the world use a first-to-file system, if you want your patent to be valid outside the United States you need to comply with first-to-file in any event.

Among many of our most innovative companies, 70 percent of their licensing revenues come from overseas. Obviously, they are already going to be complying with the first-to-file rules. This bill does not, therefore, so much switch the system with which Americans are complying today as it simply allows American companies to only have to comply with one system rather than two. As I said before, the first-to-file concept is clearer, faster, more transparent, and provides more certainty to inventors and manufacturers.

On the other hand, the first-to-invent concept would make it impossible, in many instances, to know who has priority and which of the competing patents is the valid one. To determine who has priority under first to invent, extensive discovery must be conducted and the Patent Office and courts must examine notebooks and other evidence to determine who conceived of the invention first and whether the inventor then diligently reduced it to practice.

Under first-to-file, on the other hand, an inventor can get priority by filing a provisional application. This is an important point. It is easy. It is not as if the first-to-file is hard to do. This provisional application, which only costs $110 for the small inventor, only requires you to write a description of what your invention is and how it works. That is all. That is the same thing that an inventor's notebook would have to contain under the first-to-invent concept if you are ever going to prevail in court by proving your invention date.

Because a provisional application is a government document, the date is clear. There is no opportunity for fraudulently backdating the invention date. There is no need for expensive discovery: What did the inventor know and when did he know it? You are essentially not requiring anything in addition. You file a provisional application. You have an entire year to get all of your work together and file your completed application, but your date is as of the time you file the provisional application.

As I said, for a small entity, the fee is only $110. That grace period makes it clear that the patent will not be invalid because of disclosures made by the inventor or someone who got information from an inventor during 1 year before filing. That is important.

A lot of academics and folks go to trade shows and begin talking about their concepts and what they have done. If you disclose this, you have a year to file after you disclose the information. And under the bill's second, enhanced grace period, no other disclosure, regardless of whether it was obtained from the inventor, can then invalidate the invention.

The bill has been very carefully written to protect the small inventor or the academic. That is what it is designed to do. This is not a case of big versus small, although people both big and small support the legislation. If anybody suggests the Feinstein amendment will protect the small inventor, it does not protect the small inventor. In fact, as I said, the legislation is very carefully crafted to give the small inventor a variety of ways to ensure that he or she is protected.

The first coalition to bring the whole idea of patent reform to the Congress, the Coalition for 21st Century Patent Reform, is very strongly in support of the legislation and in opposition to the Feinstein amendment. In fact, it noted in a statement released Wednesday that not only does it oppose the amendment, it would oppose the entire bill if the amendment were to be adopted and this first-to-file concept were stricken from the bill.

In fact, here is what they said:

The first-inventor-to-file provisions currently in S. 23 form the linchpin that makes possible the quality improvements that S. 23 promises.

Here is what the Obama Statement of Administration Policy says. It lays out exactly what is at stake:

By moving the United States to a first-to-file system, the bill simplifies the process of acquiring rights. This essential provision will reduce legal costs, improve fairness, and support U.S. innovators seeking to market their products and services in the global marketplace.

I am continuing the statement:

Most of the arguments in opposition to the bill and FITF appear to be decades-old contentions that have been fully and persuasively rebutted. As one example, the National Research Council of the National Academies assembled a group of leading patent professionals, economists, and academics who spent four years intensely studying these issues and concluded in 2004 that the move to FITF represented a necessary change for our patent system to operate fairly, effectively and efficiently in the 21st century.

They go on to say:

Without retaining S. 23's current FITF provisions, the bill would no longer provide meaningful patent reform.

Let me repeat that. If the Feinstein amendment would prevail, ''the bill would no longer provide meaningful patent reform.''

As an example, the new provisions on post-grant review of patents, an important new mechanism for assuring patent quality, could no longer be made to work. Instead of a patent reform bill, what would remain of S. 23 would be essentially an empty shell.

Let me finish the statement:

Thus, we could not continue our support of passage of S. 23 without the first-inventor-to-file provisions present in the bill. It would place us in the unfortunate position of opposing moving forward with a bill where we have been among the longest, most ardent supporters.

Just to conclude, the National Association of Manufacturers, which represents both large and small manufacturers in every industrial sector, has also made it clear that it strongly opposes the amendment. I will conclude by quoting from that group's statement in opposition to the Feinstein amendment.

The NAM supports transitioning the United States from a ''first-to-invent'' system to a ''first-to-file'' system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies. The ''first-to-file'' provision currently included in S. 23 achieves this goal.

Mr. President, I hope my colleagues will pay close attention to the arguments made by Chairman LEAHY and the arguments I have made in opposition to the Feinstein amendment. Whether intended or not, it would be a poison pill. It would kill the legislation if it were adopted. We need to move this important legislation forward, as the administration notes in its statement of policy, and therefore I urge my colleagues, when we have an opportunity to vote on the Feinstein amendment, to vote against it and to support the legislation as reported.

The ACTING PRESIDENT pro tempore. Morning business is closed.

PATENT REFORM ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 23, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 23) to amend title 35, United States Code, to provide for patent reform.

Pending:

Leahy amendment No. 114, to improve the bill.

Bennet amendment No. 116, to reduce the fee amounts paid by small entities requesting prioritized examination under Three-Track Examination.

Feinstein amendment No. 133, to strike the first inventor to file requirement.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

AMENDMENT NO. 133, AS MODIFIED

Mr. LEAHY. Mr. President, I understand we have the Feinstein amendment No. 133 at the desk. I ask unanimous consent that the Feinstein amendment No. 133 be modified with the changes that are at the desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 2, line 3, strike ''**FIRST INVENTOR TO FILE.**'' and insert ''**FALSE MARKING.**''

On page 2, strike line 4 and all that follows through page 16, line 21, and insert the following:

(a) FALSE MARKING.—

On page 17, line 18, strike ''(l)'' and insert ''(b)''.

On page 18, strike line 22 and all that follows through page 32, line 11.

On page 66, strike line 9 and all that follows through page 67, line 8.

On page 71, line 1, strike ''derivation'' and insert ''interference''.

On page 71, line 5, strike ''derivation'' and insert ''interference''.

On page 72, line 24, strike ''DERIVATION'' and insert ''INTERFERENCE''.

On page 72, lines 24 and 25, strike ''derivation'' and insert ''interference''.

On page 73, line 4, strike ''derivation'' and insert ''interference''.

On page 73, line 18, strike ''derivation'' and insert ''interference''.

On page 73, line 23, strike ''derivation'' and insert ''interference''.

On page 74, lines 2 and 3, strike ''derivation'' and insert ''interference''.

On page 74, between lines 20 and 21, insert the following:

(d) CONFORMING AMENDMENTS.—Sections 41, 134, 145, 146, 154, 305, and 314 of title 35, United States Code, are each amended by striking ''Board of Patent Appeals and Interferences'' each place that term appears and inserting ''Patent Trial and Appeal Board''.

On page 74, line 21, strike ''(d)'' and insert ''(e)''.

On page 95, strike lines 13 through 15, and insert the following: by inserting ''(other than the requirement to disclose the best mode)'' after ''section 112 of this title''.

Mr. LEAHY. Mr. President, I wish to thank the distinguished Senator from Arizona for his words here this morning. He is part of the small group of Republicans and Democrats who have worked very hard over the last couple of years on this bill with the idea of giving us something that would allow inventors, innovators, and entrepreneurs in America to be able to compete with the rest of the world.

I am one American who believes we can compete with anybody anywhere provided we get a level playing field. Other countries have set up enough barriers for us of their own. We shouldn't be setting up barriers here in the United States. One thing we can do is to make some major, long-overdue changes in the patent laws to give us that level playing field. Inventors and innovators in America who will take advantage of this will be better off for it and will create jobs, but most importantly, we will show the rest of the world that America is open for business.

Americans can be the innovators they have been from the time the first patent was issued—and I say this with pride—to a Vermonter back when then-Secretary of State Thomas Jefferson reviewed the application, which was then signed by the President of the United States, George Washington. Now, of course, they are not reviewed by the Secretary of State and signed by the President, thank goodness, because there are over 700,000 applications pending.

We need legislation to bring us up to date, and this act will promote innovation, it will create new businesses and, as a result, new jobs. This is bipartisan legislation that will allow inventors to secure their patents more quickly and to have better success commercializing them.

