CONGRESSIONAL RECORD — HOUSE
June 23, 2011

Mr. BERNMAN changed his vote from “aye” to “no.”
Mr. McINTYRE changed his vote from “no” to “aye.”

So the resolution was agreed to.
Mr. CONYERS. Madam Chair, I offer an amendment.

The amendment is now in order containing the President’s finding that major patenting authorities have adopted a grace period having substantially the same effect as that contained under the amendments made by

B. shall apply to all applications for patent that are filed on or after the effective date under subparagraph (A).

The amendment would encourage the countries to adopt a similar period in their patent system consistent with a recommendation by the National Academy’s National Research Council. Current law in the United States allows a grace period of 1 year, during which an inventor can disclose or commercialize an invention before filing for a patent. Japan offers a limited grace period, and Europe provides none.

If the first-to-file provision in the bill is implemented, we must ensure that American inventors are not disadvantaged. Small American inventors and universities are disadvantaged abroad in those nations where there is no grace period.

The grace period provision within H.R. 1249 would grant an inventor a one-year period between the time he first publishes his invention to the time when he is required to file a patent.

During this time, this would prohibit anyone else from seeing this publication, stealing the idea, and quickly filing a patent behind the inventor’s back.

Yet, the only way for American inventors to benefit from the grace period provision contained in H.R. 1249 is to ensure that foreign countries adopt a grace period, as well.

Small American inventors and universities are disadvantaged abroad in those nations where there is no grace period. As a result, they often lose the right to patent because those other countries do not care about protecting small business and university research.

The United States needs to do more to protect the small inventor and universities not just here but abroad.

Unfortunately, other countries will not do it on their own even though they want the United States to convert to a “first-to-file” system.

If H.R. 1249 passes without my Amendment, we will be giving away a critical bargaining chip that we can use to encourage other countries to follow our lead.

My Amendment ensures that the only way to benefit from the grace period in H.R. 1249 is to have foreign countries adopt a grace period.

Without this Amendment, we will be unilaterally transitioning the United States to a “first-to-file” system with a weak grace period without any incentive for foreign countries to adopt a grace period.

I should also note that identical language was included in H.R. 1908, the “Patent Reform Act of 2007,” which the House passed on September 7, 2007.

Accordingly, I urge my colleagues to support this Amendment.

Mr. SMITH of Texas. I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Madam Chair, the Conyers amendment to tie the Conyers amendment to the bill is implemented, we must ensure that American inventors are not disadvantaged. Small American inventors and universities are disadvantaged abroad in those nations where there is no grace period.

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Mr. SMITH of Texas. I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Madam Chair, the Conyers amendment to tie the
be made in foreign law is unworkable. I oppose providing a trigger in U.S. law that leaves our patent system at the mercy of actions to be taken at a future date by the Chinese, Russians, French, or any other country. It is our constitutional duty to write the laws for how we want to do things. We cannot give that responsibility to the whims of foreign powers.

I know that this idea has been floated in the past, but after working on several pieces of patent legislation over the past several Congresses, and particularly this year on H.R. 1249, it has become clear that this type of trigger idea is simply not workable and is counterproductive.

The move to a first-inventor-to-file system creates a more efficient and reliable patent system that benefits all inventors, including independent inventors. The bill provides a more transparent and certain grace period, a key feature of U.S. law, and a more definite filing date enables inventors to promote, fund, and market their technology, while making them less vulnerable to costly patent challenges that disadvantage independent inventors.

Under first-inventor-to-file, an inventor submits an application to the Patent Office that describes their invention and how to make it. That, along with a $110 fee, gets them a provisional application and preserves their filing date. This allows the inventor an entire year to complete the application, while retaining the earlier filing date. By contrast, the cost of an interference proceeding before the PTO often runs to $500,000.

The current first-to-invent system harms small businesses and independent inventors. Former PTO Commissioner Gerald Mosseinhoff conducted a study that proves smaller entities are disadvantaged in PTO interference proceedings that arise from disputed patent ownership under the current system. Independent inventors and small companies lose more often than they win in these disputes, plus bigger companies are better able to absorb the cost of participating in these protracted proceedings.

In addition, many inventors also want protection for their patents outside the United States. If you plan on selling your product overseas, you need to secure an early filing date. If you don’t, you will lose your right to file your patent, and your invention will be shut out from the overseas market. A change to first-inventor-to-file will help our businesses grow and ensure that American goods and services will be available in markets across the globe.

In the last 7 years, only one independent inventor out of 3 million patent applications filed has prevailed over the inventor who filed first. One out of 3 million. So there is no need for this amendment. Independent inventors lose to other applicants with deeper pockets that are better equipped to exploit the current complex legal environment.

So the first-to-file change makes it easier and less complicated for U.S. inventors to get patent protection around the world. And it eliminates the legal bills that come with interference proceedings under the current system. It is a key provision of this bill that subjects U.S. domestic law to the whims of governments in France, China, and elsewhere.

It really would be unprecedented to hold U.S. law hostage to legal challenges made overseas, and would completely go against what this great country stands for and what our Founders fought for: the independent rights and liberties we have today.

For these reasons, Madam Chair, I am strongly opposed to the amendment.

I yield back the balance of my time.

Mr. CONYERS. I yield the balance of my time to the gentleman from California (Mr. ROHRABACHER).

The Acting CHAIR. The gentleman from California is recognized for 2 1⁄2 minutes.

Mr. ROHRABACHER. Let’s just note that Ms. LOFGREN last night presented a case to this body which I felt demeans the respect that we have for this law. A move to first-to-file system, which is what this bill would do, without a corresponding 1-year grace period in other countries dramatically undermines the patent protection of American inventors. Some of us believe that’s the purpose of this bill because they want to harmonize American law with the weak systems overseas.

Well, without this amendment that we are talking about right now, without the Conyers-Rohrabacher amendment, if an inventor discloses his discoveries, perhaps to potential investors, his right to patent protection is essentially gone. It’s not gone from just Americans. Yes, he would be protected under American law; but from all those people in foreign countries without a similar grace period to what we have here in our system, these people are not restricted. Thus, they could, once an American inventor discloses it, at any time they can go and file a patent and steal our inventors’ discoveries.

The only way for American inventors to benefit from a grace period here, which this bill is all about, is to ensure that foreign countries adopt the same grace period. And that’s what this amendment would do. It would say our bill, which will make our inventors vulnerable to foreign theft, will not go into place until those foreign countries have put in place a similar grace period. But then we can go after them and their citizens from coming in and stealing our technology. Ms. LOFGREN detailed last night in great detail how that would work.

