PATENT REFORM ACT OF 2011

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

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.

Vitter-Toomey amendment No. 112, to require that the government prioritize all obligations on the debt held by the public in the event that the debt limit is reached.

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

Bennet amendment No. 117, to establish additional USPTO satellite offices.

Lee amendment No. 115, to express the sense of the Senate in support of a balanced budget amendment to the Constitution.

Mr. LEAHY. Madam President, yesterday the Senate began debating the America Invents Act. We adopted the committee amendments, and we proceeded to have five additional amendments offered to the bill. This morning I will be offering a managers' amendment, along with the distinguished Senator from Iowa, Mr. GRASSLEY, that incorporates additional improvements being made at the suggestions of Senator COBURN, Senator SCHUMER, Senator COONS, Senator BENNET, and others.

When we adopt this managers' amendment, I believe we will move very close to a consensus bill the Senate can and should pass to help create good jobs, encourage innovation, and strengthen our recovery and economy.

I ask unanimous consent to have printed in the RECORD the Statement of Administration Policy, as follows:

STATEMENT OF ADMINISTRATION POLICY

S. 23—PATENT REFORM ACT OF 2011

By Edward Wyatt, Feb. 20, 2011

The Administration supports Senate passage of S. 23. As a whole, this bill represents a fair, balanced, and necessary effort to improve patent quality, enable greater work sharing between the United States Patent and Trademark Office (USPTO) and other countries, improve service to patent applicants and the public at the USPTO, and offer productive alternatives to costly and complex litigation.

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 a global marketplace. Further, by providing authority for the USPTO to establish and adjust its fees to reflect changes in costs, demand, and workload, the bill would enhance productivity—reducing delay in the patent application process—and ensure full cost recovery at no taxpayer expense.

The Administration believes that the proposals on damages and venue are no longer needed in the legislation in light of recent court decisions in these areas. The Administration would not object to removal of these provisions from the final version of the legislation.

The Administration looks forward to continuing to work with the Congress to craft a balanced patent reform bill that reflects sound policy and meets the needs of the Nation's innovators.

U.S. SETS 21ST-CENTURY GOAL: BUILDING A BETTER PATENT OFFICE

(Washington, D.C., March 1, 2011)

The delays and inefficiencies are more than a nuisance for inventors. Patentable ideas are the basis for many start-up companies. Small business owners often require start-ups to have a patent before offering financing. That means that patent delays cost jobs, slow the economy and threaten the ability of American companies to compete with foreign businesses.

Much of the patent office's decline has occurred in the last 13 years, as the Internet age created a surge in applications. In 1997, 2,250 patents were pending for every one issued. By 2008, that rate had nearly tripled, to 6,500 patents pending for every one issued.

Though the office's ranks of patent examiners and its budget have increased by about 25 percent in the last five years, that has not been enough to keep up with applications—which grew from 200,000 to 258,000——not a measure of quality, Mr. Norman said. A claim is the part of the patent that defines what is protected. "Now they run hundreds of pages, with hundreds, and sometimes thousands, of claims."

"Lost in the scrutiny of the office's logjam, however, was the fact that the number of patents issued reached a record last year—more than 162,000, up from 150,000 the previous year. Rejections also hit a high of 258,000—not a measure of quality, Mr. Kappos said, but a sign of greater efficiency."

Between the backlog of 700,000 patents awaiting their first action by an examiner and the 500,000 patents that are in process, a total of 1.2 million cases are pending.

Sitting in his suburban Virginia office, not far from a model of the light bulb Edison presented for patent in November 1879 (which is far from a model of the light bulb Edison presented for patent in November 1879 (which is far from a model of the light bulb Edison presented for patent in November 1879 (which is far from a model of the light bulb Edison presented for patent in November 1879), Mr. Kappos proudly ticked off figures that he said proved the agency was heading in the right direction.

The backlog has actually declined about 10 percent from a peak of 770,000 at the end of 2008.

"We were able to work a 13-month year last year," he said, referring to the productivity increase in 2010 over 2009. "We are processing a far larger workload with a smaller number of examiners.

Still, Mr. Kappos wants to add more than 1,000 examiners in each of the next two years, a 30 percent increase. Mr. Obama's 2012 budget calls for a net decrease to $2.7 billion, over 2010. In two consecutive sessions, Congress has defeated a
We incorporate in the managers' amendment an amendment from Senator SCHUMER that concerns business method patents. We provide a process for their reexamination by the Patent and Trademark Office. This would also improve patent quality.