The pending amendment would gut the reforms intended by the bill. With all due respect, it would destroy all the work we have tried to do in this bill. It would eliminate a major piece of this effort—the transition to a first-inventor-to-file patent system. First-inventor-to-file is a necessary component of this legislation and enjoys support from every corner of the patent community.

The administration, the Secretary of Commerce, and the head of the Patent and Trademark Office all oppose this amendment. A vast array of individuals, independent small inventors, small businesses, and labor oppose this amendment. The four senior Republicans on the Judiciary Committee who have worked so hard on this bill—Senators GRASSLEY, HATCH, KYL, and SESSIONS—oppose this amendment. Needless to say, I oppose this amendment. It would be a poison pill to these legislative reform efforts.

Supporters of the legislation before us—ranging from high-tech and life sciences companies to universities and small businesses—place such a high importance on the transition to the first-inventor-to-file system that many of them, including those who reside in just about every State, would not support a bill without those provisions.

A transition to first-inventor-to-file has been part of this bill since its introduction four Congresses ago. Yet, until very recently, first-inventor-to-file was never the subject of even a single amendment in the Judiciary Committee over all those years. This legislation is the product of eight Senate hearings and three markups spanning weeks of consideration and numerous amendments. Never was first-inventor-to-file a contentious issue. Now some well-financed special interests that do not support the America Invents Act have decided to kill the bill by a last-minute campaign to strike these vital provisions.

I urge Senators to support the goals of the America Invents Act and vote against this amendment to strike first-inventor-to-file.

Mr. President, the United States is the only industrialized country still using a first-to-invent system, and there is a reason for that. A first-inventor-to-file system, by contrast, where the priority of a right to a patent is based on the earlier filed application, adds simplicity and objectivity into a very complex system. By contrast, our current outdated method for determining the priority right to a patent is extraordinarily complex, it is subjective, it is time-intensive, and it is expensive. The old system almost always favors the larger corporation and the deep pockets over the small independent inventor.

This past weekend, the Washington Post editorial board endorsed the transition, calling our first-inventor-to-file standard a ''bright line.'' They went on to say it would bring ''certainty to the process.'' The editorial also rightly recognizes the ''protections for academics who share their ideas with outside colleagues or preview them in public seminars'' that are included in the bill.

The transition to a first-inventor-to-file system will benefit small inventors and inventors of all sizes by creating certainty. Once a patent is granted, an inventor can rely on its filing date on the face of the patent.

The reduction in costs to patent applications that comes with a transition to this system should also help the small independent inventor. In the current outdated system where more than one application claiming the same invention is filed, the priority of a right to a patent is decided through an ''interference'' proceeding to determine which applicant can be declared to have invented the claimed invention first. It is lengthy, it is complex, and it can cost hundreds of thousands of dollars. Small inventors rarely, if ever, win interference proceedings. In a first-inventor-to-file system, however, the filing date of the application is objective and easy to determine, resulting in a streamlined and less costly process.

The bill protects against the concerns of many small inventors and universities by including a 1-year grace period to ensure the inventor's own publication or disclosure cannot be used against him as prior art but will act as prior art against another patent application. This encourages early disclosure of new inventions regardless of whether the inventor ends up trying to patent the invention.

The transition to first-inventor-to-file is ultimately needed to help American companies and innovators compete globally. As business and competition increasingly operate on a worldwide scale, inventors have to file patent applications in both the United States and other countries for protection of their inventions. Since America's current outdated system differs from the first-inventor-to-file system used in other patent-issuing jurisdictions—all our competitors—it causes confusion and inefficiencies for American companies and innovators. Harmonization will benefit American inventors.

Commerce Secretary Gary Locke highlighted the importance of the first-inventor-to-file provision to the bill in his column published in The Hill yesterday. He noted that it ''would be good for U.S. businesses, providing a more transparent and cost-effective process that puts them on a level playing field with their competitors around the world.''

Secretary Locke went on to confront the erroneous notion that the current outdated system is better for small independent inventors, and he did it head-on by explaining that in his ''strong opinion that the opposite is true.'' The first-inventor-to-file system is better for the small independent inventor. As the Secretary noted:

> The cost of proving that one was first to invent is prohibitive and requires detailed and complex documentation of the invention process. In cases where there's a dispute about who the actual inventor is, it typically costs at least $400,000 in legal fees, and even more if the case is appealed. By comparison, establishing a filing date through a provisional application and establishing priority of invention costs just $110.

Secretary Locke explained how the 125,000 provisional applications currently filed each year prove that early filing dates protect the rights of small inventors. He reiterated that during the past 7 years, under the current outdated, cumbersome, and expensive system, of almost 3 million applications filed, only 1 patent was granted to an individual inventor who was the second to apply.

Our reform legislation enjoys broad support. I have already mentioned some of those supporters, but let me highlight a few more:

Just yesterday, the National Association of Manufacturers urged every Senator to oppose the effort to strike the first-to-file transition, writing, ''The NAM supports transitioning the United States from a 'first-to-invent' system to a 'first-to-file' system to eliminate unnecessary cost and complexity in the U.S. patent system.''

The Small Business & Entrepreneurship Council has expressed its strong support for the first-inventor-to-file system, writing that ''small firms will in no way be disadvantaged, while opportunities in the international markets will expand.''

The Intellectual Property Owners Association calls the first-inventor-to file system ''central to modernization and simplification of patent law'' and ''very widely supported by U.S. companies.''

Independent inventor Louis Foreman has said the first-inventor-to-file transition will help ''independent inventors across the country by strengthening the current system for entrepreneurs and small businesses.''

Six university, medical college, and higher education associations have urged the transition to first-to-file, saying that it will ''add greater clarity to the U.S. system.''

And, in urging the transition to the first-to-file system, the Association for Competitive Technology, which represents small and mid-size IT firms, has said the current outdated system ''negatively impacts entrepreneurs'' and puts American inventors ''at a disadvantage with competitors abroad who can implement first inventor to file standards.'' That is why it is so important to move to a first-inventor-to-file system.

I ask unanimous consent copies of the Washington Post editorial, ''Patenting Innovation,'' be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. I also ask letters from the National Association of Manufacturers, higher education associations, the Small Business & Entrepreneurship Council be printed in the RECORD at the conclusion of my comments.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. LEAHY. I will conclude with this: If we are to continue to lead the globe in innovation and production, if we are to win the future through American ingenuity and innovation, we must have a patent system that is streamlined and efficient. The America Invents Act, and a transition to a first-inventor-to-file system in particular, is crucial to fulfill this promise. I urge all Senators on both sides of the aisle to oppose the Feinstein amendment and support the important provision of first-inventor-to-file, which is at the heart of the America Invents Act.

As I said, I submit the list of stakeholders across the spectrum from high-tech and life sciences to universities and small inventors in support of a transition to the first-to-file system, and ask unanimous consent that list be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 3.)

Mr. LEAHY. Mr. President, I see the distinguished Senator from Delaware who has been so helpful on this legislation on the floor, so I yield the floor.

EXHIBIT 1

[From the Washington Post, Feb. 26, 2011]

PATENTING INNOVATION

More than 60 years have passed since a major overhaul of the U.S. patent system has taken place. And it shows.

The U.S. patent system lags woefully. One example: Patents in the United States are given to those ''first to invent.'' This approach is out of step with the rest of the world's ''first to file'' approach and is highly inefficient. It invites people to come out of the woodwork years after a product has been on the market to claim credit and demand royalties.

The secretive and lengthy U.S. process also too often results in patents for products that are neither novel nor innovative. It leaves manufacturers vulnerable to infringement lawsuits and damage awards long after their products have gone to market.

The Senate is poised to take up a bill on Monday that would eliminate these defects and bring the U.S. system into the 21st century.

The Patent Reform Act, introduced by Sens. Patrick J. Leahy (D-Vt.) and Orrin G. Hatch (R-Utah), would recognize the ''first inventor to file'' standard, creating a bright line—the date on which a patent application was filed—and bringing certainty to the process. Yet the bill is not inflexible and wisely keeps in place protections for academics who share their ideas with outside colleagues or preview them in public seminars.

The bill also would increase protections for those with legitimate gripes. Third parties, currently shut out of the process, would be given clear rules and time limits to challenge patents that have not yet been approved. They'd also have a chance to lodge objections after a patent has been granted; the U.S. Patent and Trademark Office (PTO) would resolve these disputes. This safety valve should reduce the litigation costs associated with court challenges.