I call this bill basically the Unilateral Disclosure Act. If not the Patent Rip-Off Act, because we are disclosing to the world what we’ve got. And our people can’t follow up on it because there’s a grace period here, but overseas they don’t have that same grace period. So what we’re saying is, to prevent foreigners from stealing American technology, this will not go into effect until the President has issued a statement verifying that the other countries of the world have a similar grace period so they can’t just at will rip off America’s greatest entrepreneurs and inventors.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

Ms. BALDWIN. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows: Strike section 5 (“Defense to Infringement Based on Prior Commercial Use”), as amended, and redesignate succeeding sections and references thereto (and conform the table of contents) accordingly.

Page 68, line 9, strike “section 18” and insert “section 17”.


The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Wisconsin (Ms. BALDWIN) and a Member opposed each will control 5 minutes.

Ms. BALDWIN. I yield myself 3 1⁄2 minutes.

Madam Chair, I rise to urge adoption of the Baldwin-Sensenbrenner amendment that strikes section 5 in the America Invents Act. Section 5 expands the prior-user rights defense from its present narrow scope to broadly apply to all patents with minimal exceptions.

As we work to rebuild our economy, Congress should be doing all that it can
to foster small business innovation and investment. I believe that section 5 will do just the opposite. Expanding prior-user rights will be disastrous for small American innovators, as well as university researchers, and ultimately slow our economic growth.

Despite current challenges, the U.S. patent system remains the envy of the world. Since the founding of our Nation, inventions have been awarded exclusive rights in exchange for public disclosure. This system also creates incentives for new ideas by fostering new ways of thinking, and encouraging further advancement and disclosures. It promotes progress.

If proponents of expanding prior-user rights have their way with this legislation, they will give new rights to those who have previously developed and used the same process or product even if they never publicly divulged their innovation and never even applied for a patent. It will transform our patent system into one that values transparency to one that rewards secrecy.

To understand why expanding prior-user rights runs counter to the public interest, it is important to reiterate how critical exclusive rights are for incentivizing a marketplace valuing and acquiring capital. For start-ups and small businesses, raising necessary capital is vital and challenging. The expansion of prior-user rights would only make that task all the more difficult.

Under the system proposed in the American Invents Act, investors would have no way of determining whether anyone had previously developed and used the process or product that they were seeking to patent. In such a scenario, a patent might be valuable or relatively worthless; and the inventor and potential investors would have no means of determining which was true.

Madam Chairwoman, I would like to boast that if I owned Stratatech, a fiercely innovative small business in Madison run by a top researcher at the University of Wisconsin who, through her research there, developed a human living skin substitute. This living skin is a groundbreaking treatment method that we hope will ultimately save the lives of American troops who have suffered burns while serving in Iraq and Afghanistan.

The company was recently awarded nearly $4 million to continue clinical trials for their tissue product. And what can save lives in a desert combat setting abroad will assuredly transform the way doctors save lives of burn victims in hospitals around our country and around the world.

Now, I wonder if Stratatech would have been able to drive this phenomenal innovation and life-saving technology as far as they have with a patent that provides only conditional exclusivity. Would investors have felt as confident in this technology in a system shrouded in secrecy? What if Stratatech’s patent was subject to the claims of an unlimited number of people or companies who could later claim “prior use”?

The Acting CHAIR. The time of the gentleman has expired. Ms. BALDWIN. I yield myself 15 additional seconds.

If we let section 5 stand, it is unclear to me whether a similar company would ever secure the funding that they need to grow.

I urge my colleagues to adopt the Baldwin-Sensenbrenner amendment.

Mr. SMITH of Texas. I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Madam Chair, this amendment strikes the prior-user rights provision from the bill. I strongly oppose this amendment.

The bill expands prior-user rights—a strong, pro-job, pro-manufacturing provision. This provision will help bring manufacturing jobs back to this country. It allows factories to continue using manufacturing processes without fear of costly litigation. It is absolutely a key component of this bill.

This provision has the strong support of American manufacturers, the broad support of all the major university associations and technology-transfer associations. These include the Association of American Universities, American Council on Education, Association of Public and Land Grant Universities, Association of University Technology Managers, and the Council on Government Relations representing the vast majority of American Universities. Prior-user rights ensure that the first inventor of a new process or product using manufacturing can continue to do so.

This provision has been carefully crafted between stakeholders and the university community. The language provides an effective exclusion for most university patents, so this provision focuses on helping those in the private sector.

The prior-use defense is not overly expansive and will protect American manufacturers from having to patent the hundreds or thousands of processes they already use in their plants.

After getting initial input from the university community, they recommended that we make the additional change that this bill to ensure that prior-user rights will work effectively for all private sector stakeholders.

Prior-user rights are important as part of our change to a first-to-file system. I believe it is important to ensure that we include these rights to help our job-creating manufacturers across the United States. The philosophical objections of a lone tech-transfer office in Wisconsin should not counter the potential of this provision for job creation throughout America.

There are potentially thousands or hundreds of thousands of unemployed Americans who are looking for manufacturing jobs and could benefit from this provision. Without this provision, businesses say they may be unable to expand their factories and hire American workers if they are prevented from continuing to operate their facilities the way they have for years.

For many manufacturers, the patent system presents a catch-22. If they patent a process, they disclose it to the world and foreign manufacturers will learn of it and, in many cases, use it in secret without paying licensing fees. The patents issued on manufacturing processes are very difficult to police, and oftentimes patenting the idea simply means giving the invention away to foreign competitors. On the other hand, if the U.S. manufacturer doesn’t patent the process, then under the current system a later party can get a patent and force the manufacturer to stop using a process that they independently invented and used.

In recent years, it has become easier for a factory owner to idle or shut down parts of his plant and move operations and jobs overseas rather than risk their livelihood through an interference proceeding before the PTO. The America Invents Act does away with these proceedings and includes the pro-manufacturing and constitutional provision of prior-user rights.

This provision creates a powerful incentive for manufacturers to build new plants and new facilities in the United States. Right now, all foreign countries recognize prior-user rights, and that has played a large role in attracting American manufacturing jobs and facilities to these countries. H.R. 1249 finally corrects this imbalance and strongly encourages businesses to create manufacturing jobs in this country.

The prior-user rights provision promotes job creation in America. Prior-user rights will help manufacturers, small business and other innovative industries strengthen our economy. It will help our businesses grow and allow innovation to flourish.

I strongly support prior-user rights, and so I oppose this amendment.

I yield back the balance of my time.

Ms. BALDWIN. I yield the balance of my time to the gentleman from Wisconsin (Mr. SENSENBERN). The Acting CHAIR. The gentleman from Wisconsin is recognized for 1½ minutes.

Mr. SENSENBERN. Madam Chair, this expansion of prior-user rights is a step in the wrong direction. It goes against what this House determined this provision was created. This provision goes back 5 years ago when we last debated this issue, and also it is different than what the Senate has done in March of this year.

The fundamental principle of patent law is disclosure, and the provision in this bill that the amendment seeks to strike goes directly against disclosure and instead encourages people who may invent not to even file for a patent, and that will slow down research...
and expanding the knowledge of humans.

