

DeMint	Johnson (WI)	Risch
Ensign	Kirk	Roberts
Enzi	Kyl	Rubio
Graham	Lee	Sessions
Grassley	Lugar	Shelby
Hatch	McCain	Snowe
Hoeben	McConnell	Thune
Hutchison	Moran	Toomey
Inhofe	Murkowski	Vitter
Isakson	Paul	Wicker
Johanns	Portman	

NOT VOTING—1

Akaka

The motion was agreed to.

Mr. LEAHY. I want to thank all Senators for supporting adoption of the Leahy-Grassley-Kyl managers' amendment. This consensus amendment is a compromise that resolves a number of the key outstanding issues in the bill, including fee diversion, business method patents, damages and venue. I want to take a moment to discuss the importance of these provisions.

First, the provisions in this managers' amendment that end fee diversion from the PTO are supported by all corners of the patent community. Today, users fund 100 percent of the PTO's operations. The PTO does not take a dime of taxpayer money. For all of the improvements that this legislation makes to our patent system, the Patent Office will always be hindered if it cannot retain the funds it generates to more adequately plan for its future. Today, as we ask our Patent Office to unleash the best in innovation from our businesses, our Patent Office does not have the funding to do the same for itself. Ending fee diversion will better equip the patent office with the resources to tackle the complexities of the 21st century.

Second, the managers' amendment creates a temporary proceeding at the Patent Office to reexamine certain business method patents. I appreciate the work that Senator SCHUMER has done on this issue, and the provisions included in the managers' amendment represents a middle-ground that bridges a divide on this issue between the financial and tech communities that reside in all of our States.

Third, the managers' amendment strikes provisions on damages and venue. Removing these provisions addresses recent concerns voiced by certain Members of the House, and raised by the high-tech community.

Finally, this managers' amendment wraps in Senator BENNET's previously offered amendment to provide a 50-percent reduction in fees for small business accelerated patent applications at the PTO, as well as some technical amendments. This break for small businesses, which drive innovation and create jobs, will better enable them to compete with the demands of the 21st century.

As we return to the America Invents Act, I encourage any Senator who has a germane amendment to come and debate it now. This is bipartisan legislation that our economy desperately needs. It will allow the PTO to function, and our inventors and innovators to flourish. If any other Senators have

amendments, this is the time. We need to move on to other pressing matters as soon as we complete work on this bill.

Mr. BENNET. Mr. President, I would like to speak briefly on my amendment to strike the damages and venue provisions from this legislation. I thank the chairman and committee for working with my office on this important amendment and incorporating it into the managers' amendment.

I know the committee has been working tirelessly to address concerns with this bill, and I applaud their efforts for trying to build consensus.

As I discussed yesterday, I believe a well-functioning patent system is critical for our economic growth. The reforms in this legislation will promote innovation and create jobs.

In my State alone, nearly 20,000 patent applications have been granted between the years 2000 and 2009. These applications have created the foundation for our clean energy economy and emerging tech and bio industries.

Small inventors start new Colorado companies, and more established companies are able to expand their operations in a very competitive, knowledge-based economy.

An efficient and high-quality U.S. Patent and Trademark Office is essential to maintaining American leadership in innovation. The improvements to the patent system in this bill will help us grow new industries and will help cure the backlog and delay that has stunted the ability of inventors to patent their ideas.

Right now, the average pendency period for a patent application is 36 months. That is unacceptable if we are to compete with the rest of the world. This doesn't even account for those patents that have been tied up in years of litigation after they are granted.

This is why we need to ensure that patent owners have certainty. Consistency, uniformity, and fairness are essential to innovation.

Prolonged litigation and legal uncertainty only serve to stifle the incentive to innovate. We need clarity and efficient review by the courts to make sure we don't have a system where patents are tied up for years. Likewise, we also need to make sure there is a fair outcome where there is an infringement. Those whose rights are infringed have every right to take their case to court and receive the appropriate damages.

This is why I introduced my amendment on damages and venue. We need more certainty for patent owners, and I think portions of the bill may not do enough in this regard, in the face of litigation. In fact, the venue and damages portions of the bill may actually generate more uncertainty, not less.