The PTO has long been overwhelmed and underfunded. The bill would allow the agency to set the amount it charges for filings while providing discounts to solo inventors and small companies. An amendment likely to be introduced by Sen. Tom Coburn (R-Okla.) would allow the agency to keep all of its fees, thereby ensuring it the resources it needs to carry out the bill's mandates.

The president made much of ''winning the future'' in his State of the Union address. A patent system that protects innovators and encourages meaningful breakthroughs would help achieve that goal.

EXHIBIT 2

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, DC, March 2, 2011.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The National Association of Manufacturers (NAM), the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states, urges you to oppose amendment 133 offered by Sen. Dianne Feinstein (D-CA) to S. 23,The America Invents Act.

The amendment would remove a key provision in S. 23, The America Invents Act, which is strongly supported by manufacturers, the creation of a ''first-inventor-to-file'' system.

The NAM supports transitioning the United States from a ''first-to-invent'' system to a ''first-to-file'' system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies. The ''first-to-file'' provision currently included in S. 23 achieves this goal.

Thank you for your consideration and your support for the ''first-to-file'' system.

Sincerely,

DOROTHY COLEMAN.

FEBRUARY 28, 2011.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: We write as the presidents of six university, medical college, and higher education associations to express the strong support of our associations for S. 23, the Patent Reform Act of 2011, which was reported by the Senate Judiciary Committee on a 15–0 vote and is scheduled to be considered by the Senate this week. This bipartisan agreement represents the successful culmination of a thorough, balanced effort to update the U.S. patent system to support more effectively the nation's economic competitiveness and job creation in the increasingly competitive global environment of the 21st century.

Our universities and medical colleges are this nation's principal source of the fundamental research that expands the frontiers of knowledge, strengthening the nation's innovative capacity. The patent system plays a critical role in enabling these institutions to transfer the discoveries arising from university research into the commercial sector for development into products and processes that benefit society.

S. 23 will:

Harmonize the U.S. patent system with that of our major trading partners, enabling U.S. inventors to compete more effectively in the global marketplace;

Improve patent quality by allowing third parties to submit information to the USPTO concerning patents under examination, and by creating an efficient, effective post-grant opposition proceeding to challenge patents for nine months after they have been granted, allowing challengers to eliminate weak patents that should not have been granted

and strengthening those patents that survive the challenge;

Reduce patent litigation costs by establishing the new post-grant procedure noted above, and by significantly improving the current inter partes review procedure, which will provide a lower-cost alternative to civil litigation to challenge a patent throughout its lifetime, while significantly reducing the capacity to mount harassing serial challenges; and

Provide USPTO with increased resources by providing this fee-funded agency with critically needed fee-setting authority, subject to Congressional and Patent Public Advisory Committee oversight.

We wish to call your attention to two important amendments that may be offered during floor consideration:

Senator Coburn is expected to offer an amendment to prevent diversion of fees collective by USPTO. This amendment is a critical accompaniment to the fee-setting authority provided by S. 23, allowing this seriously under-resourced agency to maintain the fees necessary to carry out its critical functions and reduce the backlog of patent applications. We urge you to support the Coburn amendment.

Senators Feinstein, Boxer, and Reid are expected to offer an amendment to eliminate the transition to a first-inventor-to-file system. The National Academies, in its seminal report on patent reform, A Patent System for the 21st Century, strongly recommended moving from a first-to-invent to a first-inventor-to-file system. Adopting a first-inventor-to-file system will harmonize the U.S. patent law with that of our trading partners, add greater clarity to the U.S. system by replacing the subjective determination of the first inventor with the objective identification of the first filer, and eliminate the costs of interferences and litigation associated with determining the first inventor. We urge you to oppose the Feinstein, Boxer, and Reid amendment.

We believe S. 23 reforms current U.S. law in a way that balances the interests of the various sectors of the patent community and substantially improves the patent system overall, strengthening the capacity of this system to strengthen the nation's innovative capacity and economic competitiveness. We urge you to support this carefully crafted legislation.

Sincerely,

ROBERT M. BERDAHL,
President, Association of American Universities;
MOLLY CORBETT BROAD,
President, American Council on Education;
DARRELL G. KIRCH,
President and CEO, Association of American Medical Colleges;
PETER MCPHERSON,
President, Association of Public and Land-grant Universities;
ASHLEY J. STEVENS,
President, Association of University Technology Managers;
ANTHONY P. DECRAPPEO,
President, Council on Governmental Relations.

This letter was sent to all members of the U.S. Senate.

SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL,
Oakton, VA, February 28, 2011.

Hon. PATRICK LEAHY,
U.S. Senate, Russell Senate Bldg., Washington, DC.

DEAR SENATOR LEAHY: The Small Business & Entrepreneurship Council (SBE Council) and its members across the nation have been strong advocates for patent reform. We are pleased that you have introduced the Patent Reform Act (S. 23), and we strongly endorse this important piece of legislation.

An effective and efficient patent system is critical to small business and our overall economy. After all, the U.S. leads the globe in entrepreneurship, and innovation and invention are central to our entrepreneurial successes. Indeed, intellectual property—most certainly including patents—is a key driver to U.S. economic growth. Patent reform is needed to clarify and simplify the system; to properly protect legitimate patents; and to reduce costs in the system, including when it comes to litigation and the international marketplace.

Make no mistake, this is especially important for small businesses. As the Congressional Research Service has reported: ''Several studies commissioned by U.S. federal agencies have concluded that individuals and small entities constitute a significant source of innovative products and services. Studies have also indicated that entrepreneurs and small, innovative firms rely more heavily upon the patent system than larger enterprises.''

The Patent Reform Act works to improve the patent system in key ways, including, for example, by lowering fees for micro-entities, and by shortening time periods for patent reviews by making the system more predictable.

During the debate over this legislation, it is expected that two important areas of reform will come under attack.

First, the U.S. patent system is out of step with the rest of the world. The U.S. grants patents on a first-to-invent basis, rather than the first-inventor-to-file system that the rest of the world follows. First-to-invent is inherently ambiguous and costly, and that's bad news for small businesses and individual inventors.

In a 2004 report from the National Research Council of the National Academies (titled ''A Patent System for the 21st Century''), it was pointed out: ''For those subject to challenge under first-to-invent, the proceeding is costly and often very protracted; frequently it moves from a USPTO administrative proceeding to full court litigation. In both venues it is not only evidence of who first reduced the invention to practice that is at issue but also questions of proof of conception, diligence, abandonment, suppression, and concealment, some of them requiring inquiry into what an inventor thought and when the inventor thought it.'' The costs of this entire process fall more heavily on small businesses and individual inventors.

As for the international marketplace, patent harmonization among nations will make it easier, including less costly, for small firms and inventors to gain patent protection in other nations, which is critical to being able to compete internationally. By moving to a first-inventor-to-file system, small firms will in no way be disadvantaged, while opportunities in international markets will expand.

Second, as for improving the performance of the USPTO, it is critical that reform protect the office against being a ''profit center'' for the federal budget. That is, the USPTO fees should not be raided to aid Congress in spending more taxpayer dollars or to subsidize nonrelated programs. Instead, those fees should be used to make for a quicker, more predictable patent process.

Thank you for your leadership Senator Leahy. Please feel free to contact SBE Council if we can be of assistance on this important issue for small businesses.

Sincerely,

KAREN KERRIGAN,
President & CEO.

EXHIBIT 3

RECORD SUBMISSIONS—FIRST-TO-FILE

Mr. President. We have heard from stakeholders from across the spectrum—from high tech and life sciences, to universities and small inventors—in support of the transition to the first-to-file system. These supporters include:

AdvaMed; American Bar Association; American Council on Education; American Intellectual Property Law Association; Association of American Medical Colleges; Association for Competitive Technology; Association of American Universities; Association of Public and Land-grant Universities; Association of University Technology Managers; Biotechnology Industry Organization; Business Software Alliance; Coalition for 21st Century Patent Reform, a coalition of 50 companies from 18 different industry sectors, such as General Electric, Procter & Gamble, 3M, Pfizer, and Cargill.

Council on Governmental Relations; Gary Michelson, Independent Inventor; Genentech; Intellectual Property Owners Association; Louis J. Foreman, Enventys, Independent Inventor; National Association of Manufacturers; The Native American Intellectual Property Enterprise Council; PhRMA; Small Business and Entrepreneurship Council; Software & Information Industry Association.

The ACTING PRESIDENT pro tempore. The Senator from Delaware is recognized.