The gentleman from Texas talks about manufacturing. I am all for manufacturing. I think we all are all for manufacturing. But what this does is it helps old manufacturing, which we need to help, but it also puts new manufacturing in the deep freeze because they use the disclosures that are required as a part of a patent application.

You vote for the amendment if you want disclosure and advancement of human knowledge. You vote against the amendment if you want secrecy in this process.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentlewoman from Wisconsin (Ms. BALDWIN).

The question was taken; and the Acting CHAIR announced that the nayes appeared to be for the amendment. Ms. BALDWIN. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Wisconsin will be postponed. Amendment No. 4 offered by Ms. MOORE

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in part B of House Report 112–111. Ms. MOORE. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 139, insert the following after line 12 and redesignate succeeding sections (and conform the table of contents) accordingly:

SEC. 29. ESTABLISHMENT OF METHODS FOR STUDYING THE DIVERSITY OF APPLICANTS.

The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Wisconsin (Ms. MOORE) and a Member opposed each will control 5 minutes.

The Acting CHAIR. The gentlewoman from Wisconsin. Ms. MOORE. Madam Chair, I yield myself such time as I may consume.

My amendment would allow the USPTO to develop methods for ways to track the diversity of patent applicants. It also specifically prohibits the office from using any such results for any preferential treatment in the application process.

I certainly do applaud the USPTO for their outreach to the Women’s Chamber of Commerce and to the National Minority Enterprise Development Conferences to try to increase diversity with utilizing the patent process. But some recent data have raised concern that minorities and women-owned businesses are just not keeping up with the patent process.

Preliminary data from a 2009 Kaufman Foundation survey of new businesses show that minority-owned technology companies hold fewer patents and copyrights after the fifth year of operation than comparable non-minority businesses. In fact, the Kaufman data show that minority-owned firms with patents hold only two on average, compared with the eight of their counterparts. Another survey uses National Science Foundation data to suggest that women commercialize their patents 7 percent less than their male counterparts.

Now, the best example I can think of is the late great George Washington Carver, who we all know discovered 300 uses for peanuts and hundreds more for other plants. He went on to help local farmers with many improvements to their farm equipment, ingredients, and chemicals. However, Carver only applied for three patents.

Some historians have written on whether or not Eli Whitney was, indeed, the original inventor of the cotton gin or whether the invention could have originated from the slave community. At the time, slaves were unable to register an invention with the Patent Office, and the owner could not patent on their behalf because of the requirement to be an original inventor.

Now, African Americans and women have a long history of inventing some of the most influential products in our society, but we also simply do not have enough information to further explore and explain these results. And as our government and industry leaders look into these problems and possibly fix these deficiencies, they run into a major hurdle.

Currently, the Patent and Trade Office only knows the name and general location of a patent applicant. In most cases, only the physical street address that the office collects is for the listed patent attorney on the application. Such limited information prevents us from fully understanding the nature and scope of the underrepresentation of minority communities in intellectual property. Until we can truly understand the nature of this problem, we cannot address it or do the appropriate outreach.

Mr. SMITH of Texas. Will the gentlewoman yield? Ms. MOORE. I yield to the gentleman from Texas.

Mr. SMITH of Texas. Madam Chair, I just want to say to the gentlewoman from Wisconsin that I appreciate her offering the amendment, and I urge my colleagues to support it.

Ms. MOORE. I certainly again want to commend efforts from Director Kappos and the Patent and Trade Office that, despite their not having to do it, they do reach out to women and minority communities to try to get them to utilize the Patent Office.

I can say that the ability to innovate and create is just one part of the equation, key to success for minorities in our community as a whole also depends upon the ability to get protection for their intellectual property.

I urge the body to vote for this amendment.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Wisconsin (Ms. MOORE) and a Member opposed each will control 5 minutes.

The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 139, insert the following after line 12 and redesignate succeeding sections (and conform the table of contents) accordingly:

§ 29. SENSE OF CONGRESS.

It is the sense of Congress that the patent system should promote industries to continue to develop new technologies that spur growth and create jobs across the country which includes protecting the rights of small businesses and inventors from predatory behavior that could result in the cutting off of innovation.

The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

Ms. JACKSON LEE of Texas. Madam Chair, as I rise to offer my amendment, I take just a moment of personal privilege to say that, whatever side Members are on on this issue, I know that Members want to protect the genius of America.

I would like to thank my ranking member, Mr. CONYERS, for that commitment, as he comes from one of the original genius proponents, and that is the auto industry that propelled America into the job creation of the century, and to the chairperson of the committee, Mr. SMITH, who ventured out in efforts to provide opportunities for protecting, again, the opportunities for invention and genius.

My amendment speaks, I think, in particular to the vast population of startups and small businesses that are impacted by this legislation. In particular, it is a reinforcement of Congress’ position that indicates that the patent system should promote industries to continue to develop new technologies that provide preferential treatment for protecting, again, the opportunities for innovation and genius.
behavior that could result in the cutting off of innovation.

We recognize that small and minority businesses and women-owned businesses, which dominate the landscape of America, are really major job creators. Small businesses is thriving in my own home State of Texas. In 2006, there were 368,422 small employers in Texas, accounting for 46.8% of its private sector employment. We know that there are a large number of women-owned businesses and businesses owned by members of the growing African American and Latino communities. But we need more growth—with Asian businesses, small businesses, Hispanic, Native American, African American—all forms of businesses that are part of growing this economy.

Small business makes up a large portion of our employer network. It is important to understand how they will be impacted as a result of patent reform. In this first-to-file, for example, small businesses may in fact be concerned about trying to get investors. As they get investors, they may have to disclose. This sense of Congress will put us on notice that we need to be careful that we allow at least the opportunity for them to patent their inventions and that we continue to look at the bill to ensure that it responds to that opportunity. We must recognize again, as I said, that small businesses create jobs. And the number of new jobs that they have created over the past 15 years. My amendment, again, reinforces the idea that small businesses can survive in this climate.

I did offer an amendment which provided for a transitional review program for 5 years or add for that to be sunsetted. It was all about trying to protect our small businesses. But I believe this amendment, with its firm statement, gathers Congress around the idea that nothing in this bill will inhibit small businesses from being creative. We can as well recognize all of the growth that has come about from the ideas of small businesses.

I think my amendment also reinforces that we do not wish to engage in any undue taking of property because we indicate that we want to see the innovativeness of American businesses continue. I believe this is an important statement, because the bill is about innovation, genius, creation, job creation, and it should be about small businesses. Small businesses should be as comfortable with going to the Patent Office as our large businesses. In years to come, because of this major reform, we should see small businesses creating opportunity for growth as they exceed percent of net jobs over the past 15 years. My amendment, again, reinforces the idea that small businesses can survive in this climate.

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I rise today to offer an amendment to H.R. 1249, the “America Invents Act.” My amendment adds a section to the end of the bill expressing the sense of Congress that “the patent system should promote industries to continue to develop new technologies that spur growth and create jobs across the country, which includes protecting the rights of small businesses and inventors from predatory behavior that could result in the cutting off of innovation.”