The Federal Circuit Court of Appeals has made significant progress on damages and venue issues. The courts are moving in the right direction, and I believe it is wiser to allow this process to run its course than to add a new layer

of laws that could only serve to confuse patent litigants. So in my view, congressional intervention on damages and venue is not needed at this time.

I would like to close by again thanking the chairman for his leadership and willingness to take into account the views of others on these important issues.

The PRESIDING OFFICER. The Senator from California is recognized.

PROHIBITING MEMBERS OF CONGRESS AND THE PRESIDENT FROM RECEIVING PAY DURING GOVERNMENT SHUTDOWNS

Mrs. BOXER. Mr. President, I ask unanimous consent that the Homeland Security and Governmental Affairs Committee be discharged from further consideration of S. 388 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 388) to prohibit Members of Congress and the President from receiving pay during Government shutdowns.

There being no objection, the Senate proceeded to consider the bill.

Mrs. BOXER. Mr. President, I ask unanimous consent that the bill be read the third time and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 388) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 388

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PROHIBITION ON PAY DURING GOVERNMENT SHUTDOWN.**

(a) IN GENERAL.—Members of Congress and the President shall not receive basic pay for any period in which—

(1) there is more than a 24-hour lapse in appropriations for any Federal agency or department as a result of a failure to enact a regular appropriations bill or continuing resolution; or

(2) the Federal Government is unable to make payments or meet obligations because the public debt limit under section 3101 of title 31, United States Code, has been reached.

(b) RETROACTIVE PAY PROHIBITED.—No pay forfeited in accordance with subsection (a) may be paid retroactively.

Mrs. BOXER. Mr. President, in 1 minute or less, I thank the occupant of the Chair very much for his strong co-sponsorship of this bill, along with other colleagues.

Basically, we are saying that if we fail to keep this government open, or to lift the debt ceiling, we Members of Congress should not receive our pay. It is pretty straightforward.

I thank Senator COBURN. He had objected earlier. He backed off of his objection. He will make his own case for the RECORD.

He is making the case that Federal employees, such as nurses, or Superfund cleanup workers, or Border Patrol agents never get 1 penny of reimbursement or back pay. I think that is, in essence, unfair, if we have a government shutdown, to put it on the backs of the middle-class people who don't want to stay home; they want to work. I am glad he is allowing this to move forward.

We certainly will now ask our friends on the other side of the Capitol and Speaker BOEHNER to take this bill up post haste and get it going. Let's avoid a shutdown but make it clear that if there is one, we are going to take our lumps just like other Federal workers. I hope this will help avert a shutdown.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

PATENT REFORM ACT OF 2011—  
Continued

AMENDMENT NO. 124

Mr. MENENDEZ. Mr. President, I ask unanimous consent to set aside the pending business and I call up amendment No. 124, which is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. MENENDEZ] proposes an amendment numbered 124.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for prioritized examination for technologies important to American competitiveness)

On page 104, strike line 23, and insert the following:

**SEC. 18. PRIORITY EXAMINATION FOR TECHNOLOGIES IMPORTANT TO AMERICAN COMPETITIVENESS.**

Section 2(b)(2) of title 35, United States Code, is amended—

(1) in subparagraph (E), by striking “; and” and inserting a semicolon;

(2) in subparagraph (F), by striking the semicolon and inserting “; and”; and

(3) by adding at the end the following:

“(G) may, subject to any conditions prescribed by the Director and at the request of the patent applicant, provide for prioritization of examination of applications for products, processes, or technologies that are important to the national economy or national competitiveness, such as green technologies designed to foster renewable energy, clean energy, biofuels or bio-based products, agricultural sustainability, environmental quality, energy conservation, or energy efficiency, without recovering the aggregate extra cost of providing such prioritization, notwithstanding section 41 or any other provision of law;”.

**SEC. 19. EFFECTIVE DATE.**

Mr. MENENDEZ. Mr. President, the goal of the patent reform legislation is

to incentivize investment in the American economy, to create jobs, and allow this great country to continue to win in the global marketplace.