We also incorporate the suggestions from Senator BENNET and Senator COONS to remove certain damages and venue provisions that are no longer necessary in light of recent court decisions. The administration noted in its statement that it would not object to the removal of these provisions.

Senator BENNET came forward last night with sound amendments that he explained. They are included in this amendment, along with the change to the definition of a "microentity" made at the suggestion of the majority leader, and my amendment to conform the name of the legislation to the America Invents Act. I hope we adopt this amendment without delay.

Mr. Kappos is also pushing an initiative to keep all of the fees it collects. While another initiative and others are not enough, said Paul R. Michel, who recently retired as chief patent examiner at the United States Patent and Trademark Office, and former Secretary Locke, Director Kappos of the Patent and Trademark Office, and former Secretary of Commerce, the administration who worked on the first-to-file system simplifies the process of acquiring rights and describes it as "a little early to see the full extent of the changes. But we have seen an increase in morale and a decrease in attrition, which is now almost the lowest it's been since I came here" in 1990.

Patent applications come from all over the United States, and the office has felled satellite offices—until now. Last year, the office announced it would put about 100 examiners in Detroit. Some prominent lawmakers from Michigan, who are involved on patent issues, including Representative John Conyers Jr., a Detroit Democrat who, when the decision was made, was chairman of the House Judiciary Committee, were pleased.

Mr. Kappos said he chose Detroit because it had large communities of patent lawyers and agents, nearly universities and transport companies and relatively low costs of living and real estate. "Detroit has long been an innovation center," he said. "It’s under-valued, and that is where we want to invest. He said it would also attract a workforce with more varied skills.

Mr. Kappos is also pushing an initiative that would charge patent applicants a higher fee to appeal its ruling on their patent application. Mr. Michel, who has made evangelizing for an overhaul of the office a pet cause.

"Small efficiency improvements will only make a difference in the problem," Mr. Michel said. The reporter notes the growth in patent filings in the past few years. Mr. LEAHY, I think I am one of those with the administration who worked on the matter, and particularly Secretary Locke, Director Kappos of the Patent and Trademark Office, and former Secretary, now Chief of Staff at the White House.

The statement describes the bill as representing a fair, balanced, and necessary effort to improve patent quality. It concludes: "Senate passage of this bill in the spirit with which the administration’s commitment to support and encourage innovation that leads to improved competitiveness, economic prosperity, and job growth—without adding a penny to the deficit."
The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. GRASSLEY and Mr. KYL, proposes an amendment numbered 121.

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

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

The amendment is as follows:

(Purpose: To require that the Government give equal priority to payment of social security benefits and monthly-old-age, survivors', and disability insurance benefits under title II of the Social Security Act shall be given equal priority over all other obligations incurred by the Government of the United States.

At the appropriate place add the following:

(b) PRIORITY PAYMENT OF SOCIAL SECURITY BENEFITS.—Notwithstanding subsection (a), in the event that the debt of the United States Government, as so defined, reaches the statutory limit, the authority described in subsection (b) and the authority of the Commissioner of Social Security to pay

The amendment be dispensed with.

Mr. DEMINT. I yield the floor.

Mr. LEAHY. Mr. President, I ask unanimous consent that the pending amendment now be set aside and that the amendment be the pending amendment.

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

Mr. COONS. 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. LEAHY. Reserving the right to object—I would ask if the distinguished Senator could hold off—

The PRESIDING OFFICER. The Senator cannot reserve.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Madam President, I understand Senator DEMINT will be offering an amendment in the first degree which will require setting aside the managers' amendment. My understanding, is, once he has done that, we will then set aside his amendment and go back to the managers' amendment. I yield to the distinguished Senator.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 113, AS MODIFIED

Mr. DEMINT. Mr. President, I ask unanimous consent that the pending amendment be set aside so I can call up amendment No. 113, as modified.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT], for Mr. VITTER, proposes an amendment numbered 113, as modified.

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

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

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Reserving the right to object—I would ask if the distinguished Senator could hold off—

The PRESIDING OFFICER. The Senator cannot reserve.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

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

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

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

The PRESIDING OFFICER. Mr. President, I rise today to speak to the America Invents Act. The America Invents Act, is about creating jobs. It is about protecting and promoting American ingenuity and giving American ideas the opportunity to become American products. The America Invents Act is about restoring American competitiveness and leadership in our global economy.

