

THE COALITION FOR 21ST CENTURY PATENT REFORM

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THE COALITION FOR 21ST CENTURY PATENT REFORM APPLAUDS THE INTRODUCTION OF S. 1720

The Coalition for 21st Century Patent Reform (“21C”) applauds introduction of S. 1720 by Chairman Leahy and Senator Lee, the “Patent Transparency and Improvements Act of 2013.” This bill represents a thoughtful and constructive contribution to the patent reform effort. We are especially pleased that the Chairman’s bill takes a cautious and balanced approach to the concerns that have been raised in connection with the enforcement of patent rights while also continuing to perfect the historic reforms under the Leahy-Smith America Invents Act (AIA).

S. 1720 properly repeals the “or reasonably could have raised” estoppel for civil litigation which should not have been part of the new post-grant review in the AIA but was included because of an inadvertent scrivener’s error. Its repeal will ensure that post-grant review will serve as an effective quality check on issued U.S. patents. We are also pleased that the bill would require the USPTO to use the same patent claim construction rules in the new post-grant and inter partes review proceedings that are used in the courts, by the ITC and by the USPTO in certain reexamination proceedings where the patent owner no longer has a right to freely amend the claims. The bill should also be amended to make clear that the same claim construction rules are to be applied in post-grant review proceedings involving covered business method patents. With this amendment, the bill will ensure that the USPTO construes patent claims in all of the new post-issuance proceedings in accordance with the ordinary and customary meaning of the claim language, thus allowing the public, patent owners and patent challengers all to rely on consistent claim construction rules when patent claims are challenged in court or in the USPTO.

The 21C also commends Chairman Leahy and Senator Lee on the inclusion in S. 1720 of a provision clarifying the authority of the Federal Trade Commission (FTC) to target bad-faith patent demand letters that, when sent on a widespread basis to multiple recipients, may constitute unfair or deceptive trade practices. Such authority furthers the FTC’s consumer protection mission and promises to curtail some of the egregious practices that unfortunately have developed whereby some patent owners send upward of hundreds – or even thousands – of letters to small businesses or individuals with false or misleading threats of litigation for alleged patent infringement and baseless demands for payment. The 21C cautions, however, that amendments to this provision are needed to ensure that efforts to address this small subset of demand letter abuses do not chill legitimate patent notice and licensing communications.

We further commend Chairman Leahy and Senator Lee for not including other suggested proposals that would be detrimental to innovators. For example, the bill does not include either expansion of the scope of the AIA’s Transitional Program for Covered Business Method Patents or elimination of its sunset. Nor does it legislate the specifics of patent litigation discovery and case management – such as the timing and discovery permitted prior to claim construction rulings. Such a provision would inappropriately wrest control of case management from, and encroach on the independence of, our federal judiciary, while making patent litigation more expensive, burdensome and protracted for all litigants.

Finally, we applaud the measured and balanced approach to other patent litigation reforms that are contained in S. 1720. The stay of customer suits provision, for example, promises to provide targeted relief from suits inappropriately brought against resellers and end users instead of manufacturers. This should reduce the volume of unnecessary, duplicative suits brought against retailers, small businesses, and individuals, and will be particularly effective if further improved to balance the interests of all stakeholders, and to function without creating unintended consequences.

The 21C remains committed to work constructively with Chairman Leahy and Senator Lee, and other members of the Judiciary Committee to achieve balanced, measured, and targeted legislative reforms to perfect the AIA, provide a level playing field for all litigants, and curb misbehavior on the part of any litigant.

The Coalition has approximately 50 members from 18 diverse industry sectors and includes many of the nation’s leading manufacturers and researchers. The coalition’s steering committee includes 3M, Caterpillar, General Electric, Johnson & Johnson, Eli Lilly and Procter & Gamble. Visit <http://www.patentsmatter.com> for more information.