Mr. COONS. Mr. President, I thank the chairman for his leadership on this floor deliberation regarding S. 23, the America Invents Act.

I rise to speak in opposition to the Feinstein amendment, which would strike the first-to-file provision, which I think is one of the critical components of this act that will harmonize the patent system with that of the rest of the world, as I heard Chairman LEAHY speak to. This is the first comprehensive patent reform bill in 60 years. It is a key piece of our bipartisan work to make sure the United States remains a competitive country which can once again be in the forefront of world innovation.

As someone who, like you, Mr. President, is concerned about manufacturing, is concerned about employment, is concerned about jobs, one of the ways we can restrengthen, reinvigorate, reenergize manufacturing in this country is by making sure our Patent and Trademark Office is as capable, is as strong as it can possibly be. I take quite seriously that the Patent and Trademark Office under the very able leadership of Director Kappos is opposed to this amendment and has also raised concern, which I share, that this amendment would tear apart the very broad coalition that has worked so hard and has negotiated this particular act, the America Invents Act, over the last 6 years.

On an issue that is as important as this, as critical as this to the protection of American innovation and the resulting creation of jobs, I think it is important that we in the Senate not allow this bipartisan bill to fall apart over this issue.

Transition to first-to-file is an improvement over the current system because it provides increased predictability, certainty, and transparency. Patent priority will depend on the date of public disclosure and the effective filing date rather than on secret inventor notebooks, secret personal files which may or may not be admissible and often lead to long and contentious litigation, as the chairman mentioned in his floor comments as well.

This predictability, the predictability that the first-to-file system will bring, I believe will strengthen the hand of investors, inventors, and the public. All will know as soon as an application is filed whether it is likely to have priority over other patent applications.

In contrast, the current system with which we worked for many years does not provide an easy way to determine priority. That is why interference proceedings can be so contentious, so long, and so expensive. There are some small inventors in particular who I know are concerned that first-to-file will be used by larger companies to steal away their rightful invention. This bill contains critical protections for all inventors so the ultimate new system, once this is passed, will be more fair, more predictable, and transparent for all. For those inventors who publicly disclose an invention before anybody else, they have a 1-year grace period to claim priority for any patent application based on the subject matter they disclose. Smaller inventors as well as large inventors will be protected as soon as they publish or otherwise disclose under this America Invents Act.

In my view, that will increase the free flow of ideas while still protecting the IP rights of any inventor, large or small.

The Patent and Trademark Office commissioned a study of patent and trademark applications filed over the last 7 years. They found only 1 out of 300,000 filings would, under the new system, grant a patent to a large company that might otherwise have gone to a small company or individual inventor. By avoiding cost, the difficulty, the unpredictability of lengthy interference proceedings, transition to first-to-file will neutralize what I think is a big structural advantage to large companies in the current dispute system.

First of all, it also gives the holder of a new patent increased confidence in the strength and reliability of this patent, which I also think will accelerate venture capital investment, new company formation, and movement toward deployment of critical new technology.

I think experience has shown in other countries, in Europe and Canada, that transitioning from a first-to-invent to a first-to-file system will not lead directly to an increase in so-called junk applications and will, instead, make patent examination simpler, fairer, and more predictable. In short, my view is that it is crucial to the success of this legislation. It is crucial for the coalition that has come together over many years to support it. It is crucial for the progress this act will make in strengthening and streamlining the patent review and granting process in the United States. So I urge my colleagues to oppose the amendment, amendment No. 133.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWN of Ohio). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENNET. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNET. Mr. President, I would like to speak briefly on the importance of passing the America Invents Act.

Chairman LEAHY and the Judiciary Committee have worked hard to put this product on the floor that will mark the biggest reforms to our patent system in 60 years. This bill will create jobs in Colorado and across the country by promoting innovation. By making our patent system more efficient, we are building the foundation for future economic growth.

In my State alone, nearly 20,000 patent applications have been granted between the years 2000 and 2009. These applications have created the foundation for our clean energy economy and emerging tech and bio industries.

Having a high quality U.S. Patent and Trademark Office is essential to maintaining American leadership in innovation. The America Invents Act will help us grow new industries and will help cure the backlog and delay that have stunted the ability of inventors to patent their ideas.

Right now, the average pendency period for a patent application is 36 months. That is unacceptable if we are to compete with the rest of the world. This does not even account for those patents that have been tied up in years of litigation after they are granted.

And we have improved the bill on the floor by helping solidify alternatives to litigation, provide for more efficient resolution of disputes and help create more certainty, which is essential to inventors.

It is hard to pass a jobs bill without spending money, but that is absolutely what we have done here. The bill does a good job of balancing the interests of innovators across the many sectors of our economy.

We have passed a number of bipartisan amendments that have improved this bill. We added amendments promoting the establishment of satellite USPTO offices in regions across the country; creating a discount for small entities to participate in the accelerated patent examination program of the USPTO; and addressing concerns with damages and venue provisions. I am proud to have worked with the chairman and the ranking member to get these issues resolved.

I also commend Senator MENENDEZ on his amendment to provide a fast track for patents that are critical for our national competitiveness, which I cosponsored.

The Senate has come a long way toward improving our patent system with this legislation and harmonizing our system with the rest of the world. There are a lot of people in my State who are interested in further improvements. I pledge to continue to work with them to help make sure we continue to fine tune this legislation where we can.

The America Invents Act represents significant progress for our patent system. We are moving our patent system into the new century, which is already being defined by the next wave of American innovation. The breadth of support for this legislation across industries and from large and small businesses, as well as our universities, has provided the momentum to complete this legislation.

I would like to close by again thanking the chairman and Judiciary Committee. I urge my colleagues to vote for patent reform.

I thank the Chair. I yield the floor.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SETTING THE RECORD STRAIGHT

Mr. DURBIN. This morning the Republican leader came to the floor, Senator MCCONNELL, and made some pretty strong and sweeping statements about the state of the deficit and responsibility. I would like to have a chance to respond.

Senator MCCONNELL said for 2 years now Washington Democrats have taken fiscal recklessness to new heights. The amount of red ink Democrats plan to wrack up this year alone would exceed all the debt run up by the Federal Government since its inception through 1984.

I would like to set the record straight. Understand what the national debt of America was when President William Jefferson Clinton left office. We were running surpluses. We had not done that for decades—surpluses in the Federal Treasury.

What did we do with all this money? We put it in the Social Security trust fund. We bought more longevity and solvency for Social Security and, if you remember, the economy was never stronger.

William Jefferson Clinton left office, and at that moment in time, the national debt, the accumulated debt of

America, from George Washington until he left office, $5 trillion. Remember that number, $5 trillion. Fast forward 8 years after the end of President George W. Bush—8 years later—where were we? The national debt was now $12 trillion.

Fiscal recklessness by Democrats? Under President Bush, the national debt more than doubled. Instead of leaving a surplus for President Obama, he said: Welcome to an economy that is hemorrhaging hundreds of thousands of jobs lost every single month, and we anticipate next year's deficit—he told President Obama—to be $1.2 trillion. That was what President Bush handed to President Obama.

I do not mind a selective view of history. I guess we are all guilty of that, to some extent. But to ignore the fiscal mess created that more than doubled the national debt in 8 years, to ignore that we waged two wars without paying for them, to ignore that we cut taxes in the midst of a war, which is something no President in the history of the United States has ever done, is to ignore reality.

The reality is, we are here today, in the midst of this Titanic struggle, about whether we are going to continue to keep the Federal Government functioning. We are being asked whether, 2 weeks from now, we want to have security at our airports, air traffic controllers, whether we want to have Social Security checks sent out, people actually sending a check, answering questions at the Internal Revenue Service, whether we want the Securities and Exchange Commission still working on Wall Street 2 weeks from now.

We cannot lurch forward 2 weeks at a time without doing a great disservice to taxpayers of this country, as well as to the men and women who work hard for our government every single day.

What is the answer in the House of Representatives? Well, the House of Representatives says we need to cut $100 billion this year. They started at $60 billion, incidentally, and then decided that was not enough for bragging rights; let's get up to $100 billion this year.

You say: Well, out of a budget of $3.7 trillion, how big is that? Whoa. They did not look at the budget of $3.7 trillion. They looked at one 14-percent slice of the pie, domestic discretionary spending. That is it. Nothing to be taken out of the Department of Defense, nothing to be taken away in terms of tax breaks for the wealthiest corporations, the most successful corporations, nothing out of oil and gas royalties and the like—nothing out of that. We will take it all out of domestic discretionary.

