

THE COALITION FOR 21<sup>ST</sup> CENTURY PATENT REFORM  
*Protecting Innovation to Enhance American Competitiveness*

For Immediate Release  
March 26, 2009

Contact: Bill Mashek  
202.354.8275  
bmashek@pstrategies.com

**Coalition Statement on Senate Judiciary Mark Up of S. 515**

**Washington, D.C.** – Gary Griswold, Chairman of The Coalition for 21<sup>st</sup> Century Patent Reform, released the following statement after the Senate Judiciary mark up of S. 515, The Patent Reform Act of 2009.

“We commend the members of the Senate Judiciary Committee for continuing to take a careful review of S. 515. America’s patent system is crucial to all innovators and researchers – and most particularly during this time of obvious economic turmoil. Our coalition of over fifty member companies supports today’s action to take more time to try to achieve a consensus on the legislation. At this point we do not believe consensus has yet been reached on damages language that we believe is critical for the bill to move forward. We will continue to work with committee members and others on developing legislation that is fair and balanced.”

-- 30 --

The coalition has 50 members from 18 diverse industry sectors and includes many of the nation’s leading manufacturers and researchers. The coalition’s steering committee includes 3M, Caterpillar, General Electric, Johnson & Johnson, Eli Lilly and Procter & Gamble. The coalition has members in a variety of industry sectors including: Aerospace and Defense, Chemical, Computers, Diversified Financials, Diversified Technology, Energy, Food Production, Forest & Paper Products, Health Care, Household & Personal Products, Industrial Equipment, Medical Equipment & Devices, Network & Communications, Payroll Services, Pharmaceutical, Biotechnology, Semiconductors & Electronic Components, and Transportation Equipment.

Visit [www.patentsmatter.com](http://www.patentsmatter.com) for more information.

## **Coalition for 21st Century Patent Reform**

### Executive Summary

Philip S. Johnson, Chief Intellectual Property Counsel, Johnson & Johnson  
Committee on Judiciary Testimony, March 10, 2009

The primary focus of patent reform should be job growth. Congress should change our patent laws to ensure that meritorious inventions are uniformly accorded patent protection. The resulting patents should be promptly and reliably enforceable against infringers, and result in damages awards that fairly compensate for the unauthorized uses made of the patented inventions. Because the R&D investments made in reliance on the patents dwarf the costs associated with their filing, maintenance and enforcement, the principal objective of patent reform should not be on saving administrative costs, but on changes that will stimulate R&D investment. Collectively, these changes will stimulate job growth.

S. 515 is an excellent first step towards achieving these goals. The 21st Century Coalition supports, subject to certain technical amendments, the provisions in S. 515 that would: adopt the first-inventor-to-file principle (Section 2); expand the grounds for inter partes reexamination to include statements of the patent owner in prior proceedings – but not challenges on the basis of prior use and sale (Section 5); expand the opportunity for the public to submit publications to the USPTO (Section 7); and, permit interlocutory appeals – but only from denied, dispositive summary judgment motions where not duplicative of earlier appeals (Section 8); and permit the Director to set fees if accompanied by statutory protection limiting their use to the USPTO (Section 9).

The Coalition opposes the provisions relating to willful infringement as unnecessarily retarding, and perhaps disrupting, the orderly case law development of the objective recklessness standard as contemplated by *In re Seagate* (Section 4), and the provisions relating to venue as unnecessary in view of recent judicial developments facilitating the transfer of cases to districts with substantial contacts with the cause of action and as unfair to patent owners (Section 8).

As to reasonable royalty patent damages, the 21st Century Coalition believes that the case for remedial legislation has not been made. The sizes of patent damages awards have been relatively stable for many years, and typically barely cover the costs of litigation. At the very least, the Coalition believes it would be best to await the anticipated decision in *Lucent v. Gateway*, and/or the outcome of the study proposed in Section 18 of H.R. 1260, before considering such changes to our patent laws.

As Chairman Leahy has suggested, one promising future approach may be to enact appropriate “gate keeper” language. Any approach to reasonable royalty damages that would redefine the invention to be less than that to which the inventor has proven he/she is entitled, such as an “essential elements” approach, would amount to just another version of “prior art subtraction,” and would be grossly unfair to inventors.