We must always be mindful of the importance of ensuring that small companies have the same opportunities to innovate and have their inventions patented and that the laws will continue to protect their intellectual property. Several studies, including those by the National Academy of Sciences and the Federal Trade Commission, recommended reform of the patent system to address what they thought were deficiencies in how patents are currently issued.

The U.S. Department of Commerce defines small businesses as businesses which employ less than 500 employees. According to the Department of Commerce in 2006 there were 6 million small employers representing 99.7% of the nation’s employers and 50.2% of its private-sector employment.

In 2002 the percentage of women who owned their business was 28% while black owned was around 5%. Between 2007 and 2008 the number for black females who were self employed went down 2.5% while the number for men went down 1.5%. Small business is thriving in my home state of Texas as well. There were 368,422 small employers in Texas in 2006, accounting for 48.9% of the state’s employers and 46.8% of its private-sector employment.

In 2009, there were about 468,000 small women-owned small businesses compared to over 1 million owned by men. Small business makes up a large portion of our employer network, it is important to understand how they will be impacted as a result of patent reform.

Given the current state of the economy, we cannot afford to overlook the opportunities for job growth that small businesses create. According to the Bureau of Labor Statistics, between the 1992 and 2005, small businesses accounted for 65% of quarterly net employment growth in the private sector. Even in unsteady economic times, small businesses can be counted on for job creation. Between 1992 and 2004, the net job creation rate was the highest at the smallest establishments.

Small Businesses Create Jobs. It is a fact. According to the Small Business Administration, small businesses: Represent 99.7 percent of all employer firms. Employ just over half of all private sector employees. Generated 64 percent of net new jobs over the past 15 years. Create more than half of the nonfarm private gross domestic product (GDP).

Hire 40 percent of high tech workers (such as scientists, engineers, and computer programmers). Made up 97.3 percent of all identified exporters and produced 30.2 percent of the known export value in FY 2007.

Produce 13 times more patents per employee than large patenting firms; these patents are twice as likely as large firm patents to be among the one percent most cited.

Many successful business owners will credit at least part of their success to the ability to innovate—in technologies, in strategies, and in business models. Patent reform comes from the ability to create and patent ideas. According to a study conducted by Business Week, half of all business innovation resources are dedicated to creating new products and services.

Patents are the driving force behind this product innovation, and without strong patent protection, businesses will lack the incentive to attract customers and contribute to economic growth.

While I am happy to be here debating this all important amendment to this bill, it is unfortunate that some of my other amendments supporting small businesses and acknowledging the “takings clause” in the U.S. Constitution were not accepted. In yesterday’s Rules Committee meeting, I offered a number of amendments:

I offered amendments that ensure the inclusion of minority and women owned businesses in the definition of “small entities” to ensure they receive the benefits of reduced user fees. I also introduced an amendment ensuring the inclusion of Historically Black Colleges and Universities and Hispanic Serving Institutions amongst entities that receive fee discounts.

Another pro-small business amendment I offered would have extended the grace period for small businesses from one year to 18 months, enabling them enough time to secure financial support and develop their invention in order to bring it to market.

Section 18 of the bill, which creates a transitional review program for business method patents, has raised concerns about the potential to create situations which could run afoul of the “takings clause” in the U.S. Constitution. To address these concerns, I offered a number of amendments:

One of my amendments would have shortened the sunset on Section 18 from 10 years to 5 years.

I also introduced an amendment that would have required the Director of the USPTO to make a determination of whether or not a condition creating an unlawful taking is created by this section.

Lastly, I introduced a sense of Congress amendment that affirms that no provisions in this bill should create a unconstitutional taking. Despite my concerns with certain provisions in this bill, overall, I believe H.R. 1249 will usher in the reforms needed to improve the patent system, making it more effective and efficient, and therefore encouraging innovation and job creation.

I yield back the balance of my time. Mr. SMITH of Texas. Madam Chair, I claim the time in opposition, although I do not plan to use it.

The Acting Chair. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. SMITH of Texas. Madam Chair, I understand the underlying point of the Member’s amendment, and I want to make it clear that my interpretation of this amendment and its intent is to
AMENDMENT NO. 7 OFFERED BY MR. PETERS

The Acting CHAIR. It is now in order to consider amendment No. 7 printed in part B of House Report 112-111.

Mr. PETERS. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 139, insert the following after line 12 and redesignate succeeding sections (and conform the table of contents) accordingly:

SEC. 29. USPTO STUDY ON INTERNATIONAL PATENT PROTECTIONS FOR SMALL BUSINESSES.

(a) Study Required.—The Director, in consultation with the Secretary of Commerce and the Administrator of the Small Business Administration, shall, using the existing resources of the Office, carry out a study—

(1) to determine how the Office, in coordination with other Federal departments and agencies, can best help small businesses with international patent protection; and

(2) whether, in order to help small businesses pay for the costs of maintaining, and enforcing international patent applications, there should be established either—

(A) a revolving fund loan program to make loans to small businesses to defray the costs of such applications, maintenance, and enforcement and related technical assistance; or

(B) a grant program to defray the costs of such applications, maintenance, and enforcement and related technical assistance.

(b) Report.—Not later than 120 days after the date of the enactment of this Act, the Director shall issue a report to the Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a);

(2) a statement of whether the determination was made that—

(A) a revolving fund loan program described under subsection (a)(2)(A) should be established;

(B) a grant program described under subsection (a)(2)(B) should be established; or

(C) neither such program should be established;

and

(3) any legislative recommendations the Director may have developed in carrying out such study.

The Acting CHAIR. Pursuant to House Resolution 316, the gentleman from Michigan (Mr. PETERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. PETERS. While the America Invents Act makes a number of important changes to our patent system which are targeted at reducing the USPTO’s backlogs and driving innovation, I believe that we must do more to help our Nation’s small businesses compete in the global marketplace. Success in the global economy depends more and more on IP assets. America’s IP-intensive industries employ nearly 18 million workers at all education and skill levels and represent 60 percent of U.S. exports.

While obtaining a U.S. patent is a critical first step for our inventors towards recouping their R&D costs, capitalizing on their inventions and creating jobs, a U.S. patent only provides...
protection against infringement here at home. If inventors do not register in a foreign market, such as China, they have no protection there if the Chinese economy begins production of their patented inventions. Not only is a foreign patent protection necessary to ensure enforcement of our intellectual property rights abroad; it is necessary to defend American inventors against foreign lawsuits.

High costs, along with language and technical barriers, prevent many American small businesses from filing for foreign patent protection. Lack of patent protection both at home and abroad increases uncertainty for innovators and the likelihood of piracy. While we must reduce backlogs at the USPTO to make domestic patent protection more attainable, we must also look forward to find ways to help our manufacturers and other IP-intensive industries compete globally.