So what did they take away? I looked in my State last week. I went up to Woodstock, IL. We have an office there with counselors who are bringing in unemployed people, sitting them in front of computers, with fax machines and copy machines. They are preparing resumes and trying to get back to work. These are people who want to work. They need a helping hand. This place has been successful. It places people in jobs. What would happen to that office under the House Republican budget resolution? It would close its doors—more unemployed people, more unemployment checks. Is that the answer to putting America's economy back on its feet? Is that how we are going to get 15 million Americans back to work?

How about the House Republicans' proposal to eliminate $850 a year in Pell grants. Senator LEAHY knows what that is all about. These are kids from the poorest families, many of them for the first time in their family have a chance to graduate from college, but they can't make it; they don't have enough money. We give them a helping hand. The Republicans take it away. What will that do? The President of Augustana College in Rock Island, IL, told me what it will mean. It will mean that 5 percent, 1 out of every 20 students, will not finish the school year. That is what the Republican cut means. To cut job training, to cut education when we have 15 million people out of work, what are they thinking?

Not bad enough, I went to a medical school in my hometown of Springfield, Southern Illinois University School of Medicine, and met with researchers. They get a few million a year to do medical research in fields of cancer therapy, dealing with heart issues, dealing with complaints of returning veterans. What do the House Republicans do? They virtually close down research for the remainder of the year, close down this medical research. Is that right? Is that what we want? Have we ever had a sick person in our family and we went to the doctor and asked: Is there anything, is there a drug, is there something experimental, a clinical trial, is there anything? Have we ever asked that question? If we did, we know this cut by House Republicans is mindless, to cut medical research at this moment in history.

Then I went to a national laboratory, the Argonne National Laboratory, on Monday. What do they do there? A lot of people can't answer that question. I learned specifically. Are Members aware of the Chevy Volt, a breakthrough automobile, all electric? Where did that battery in this automobile come from? The Argonne National Laboratory. How about the latest pharmaceutical breakthroughs? Virtually every one of them uses the advanced photon source at the Argonne National Laboratory. I met a man from Eli Lilly who was there experimenting with a new drug that can save lives. How about computers? Where is the fastest computer in the world today? I wish it was in the United States. It is in China. We are now working on the next fastest computer so we don't lose that edge. Where? At the Argonne National Laboratory. So what would the House Republican budget do to that laboratory and most every other laboratory? It would eliminate one-third of the scientists and support staff working there and cut their research by 50 percent for the rest of the year.

So what? So what if we don't move these pharmaceuticals forward to market sooner to save lives, if we don't compete with the Chinese on this computer, if we don't deal with battery technology so we don't lose that edge in the world? What will it mean? Lost jobs.

The House Republicans weren't thinking clearly. They were performing brain surgery with a hacksaw. As a result, they have cut what is essential for the future: infrastructure projects, education, research. To have the Republican leader come and tell us we have to accept that, that that is the future of America—no, it is not. Time and again, when we sit down to deal with budget challenges, whether it is in the deficit commission, on which I was honored to serve, or whether it is in past negotiations, we open the table to all Federal spending, not just 14 percent, that tiny slice of the pie.

Senator MCCONNELL can remember—and I can, too—under President George Herbert Walker Bush and under President Clinton, we put on the table tax breaks for some of these oil companies and corporations and said: Is it worth America's future for us to give them a tax break or to use the money to reduce the deficit? That is an honest question. Mandatory spending. All these things need to be brought to the table for conversation, but that is not the position of the Republicans. They would rather see us shut down the government than to open this conversation to the entire Federal budget. They would rather see us shut down the government than fight to make sure education, training, research and innovation and infrastructure are there to build a strong American economy for the future.

I say to my friend Senator MCCONNELL, we don't need any speeches from that side of the aisle about a national debt that more than doubled under the last Republican President. We have to work together in a bipartisan way, acknowledging the reality of history, that we all have had a hand in reaching the point we are at today, both positive and negative, and we all need to take a responsible position to move us forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the comments of the Senator from Illinois. I recall great discussions during the administration of President Reagan. I happened to like President Reagan. We got along very well. But I remember discussions on a balanced budget and all that, as his budget tripled the national debt. I do recall he did veto one spending bill because it didn't spend as much as he wanted. Rhetoric is one thing, as the Senator

from Illinois points out. Reality is often different. I thank him.

AMENDMENT NO. 133, AS MODIFIED

I ask unanimous consent that at 12:30 p.m., the Senate proceed to a vote in relation to the Feinstein amendment No. 133, as modified, with no intervening action or debate; that the time until then be divided equally between the proponents and the opponents, and no amendments be in order to the Feinstein amendment prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. CANTWELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Ms. CANTWELL. Madam President, am I correct there is a vote at 12:30?

The PRESIDING OFFICER. That is correct.

Ms. CANTWELL. The time is equally divided on the Feinstein amendment?

The PRESIDING OFFICER. Correct.

Ms. CANTWELL. Madam President, I rise to support the Feinstein amendment and to ask my colleagues, who I know have been working diligently on the legislation for several years now, to respect the very tough balance that has been sought in this legislation as this legislation came out of the Judiciary Committee.

I know we adopted a managers' amendment yesterday, and I know that managers' amendment now is catching a lot of people off guard because there are far more changes than people realized in that managers' amendment that I think upsets that apple cart of balance that was struck in the Judiciary Committee.

So I am urging my colleagues to support the Feinstein amendment and expressing my concern for the underlying bill that is something that, at this point in time, I cannot support.

I do not come to that decision lightly nor because of the fact that I have many high-tech companies in the State of Washington that might say we need patent reform and that this is good innovation. But large high-tech companies are not the only ones that know something about innovation. In fact, most of the people who have helped build those organizations were once the small inventors themselves of key technology.

What is at stake is unbalancing the apple cart as exists today to innovation—not just innovation in general but innovation in an information age. The meal ticket for all of us is going to be the invention and creation of new products and services. So that is the great time and age we live in.

But if in this legislation we all of a sudden upset that apple cart, where we are tilting the playing field in support of large corporations that have already made their mark and made their markets and made their success and have slowed down on the rate and progress of innovation within their companies and do a lot to acquire technology from smaller inventors—and now, all of a sudden in this underlying bill, particularly in the area of damages, make sure the big corporations can win in any kind of legal dispute against the technology holder or creator because they are able to outlast them in a legal battle because they are more well financed, more well heeled, with the ability to draw out this battle—because of that change in the underlying bill, we leave the small guy without many resources.

The only thing the small inventor has is their intellectual property and a fair day in court. If now we take that away from them, I guarantee you, they will have less success. Then, when you have less success of having 5,000 flowers bloom, we have a problem.

This is not about what five or six or seven large corporations can create. This is about what thousands and thousands of innovators are going to create in the future and whether they are going to be incented or disincented to do that.

The Feinstein amendment tries to protect the current process, to protect what are the rights of those inventors today under current law. I am sure my colleagues will say: Well, that is not the way the rest of the world does it. I would say to my colleagues: I am not sure the way the rest of the world does it is the mark we are trying to hit. What we are trying to preserve is the entrepreneurial spirit that has been created in the United States. I am not saying that is not based on just raw creativity of individuals—it is—but it is also based on financial incentive and the incentive those individuals have that their intellectual property can be protected.

But if this is going to be a game about the big boys coming to Washington and squashing the small inventors, count me out. This has to be a level playing field. I get it is tempting to want to, in the last minute, stick into the managers' amendment language you could not get out of committee. But if we want to get this legislation through this process, then we have to take into consideration the rights of the inventors along with the rights of those larger companies that are trying to acquire or integrate or be part of the manufacturing on a larger scale of that inventor's technology.

So I say to my colleagues, the Feinstein amendment, in keeping the rights of the inventors where they are, gives them at least a modicum of holding on to that. I think the underlying bill has changed so much in the managers' amendment that we are going down a road that is going to make it very difficult for us to finally get a piece of legislation. We have to respect the rights of the small individuals, and we can't have carve-outs for specific jurisdictions such as Wall Street who think they can have their cake and eat it too.

This has to be about how we move forward on a smoother patent process. We need to take into consideration that we have gotten to this great place in our country because we have had a balance and an empowerment of these technologies. We should not all of a sudden in one fell swoop take that away on the Senate floor and basically undermine what is the creative opportunity for the U.S. economy, which is an invention. We want thousands and thousands of inventors—not just inventors who work for big corporations—thousands of inventors who have their rights.

