiner would not have allowed the invalidated claim to issue as part of the patent. Where such conduct is proven, a fraud has occurred and the patent would be unenforceable. Thus, the AIPLA proposal would return the “inequitable conduct” defense to its equitable roots. A patent owner who had engaged in a fraud to secure an invalid claim would not be able to enforce the patent – the patent owner’s “unclean hands” would preclude such enforcement.

After considering a number of alternative proposals, we came to the conclusion that other possible misconduct by the patent owner that does not rise to the level of fraud – that is, misconduct that would not have resulted in an examiner allowing a claim even if the omission or misstatement had not occurred – should be referred by the court back to the PTO. We propose that Congress codify the duty of candor and good faith and give the PTO the authority to administer that duty where questionable misconduct is uncovered during patent enforcement proceedings. Like other agencies, Congress should look to the PTO to enforce its own rules and charge it with the responsibility for doing so. No agency of government undertaking work of crucial importance to the nation should have rules mandating high standards of conduct for those appearing before it and not have responsibility, resources, and capabilities for administering and enforcing those rules. This would allow the Office – as part of its control over the duty of candor and good faith – to determine whether or not the allegations merited investigation and sanction.

Giving the PTO authority over the duty of candor and good faith means that the Office could address the dilemmas faced by those representing clients who – justifiably and consistently – have opposed efforts by the Office to mandate more meaningful disclosures of information. Such more meaningful disclosures could clearly drive the efficiency and accuracy of the patent examination process – for example, by specifying the contents of statements to be submitted regarding the potential relevance of prior art. Today, if such statements are offered, they are fodder for the “inequitable conduct” defenses raised in patent litigation. Placing the PTO in control of the duty of candor and good faith would allow the creation of “safe harbors” for applicants satisfying enhanced

disclosure requirements which could not later be used as grounds for an allegation of inequitable conduct.

Giving the PTO such authority could also address an AIPLA concern for a post-grant opposition procedure, namely, that the duty of candor and good faith should meaningfully apply to opposers. An opposer that raises an issue of unpatentability should be no more free to mislead or misrepresent the facts in that proceeding than an inventor or patent owner in a PTO proceeding. This is a hole in the duty today with respect to reexamination that could be filled by giving the PTO such authority.

We propose, therefore, that Congress adopt a mechanism that would authorize the PTO to investigate misconduct by opposers and third parties who request reexamination and to impose civil monetary sanctions on patentees and disbarment of their attorneys. In addition, where false statements have been made, the mechanism for sanctioning misconduct should include a mechanism for referrals to the Criminal Division of the Department of Justice.

We believe that such proceedings by the PTO – where the Office elects to proceed after reviewing a referral from a court – would be relatively rare events, but nonetheless a much more effective deterrent to misconduct than the current unenforceability defense. The current reliance on the courts for “enforcement” of the duty is problematic because it can lead to the punishment of benign deeds and the failure to punish bad deeds. The ultimate ineffectiveness of the inequitable conduct defense today is probably best illustrated by the fact that it is raised and litigated in almost every important patent case, but is rarely successful.

- “*Willful infringement*”

NAS also recommended that the doctrine of willful infringement be eliminated from patent litigation. It observed that the question of willful infringement involves an issue of intent that produces a significant discovery burden, introduces an element of substantial uncertainty, and complicates much patent infringement litigation. While AIPLA does not recommend its elimination, we agree that Congress should act to contain charges of willful infringement.

During the hearings conducted by the FTC, it was revealed in testimony that some companies forbid their engineers from reading patents for fear that such acts might be used by a patentee to allege that the company willfully infringed the patent. As reported by the FTC, “the failure to read a competitor’s patents can jeopardize plans for a noninfringing business or research strategy, encourage wasteful duplication of effort, [and] delay follow-on innovation...” (FTC Report, Chapter 6, page 29). This fear, whether well founded or not, forcefully demonstrates that the law on willfulness has effectively undermined the Constitutional purpose of the patent system, i.e., to promote the progress of the useful arts. In practice, exposure to a claim of willfulness is not limited to cases of knowing, intentional infringement. Knowledge of a patent, coupled with a decision to engage in or continue conduct later found to be infringing, may be enough to result in treble damages.