This is why I am offering a common-sense, bipartisan amendment to the America Invents Act along with my colleague, Representative Renacci, whom I would also like to thank for working with me on this important issue.

This amendment mandates a USPTO-led study with SBA to determine the best method to help small businesses obtain, maintain and enforce foreign patents. This study is to be conducted using existing resources at no cost to the taxpayer and does not displace the score of the bill. I believe our amendment will help Congress and the USPTO determine the best ways to help American small businesses protect their IP assets, compete globally and boost exports.

I would like to thank Chairman Smith and Ranking Member Conyers for working with us on this amendment; and I urge passage of the Peters-Renacci amendment.

I yield my remaining time to my colleague from Ohio, Representative Renacci.

The Acting CHAIR. The gentleman from Ohio is recognized for 2½ minutes.

Mr. Renacci. I thank the gentleman for yielding and also for his hard work on the amendment on behalf of American small businesses.

I rise today in strong support of the Peters-Renacci amendment—a commonsense, commonsense approach to determining the best method for American small businesses to obtain and enforce patent protections in foreign countries.

Industries that rely on intellectual property employ nearly 18 million American workers and represent 60 percent of American exports. As these industries continue to grow globally, foreign patent protection will become increasingly important to protect these workers' jobs, promote exports and expand our economy.

Our economy is becoming more global by the day, with foreign innovators testing the outer reaches of imagination and enjoying the strong support of their home nations. China, for example, is becoming increasingly aggressive at protecting their innovators' intellectual property rights and is subsidizing applications for foreign patents. We must develop a way here at home to make American small businesses more competitive in the foreign marketplace. In order to compete with China, we have to stand behind our innovators with equal force.

Our amendment simply directs the U.S. Patent and Trademark Office to conduct a joint study with the Small Business Administration to issue recommendations on how America can do just that. Furthermore, this study is to be completed within 120 days, giving the 112th Congress ample time to implement its recommendations.

Not only are jobs and the economy paramount, but promoting American innovation is also important. Innovation is about much more than economic growth. It breaks boundaries, creates new wealth, inspires the imagination, and sends a message of hope to those who need it most. Americans should be on the cutting edge of innovation, and this amendment is a good first step toward that direction.

I would again like to thank Mr. Peters as well as Chairman Smith and Ranking Member Conyers. I urge support of the amendment.

Mr. Smith of Texas, Madam Chair, I claim the right of further participation, although I support the amendment.

The Acting CHAIR. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. Smith of Texas, Madam Chair, I understand the underlying point of the Member's amendment, but other legislation and patent reform in particular have taught us that even small changes can have unintended consequences unless they have been vetted and have gone through the regular committee process.

The problem is in the details. This amendment is drafted as a study. I agree with the first part of the amendment but not the second because its objectives are written very much like a bill of legislation. It seeks to create support for a new program whereby taxpayer funds would be used to pay patent fees in foreign countries.

I am determined to helping our small businesses and independent inventors secure their rights and have a level playing field abroad, but I can't support a result that could create a new entitlement program, a new bureaucracy and the transferring of taxpayer dollars directly to the treasuries of foreign governments. We should not use taxpayer funds to pay patent filing fees to foreign governments.

I do agree with the first part of this study. I am interested to see how the PTO, in coordination with other agencies, can figure out ways to help small businesses with international patent protection. I hope that this will be the focus of the study. The results of this study will show that small business outreach and educational and technical assistance programs are the most effective tools for small business and independent inventors.

I think that the PTO needs to continue and be effective not only to our small businesses and independent inventors. This bill includes a provision which creates a permanent small business ombudsman at the PTO to work with small businesses to help them secure international patent protection and conduct small business outreach programs throughout the country, teaching small businesses about IP enforcement and how to protect their intellectual property both at home and abroad.

Though I do not agree with the policy outlined in the second part of the study and will strongly recommend that the PTO and SBA determine that such a program should not be established, I will support this amendment to initiate the study, and I hope that the bulk of it will focus on how to better utilize existing government resources for education and technical assistance to help small businesses with international patent protection.

Before I yield back the balance of my time, I hope that the movers of this amendment might be willing to reassure me and others about the intent and goals of this study.

I yield back the balance of my time.

The Acting CHAIR. The gentleman from Michigan has 15 seconds remaining.

Mr. Peters. I just appreciate the support for this amendment. It is an important amendment that will give us information we can then use to support our small businesses as they're doing business abroad, and I urge its adoption.

I yield back the balance of my time.

The Acting CHAIR. The amendment is now in order to consider amendment No. 8 printed in part B of House Report 112–111.

Mr. Polis. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 108, beginning on line 18, strike "pending on, or filed on or after," and insert "filed on or after."

The Acting CHAIR. Pursuant to House Resolution 316, the gentleman from Colorado (Mr. Polis) and a Member appointed each will control 5 minutes.

The Chair recognizes the gentleman from Colorado.

Mr. Polis. Madam Chair, H.R. 1249 correctly changes the policy involving tax strategy patents. Under current law, although it was current law that was never specifically contemplated by lawmakers, tax strategy methods are
However, rational inventors, making a conscious choice, said, hey, in favor of disclosing, I will then accept a 17-year monopoly, and are now being penalized for making what was a very reasonable decision.

I strongly support this provision. However, there are a number of folks who are currently involved with the process of applying for tax strategy patents, and in effect, we risk changing the rules of the game retroactively for them, a form of takings. There are currently 160 tax strategy patent applications in the process. Many of the inventors have decided to devote thousands of hours of time to disclose their innovations. Again, had this window of patent-entitlement never been opened—and it never should have been—this would not have been an issue because these inventors would have retained their innovations as trade secrets.

However, you can’t blame them for saying, okay, there’s a window on patent-entitlement, I will disclose so that I can have the exclusive. And now the risk is that that calculation that they made to disclose is being changed retroactively insofar as they will no longer have the ability to protect their innovation as a trade secret.

In these applications, these applicants have described how to make and use their invention. Many have even provided computer programs, including code, to carry them out. The patent applications have been published. And some of those are pending for many years. Changing the law midstream fundamentally hurts these applicants who did all that was proper under the law at the time they filed their patent application.

The underlying bill as drafted would make those patent applications useless; and because the patent applications have been published, the patent applicant will get nothing for disclosing their secrets, except the expense of pursuing a patent and of course the ability of others to replicate their innovation. Competitors will be free to use their disclosures in the published patent application process.

Changing the law midstream simply sends the wrong message to inventors that one cannot trust the law that is in place when they file a patent. Congress would be sending a message, unless my amendment is incorporated into the underlying bill, that all inventors on any subject matter may have their disclosure taken away from them after they have made the decision to apply for a patent by retroactively negating the possibility of them receiving a patent.

