

Statement of
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Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate Washington, D.C.

On
Perspectives on Patents

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Mr. Chairman, Members of the Committee, thank you for the opportunity to be here today at this important hearing. I am Dean Kamen, President of DEKA Research & Development Corp., a technology development company based in Manchester, New Hampshire that I founded in 1982. As a holder of more than 100 U.S. patents, I am pleased to speak to you today from the perspective of an inventor.

As a small businessman whose company relies heavily on intellectual property, I feel that maintaining strong patent protection for America's inventors is critical. From my perspective, some of the proposals currently being discussed – such as the weakening of injunctive relief, post-grant opposition, and the elimination of the presumption of patent validity – are extremely concerning.

Specifically, I would offer the following perspectives as the Congress considers how to maintain and improve our country's patent system:

1. The purpose of the patent system in the United States, as set forth in Article 1, Section 8, Clause 8 of the Constitution, is to “promote the progress of ...the useful arts by securing to ...inventors for limited times the exclusive rights to their ...discoveries.” As President Abraham Lincoln stated, our patent system “adds fuel of interest to the fire of genius.” To work correctly, the patent system must appropriately reward innovation and risk.
2. In exchange for the right to exclude others from practicing the invention for a period of years, the public gains the benefit of the technical knowledge contained in the patent disclosure. The public also gains when the technology enters the public domain at the end of the patent term.
3. A strong patent system, at its core, must ensure that the U.S. Patent and Trademark Office issues patents of the highest possible quality. To accomplish this, patent applications must be examined effectively by highly qualified examiners, using the best available technology and prior art. Any patent reform must fundamentally focus on ensuring patent quality prior to the issuance of the patent.
4. It is my understanding that one reason this examination process is in need of improvement is because funding for the U.S. Patent and Trademark Office has not kept up with the increased number of patent applications being filed. Ending the diversion of patent fees to other parts of the government would certainly help address this underfunding. With the proper funding, I am confident that the Director of the U.S. Patent and Trademark Office, Jonathan Dudas, could find ways to hire, train, retain and reward examiners with the requisite credentials to solve the quality problem at its roots. With state of the art search tools and access to the world's technical literature at their fingertips, along with proper training, supervision and adequate time to do a quality job, many of the real and perceived problems with the patent system should fade away.
5. I fear that some of the patent reform measures currently under discussion are not only unnecessary to address the issues that exist in our patent system today, but have the very real potential to create substantially worse problems. Fundamentally our existing patent system is not broken. It is uncontested that a vast majority of the patents issued by the U.S. Patent and Trademark Office are sound. While we should strive to further improve