So I support the Feinstein amendment.

I thank the President, and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I thank the Senator from Washington for her comments. We welcome her support. I was pleased to be able to listen to her comments.

What is the current status of the time allocation?

The PRESIDING OFFICER. The proponents have 3½ minutes remaining, and the opponents have 10 minutes remaining.

Mrs. FEINSTEIN. I ask unanimous consent that our 3½ minutes be extended so that Senator RISCH, who will speak next, has the time he requires, and I have the time for a few brief closing remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Thank you very much.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, I am proud to come to the floor today to speak on the amendment to which I am a cosponsor.

This is simply a matter of fairness. With all due respect to my colleague from Washington, referencing her comments about the big boys versus the small inventors and what have you, I don't view it as that at all. I view it as a fairness issue: The person who created the invention gets the benefits of that creation, not the person with the fastest tennis shoes. That is what we are doing.

We are creating what is called a race notice statute, which is similar to what is in place in many States on real estate filings. It has a legitimate place in the real estate market but not here. With so much on the line, with creativity on the line, it should be the person who actually does the invention who reaps the benefits of that invention, and that is all this does.

The other thing I think is so important is it preserves the situation we

have had for many years in place. I have heard people say: Oh, well, this is a poison pill. If you take this out, it kills the bill. That isn't the case at all. It simply preserves the situation we have in place today. It is the right thing to do. It is the fair thing to do.

I urge an affirmative vote for this amendment.

I yield the floor to my colleague from California, Senator FEINSTEIN.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Thank you very much, Madam President. I thank Senator RISCH for his cosponsorship, and, of course, I agree exactly with his statement.

At this time I wish to briefly summarize the arguments in favor of our amendment to strike the first-to-file provisions from this bill. This amendment is cosponsored, as I said, by Senator RISCH, Majority Leader REID, Senators CRAPO, BOXER, ENSIGN, and I ask unanimous consent to add Senator BEGICH.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Thank you, Madam President.

Proponents of the first-to-file argue that the rest of the world follows this system and making this change will harmonize our system with theirs, and that is true. But under our first-to-invent system, our Nation has been by far the leader in the field of innovation, the leader in the field of new patents, new discoveries, new inventions. The other first-to-file countries have been playing catchup with our technological advances. I wouldn't trade our record of innovation for any of theirs, and I doubt many Members of this body disagree with me if they really think about it.

Think about the history of innovation. What sets America apart is so many of our great inventions start out in small garages and labs, with driven, inspired people who have great ideas, develop them, and then they take off. I mentioned companies that have started this way yesterday, including Hewlett Packard, Apple, and Google, and there are hundreds and perhaps thousands of others. They started from humble beginnings, and they grew spectacularly, creating jobs for millions of Americans and lifting up our economy and standard of living.

I know an inventor who invented Skyy vodka. The vodka he drank disturbed his stomach, so he figured out biologically and chemically what it was, and he invented a vodka called Skyy vodka—a small inventor. I think that company was subsequently sold for a great deal of money. But it started with one man who had a stomachache from drinking vodka.

Now, this may be just one type of example, but Apple is certainly another example. It started in a garage many years ago in California, and out of that emerged this giant company. So these companies started from humble beginnings. They grew. This created jobs for millions of Americans. They lifted our economy and our standard of living.

The National Small Business Association is a supporter of this amendment, and just last week other small business inventor groups have joined them in saying that first-to-file ''disrupts the unique American start-up ecosystem that has led to America's standing as the global innovation leader.''

First-to-invent has served our country well. Here are the main problems, as I see them, with the bill's first-to-file system: First, the grace period. It ''guts'' the current grace period, in the words of a letter from 108 startups and small businesses that protect inventors' rights to their inventions for 1 year from offering them for sale or making a public use of them, among other things, before they have to file a patent application with the Patent Office. So there is this 1-year grace period for them to get their act together.

Now, under the present system, instead of preparing a costly patent filing, they can concentrate on developing their invention and obtaining necessary funding.

The majority leader just circulated a statement to Members which speaks to this grace period. I wish to quote one part of that statement:

> The grace period comports with the reality of small entity financing through friends, family, possible patent licensees, and venture capitalists. The grace period allows small inventors to have conversations about their invention and to line up funding before going to the considerable expense of filing a patent application.

The grace period allows them to not have to race to the Patent Office because they are afraid somebody else might have heard the conversation, might have stolen it from them, and moved on.

Senator REID goes on:

> In fact, in many ways, the one-year grace period helps improve patent quality—inventors find out which ideas can attract capital, and focus their efforts on those ideas, dropping along the way other ideas and inventions that don't attract similar interest and may not therefore be commercially meaningful.

So this first-to-file essentially replaces this critical innovation-protecting provision with a more limited and murky grace period that only runs from the undefined term of ''disclosure.'' There is no discovery. Litigation is sure to ensue as courts interpret this term, creating uncertainty that I believe will chill investment in startups which in turn will damper innovation and job growth.

Unfortunately, first-to-file incentivizes inventors to race to the Patent Office, to protect as many of their ideas as soon as possible, so that they are not beaten to the punch by a rival. Thus, first-to-file will likely result in significant overfiling of dead-end inventions, unnecessarily burdening both the Patent Office and especially small inventors.

The third reason, difficulty of proving copying. The third major problem with this bill's system is the difficulty of proving that someone copied an invention. Currently, you as a first inventor can prove that you were first by presenting evidence that is in your control—this is under first-to-invent—your own records contemporaneously documenting the development of your invention. But under this bill, to prove that someone else's patent application came from you, was derived from you, you would have to submit documents showing this copying. Because there is no discovery, you wouldn't have those documents in your possession, so it makes proving your invention much more difficult. The bill doesn't provide for any discovery in these ''derivation proceedings.'' Therefore, the first inventor can't prove his or her claim because he or she does not have access to the documents of the alleged copier.

Mr. LEAHY. Madam President, if the Senator will yield, how much time is remaining?

Mrs. FEINSTEIN. I will just take 2 minutes more.

The PRESIDING OFFICER. The Senator from California by consent is using the opponent's time.

Mr. LEAHY. Is using my time?

Mrs. FEINSTEIN. No. I have asked to extend our time.

Mr. LEAHY. Madam President, we are supposed to vote at 12:30. I realize the Senator couldn't be here when her amendment was brought up and couldn't be here when her amendment was modified. We did that for her. But I am in opposition to it, and I should at least have some of my time to be able to use.

Mrs. FEINSTEIN. I will be very happy to—I was here yesterday. I did speak on the floor, Mr. Chairman. I did, in a rather lengthy speech, indicate the arguments. I have asked for just a short period of time. My remarks are no more than five pages, which should take me 1½ more minutes to conclude. I hope I would be offered that time.

Mr. LEAHY. Madam President, at the hour of 12:30 we are supposed to vote. I would ask unanimous consent, so far as my time has been used by those in another position, that Senator GRASSLEY and I have 4 minutes back of our time.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator has consent.

Mrs. FEINSTEIN. Fine. Then I would ask that my time on this side be extended for another 1½ minutes.

The PRESIDING OFFICER. The Senator has that time.

Mrs. FEINSTEIN. Thank you very much.

So I have outlined the difficulty of proving copying under the first-to-file system.

Disputes about who is the first to invent are resolved by the Patent Office in what is called an interference proceeding, which number only about 50 a year out of 480,000 patent applications.

The opposition infers that this is a huge problem. Fifty a year out of 480,000 patent applications is a very small percentage.

As I said in the beginning, America leads the world under the first-to-invent system. I don't think we should fix what isn't broken. This works for people who have great ideas but don't have money, who begin in a garage or in a lab. It has worked well for our system.

I ask my colleagues to join Senator RISCH, Majority Leader REID, Senators CRAPO, BOXER, ENSIGN, BEGICH, and myself in voting yes on this amendment.

I yield the floor.

Mr. LEAHY. Madam President, as I said earlier, Secretary Locke confronted the notion that the current outdated system is better for small independent inventors. He said the cost of proving that one was first to invent is prohibitive and requires detailed, complex documentation of the invention process. In cases where there is a dispute about who the actual inventor is, it typically costs at least $400,000 in legal fees and even more if the case is appealed. By comparison, establishing a filing date through provisional application to establish priority of invention costs just $110.