America has been at the forefront of global innovation throughout our Nation's great history. We invented the light bulb, the cotton gin, the mechanical reaper and thresher. Thomas Edison, perhaps the most noted American inventor, invented the electric light, electric power transmission, the motion picture camera, the phonograph, and x-ray photography. The transistor, carbon fiber, GPS, Kevlar, recombinant DNA, the personal computer, and the Internet are all American inventions as well. Even more recently, American companies have invented the iPod and the iPhone and the Segway.

Inventors in Delaware and across America are right now working on critical advances in wind turbines, fuel cell technology, and electric cars. These technical innovations and so many others improve our quality of life, the health, safety, and productivity of our nation.

Never has PTO been more central to ensuring that the system of nationwide patents contemplated by our Founding Fathers is possible today. PTO must have clear, objective guidelines that enable an applicant to predict whether his or her application will be approved. That application process must move expeditiously. At the end of that process, when PTO issues a patent, the inventor and the industry must have confidence that the patent is of good quality and will provide a good defense against future challenges.

In recent years, however, PTO has fallen short of these objectives. Today, a patent applicant must wait over 2 years before an examiner first picks up that application. Two years. At this moment, more than 700,000 applications simply sit at PTO awaiting consideration. Each one of those applications represents an idea that could create a job or 10 jobs or 100 or 1,000. If you file a patent application at PTO today, you can expect to wait just over 3½ years for an initial disposition. Should PTO make an error in their examination, it would take about 3 more years to appeal it.

In a world in which startup companies depend on patents to secure venture capital and other funding, these times are just too long. While PTO Director Kappos has achieved some success and has begun to right the ship at PTO, he simply cannot accomplish adequate reform without our action.

The America Invents Act takes a number of steps to improve the efficiency with which this country handles
The playing field for economic innovation has never been more crowded. The United States faces rivals growing in strength and number, which is why our government should be encouraging innovation, not stifling it.

The America Invents Act will create jobs in Delaware and throughout the United States by removing some of the administrative roadblocks currently preventing inventors from becoming successful entrepreneurs. This bill will improve the speed, quality and reliability of the Patent and Trademark Office and it will ensure that America retains its place in the world as the leader of invention and innovative thinking.

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

Mr. KIRK. Mr. President, I ask unanimous consent that the amendment numbered 123.

Mr. KIRK. Mr. President, I ask unanimous consent to set aside the pending amendment and call up the Kirk-Pryor amendment numbered 123.

Mr. LEAHY. Mr. President, I will not object.

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

AMENDMENT NO. 123

Mr. KIRK. Mr. President, I ask unanimous consent that the amendment numbered 123.

Mr. KIRK. That is correct.

Mr. LEAHY. I will not object.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. KIRK], for himself and Mr. PRYOR, proposes an amendment numbered 123.

Mr. KIRK. Mr. 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:

SEC. 18. PATENT OMBUDSMAN PROGRAM FOR SMALL BUSINESS CONCERNS.

Subject to available resources, the Director may establish in the United States Patent and Trademark Office a Patent Ombudsman Program. The duties of the Program’s ombudsman may include providing support and services relating to patent filings to small business concerns.

Mr. KIRK. Mr. President, the Kirk-Pryor amendment seeks to assist some of our greatest innovators by providing a fast lane within the U.S. Patent and Trademark Office for small businesses to receive information and assistance regarding their patent applications.
Small businesses are the economic engine of the American economy. According to the Small Business Administration, small businesses employ just over half of all private sector employees and create over 50 percent of our nonfarm GDP. Illinois alone is home to 258,000 small employers and more than 885,000 self-employment.

Small businesses are helping to lead the way on American innovation. These firms produce 13 times more patents per employee than large patents firms, and their patents are twice as likely to be among the most cited among all patents. Small business breakthroughs led to the development of airplanes, FM radio, and the personal computer. Today small businesses are among all patents. Small business advancements by establishing the U.S. Patent and Trademark Office Ombudsman Program to assist small businesses with their patent filing issues. The provision was first conceived as part of the Small Business Bill of Rights, which I introduced in the House, to expand employment and help small businesses grow. The Small Business Bill of Rights and this amendment are endorsed by the National Federation of Independent Business. I am proud to have this as part of a 10-point plan to be considered here in the Senate.

