

Statement of

The Honorable Patrick Leahy

United States Senator
United States Senate
June 20, 2012

Nine months ago, the United States Congress did something that has become all too rare. It sent to the President bipartisan legislation that will unleash American innovation to create jobs and improve our economy. The Leahy-Smith America Invents Act, signed by the President last September, was the product of more than six years of hearings and markups, as well as countless hours of meetings and negotiations.

The patent reform process was a bipartisan and bicameral effort from the outset. Every member of this Committee made important contributions to the legislation. Director Kappos ' leadership was also invaluable to this process, as was that of Ambassador Locke, who was Secretary of Commerce when the Senate first passed the America Invents Act in March.

The America Invents Act creates a more effective, efficient, and streamlined patent system, that will get the highest quality patents to issue from the PTO as quickly as possible. Accomplishing this goal required major structural changes to the system of granting and enforcing patents that will take the PTO time and work to implement.

That work has already begun. So far, the PTO has initiated more than 10 different rulemakings and hired more than 800 examiners and 40 Administrative Patent Judges. The PTO has also conducted seven road-shows across the country to explain and receive feedback on proposed rules. I appreciate the transparent manner in which the PTO has begun the implementation process.

I am also pleased that even before the Act is fully implemented the PTO has focused on reducing the backlog of patent applications. Over the last two years, the backlog has been reduced roughly 12 percent even as the number of incoming applications has increased. These numbers need to continue to improve, however. There are still over 640,000 applications that have not yet received a first action from the PTO.

Speed is only one part of the equation. The patents that the PTO issues need to be of high quality or, instead of incentivizing inventions, they will impede innovation. The Leahy-Smith American Invents Act includes important quality controls by allowing the public a greater role in the application process and a chance to challenge patents at the PTO that should not have been issued.

The Act did not include everything I had wanted. I am particularly concerned that while it includes quality control for new patent applications, many low quality patents issued years ago continue to infect the system and provide opportunities for patent trolls. I hope that as the PTO continues its implementation process, it does so in a manner that incentivizes the use of its reexamination processes, in order to weed out poor quality patents.

We also need to do more to protect American inventors in overseas markets. International harmonization is one element of that protection. The Leahy-Smith America Invents Act includes a very important grace period protection, which will particularly benefit inventors at universities

and startups. We need to encourage other Nations to adopt a similar grace period, without which some American inventors may be unable to seek patent protection abroad.

We can also make it easier for American inventors to seek patent protection abroad by implementing the Patent Law Treaty and the Geneva Act treaty on design patents. These two treaties will reduce filing formalities in other countries. They have been supported by both the Bush and Obama administrations. I look forward to working on implementing legislation in the same bipartisan and bicameral manner as we did on patent reform.

An efficient and effective patent system will unleash American innovation and improve the American economy. Our system should be one that supports and rewards inventors with high quality patents and therefore remains true to the constitutional imperative of promoting the progress of science and the useful arts.

Congress has done its part, and I look forward to hearing from Director Kappos about the steps the administration is taking to ensure the Leahy-Smith America Invents Act fulfills its potential as we create the first truly 21st century patent system.

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