I appreciate the work of the Senator from California, but her amendment is a killer amendment. It would kill this bill. Our bill is set up so that it will allow us to compete with the rest of the world. Right now, we are behind the rest of the world in our patent system. Our bill as it is written allows us to compete with the rest of the world. Her amendment would hold us back and give an advantage to those countries with which we have to compete.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I associate myself with the remarks of the chairman of the committee. I ask that people on my side of the aisle not support the Feinstein amendment.

At this point, I move to table the Feinstein amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion to table the Feinstein amendment, as modified.

The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 13, as follows:

[Rollcall Vote No. 31 Leg.]

YEAS—87

Akaka	Bingaman	Burr
Alexander	Blumenthal	Cardin
Ayotte	Blunt	Carper
Barrasso	Boozman	Casey
Baucus	Brown (MA)	Chambliss
Bennet	Brown (OH)	Coats
Coburn	Johnson (WI)	Nelson (NE)
Cochran	Kerry	Paul
Collins	Kirk	Portman
Conrad	Klobuchar	Pryor
Coons	Kohl	Reed
Corker	Kyl	Roberts
Cornyn	Landrieu	Rubio
DeMint	Lautenberg	Sanders
Durbin	Leahy	Schumer
Enzi	Lee	Sessions
Franken	Levin	Shaheen
Gillibrand	Lieberman	Shelby
Graham	Lugar	Snowe
Grassley	Manchin	Stabenow
Hagan	McCain	Thune
Harkin	McCaskill	Toomey
Hatch	McConnell	Udall (CO)
Hoeven	Menendez	Udall (NM)
Hutchison	Merkley	Vitter
Inhofe	Mikulski	Warner
Isakson	Moran	Webb
Johanns	Murkowski	Whitehouse
Johnson (SD)	Murray	Wicker

NAYS—13

Begich	Feinstein	Rockefeller
Boxer	Inouye	Tester
Cantwell	Nelson (FL)	Wyden
Crapo	Reid	
Ensign	Risch	

The motion was agreed to.

Mr. LEAHY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 126

Ms. STABENOW. Madam President, I will call up amendment No. 126. I understand it will be agreed to. I ask unanimous consent that the pending amendments be set aside and I call up amendment No. 126.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW], for herself and Mr. LEVIN, proposes an amendment numbered 126.

Mr. LEAHY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To designate the satellite office of the United States Patent and Trademark Office to be located in Detroit, Michigan as the ''Elijah J. McCoy United States Patent and Trademark Office'')

On page 104, strike line 23 and insert the following:

SEC. 18. DESIGNATION OF DETROIT SATELLITE OFFICE.

(a) DESIGNATION.—The satellite office of the United States Patent and Trademark Office to be located in Detroit, Michigan shall be known and designated as the ''Elijah J. McCoy United States Patent and Trademark Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the satellite office of the United States Patent and Trademark Office to be located in Detroit, Michigan referred to in subsection (a) shall be deemed to be a reference to the ''Elijah J. McCoy United States Patent and Trademark Office''.

SEC. 19. EFFECTIVE DATE.

Mr. LEAHY. I ask that it be adopted.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 126) was agreed to.

Mr. LEAHY. Madam President, I move to reconsider the vote.

Ms. STABENOW. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. I yield to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I thank the distinguished chairman of the Judiciary Committee and our ranking member and those who are working very hard on a very important jobs bill today. On behalf of the people of Detroit, the people of Michigan and Senator LEVIN and myself, I thank very much the Members for their support of this amendment.

Madam President, just few months ago, we learned that Detroit, MI, will be home to the first-ever satellite office of the U.S. Patent and Trademark Office. This office is such great news for Michigan, where we have a proud tradition of innovation and invention.

Every day, we are looking to innovate and create ''the next big thing.'' The decision to locate this satellite office in Detroit shows just how much new invention is happening in Michigan. Thanks to some of the best research universities in the country, with an incredibly skilled workforce, we have become third in the nation in terms of clean energy patents. And we are getting new patents every single day.

In addition to clean energy, Michigan is home to groundbreaking research in fields such as agriculture, defense technology, medical technology and pharmaceuticals, advanced batteries, and, of course, automobiles.

This patent office will help us continue that tradition of innovation, while reducing the backlog of patent applications so those new products can get to the market faster.

It makes perfect sense to locate this new satellite office in Detroit.

Today I am offering, along with Senator LEVIN, amendment No. 126 to the America Invents Act to name this new facility after a great Michigan inventor, Elijah McCoy.

His life captures the spirit of Michigan ingenuity and entrepreneurship. His parents escaped slavery and fled across the border to Canada. After training as an apprentice in Scotland, he came to Ypsilanti, Michigan and set up a home-based invention shop.

Over the course of his brilliant life, Elijah McCoy secured more than 50 patents, but he is best known for his inventions that revolutionized how our heavy-duty machinery, including locomotives, function today. In July of 1872, he invented the automatic lubricator, a device that kept steam engines working properly so trains could run faster and longer without stopping for service.

His invention was incredibly effective and many tried to copy his idea,

but nobody could match McCoy's idea. Machinists started asking if the engines were using the ''real McCoy'' technology, and people still use that phrase today when they want the best quality product.

He did not have an easy journey. As an African American, he was kept out of many of the histories of the industrial revolution. Despite his brilliance, he was only ever allowed to work in menial jobs on the railroad tracks.

But despite the racial prejudice, Elijah McCoy never gave up and continued inventing. In 1976, the city of Detroit celebrated Elijah McCoy day and dedicated his home as a historic site. In Detroit, Elijah McCoy Drive runs between Trumball and the Lodge, near Henry Ford Hospital. He is buried in Warren, MI.

It is a great honor for Michigan that the first-ever Patent and Trademark Satellite Office will be named for this great leader and great inspiration for Detroit.

It is a great honor for us to have this first-ever patent and trademark satellite office in Detroit and to have it named after a great leader who has provided great inspiration.

I thank my colleagues very much for supporting this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COONS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BLAMING WORKERS

Mr. BROWN of Ohio. Mr. President, we have all watched the news stories—from Madison, WI; Columbus, OH; Trenton, NJ, and other places around the country—where public employees, when you really analyze it, are paid more or less, including benefits and depending on the place, comparable to the private sector worker. Whether they are high school graduates or college graduates or whatever, the overall pay and benefits are pretty similar. We have seen around the country that these public employees are in most cases willing to share in the sacrifice of balancing budgets and share in the sacrifice of fighting back against this bad economy. In fact, we know that workers—teachers, police officers, nurses, people working at the unemployment bureaus, people working at the Department of the Interior, wherever—have taken pretty big hits already in terms of lost jobs, in terms of no raises, in terms of paying more for their health benefits.

So we know that even though these are not the people who caused the recession any more than the workers at Lordstown, OH, assembling cars or Defiance, OH, building engines or Northwood, OH, making bumpers for the Chevy Cruze are responsible for the failure of the automobile industry, there just seems to be, as we have seen from these ideological conservative Governors, an assault all over the country blaming workers, whether they are public or private workers, for the problems in this economy.

They continue to want to give tax cuts to the richest people on Wall Street, as they take their bonuses and make big dollars and see their incomes go like this, but as workers have pretty much had no real increase in the last 10 years—wages have been mostly stagnant—how can you blame the workers for this? That is what we have seen around the country.

It has been so interesting. Two days ago in Columbus, OH, 8,500 people demonstrated not against budget cuts, because they know those are coming, but against this direct assault by the government—by the Governor and legislative leaders—on the right to organize and bargain collectively. That is a right that has been part of Americana, a part of our values for 75 years.

Why do they think we have a middle class? We have a middle class because workers have been able to band together and say to a company that is very profitable: We should get some of that profit you are making because we are your workers and we have made your company more prosperous.

Management is important and crucial, but workers are important and crucial. As worker wages go up, management wages typically go up. But we have seen worker wages remain stagnant, in part because of a lack of unionization or a decline in unionization.

Now we are also seeing in Madison, Columbus, Trenton, Harrisburg, Indianapolis, Lansing, in these capital cities, especially in my part of the country, a real play on fear. They are trying to turn private sector workers against public sector workers. They blame the UAW—the auto workers—for the problems in the auto industry. Now they are blaming public workers for problems with State budgets and trying to work the private sector and union workers against each other, fighting with each other. That is the most base Karl Rove-type politics, to turn working-class people against one another. It is wrong. It is morally wrong, it is politically wrong, and it is very wrong for our country.