The amendment I am offering here today would do just that. It would incentivize innovation and investment by prioritizing patents that are vital to the American economy and American competitiveness. It will enable us, in essence, to incentivize that innovation by creating that prioritizing.

My amendment would allow the Patent Office to prioritize patent applications that are vital to our national interests.

Specifically, the amendment says the Patent Office Director may prioritize the examination of applications for technologies that are important to the national economy or national competitiveness, such as green technologies designed to foster renewable energy, clean energy, biofuels, agricultural sustainability, environmental quality, conservation, or energy efficiency.

Currently, the Patent Office runs a green technology pilot program. An application for green technologies may be fast-tracked, leading to an expedited decision. This fast-track process is reserved for a small number of applications that are vitally important, so it has little to no adverse impact on other patent applications.

Currently, the patent process is rather lengthy. Patent decisions regularly take 2 to 3 years for a final decision. Our country is at risk of having vital new technologies buried in a sea of paperwork at the Patent Office. We want to make sure patents that are important to our national economy are fast-tracked rather than sidelined.

The goal here is to create jobs at home. We have to make sure the Patent Office has the resources and ability to prioritize patents that do just that—create jobs, incentivize investment, and support innovation. The Patent Office supports this amendment because they need the tools to make sure this bill reaches its intended goal of improving America's economy.

This amendment will create green jobs and support America's transformation to a self-sustaining economy that, among other things, is not reliant on foreign oil.

It is vitally important we do our best to ensure that all Americans have good-paying jobs and that we secure our Nation's economic future.

I ask my colleagues to support this amendment. It codifies an existing, successful program at the Patent Office. It is good commonsense policy that can help America propel forward in the 21st century.

Mr. WHITEHOUSE. Mr. President, I rise today to speak about the America Invents Act of 2011. As we all know, innovation, hard work, and ingenuity long have been the fuel of the American dream. This bill will make much needed improvements to our patent system to unleash the full power of American innovation once again. I am proud to be a cosponsor.

Before I speak in more detail about the importance of this bill, I would like to recognize the hard work of Senator LEAHY, the chairman of the Judiciary Committee. He long has sought to change our patent system from a drag on innovation into a driver of innovation. Chairman LEAHY has led bipartisan negotiations on this bill, seeking input from all segments of the American intellectual property community. I applaud his work with Senator GRASSLEY, Senator HATCH, and others of our colleagues in bringing this much needed legislation to the floor.

I take particular interest in this bill because of Rhode Island's long and proud history of innovation, from the birth of the American industrial revolution to the high-tech entrepreneurs leading our State forward today. An area has developed in Providence, for example, that is rightfully known by the nickname “the Knowledge District” for its remarkable innovation. We need to take every opportunity to support such work across our Nation.

Make no mistake, this legislation will drive innovation and create high-quality jobs. It will secure the foundations of new small businesses, encourage the discoveries made every day in our universities, and allow American companies to continue to lead the world in technology, medicine, and mechanical science.

Patent reform may be complicated, but these are not abstract issues. In my conversations with innovators in Rhode Island, it has become clear to me that the problems in our patent system are real and need to be fixed. Fail to do so and we will pay the price in jobs and international competitiveness.

Perhaps the most consistent concern I have heard back home has related to delays in the issuance of patents. Massive backlogs of patent applications persist at the Patent and Trademark Office, causing years of uncertainty over whether an innovator in fact has secured intellectual property rights in his or her invention. We have to fix this problem. Innovators in Rhode Island and elsewhere in this country must be able to gain patent protection for their inventions within a reasonable timeframe. Uncertainty and delay in patent protection will dampen and frustrate innovation.

The America Invents Act takes on this problem by allowing the Patent and Trademark Office discretion to set its own fees. Coupled with exceptions that will ensure low fees for small businesses, this provision will enable the Patent and Trademark Office to better manage its resources and reduce examination times.

I also support Senator COBURN's amendment to restrict fee-diversion and enable the Patent and Trademark Office, which does not depend at all on taxpayer funding, to be properly resourced with examiners who can work through the patent application backlog. This provision raises issues