Moreover, willfulness is asserted in most cases. Professor Kimberly A. Moore, George Mason University School of Law, conducted an empirical study of willfulness, looking at patent infringement cases that terminated during litigation from 1999–2000. Professor Moore found that willful infringement was alleged in over 92% of the cases,

observing that her “results suggest that willfulness claims are plaguing patent law. It seems unlikely that in 92% of the cases, the patentee had sufficient factual basis at the time the complaint was filed to allege that the defendant’s infringement was willful.” See [Empirical Statistics on Willful Patent Infringement](#), 15 Fed. Cir. B.J. 227 (2004),

Additional problems arise from the Federal Circuit’s opinion in *Underwater Devices, Inc. v. Morrison-Knudsen Co.*, 717 F2d 1380 (Fed. Cir. 1983). The decision speaks of an accused infringer having an affirmative duty to exercise due care to determine whether or not he is infringing once given notice of a another’s patent, including the duty to seek and obtain competent legal advice from counsel. This leads to hundreds of thousands of dollars spent by company after company on opinions of counsel as insurance against a finding of willful infringement. This perceived obligation also leads to problems with attorney disqualification since the attorney giving the opinion will be called as a witness during the litigation. As a result, a company’s chosen counsel cannot act as both its counselor and its trial attorney. Some states, such as the state of Virginia, do not even allow the attorney trying the patent infringement case to be in the same law firm as the attorney who drafted the infringement opinion. Complicated issues involving waiver of attorney-client privilege further exacerbate the matter.

These difficulties were not obviated by the en banc reconsideration of *Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.* 383 F3d 1337 (Fed. Cir. 2004). While the Court did rule that it is inappropriate for the trier of fact to draw an adverse inference with respect to willful infringement when a defendant has not obtained legal advice or invokes the attorney-client privilege, the decision leaves untouched the duty of due care and the circumstances which give rise to such duty.

AIPLA would retain the concept of willful infringement, but would limit it to apply only where the infringer is truly a bad actor. Of course, every successful patentee will still receive damages adequate to compensate for the infringement, together with interest and costs as fixed by the court. In general, however, absent copying of a patented invention with knowledge that it was patented, we believe there should be no finding of willful infringement unless the patent owner has provided to the infringer a detailed written notification of the specific patent claims infringed and the infringing products and processes.

We further believe there should be no finding of willful infringement if an infringer can establish that, once it had received notice, (1) it obtained competent advice of counsel that there was no infringement on the grounds of invalidity, unenforceability or non-infringement, and (2) it reasonably relied upon such advice. In cases of the intentional copying of an invention knowing it to be patented, the informed good faith belief of the alleged infringer must exist prior to the time the alleged infringing activity begins.

Finally, we believe that the absence of an opinion of counsel should not create an inference that the infringement was willful and that mere knowledge of a patent should not be the basis for enhanced damages.

- *“Best mode”*

The third subjective element in patent litigation that NAS recommended for elimination is the requirement to disclose the “best mode.” Section 112 of the Patent Act requires that an application “set forth the best mode contemplated by the inventor of carrying out his invention.” To enforce this requirement, courts inquire whether the inventor, at the time of filing, knew of a mode of practicing the invention that the

inventor believed was better than that disclosed in the application. This test is obviously subjective, focusing on the inventor's state of mind at the time an application was filed.

Because the defense depends on historical facts and because the inventor's state of mind usually can be established only by circumstantial evidence, litigation over this issue—especially pretrial discovery—can be extensive and time-consuming. Further, the best mode requirement provides only a limited incentive for a patentee to disclose more information than is required by the written description and enablement provisions of 35 U.S.C. §112. Given the cost and inefficiency of this defense and its limited incentive to provide additional disclosure to the public, the NAS report recommended its elimination. AIPLA endorses this change. We support and would retain the requirements in current law that every patent application must provide the public a full description of the invention (i.e., the so-called “written description” requirement) and fully enable the practice of the invention the inventor seeks to patent (i.e., the so-called “enablement” requirement). However, we would remove the problematic and subjective requirement, first introduced into the patent law in the 1952 Patent Act, that the inventor additionally include in the patent application the mode the inventor subjectively contemplated to be the best as of the day that the application was filed.

