

**Statement of Senator Patrick Leahy (D-Vt.),  
Ranking Member, Senate Judiciary Committee,  
on Executive Business Meeting  
June 4, 2015**

Almost two years ago, this Committee began working on legislation to address abusive conduct in our patent system. In April, seven bipartisan members came together to introduce the PATENT Act, which builds off the extensive negotiations we held last Congress. Since then we have expanded our ranks to 15 members working on further additions to the bill. This Committee works best when we come together to incorporate ideas from across the spectrum. That hard work is reflected in the Managers' Amendment we will consider today. After months of negotiations, we have achieved a strong and fair balance that I strongly support.

When Senator Lee and I first introduced a patent bill last Congress, we focused on two key problems: stopping extortionate demand letters, and protecting end users who are being targeted for using products they purchased off-the-shelf. I continue to hear about the urgent need for these measures from Main Street businesses in Vermont and across the country. When businesses are threatened with patent suits just for using a document scanning machine, or website owners like the Vermont Country Store face threats simply for using basic software in e-commerce, the patent system is not working as intended. I am proud that our measures to address these problems are a key piece of the PATENT Act.

The PATENT Act also incorporates ideas that were important to other members and constituencies. Small and large businesses told us that Congress must act to address imbalances that make it unusually difficult to defend against patent lawsuits. Patent holders told us about unintended problems in the patent challenge process at the U.S. Patent & Trademark Office (PTO). The Managers' Amendment addresses these areas. Throughout, our goal has been to make measured, reasonable reforms without upsetting the balance of our patent system, which remains the envy of the world.

When we introduced the PATENT Act in April, I highlighted some of the concerns that I previously had with some of the litigation reforms that were suggested. I thank my fellow members for working with me and others to address those concerns. The result is a strong bill that will deter abusive behavior in patent lawsuits, while still ensuring that legitimate patent holders can protect their rights in court. On fee shifting, for example, the PATENT Act does not include the "presumptive loser pays" approach of the House's patent reform bill. Instead, fee shifting is only provided in cases where the court finds that the losing party was not objectively reasonable. Today's Managers' Amendment makes further improvements to the fee shifting provision at the urging of Senators Blumenthal, Whitehouse, and Franken. I thank them for working so closely with me to make these improvements. Their language explicitly clarifies that the burden is on the party seeking fees to show that fees should be awarded. We have also added language to protect named inventors and institutions of higher education if they are the subject of a fee award.

While the litigation reform provisions are not measures I would have written independently, they strike a meaningful balance given the unusual complexities of patent litigation. That is an important point for me to note: I am comfortable with these provisions because they relate to the specific context of patent litigation, which involves the enforcement of a government-granted monopoly right. Legislation in this area should not be misconstrued as a green light to change the ability of workers and consumers to have their day in court. In this context, I am comfortable

that we have achieved a fair balance that works in the specific framework of enforcing patent rights.

When we introduced the PATENT Act, we committed to work on additional provisions to address imbalances in the administrative proceedings through which patents can be challenged at the PTO. We have spent the past three weeks in intense conversations to fulfill that commitment. Section 11 of today's Managers' Amendment incorporates a package of detailed, reasonable reforms that will help address abuses while ensuring the PTO programs continue to function well.

As this legislation proceeds to the floor, there are some further issues to address. One is the question of amending patent claims in the context of a PTO proceeding. That issue is technically complex and we have been unable to complete it before today's markup. I look forward to continuing that conversation towards the floor.

The second is a request from the life sciences regarding whether patents that are subject to the Hatch-Waxman process should be subjected to challenges in proceedings at the PTO. The life sciences have made a compelling argument that the Hatch-Waxman process—and the new equivalent for biologics—is carefully balanced and should not be circumvented by procedures in other forums. We need to get input from all sides, including from members of the HELP committee. I am committed to continue these conversations as we move towards the floor.

The Managers' Amendment we will consider today includes the Patents for Humanity Program Improvement Act, which Senator Grassley and I introduced last month and I have also introduced in previous Congresses. I thank our cosponsors for agreeing to include it in the Managers'. This bipartisan legislation strengthens a program created by the PTO in 2012 to reward select patent holders who use their inventions to address a humanitarian issue that significantly affects the public health or quality of life of an impoverished population. Those who receive the award are given a certificate to accelerate certain PTO processes, as described in the program rules. The Patents for Humanity Program Improvement Act enhances the program by making the certificates transferable to improve their usability and increase the incentives of the Patents for Humanity Award. It is a straightforward, cost-neutral provision that will strengthen this program and encourage innovations to be used for humanitarian good.

The Managers' Amendment we consider today is the result of almost two years of work by the Committee. I thank the chairman for his leadership and hope we will report the bill from Committee today with strong, bipartisan support.

We have four district court nominees on today's agenda – three of which will fill judicial emergency vacancies. We also have three U.S. Attorney nominees on today's agenda, including the nomination of Eric Miller's to serve as the U.S. Attorney for Vermont.

Before recommending Eric to the President, I consulted prosecutors, defense attorneys, judges, law enforcement officials and civic leaders throughout Vermont. They were unanimous in their support for Eric. I am confident that he will make an excellent United States Attorney for Vermont. I have been impressed with his thoughtfulness, vision and depth of experience. I am grateful to Chairman Grassley for his leadership to ensure this important vacancy in my home state is promptly filled.

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