Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
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On today's agenda is the bipartisan PATENT Act, which addresses the problem of abusive patent litigation tactics. I've already spoken at length on the need for legislation to crack down on these abuses, so I'm going to be brief in my remarks. Also, I want to complete the markup of this bill today, so I hope my colleagues will cooperate and be succinct in their remarks and debate.

Let me briefly talk about the managers' package. There are a number of provisions that we've included in the bill, including non-controversial PTO requests, the Leahy/Grassley Patents for Humanity legislation that improves this PTO program, and other technicals. One provision I want to highlight in the managers' amendment clarifies that in the fee shifting provision, "undue economic hardship to a named inventor or institution of higher education" is a factor that a judge can consider when determining if "special circumstances" make a fee award unjust.

Another provision I want to mention is the new section 11 which deals with inter partes and post grant review proceedings at the PTO. I worked with the Ranking Member, Senator Cornyn, Senator Schumer, Senator Hatch, and a number of my other Committee colleagues on this particular piece. This effort was in response to concerns that had been raised by certain industry groups about what they saw as abuse of the administrative proceedings at the PTO. At the same time, there were also other stakeholders that believed these proceedings have been very effective at getting rid of weak patents.

This piece is the product of discussions with various industry stakeholders, including the life sciences and tech groups. I think that many of us believe that the post grant proceedings at the PTO are working quite well with respect to weeding out poor quality and improperly granted patents. So it was our goal to address concerns, but not derail the very important function that these proceedings have in knocking out weak claims and patents.

I hope that we've succeeded in making limited changes to the PTO processes to address these concerns. I know not everyone is happy, but we really tried to strike the right balance of addressing concerns but not disrupting the PTO proceedings.

I'd like to point out that, as this bill moves to the floor, there remain a few issues that need to be resolved. As we indicated, the language we included in the managers' amendment that deals with amending claims in the PTO proceedings is a placeholder because it remains the subject of good faith negotiations. This has been a difficult nut to crack, but I understand that both sides believe that we can reach a compromise that will work. Unfortunately we weren't able to reach agreement before today's session, so the placeholder language stands, but I'm committed to getting resolution on this piece as we move to the floor.

In addition, there is a proposal by the life sciences community concerning the applicability of the PTO's post grant proceedings to patents that are subject to the Hatch-Waxman Act and Biologics

Price Competition and Innovation Act (BPCIA) processes. The Hatch-Waxman process has been instrumental in facilitating the entry of low cost generic drugs in the market. Consumers want access to cheaper drugs as soon as possible, so I've been a big supporter of this law. I'm also supportive of incentivizing biosimilar market entry. When the America Invents Act was considered, it's my understanding that there was no debate over whether or how IPR would impact these important processes.

It's imperative for us to hear from all sides, get additional information and data, and consult with the HELP Committee, which is the Committee of jurisdiction over the Hatch-Waxman Act and Biologics Price Competition and Innovation Act (BPCIA) laws. This is a complex issue that needs to be seriously and responsibly considered, including further review, discussion, and vetting. My colleagues and I have already started getting views on this matter, and we continue to review and conduct outreach.

I agree that we need to preserve incentives for generics to come to market, and I'm committed to working on this issue as we move towards the floor.

Once again, I thank my colleagues for their hard work on this important bill.

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