Enhancements to the American Inventors Protection Act

There are other important parts of the patent law that we believe should be addressed to complete the reforms needed for the patent system. Moving to a first-inventor-to-file system suggests that some changes should be made to the prior user defense to patent infringement. In addition, we believe that the patent law should expressly codify that the right to patent is the inventor's right. This fundamental right is

captured in the description of the priority system we propose: first-inventor-to-file. This right of the inventor is well understood in the laws of other countries – only the inventor has the right to a patent. The inventor can transfer this right through assignment if desired, but no one can take the invention and obtain a valid patent merely by filing the first application.

Finally, AIPLA believes that the PTO should publish all pending applications for patent 18-months after their initial filing. This would make the patent system more transparent and allow the public to make earlier determinations of whether an invention is novel and non-obvious on the basis of all prior art. It would also allow the public to better gather evidence for submission in the post-grant opposition proceeding which AIPLA supports and to which I now turn.

Adopt a fair and balanced post-grant opposition system

With the adoption of a first-inventor-to-file system and the related prior art simplification, a truly effective post-grant opposition procedure can be adopted to provide the public a mechanism to promptly correct mistakes made by the PTO in issuing patents. To encourage the public to act promptly, we believe that an opposition request should be made no later than nine months after a patent has issued. We do not view oppositions as an alternative to litigation. These procedures should allow the public to correct improvidently granted patents – patents with claims that are too broad or patents that the PTO should not have granted at all. After the initial period of nine months has passed and no opposition has been filed, patentees should enjoy a “quiet title” without the fear of later administrative challenges, except for the limited reexamination procedure.

Consistent with this approach, for an opposition brought within this nine month

window from grant, an opposer should have the burden of proving the invalidity of a claim by a preponderance of the evidence. Also consistent with this approach, we would retain the standard of “clear and convincing evidence” that applies in a patent infringement lawsuit or a declaratory judgment action seeking to invalidate a patent claim. In this way, the procedure strikes a balance – encourage the public to promptly eliminate questionable patents without unduly undercutting the patentee’s right to benefit from his invention.

As noted above, a key feature of the post-grant opposition system that we propose is that the PTO would be able to correct all mistakes made in the patent examination process. We refer to this as an “all issues” opposition, that is, a proceeding in which, unlike current reexamination proceedings, a challenger can raise all of the legal issues related to patentability. The predicate for such an “all issues” opposition is the adoption of a “first-inventor-to-file” system and related changes to the definition of prior art. Eliminating the need to consider evidence of the date on which work was actually started and completed by the inventor is a critical reason for coupling the adoption of the first-inventor-to-file principle to a post-grant opposition proceeding. The feasibility and effectiveness of the post-grant opposition proceedings would be enhanced by the removal of this otherwise complicating factor. Issues such as the inventor’s forfeiture of the right to patent through some secret commercial use or private offer for sale would be eliminated. So also would issues of “abandonment” of the invention. As previously discussed, the elimination of the requirement to disclose the “best mode” would mean that this subjective element would not complicate the proceeding and add unnecessarily

to its costs. Thus, the issues that would necessitate significant discovery – and thereby unduly complicate and increase the costs of an opposition – would vanish.

Conclusion

The U.S. patent system continues to be an essential driver of our nation's economic and technological success, but there is a growing consensus that it is in need of adjustment. The NAS and FTC have reached this conclusion. The Intellectual Property Law Section of the American Bar Association, the Intellectual Property Owners Association, the Biotechnology Industry Organization and AIPLA are generally agreed on the adjustments that need to be made.

We now have an opportunity – indeed, an obligation – to prepare the U.S. patent system for the 21st Century. The reforms that AIPLA has proposed will, we believe, achieve this goal.

We commend you, Mr. Chairman and Senator Leahy, for your continuing leadership in striving to improve our intellectual property system. The AIPLA looks forward to working with you, the other Members of the Subcommittee, and your able staffs to assist you in any way we can.