

**PATENT REFORM ACT — (Senate - December 18, 2007)**

[Page: S15898]

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**FURTHER IMPROVEMENTS**

Mr. LEAHY. Mr. President, I would like to take a moment, along with the distinguished Senator from Utah, a longstanding member of the Judiciary Committee and a consistent partner of mine on intellectual property issues, to discuss S. 1145, the Patent Reform Act of 2007.

Mr. HATCH. I would be happy to discuss this important issue with my good friend from Vermont.

Mr. LEAHY. First, I want to express my appreciation for my colleague's efforts in working to ensure that our patent laws are modernized. We first cosponsored patent reform last Congress. We again jointly introduced comprehensive patent reform this Congress in the form of S. 1145 in April of this year. Both bills had their foundations in numerous hearings with the testimony of dozens of witnesses and in innumerable meetings with the myriad of interested participants in the patent system. The message we heard repeatedly was of the urgent need to modernize our patent laws. The leaders of the House Judiciary Committee also heeded that call to legislate, and working with them, we introduced identical, bipartisan bills. H.R. 1908 was introduced the very same day that we introduced the Senate bill.

In July, after several extensive and substantive markup sessions, the Senate Judiciary Committee reported S. 1145 favorably and on a clear and strong bipartisan vote. In the course of

[Page: S15899]

our committee deliberations, a great many changes were made to improve and perfect the bill. These improvements included changes on the key issues of enhancing patent quality, clarifying rules on infringement and compensation of inventors, and improving the ability of the Patent and Trademark Office to do its job well.

Mr. HATCH. I am proud to be a leading cosponsor of patent reform. The inventiveness of our citizens is the core strength of our economy. Our Founding Fathers recognized the critically important role of patents by mandating in article 1, section 8, of the Constitution that Congress was to enact a patent law. The Congress has periodically seen fit to update the law to ensure it meets the changing needs of both science and our economy. But the current law has not seen a major revision since 1952. Much has changed since then. The courts have struggled valiantly to interpret the law in ways that make sense in light of

change, but that piecemeal process has left many areas unclear and some areas of the law out of balance. So action by the Congress is needed, and needed urgently.

Mr. LEAHY. I agree with my distinguished colleague that now is the time to enact patent reform, and we are in good company in that belief. Our leadership has committed to taking up S. 1145 as early in the new year as possible, and we commend that commitment. I fully recognize that when the bill was reported by the Judiciary Committee, a number of members expressed a strong view that the bill should be further perfected before it comes to a vote on the floor of the Senate. I made a commitment to the members of the Judiciary Committee at the markup that I would work closely with each of them, and other Members of the Senate, to make further improvements in the bill. I reaffirm that commitment.

Mr. HATCH. Thank you. I was among the members of the committee who expressed the view that while I believed we were reporting a very sound bill, further improvements should be considered. I very much appreciate your willingness to work with me and other Senators and very much appreciate your commitment.

Mr. LEAHY. As you and I have discussed, successful enactment of patent reform requires the input of all Senators. Over the past months, since the committee reported the bill, I have had numerous meetings with both members and affected interests. I know you have too. My staff has had literally hundreds of meetings and discussions about this legislation. In the course of those meetings, it has become clear to me that several issues are on the minds of most people: ensuring compensation for infringement is fair and adequate; clarifying rules on venue; and improving the ability of parties to challenge the validity of granted patents through administrative processes.

Mr. HATCH. I agree with my colleague, further improvements should be considered to key provisions of the bill, including damages, post-grant review, inequitable conduct defense, and venue.

Let me just say a few words about the need to make further reforms to the inequitable conduct defense. I commend Senator Leahy for working to develop an effective solution to the problem of the inequitable conduct defense during committee deliberation in July. No doubt he has done a good job in initiating this process. We certainly share many perspectives on how to reform this area of the law, but I believe more must be done to change the use of this defense as an unfair litigation tactic.

I know some have opposed any meaningful changes in this area because of how it would affect the generic pharmaceutical industry. As a coauthor of the Drug Price Competition and Patent Restoration Act, informally known as the Hatch-Waxman Act, I certainly understand the generic drug industry, but S. 1145 is an innovator's bill. Unless we promote and protect a structure that fosters a strong and vibrant environment for innovators, there will be fewer and fewer drugs for the generics to manufacture--and all, including patients, will suffer.

Much like Senator Leahy, my staff and I have met with many interested stakeholders and individuals about these provisions, and they have stated that further refinements to these four key provisions would garner even greater support of S. 1145. I firmly believe that compromise on each of these provisions is achievable, and I know that my good friend from Vermont would agree.

Mr. LEAHY. Over the course of early January, I invite you and our colleagues to work with me to find viable solutions. It is my intention to seek and hear the views of any and all parties and to include all interested staff and Senators. This will continue to be an open and deliberative process, with the goal of favorable Senate action as early as the floor schedule permits. I am committed to a strong and effective balanced bill. I know there are some out there who would rather see us do nothing and leave the systems now in place or merely codify current jurisprudence. I believe that following this course would be shirking our responsibility to ensuring the economic strength of our country that is built on inventiveness.

Mr. HATCH. I agree with your intentions and applaud your plan. I stand ready to work with you and each of our colleagues. I also agree that this should not become an excuse for further delay or for doing nothing. Unfortunately, some would like to play political football with this bill to pursue other agenda items. Make no mistake: this bill is far too important and should not fall prey to such partisan tactics from either side. The Senate has a tremendous opportunity and responsibility to further strengthen our Nation's competitiveness through meaningful patent reform.

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