

triggers Fifth Amendment obligations to pay “just compensation.” Section 18 would shift the cost of patent infringement from financial services firms to the U.S. Treasury. Finally, the “prior use” provision in H.R. 1249 violates the “exclusive” use provision guaranteed to inventors under the Constitution.

Thus, because this bill will hurt jobs and is unconstitutional, I urge my colleagues to oppose the bill. The manager’s amendment does not fix any of the problems with the bill; in fact, it further compounds the problems with the bill. The first step to fixing our patent system is to fix the PTO. This manager’s amendment would still allow patent fee diversion to take despite promises made in recent days. Permitting the PTO to retain its fees will allow the agency to hire more examiners and modernize its information technology infrastructure to reduce the massive backlog of pending patent applications. That’s real patent reform; not this bill.

Mr. SMITH of Texas. Madam Chair, I yield 1 minute to the gentleman from New Hampshire (Mr. BASS) for purposes of a colloquy.

Mr. BASS of New Hampshire. I thank the chairman.

I want to discuss some important legislative history of a critical piece of this bill, in particular, sections 102(a) and (b) and how those two sections will work together. I think we can agree that it is important that we set down a definitive legislative history of those sections to ensure clarity in our meaning.

Mr. SMITH of Texas. I want to respond to the gentleman from New Hampshire and say that one key issue for clarification is the interplay between actions under section 102(a) and actions under section 102(b). We intend for there to be an identity between 102(a) and 102(b). If an inventor’s action is such that it triggers one of the bars under 102(a), then it inherently triggers the grace period subsection 102(b).

Mr. BASS of New Hampshire. I believe that the chairman is correct. The legislation intends parallelism between the treatment of an inventor’s actions under 102(a) and 102(b). In this way, small inventors and others will not accidentally stumble into a bar by their pre-filing actions. Such inventors will still have to be diligent and file within the grace period if they trigger 102(a); but if an inventor triggers 102(a) with respect to an invention, then he or she has inherently also triggered the grace period under 102(b).

The Acting CHAIR. The time of the gentleman has expired.

Mr. SMITH of Texas. I yield myself 30 seconds.

Madam Chair, contrary to current precedent, in order to trigger the bar in the new 102(a) in our legislation, an action must make the patented subject matter “available to the public” before the effective filing date. Additionally, subsection 102(b)(1)(B) is designed to make a very strong grace period for inventors that have made a disclosure that satisfies 102(b). Inventors who have made such disclosures are protected during the grace period not only

from their own disclosure but from other prior art from anyone that follows their disclosure. This is an important protection we offer in our bill.

Ms. ZOE LOFGREN of California. Madam Chairwoman, I yield 2 minutes to my colleague from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Thank you very much, and I hope everyone is paying attention to what this is all about tonight.

First of all, we have DAN LUNGREN, one of our Members who is a former Attorney General of California, along with JIM SENSENBRENNER and JOHN CONYERS both the former chairmen of the Judiciary Committees, all of them adamant that this bill is unconstitutional. And now we have a discussion and we have a lot of people talking about backlogs and what’s wrong with the efficiency of the patent system or the patent office as if that’s what this is all about.

It is not what this is all about. This, again, has been designed, this is a patent fight that’s been going on 20 years. Basically, you have some very large multinational corporations who are trying to harmonize American patent law with the rest of the world, even though American patent law has been stronger than the rest of the world throughout our Republic’s history. You weaken the patent protection of the American people; you are weakening their constitutional protections in the name of harmonizing it with Europe. Is that what we want to do? I don’t think so. That will have dramatic impact on our country.

Hoover Institution, one of the most highly respected think-tanks in the United States, had four of their scholars go after this bill; and here’s three of the points they’ve made, through the many points, that said thumbs down on this America Invents Act. It is better called the patent rip-off bill. Here’s what Hoover Institution said: the America Invents Act will protect large, entrenched companies at the expense of market challenging competitors. Read that: overseas multinational corporations. They also said, The bill wreaks havoc on property rights, and predictable property rights are essential for economic growth.

This bill is a job killer, and the jobs that will be killed are in the United States of America, not the multinational corporation.

The Acting CHAIR. The time of the gentleman has expired.

Ms. ZOE LOFGREN of California. I yield the gentleman an additional 30 seconds.

Mr. ROHRABACHER. These multinational corporations, they’re creating jobs overseas. They don’t care if the jobs are lost here. The America Invents Act—here’s Hoover Institution again—the America Invents Act would inject massive uncertainty into the patent system.

We have had the strongest patent system in the world, and it has yielded

us prosperity and security as a people. We do not need to change the fundamentals of this system and to harmonize with weaker systems throughout the world.

I call for the people to vote against this patent rip-off bill.

Mr. SMITH of Texas. Madam Chair, I yield 2 minutes to the gentleman from Arizona (Mr. QUAYLE), who is also the vice chairman of the Intellectual Property Subcommittee of the Judiciary Committee.

Mr. QUAYLE. I thank the gentleman for yielding.

Madam Chair, I rise in support of H.R. 1249, and one of the reasons I do is because it encourages innovation and entrepreneurship by reducing costly litigation within our patent system. Innovation is the key to America’s immediate and future economic growth; and right now, many American innovators are being held back by an onerous and backlogged patent system. In order to unleash their job-creating potential, we must reform this system which hasn’t been reformed in almost 60 years.

□ 2040

One way this bill tackles patent reform is by creating a business method patent pilot program in which administrative patent judges will review the validity of these patents if a challenger presents evidence showing that a patent is more likely than not invalid.

Business method patents were not patentable until the late 1990s and have resulted in frivolous lawsuits which have cost between \$5 million to \$10 million per patent.

These types of patents cover a “method of doing or conducting business” which includes printing ads at the bottom of a billing statement, ordering something online but picking it up in person, tax strategies, or getting a text when your credit card gets swiped.

The tort abuse created by these patents has become legendary. Section 18 of this bill has broad bipartisan support in the Senate and is an alternative to costly litigation that will save 90 percent of the costs incurred in civil litigation.

I support Chairman SMITH’s work in creating a less costly, more efficient alternative to this abusive litigation and oppose any effort to strike section 18. As part of the Republican Conference’s overall effort to spur job creation and economic growth, I urge passage of this important legislation.

Ms. ZOE LOFGREN of California. Madam Chairman, I yield myself such time as I may consume.

I want to talk a little bit about the manager’s amendment under this general debate time because there is a very constrained amount of time for that discussion.

I want to touch on two things in particular. First is the fee issue. I know that there’s been discussion that somehow the fees won’t be diverted under