Tax strategy patents should never have been allowed under the law. I think there’s broad agreement among all of us in this Chamber on that topic. It’s unfortunate that there was a window. However, rational inventors, making a conscious choice, said, hey, in favor of disclosing, I will then accept a 17-year monopoly, and are now being penalized for making what was a very reasonable decision.

Restore equity to the America Invents Act by supporting my amendment. Claiming inventions on both sides of the aisle will support this, which effectively addresses only those 160 applications that are in effect now. It certainly continues and am in support of the ban on future patents for tax strategies. There are few alternatives or remedies to the takings that would otherwise occur under this bill unless my amendment is incorporated.

I strongly urge a ‘‘yes’’ vote on the amendment.

I yield back the balance of my time. Mr. SMITH of Texas, Madam Chair, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. I yield 2 minutes to the gentleman from Virginia (Mr. GOODLATTE), who is the chairman of the Intellectual Property Subcommittee of the Judiciary Committee.

Mr. GOODLATTE. Madam Chairman, I rise in strong opposition to this amendment.

Increasingly, individuals and companies are filing patents to protect tax strategies. When one individual or business is given the exclusive right to a particular method of complying with the Tax Code, it increases the costs and complexity for every other citizen or tax preparer to comply with the Tax Code. It is not difficult to foresee a situation where taxpayers are forced to choose between paying a royalty in order to reap the best tax treatment or complying with the Tax Code in another, less favorable way. Tax strategy patents add additional costs and complications to an already overly complex process, and this is not what Congress intended when it passed the Federal tax laws or the patent laws.

The problem of tax strategy patents has been a growing concern for over a decade. Over 140 tax strategy patents have already been issued, and more applications are pending. Tax strategy patents have the potential to affect tens of millions of everyday taxpayers, many who do not even realize these patents exist. The Tax Code is already complicated enough without also expecting taxpayers and their advisers to become ongoing experts in patent law. That is why I advocated for inclusion in H.R. 1249 of a provision to ban tax strategy patents. H.R. 1249 contains such a provision which deems tax strategies insufficient to differentiate a claimed invention from the prior art. This will help ensure that no more tax strategy patents are granted by the PTO.

Importantly, the House worked hard to find a compromise that will ensure Americans have equal access to the best methods of complying with the Tax Code, while also preserving the ability of U.S. technology companies to develop innovative tax preparation and financial management solutions. I believe the language in H.R. 1249 does just that.

This amendment would allow any tax strategy patent that was filed as of the date of enactment of the bill to move toward issuance by the PTO. However, tax strategy patents are bad public policy whether they were filed the day before or the day after this happens to be enacted. The effective date in the underlying bill rightly applies to any patent applications pending on the date of enactment.

In order to reduce the cost of filing taxes for all Americans and to restore common sense to our patent system, I urge my colleagues to oppose this amendment.

Mr. SMITH of Texas, Madam Chair, I yield the balance of my time. Mr. SHERMAN.

Mr. SHERMAN. I have tremendous respect for the gentleman from Colorado, but I rise in opposition to this amendment.

This amendment would cover not only those patent applications that were on file yesterday but, as I understand it, also those that are filed tomorrow. Tax strategy patents are a bad idea, as the American Institute of Certified Public Accountants states, ‘‘It’s bad public policy. No one should be granted a monopoly over a form of compliance with the Federal Tax Code.’’

This amendment is opposed not only by the American Institute of Certified Public Accountants but also my colleague, co-chair of the CPA Caucus, MIKE CONAWAY, and a majority of the CPA and accountants caucus, together with the American Institute of Certified Public Accountants but also my colleagues, the American Bar Association, the Certified Financial Planner Board of Standards.

Keep in mind, the purpose of a patent is to encourage innovation. What interest have the Federal Government have in encouraging intellectual property owners to avoid paying taxes to the Federal Government? It is now time to draw a line against patents on tax compliance.

Mr. SMITH of Texas. I yield myself the balance of my time.

Madam Chair, I oppose the amendment to change the effective date for the tax strategy method section of the bill.

It is possible to patent tax strategy methods, but it is bad policy. It is not fair to permit patents on techniques regularly used to satisfy a government mandate, such as one that requires individuals and businesses to pay taxes.

Tax preparers, lawyers, and planners have a long history of sharing their knowledge regarding how to file returns, plan estates, and advise clients. They maintain that allowing the patentability of tax strategy methods will complicate the tax filing process and inhibit the ability of preparers to provide quality services for their clients.

The effective date applies to any patent application that is pending on, or
filed on or after, the date of enactment and to any patent that is issued on or after that date.

The gentleman’s amendment eliminates the application of this provision to those applications pending on the date of enactment. These applications have not been approved so I disagree with excluding these patents-in-waiting.

It was a mistake for the PTO to issue these patents in the first place, given their potential to harm individual taxpayers and tax return preparers. We have not been approved so I disagree with excluding these patents-in-waiting.

For purposes of determining the date on which a product receives permission under section 156 of title 35, United States Code, is amended by adding part B of House Report 112–111.

Mr. CONYERS. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. Pursuant to a previous understanding, the gentleman from Michigan (Mr. POLIS).

The amendment was rejected.

Mr. CONYERS. The Acting CHAIR. It is now in order to consider amendment No. 9 printed in part B of House Report 112–111.

Mr. CONYERS. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add at the end the following new section (and conform the table of contents accordingly):

SEC. 32. CALCULATION OF 60-DAY PERIOD FOR APPLICATION OF PATENT TERM EXTENSION.

(a) In General.—Section 156(d)(1) of title 35, United States Code, is amended by adding at the end the following flush sentence:

“For purposes of determining the date on which a product receives permission under the second sentence of this paragraph, if such permission is transmitted after 4:30 P.M., Eastern Time, on a business day, or is such permission is transmitted after 4:30 P.M., Eastern Time, on a business day, the product shall be deemed to receive such permission on the next business day. For purposes of the preceding sentence, the term ‘business day’ means any Monday, Tuesday, Wednesday, Thursday, or Friday, excluding any legal holiday under section 6103 of title 5.”.

(b) Applicability.—The amendment made by subsection (a) shall apply to any application for extension of a patent term under section 156 of title 35, United States Code, that is pending on, that is filed after, or as to which a decision regarding the application is subject to judicial review on, the date of the enactment of this Act.

The Acting CHAIR. Pursuant to House Resolution 316, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 5 minutes.

Mr. CONYERS. The Acting CHAIR. The gentleman from Michigan.