What has also been interesting about these protests is that they are not all steelworkers and electricians and American Federation of Government Employees and AFSCME and SCMU. There are people of faith also involved.

I did a roundtable at an Episcopal church right off statehouse square, and the leaders of the church and some of the volunteers of the church were there. Now, I don't preach or wear my Christianity on my sleeve, but these people of faith understand that the Bible talks a lot about poverty and a lot about fairness and equality and egalitarianism, if you will, but for them to go against workers on behalf of the richest people in our country—and that is really what they are doing in the Governors' offices in Columbus and Madison and Trenton and other places—runs counter at least to my faith. I will not judge their faith. They worship what God they worship and read what scripture they read. But when I look at what my faith means—and as I said, I am a Lutheran, I am not a Catholic—but when I look at Leo the XIII and what he said about what Catholicism means for workers and fairness, it is point, set, match. That clearly spoke definitively about this.

Mr. President, I have said this on the floor before today, but I wear this pin on my lapel. It is the depiction of a canary in a birdcage. One hundred years ago, miners took a canary down in the mines. If the canary died from lack of oxygen or from toxic gas, the miner got out of the mine. He only had himself to depend on. He didn't have a government that cared much in those days to write safety laws, particularly child safety laws, on the mines. He didn't have a union strong enough in those days to fight back.

Too many people who are ultraconservative—and there are many in both the Senate and the House—want to go back to those days. They want to eliminate worker safety laws, and they want to eliminate minimum wage. They are clearly going after collective bargaining and so many of the things we hold dear.

Again, it wasn't the UAW workers, it wasn't the Service Employees Union workers at the State capital who caused this financial crisis. They have been the victims of it, just as a whole bunch of nonunion workers have. This financial crisis was caused by greed, by people overreaching, by the richest in our society grabbing and grabbing and grabbing for more wealth. Yet they are going to turn this—let's change the subject—against those workers. That has happened far too many times in our country.

I am a new member of the Senate Appropriations Committee, and I am lucky enough to serve on Senator LEAHY's Subcommittee on State, Foreign Operations, and Related Programs. We brought the Secretary of State in—Secretary Clinton—to talk to us about the State Department's budget.

One of the things she said—and I mentioned Madison and Columbus after she said it—but one of the things she said is, it has been unions in Egypt, it has been workers in Egypt and Tunisia and around the world, it has been workers who so often, sometimes through their unions—if they are allowed to have unions, sometimes through a more informal collection of people in what might look like a union but is not formalized—fought for freedom, fought for equality. A lot of the problems in Tunisia and Egypt were because people were hungry—not just because they want freedom, but they also

want fairness and a chance to make a living.

But one of the things Secretary Clinton talked about is, yes, this administration is actually enforcing labor laws in Guatemala, this administration will enforce labor laws in the labor component of our trade agreements across the world because we as a country stand for a more egalitarian workforce. We stand for workers rights. We believe workers should organize and bargain collectively, if they choose. We believe in a minimum wage. We believe in workers' compensation. We believe in workers' safety. We believe in human rights. All of that is about the labor movement.

You can support labor rights in Guatemala, but you better be damned sure you are supporting labor rights in Wilmington and Columbus and Cleveland and Detroit and Dover, DE, and everywhere else. Those were some of the words Secretary Clinton said. I am obviously expanding on them.

I looked back in history and some of the worst governments we ever had, do you know the first thing they did? They went after the trade unions. Hitler didn't want unions. Stalin didn't want unions. Mubarak didn't want unions. These autocrats in history did not want independent unions. So when I see Egypt or I see old Soviet Russia and history tells me about Germany—I am not comparing what is happening to the workers in Madison or in Columbus to Hitler and Stalin. But I am saying, history teaches us that unions are a very positive force in society that creates a middle class and that protects our freedom.

So don't tell me you support unions internationally but you don't support unions here. Don't tell me you support collective bargaining in Poland but you oppose collective bargaining in Zanesville or Dayton, OH, because, frankly, that is inconsistent and ultimately it is not taking the side of people whom we are supposed to represent.

I am proud of my State. About two or three blocks from the capitol, in 1876, the capitol in Columbus, the American Federation of Labor was formed. What we know now as the AFL/CIO began in Columbus, OH, in 1876, when some workers got together thinking there was some strength and some safety in numbers and they were going to have a better standard of living and better country and more freedom for all if they began to coalesce in a group of people—not to bust a hole in the State budget, not to hurt companies but to make sure the workers were represented and get a fair shake in the society.

It is all pretty simple. We have a strong middle class in this country because we have the right to organize and bargain collectively. We have a strong middle class in this country because we are a democracy, because workers can share in some of the wealth they create for their employers. So I hope 10 years from now—I know in Delaware this is something we fought for with manufacturing and middle class and all—we will see, as productivity goes up and profits go up, that workers' wages will go up too. It is the American way. It is what we stand for. Nothing in our society, frankly, is more important than a prosperous middle class and what it brings to us in terms of freedom and equality.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANDERS). Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each, with the majority controlling the first hour and the Republicans controlling the next hour.

The Senator from Maryland.

EFFECTS OF H.R. 1 ON WOMEN AND CHILDREN

Ms. MIKULSKI. Mr. President, I am here representing 150 million women in the United States of America, and they are bewitched, bothered, and bewildered by what the Congress, particularly the House of Representatives, in H.R. 1, has done to women.

Women all over America have to balance their family budgets, so they know our United States of America needs to get its fiscal act together. They also know we need to live in a more frugal time. They understand that. But what they do not understand is that in H.R. 1, with what the House did, the entire burden has come from a very limited amount in discretionary spending. When you take off defense, homeland security, women and children are actually thrown under the bus. Well, they are mad as hell, and they don't want to take it anymore. So the Democratic women today, in the hour we have been given, are going to lay out the consequences of what H.R. 1 means.

Now, we in the Senate, and we, your appropriators—of which there are many women on the committee: LANDRIEU, FEINSTEIN, MIKULSKI, MURRAY—we know we have to bring about fiscal discipline. The Senate Appropriations Committee has already worked to reduce the appropriations in the Senate by $41 billion. Now that is really meat and potatoes. So we feel we have already given an option, but, my god, enough is enough.

Let me give you just the top 10 reasons why H.R. 1 is bad for women and children and examine why we are ready to negotiate so we do not have a shutdown of the government. We need a final settlement on the budget for 2011.

Let's just go through them. One, it defunds the entire health care reform law. That is bad for saving lives and saving money. It also eliminates title X family planning money. It jeopardizes breast cancer and cervical cancer screenings for more than 5 million low-income women. They even went after Head Start. Even little kids in Head Start had to take it on the chin. It is going to cause 218,000 children to be kicked off of it. But they go further. For the group who says they are pro family, family values, and that they have to defend life, yet they slash the nutrition programs for pregnant women by $747 million, affecting 10 million low-income pregnant women, new mothers, and children. They also cut funding for prenatal care, and they went after afterschool programs.

They cut funding for Pell grants. They terminate funding that helps schools comply with title IX. They cut funding for job training, which hurts over 8 million workers, many of them getting new training for the new jobs for the new economy. And something very near and dear, I know, to the Presiding Officer: they went not after Social Security in terms of the benefits but went after the people who work at Social Security—the Social Security offices where they work on everything from the regular Social Security benefit to the disability benefit. If H.R. 1 passes, over 2,500 people at Social Security will be laid off. In my home State, they were out in the streets in front of the Social Security headquarters saying: What about us? We come every day. We give you the actuarial information on how to keep it solvent. We make sure checks are out there on time, and in snowstorms we are showing up to make sure everything works. But at the end of the day, we are going to be told we are nonessential.

This whole nonessential drives me crazy because, ironically, Members of Congress are considered during a government shutdown. Well, if we are going to be essential, we need to get real about how we come to an agreement on this Continuing Resolution.

So, Mr. President, we in the Senate feel we have given $41 billion already, and we think H.R. 1 just goes too far. It goes too far by leaving so many things off the table.

Now I want to talk about health care reform. We had many goals during health care reform, one of which was to expand universal access. Again, the Presiding Officer has been a champion of that, a stalwart defender of the public option, and a stalwart defender of the single-payer system. As we worked on it and came up with a compromise, what was very clear was that there were certain things we just had to do. One was—whether you were for the public option or not, whether you are for a single-payer system or the system