



## Statement Of Senator Patrick Leahy On The Introduction Of The Patent Reform Act of 2011

January 25, 2011

The United States of America has long been the world leader in invention and innovation. That leadership has propelled our economic growth, but we cannot remain complacent while expecting to stay on top.

A *Newsweek* study last year found that only 41 percent of Americans believe that the United States is staying ahead of China on innovation. A Thompson Reuters analysis has already predicted that China will outpace the United States in patent filings this year. China, in fact, has a specific plan not just to overtake the United States this year in patent applications, but to more than quadruple its patent filings over the next five years.

That is astonishing, until considering that China has been modernizing its patent laws and promoting innovation while the United States has failed to keep pace. It has now been nearly 60 years since Congress last acted to reform American patent law. We can no longer wait.

Today, I am reintroducing bipartisan patent reform legislation that is the culmination of three Congresses worth of bipartisan, bicameral work, including eight hearings in the Senate alone. The Patent Reform Act of 2011 is structured on legislation first introduced in the House by Chairman Smith and Mr. Berman in 2005. The legislation will accomplish three important goals, which have been at the center of the patent reform debate: improve the application process by transitioning to a first-inventor-to-file system; improve the quality of patents issued by the USPTO by introducing several quality-enhancement measures; and provide more certainty in litigation.

In many areas that were highly contentious when the patent reform debate began, the courts have stepped in to act. Their decisions reflect the concerns heard in Congress that questionable patents are too easily obtained and too difficult to challenge. The courts have moved the law in a generally positive direction, more closely aligned with the text of the statutes.

Most recently, the Federal Circuit aggressively moved to constrain run-away damage awards, which has plagued the patent system by basing awards on unreliable numbers, untethered to the reality of licensing decisions. As the court continues to move in the right direction, it is more apparent than ever that the gatekeeper compromise on damages we have worked to reach with Senator Feinstein and others is what is needed to ensure an award of a reasonable royalty is not artificially inflated or based on irrelevant factors.

The courts have addressed issues where they can, but in some areas, only Congress can take the necessary steps. The Patent Reform Act will both speed the application process and, at the same time, improve patent quality. It will provide the USPTO with the resources it needs to work through its application backlog, while also providing for greater input from third parties to improve the quality of patents issued and that remain in effect.

High quality patents are the key to our economic growth. They benefit both patent owners and users, who can be more confident in the validity of issued patents. Patents of low quality and dubious validity, by contrast, enable patent trolls and constitute a drag on innovation. Too many dubious patents also unjustly cast doubt on truly high quality patents.

The Patent Reform Act provides the tools the USPTO needs to separate the inventive wheat from the chaff. It will allow our inventors and innovators to flourish. The Department of Commerce recently issued a report indicating that these reforms will create jobs without adding to the deficit. The Obama administration supports these efforts, as do industries and stakeholders from all sectors of the patent community. Congressional action can no longer be delayed.

Innovation and economic development are not uniquely Democrat or Republican objectives, so we worked together to find the proper balance for America – for our economy, for our inventors, for our consumers.

Thomas Freidman wrote not too long ago in *The New York Times* that the country which “endows its people with more tools and basic research to invent new goods and services [] is the one that will not just survive but thrive down the road. . . . We might be able to stimulate our way back to stability, but we can only invent our way back to prosperity.”

Reforming our patent system will stimulate the American economy through structural changes, rather than taxpayer dollars. I look forward to working with all Senators and our counterparts in the House, who have also made this a bipartisan priority, to ensure that this is the year we make our patent system reward inventors and provide certainty to users.

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