
Legislative Hearing on H.R. 2795, the "Patent Act of 2005."

THE HONORABLE LAMAR SMITH
OPENING STATEMENT REGARDING
H.R. ____, THE "PATENT ACT OF 2005"
JUNE 9, 2005

Today marks our third hearing on patent reform in the 109th Congress. The first two focused on the contents of a Committee Print.

I want to take a moment to commend the members of this Subcommittee, all of the witnesses, and other interested parties who have contributed to this project over the past six months.

To arrive at this point is no small accomplishment, given the scope of the bill and its eventual application to so many lives and jobs. The bill in its current form is, without question, the most comprehensive change to U.S. patent law since Congress passed the 1952 Patent Act.

This Subcommittee has undertaken such responsibility because the changes are necessary to bolster the U.S. economy and improve the quality of living for all Americans.

The bill will eliminate legal gamesmanship from the current system that rewards lawsuit abuses over creativity.

It will enhance the quality of patents and increase public confidence in their legal integrity.

This will help individuals and companies obtain seed money for research, commercialize their inventions, grow their businesses, create new jobs, and offer the American public a dazzling array of products and services that make our country the envy of the world.

All businesses, small and large, will benefit. All industries directly or indirectly affected by patents, including finance, automotive manufacturing, high-tech, and pharmaceuticals, will profit.

The bill before us is a good first-cut of what we envisioned when this process commenced. No doubt, it will undergo changes as we proceed to markup. In this regard I encourage the industry working groups to continue negotiating.

If interested parties keep talking and remain committed to a holistic approach in which the greater good prevails, then we can and will produce a patent bill that benefits all Americans.

That said, I would note that the bill makes the following substantive changes from the Committee Print:

First, in response to criticism of the apportionment of damages section of the Print, the bill contains language from case law that more clearly distinguishes between an "inventive contribution" and other features.

Second, the bill replaces the print text governing injunctive relief, which does not allow a court to presume the existence of irreparable harm.

Instead, the new language supplements the existing statute on injunctive relief by compelling a court to consider the "fairness of the remedy in light of all the facts and the relevant interests of the parties associated with the invention." The provision also makes it easier for a judge to stay an injunction pending appeal.

Third, the bill addresses the issue of continuations by authorizing the PTO Director to limit by regulation the circumstances in which an applicant may file a continuation and still be entitled to the priority date of the parent application.

Fourth, the bill includes a second window for proceedings under the post-grant opposition system. This additional review must be initiated within six months from the date on which a notice of infringement is received.

Finally, section 10 of the bill allows third-party submission of prior art within six months after the date of publication of the patent application. The third party must articulate the relevance of each submission and pay an accompanying fee to defray PTO expenses and discourage frivolous submissions.

The other provisions in the bill largely mirror those in the Print, with the exception of clarifying, technical, and conforming changes.

We intend to mark-up this bill by the end of the month. So it is incumbent upon the Subcommittee members, industry stakeholders, the PTO, and other interested parties to work hard and in good-faith between now and June 30th.

That concludes my opening statement. The Ranking Member from California, Mr. Berman, is recognized for his remarks.