

February 28, 2011

The Honorable Patrick J. Leahy  
433 Russell Senate Office Building  
Washington, DC 20510-4502

Dear Senator Leahy:

We write as the presidents of six university, medical college, and higher education associations to express the strong support of our associations for S. 23, the Patent Reform Act of 2011, which was reported by the Senate Judiciary Committee on a 15-0 vote and is scheduled to be considered by the Senate this week. This bipartisan agreement represents the successful culmination of a thorough, balanced effort to update the U.S. patent system to support more effectively the nation's economic competitiveness and job creation in the increasingly competitive global environment of the 21st century.

Our universities and medical colleges are this nation's principal source of the fundamental research that expands the frontiers of knowledge, strengthening the nation's innovative capacity. The patent system plays a critical role in enabling these institutions to transfer the discoveries arising from university research into the commercial sector for development into products and processes that benefit society.

S. 23 will:

- harmonize the U.S. patent system with that of our major trading partners, enabling U.S. inventors to compete more effectively in the global marketplace;
- improve patent quality by allowing third parties to submit information to the USPTO concerning patents under examination, and by creating an efficient, effective post-grant opposition proceeding to challenge patents for nine months after they have been granted, allowing challengers to eliminate weak patents that should not have been granted and strengthening those patents that survive the challenge;
- reduce patent litigation costs by establishing the new post-grant procedure noted above, and by significantly improving the current inter partes review procedure, which will provide a lower-cost alternative to civil litigation to challenge a patent throughout its lifetime, while significantly reducing the capacity to mount harassing serial challenges; and
- provide USPTO with increased resources by providing this fee-funded agency with critically needed fee-setting authority, subject to Congressional and Patent Public Advisory Committee oversight.

We wish to call your attention to two important amendments that may be offered during floor consideration:

- Senator Coburn is expected to offer an amendment to prevent diversion of fees collective by USPTO. This amendment is a critical accompaniment to the fee-setting authority provided by S. 23, allowing this seriously under-resourced agency to maintain the fees necessary to carry out its critical functions and reduce the backlog of patent applications. We urge you to support the Coburn amendment.

- Senators Feinstein, Boxer, and Reid are expected to offer an amendment to eliminate the transition to a first-inventor-to-file system. The National Academies, in its seminal report on patent reform, *A Patent System for the 21<sup>st</sup> Century*, strongly recommended moving from a first-to-invent to a first-inventor-to-file system. Adopting a first-inventor-to-file system will harmonize the U.S. patent law with that of our trading partners, add greater clarity to the US system by replacing the subjective determination of the first inventor with the objective identification of the first filer, and eliminate the costs of interferences and litigation associated with determining the first inventor. We urge you to oppose the Feinstein, Boxer, and Reid amendment.

We believe S. 23 reforms current U.S. law in a way that balances the interests of the various sectors of the patent community and substantially improves the patent system overall, strengthening the capacity of this system to strengthen the nation's innovative capacity and economic competitiveness. We urge you to support this carefully crafted legislation.

Sincerely,

Robert M. Berdahl  
President  
Association of American Universities

Molly Corbett Broad  
President  
American Council on Education

Darrell G. Kirch  
President and CEO  
Association of American Medical Colleges

Peter McPherson  
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Association of Public and Land-grant Universities

Ashley J. Stevens  
President  
Association of University Technology Managers

Anthony P. DeCrappeo  
President  
Council on Governmental Relations

- ❖ This letter was sent to all members of the U.S. Senate