

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

beyond the jurisdiction of the Judiciary Committee and as a result was not considered previously, but I trust it will win the support of our colleagues on the floor. I am glad that this provision has been included in the managers' amendment, of which I am a co-sponsor.

My conversations with Rhode Island inventors also made clear that the fear of protracted litigation also dampens innovation. Unfortunately, numerous poor-quality patents have issued in recent years, resulting in seemingly endless litigation that casts a cloud over patent ownership. Administrative processes that should serve as an alternative to litigation also have broken down, resulting in further delay, cost, and confusion.

The America Invents Act will take on these problems by ensuring that higher quality patents issue in the future. This will produce less litigation and create greater incentives for innovators to commit the effort and resources to create the next big idea. Similarly, the bill will improve administrative processes so that disputes over patents can be resolved quickly and cheaply without patents being tied up for years in expensive litigation.

This body must not pass up this chance to enhance innovation and energize our economy. We must see this bill through the Senate, and we must work with the House to see it passed promptly into law. It is true that the bill is a compromise and may not reflect all of everyone's priorities. Improvements to the bill may still be possible. To that end, I expect a productive debate on the floor and a constructive dialog with the House. I look forward to continuing to work with the chairman, my colleagues, and all interested parties to craft a bill that generates the broadest consensus possible.

But we must not lose sight of the need for action. Our patent system has gone 60 years without improvements. It needs repair. Now is the time to energize our innovation economy, to create jobs, and to secure continuing American leadership in the fields of medicine, science, and technology. Hard work and ingenuity long have been the backbone of this country. Let's not get in their way.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators

permitted to speak therein for up to 10 minutes each.

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

Mr. MENENDEZ. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### AMERICA INVENTS ACT

Mr. SCHUMER. Mr. President, I rise to speak in support of the America Invents Act generally and about the managers' amendment specifically. The America Invents Act, also known as the patent reform bill, has been pending for many years and has been the subject of extensive debate, negotiation, and revisions. In its current draft, it does much needed good to help protect the American innovation economy by updating and modernizing our patent system.

The patent system in the United States is designed to protect innovation and inventions and investment. But over the last several decades, the Patent and Trademark Office has become bogged down and overburdened by inefficient process and outdated law. The result is a heavy burden on the innovative work that is the engine of our economy.

I wish to commend Senator LEAHY. He has gone the extra mile for this bill for many years. I am proud and glad he is seeing his work come to fruition as we finally debate the bill on the floor. Passage of the bill is in sight. I also wish to commend the ranking member of the Judiciary Committee, Senator GRASSLEY, who worked with him, as well as Senator KYL, who has taken a leading role on the Republican side, for their hard work in crafting a bill that effectively modernizes the patent system, while paying attention to the many and varied demands different sectors of the economy exert upon it.

I am particularly pleased the chairman has decided to adopt the Schumer-Kyl amendment on business method patents into the managers' amendment. It is a critical change that this bill finally begins to address the scourge of business method patents currently plaguing the financial sector. Business method patents are anathema to the protection the patent system provides because they apply not to novel products or services but to abstract and common concepts of how to do business.

Often, business method patents are issued for practices that have been in widespread use in the financial industry for years, such as check imaging or one-click checkout. Because of the nature of the financial services industry, those practices aren't identifiable by

the PTO as prior art and bad patents are issued. The holders of business method patents then attempt to extract settlements from the banks by suing them in plaintiff-friendly courts and tying them up in years of extremely costly litigation.

This is not a small problem. Around 11,000 new applications for patents on business methods are filed every year, and financial patents are being litigated almost 30 times more than patents as a whole. This is not right, it is not fair, and it is taking desperately needed money and energy out of the economy and putting it into the hands of a few litigants. So I am very pleased Congress is going to fight it.

The Schumer-Kyl amendment, which was included in the managers' package we just adopted, will allow companies that are the target of one of these frivolous business method patent lawsuits to go back to the PTO and demonstrate, with the appropriate prior art, that the patent shouldn't have been issued in the first place. That way bad patents can be knocked out in an efficient administrative proceeding, avoiding costly litigation.

One of the most critical elements of this amendment has to do with the stay of litigation while review of the patent is pending at the PTO. The amendment includes a four-factor test for the granting of a stay that places a very heavy thumb on the scale in favor of the stay. Indeed, the test requires the court to ask whether a stay would reduce the burden of the litigation on the parties and the court. Since the entire purpose of the transitional program at the PTO is to reduce the burden of litigation, it is nearly impossible to imagine a scenario in which a district court would not issue a stay.

In response to concerns that earlier versions of the amendment were too broad, we have modified it so it is narrowly targeted. We want to make sure to capture the business method patents which are at the heart of the problem and avoid any collateral circumstances.

In conclusion, I believe the amendment takes an important step in the direction of eliminating the kinds of frivolous lawsuits the jurisprudence on business method patents have allowed. I am very grateful to the chairman and the ranking member, Senator KYL, and I support the managers' amendment and the America Invents Act as a whole.

Finally, I would like to say a few words about Senator COBURN's proposal on fee diversion. I think his idea, which is incorporated in the managers' amendment, makes a lot of sense; that is, to let the PTO keep the fees they charge so they are self-funded and we don't have to spend taxpayer money to fund them every year.

Last year, when we were debating the Wall Street reform bill, Senator JACK REED and I made a similar proposal for the SEC, which ultimately didn't make it into the final bill. I just wanted to