Mr. CONYERS. This bipartisan amendment makes a technical revision to H.R. 1249. It addresses the confusion regarding the calculation of the filing period for patent term extension applications under the Hatch-Waxman Act. By eliminating confusion regarding the deadline for patent term extension applications, this amendment provides the clarity necessary to encourage costly investments in life-saving medical research. It also is consistent with the only court case to address this issue entitled, The Conyers amendment essentially codifies the district court’s decision, but it ignores the fact that this case is on appeal. We need to let the courts resolve the pending litigation. It is standard practice for Congress not to interfere when there is ongoing litigation. If the Federal circuit rules against Medco, generic manufacturers of the drug could enter the marketplace immediately rather than waiting another 5 years. This has the potential to save billions of dollars in health care expenses. While the amendment is drafted so as to apply to other companies similarly situated, as a practical matter, this is a special fix for one company. As a result, the amendment?)
The public’s interest in fostering innovation requires that the derivation proceedings be equitable to both parties and that the PTO have a complete record of evidence on which to make its decision. Inventors must have a fair chance to prove their claim, and defending parties must provide evidence to rebut claims. This amendment accomplishes these goals by requiring the PTO to provide rules for the exchange of relevant information and evidence by both parties.

I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chair, I think this is a good amendment. I urge my colleagues to support it.

I yield back the balance of my time.

Mr. HOYER. I thank the gentleman from Maryland (Mr. HOYER).

I congratulate the gentlewoman from California for this amendment as well, which I think improves this bill, and I rise in strong support and urge my colleagues to support this piece of legislation. I congratulate all of those who have worked on this legislation.

It is, obviously, not perfect. But then again, no piece of legislation that we adopt is perfect. It is, however, a significant step forward to make sure that America remains the inventive, innovative, and development phases of our economy. In order to do that, we also need to enhance the inventive, innovative, and development phases of our economy. This bill, I think, will facilitate this.

I congratulate the gentlewoman from California for this amendment as well, which I think improves this bill, and I rise in strong support and urge my colleagues to support this piece of legislation.

I congratulate all of those who have worked on this legislation.

So I thank Mr. SMITH, I thank Mr. WATT, and I thank others who have worked so hard on this legislation. Ms. LOPFREN as well, who have dedicated themselves to try to make sure that we have a context and environment in America which will facilitate the inventive, innovative sector of our economy.
House Resolution 316, the gentleman holding.

The Acting CHAIR. It is now in order to consider amendment No. 11 printed in part B of House Report 112–111.

Mr. WATT. Madam Chair, we were expecting Congresswoman WATERS. I would ask unanimous consent that this amendment be delayed until we can determine whether she is still planning to offer it.

The Acting CHAIR. The Committee of the Whole is unable to reorder the amendments.

Mr. WATT. In that case, I offer the amendment as the designee of the gentlewoman from California.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 139, insert the following after line 12 and redesignate succeeding sections and (conform the table of contents) accordingly:

SEC. 29. SEVERABILITY.

If any provision of this Act or amendment made by this Act, or the application of a provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

The Acting CHAIR. Pursuant to House Resolution 316, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Madam Chair, I yield myself such time as I may consume solely to say that this is a straightforward amendment that provides that if one part of the bill is determined to be unconstitutional, it can be severable from the rest of the bill and it doesn’t bring the rest of the provisions down. That’s a standard policy to put in most legislation.

With that, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chair, I rise to claim the time in opposition, although I support the amendment.

The Acting CHAIR. Without objection, the gentleman is recognized for 5 minutes.

The Chair recognizes no objection.

Mr. SMITH of Texas. I thank the gentleman for offering the amendment, and I urge my colleagues to support it.

I yield back the balance of my time.

Mr. WATT. Madam Chair, I have just been advised that we were mistaken in the desire of Ms. WATERS to offer the amendment. She didn’t want me to offer it in her stead, and that’s why she didn’t show up.

I would just ask unanimous consent to withdraw the amendment, unless the chairman has an objection.

The Acting CHAIR. Without objection, the amendment is withdrawn.

There was no objection.
independently conceived of an invention before it was in the public domain. And under the Constitution, that is what is required to be considered an "inventor." □

In fact, early American patent law, that of our Founders’ generation, did not concern itself with who was the first to invent. The U.S. operated under a first-to-register system for nearly half a century, starting in 1790. The first-inventor-to-register system is similar to first-inventor-to-file, a system that the Founders themselves supported early in our Nation’s history. The courts did not even concern themselves with who was the first person to invent until 1870, with the creation of interference proceedings. Those proceedings are the ones that disadvantage small businesses and small businesses. And over the years, and in subsequent revisions of the law, those proceedings have morphed into a costly litigation tactic. Under first-inventor-to-file, an inventor submits an application to the Patent Office that describes their invention and how to make it. That, along with just a $110 fee, gets them a provisional application and preserves their filing date. This allows the inventor an entire year to complete the application, while retaining the earlier filing date. By contrast, the cost of an interference proceeding in today’s law could run an inventor $500,000.

According to the bill, the bill doesn’t preserve the 1-year grace period are simply false. This bill provides a stronger, more transparent and certain 1-year grace period for disclosures. This enhances protection for inventors who have made a public or private disclosure and small businesses. And over the years, and in subsequent revisions of the law, those proceedings have morphed into a costly litigation tactic. Under first-inventor-to-file, an inventor submits an application to the Patent Office that describes their invention and how to make it. That, along with just a $110 fee, gets them a provisional application and preserves their filing date. This allows the inventor an entire year to complete the application, while retaining the earlier filing date. By contrast, the cost of an interference proceeding in today’s law could run an inventor $500,000.

In the last 7 years, only one independent inventor out of 3 million patent applications filed has proved an earlier date of invention than the inventor who filed first. Madam Chair, let me repeat that: in the last 7 years, only one independent inventor out of 3 million patent applications filed has proved an earlier date of invention than the inventor who filed first. Independent inventors lose to other applicants with deeper pockets that are better equipped to exploit the current complex legal environment. So the first-inventor-to-file change makes it easier and less complicated for U.S. inventors to secure their patent rights, and it protects their patents overseas. And it eliminates the legal bills that come with interference proceedings under the current system. It is a key provision of this bill.

Madam Chair, the amendment should not be approved, and I urge my colleagues to vote against it. I yield my time.

Mr. SENSENBRENNER. Madam Chair, I yield 1 minute to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Madam Chair, I find myself in reluctant opposition to my colleagues from both sides of the aisle today. The Sensenbrenner amendment. Section 3 shifts our patent system from the unique first-to-invent system to a first-to-file system.

As I speak to inventors, startups, venture capitalists and angel investors in California, I am convinced that the proposed transition to first-to-file will be harmful to innovation and burdensome to the most dynamic and innovative sector of our economy.

With the shift to first-to-file, the rush to the Patent Office will lead to new costs for small businesses as they prepare applications for inventions that they may ultimately find impractical. For small startups, the cost of retaining outside counsel for this purpose will be a drain on their limited resources, and it will mean less money for hiring and the actual act of innovation.

Supporters of first-to-file argue that inventors can turn to provisional applications to protect their patent rights. That sounds good in theory, but from talking to small inventors I have learned that good provisional applications require substantial legal fees and time investment on the part of the investor to make them sufficiently detailed to be of any use should another entity file a similar patent application.

