

Statement of
The Honorable Russ Feingold

United States Senator
Wisconsin
April 2, 2009

Statement on S. 515, the Patent Reform Act of 2009
Sen. Russ Feingold
April 2, 2009

Mr. Chairman, I appreciate all the effort that has gone into trying to find a compromise on this bill. I know you, Sen. Feinstein, Sen. Specter, Sen. Hatch, and others have put in long hours to try to put together a balanced package. This bill is much improved in my judgment from the bill that was reported out of this Committee two years ago. I remain hopeful that further improvements can be made that will allow me to support it. But because I remain concerned about the effect of the bill on one of the most important engines of American innovation, I will vote No.

The Constitution gives Congress the power to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." The Framers understood that granting exclusive rights to license an invention was the key to spurring technological development. Just as your home is not worth much if neighbors are constantly entering, eating your food, and sleeping in your bed, so the value of intellectual property rights depends on their security.

No system is immune to abuse, of course, and the more than five decades since the last major reform of the patent system have demonstrated some need for revisiting and reforming the law to deter strategic litigation and gamesmanship. So, as I have said before, I am not inalterably opposed to patent reform.

Great strides toward a bill I can support have been made. Although it is difficult to tell how well drafted the new damages provision is since experts have not had much time to review and analyze it, the intent seems positive. I am pleased that the much more sweeping and untested damages provision from last year's bill was abandoned. The modest changes in this bill are much less likely to severely undercompensate patent holders who prove their patents have been infringed, thus devaluing their intellectual property. Similarly, I am pleased that the venue provisions were modified to simply codify a recent Federal Circuit opinion that makes forum shopping more difficult while not preventing patent holders from having an infringement action heard in their own jurisdictions.

It is in the area of post-grant review that I remain deeply concerned about the impact of this bill. Simply put, even as amended, S. 515 still threatens to reduce the value and enforceability of U.S. patents. The reduction in value will most likely be felt by individual inventors, start-ups and

small businesses, and research universities. These are the entities that don't have the resources to mount a continual defense of their patents against repeated requests for inter partes reexamination that the bill allows. I hope that further work on these provisions can be done because as it stands the bill makes it too easy for would-be infringers to attack a patent, or make it too expensive to defend.

To support a patent reform bill in these difficult economic times, I need to be confident that it will not stifle innovation or reduce the likelihood of new jobs being created from the creativity of our citizens. I do not have that confidence, so I will vote no. I remain open to considering further modifications to this legislation.