

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 23, 2006

Statement of Senator Patrick Leahy
Ranking Member, Judiciary Subcommittee on Intellectual Property

"Perspectives on Patents: Post-Grant Review Procedures and Other Litigation Reforms"

May 23, 2006

Senator Hatch and I have been grappling with the very complex issues in the patent litigation process for more than a year. We are grateful for the assistance we have received from our witnesses, and from many others in the audience and around the nation. Today, we are here to address a particularly knotty problem - the proper scope and form of review procedures after the Patent and Trademark Office has granted a patent.

The proper scope and form raises sets of questions, matters of patent law, matters of administrative adjudication, and matters of litigation strategies. I want to remind everyone of the bigger picture here. Our Constitution enshrined patent rights for a reason: "to promote the progress of science and useful arts." There is no mandate from the Founders that we embrace any particular approach to the patent litigation system, no requirement that we favor one side or another in a patent dispute, and no directive to ensure that any other policies - however laudable they may be - are advanced. We are charged with creating and maintaining a system that gives inventors "exclusive rights" in their inventions for "limited times" in order to "promote the progress of science and useful arts."

I believe that an effective post-grant review procedure can, and should, do just that. Invalid patents can be weeded out more efficiently and the PTO can correct its own errors. Infringement claims can be evaluated more effectively. And patent holders can be more confident in the rights secured to them.

Looking at the written testimony of our witnesses today, we should have a lively debate on this topic. In fairness, I will say that I favor a robust post-grant process, which would include a limited "second window," in the event that a patent holder sues for infringement. But there are a multitude of subsidiary issues to be addressed, even within that framework, and I look forward to the assistance of all of you in understanding and resolving those issues. I want to thank Senator Hatch for his willingness to work on this enormous project.