I wish to thank Senator MARK PRYOR of Arkansas, who is the lead Democrat on this amendment. He is a strong and consistent supporter of small business, and I appreciate his partnership on this important program. I also thank Chairman LEAHY and Ranking Member GRASSLEY and their staffs for working with us on this amendment and for preserving this critical legislation.

Our Founding Fathers recognized the importance of a strong patent system that protects and incentivizes innovators. It is vital for America’s future competitiveness. Without a strong patent system, small businesses will not have the resources to create the products and processes that will build our economy. Small firms do not have the resources to patent every idea, because doing so would be too costly and time-consuming. Instead, they rely on a smaller number of ideas to drive their businesses. Small businesses are the engines of innovation.

In sum, we should help foster innovation by protecting innovators, especially small business men and women, and I urge adoption of the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Senator from Illinois for his contribution to this effort.

I ask unanimous consent that we set aside the Kirk-Pryor amendment and go back to the pending business, which is the managers’ amendment. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I understand there is another Senator who will come down and speak, and in the meantime I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, I ask unanimous consent that the distinguished Senator from Michigan, Ms. STABENOW, be recognized as though in morning business.

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

The Senator from Michigan.

(remarks of Ms. STABENOW are printed in today’s Record under “Morning Business.”)

PATENT REFORM ACT OF 2011—Continued

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, it is a great privilege and honor for me to be able to represent the great, wonderful, diverse Commonwealth of Pennsylvania in the Senate. Pennsylvania is a wonderful State. It has a terrific range of great attributes. It has big, bustling cities such as Philadelphia and Pittsburgh at opposite ends; has all throughout the Commonwealth beautiful, historical boroughs such as Emmaus and Gettysburg. We go from the banks of the Delaware all the way to the shores of Lake Erie.

In a State like ours, of course, we have a wide range of very vital industries. We have old industries that we have had for a long time and are still very important—employers: agriculture, coal, steel, and many others. We are a big manufacturing State, manufacturing goods of all kinds. We have a huge service sector, especially in the fields of education, medicine, finance, tourism, and many others. We have some relatively new and very exciting industries in our Commonwealth that I am very hopeful to an acceleration of job growth soon. I am thinking in particular of the natural gas and the Marcellus shale. I am thinking of the life sciences, all across the Commonwealth, especially in greater Philadelphia and greater Pittsburgh as well as in points in between. The medical device sector and pharmaceutical industries are offering some of the most exciting opportunities for economic growth anywhere in the Commonwealth.

So when I think about the diversity and the strength of our Commonwealth, I am convinced that Pennsylvania’s best days are ahead of us.

That said, despite all of the underlying strengths and advantages we have, we have an economy that is struggling. We have job creation that is far too slow. As I said repeatedly throughout my campaign for the Senate seat and as I have said since then, I think there are two vital priorities that we need to focus on first and foremost in Washington. The first is economic growth and the job creation that comes with it, and the second is restoring fiscal discipline to a government that has lost all sense of fiscal discipline. These two, of course, are closely related. We will never have the kind of job growth we need to deserve until we get our fiscal house in order.

But I look at them as separate issues. I think they should be at the top of our priority list. I absolutely convinced we can have terrific economic growth, terrific job growth. We can have the prosperity we have been looking for.

In fact, it is actually inevitable if the Federal Government follows the right policies, remembering first and foremost that prosperity comes from the private sector, it does not come from government itself, but that government creates an environment in which the private sector can thrive and create the jobs we so badly need. I would argue that the government does that by doing four things and doing them well.

The first is to make sure we have a legal system that respects property rights because the clear title and ownership and ability to use private property is the cornerstone of a free enterprise system.

It requires, second, that the government establish sensible regulations that are not excessive, because excessive regulation—and frankly we have seen a lot of excess that we have recently—too much regulation always has unintended consequences that curb our ability to create the jobs we need.

A third thing a government always needs to do is provide a stable currency, sound money, because debasing one’s currency is the way to ruin, not the way to prosperity.

Fourth, governments need to live within their means. They cannot be spending too much money and they cannot have taxes at too high a level.

It is so important that government spending remain limited and, frankly,