Madam Chair, I appreciate the hard work that has gone into this bill and the leadership of the gentleman from Texas. However, I remain deeply concerned that the shift to First to File will have lasting negative consequences for small inventors, and I urge the House to improve the bill by adopting the Sensenbrenner amendment.

Mr. SENSENBRENNER. Madam Chair, I yield 1 minute to the gentleman from California (Ms. ZOE LOFGREN).

Ms. LOFGREN. Madam Chair, I rise in support of the Sensenbrenner amendment. Actually, I don’t agree that first-to-file is unconstitutional, and I, in general, am not opposed to the idea of first-to-file. But, unfortunately, the bill is flawed, and we cannot have this without robust prior-user rights and a broad prior-user rights used in the grace period. We don’t have that in this bill.

And so what we will have are established businesses having to either reveal trade secrets or be held up, have to license their own trade secrets. For startups this is a very serious problem.

And coming from Silicon Valley, I’ll tell you I’ve heard from a lot of startups and the venture world that supports substantial legal fees and time investment on the part of the investor to make them sufficiently detailed to be of any use should another entity file a similar patent application.

There were other remedies. They were not adopted. All we can do now is
to strike the first-to-file provision. I do that without any reluctance. It will serve our economy best. And I thank the gentleman for offering his amendment.

Mr. SENSENBRENNER. I yield myself the balance of the time.

Madam Chair, the reason that first-to-invent is important is that it allows an inventor to talk to investors, conduct trial and error innovation and deal with leaks, because commercially important patent rights are determined by ordinary, nonburdensome business activities.

Where this hurts the ordinary inventor by going to first-to-file is that he needs to get his venture capital together, and then go ahead and file for a patent. With first-to-file, he has to put all of the money up front to file in order to protect himself; and what that will do is have a chilling effect on the small inventor who needs to get capital in order to perfect a patent and in order to bring it to market. That's why this amendment should be adopted. I urge the Members to do so.

I yield back the balance of my time. The Acting Chair. The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. SENSENBRENNER. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Wisconsin will be postponed.

AMENDMENT NO. 13 OFFERED BY MR. MANZULLO TO CONSIDER AMENDMENT NO. 13 PRINTED IN PART B OF HOUSE REPORT 112–111

Mr. MANZULLO. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike section 10 (beginning on page 81, line 1 in "Fee Setting Authority"), as amended, and insert the following (and conform the table of contents accordingly):

SEC. 10. ELECTRONIC FILING INCENTIVE.

(a) In General.—An additional fee of $400 shall be established for each application for an original patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director. The fee established by this subsection shall be reduced by 50 percent for small entities that qualify for reduced fees under section 419(h)(1) of title 35, United States Code. All fees paid under this subsection shall be deposited in the Treasury as an offsetting receipt that shall not be available for obligation or expenditure.

(b) Effective Date.—This section shall take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act.

The Acting CHAIR. Pursuant to House Resolution 316, the gentleman from Illinois (Mr. MANZULLO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. MANZULLO. Madam Chair, there are a lot of problems with this bill as we have heard about already. In fact, on the wall of my office here in Washington, all by two pictures, among many. One is a portrait of W. Edwards Deming and myself, taken just before he passed away in 1993—the real inventor of Lee Manufacturing. The other is of Dr. Ray Damadian, the inventor of the MRI who, when examining this legislation, realized that he had been taken place in the patent law, had they been part of the patent system when he invented the MRI, the MRI never would have been invented. He knows more than anybody how flawed this bill is.

I want to focus in particular on section 10 of the bill, which allows the Director of the Patent Office to set fees. I'm very concerned about this because, in the last patent fight, in 2004, when I chaired the House Small Business Committee, the fee-setting authority was lowered to a rate structure for small businesses, the provision in that bill allowing the PTO Director to set fees was removed.

This new bill abrogates that hard-won compromise and allows the director of the PTO to set the fees. It is not wise for the legislative branch to give up authority to the executive branch. I know it's inconvenient to have Congress set fees, but that's the job of Congress, not the job of an unelected bureaucrat.

When I chaired the House Small Business Committee, I continued the tradition of preventing the SBA from unilaterally being able to set fees to whatever level they sought. I don't see why we have to do this with the PTO.

Now in the present bill, section 11 actually lowers fees for small business people and establishes a fee structure. However, section 10 would allow the PTO Director to proceed with the administrative process to eviscerate that section and impose its own fees.

To compound the problem, the Patent Office has been saying for years that if they had the authority to raise fees, they would. In 2002, the PTO strategic plan said they needed to have a fee based upon a progressive system aimed at limiting applications. In 2010, in the white paper on patent reform, they said the same thing.

The Patent Office's idea of cutting back on the backlog is to raise fees. That doesn't make sense. But let's eliminate that authority from the Patent Office. After all, they lost that authority with the United States Congress.

I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chair, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized.

Mr. SMITH of Texas. Madam Chair, I oppose the gentleman's amendment to strike the PTO fee-setting authority from H.R. 1249.

Although the PTO has the ability to set certain fees by regulation, most fees are set by Congress. History has shown that such a scheme does not allow the PTO to respond to the challenges that confront it.

The PTO, most stakeholders, and the Judiciary Committee have agreed for years that the agency must have fee-setting authority to address its growing workload. This need is critical. The agency's backlog exceeds 1 million patent applications. This means it takes 3 years to get a patent in the United States—far too long. The wasted time leads to lost commercial opportunities, fewer jobs, and fewer new products for American consumers. Moreover, the new fee structure will not only retain the existing 50 percent discount for small businesses, it creates a new 75 percent discount for micro entities. This benefit helps independent inventors and small businesses.

The bill allows the PTO to set or adjust fees related to patents and trademarks, so long as they do no more than reasonably compensate the agency for the services performed.

To the charge that we are abandoning our oversight of the process, I urge the Members to review the oversight mechanisms in the bill. For example, prior to setting such fees, the director must give notice to and receive input from the Patent Public Advisory Committee or the Trademark Public Advisory Committee. The director may also reduce fees for any given fiscal year, but only after consultation with the advisory committees.

The bill details the procedures for how the director shall consult with the advisory committees, which includes providing for public hearings and the dissemination to the public of any recommendations made by either advisory committee.

The fees shall be prescribed by rule. Any proposed fee change shall be published in the Federal Register and include the specific rationale and purpose for the proposed change.

The director must seek public comments for no less than 45 days. The director shall notify Congress of any final decision regarding proposed fees. Congress shall have no more than 45 days to consider and comment on any proposed fee, but no proposed fee shall be effective prior to the expiration of this 45-day period.

Congress will remain part of the process, but PTO is better able to respond to their own resources needs, which, after all, will benefit patent holders and subsequently the economy. I urge my colleagues to oppose the amendment.

Madam Chair, I yield the balance of my time to the gentleman from Virginia (Mr. GOODLATTE), the chairman of the Subcommittee on Intellectual Property.
Mr. GOODLATTE. I thank the chairman for yielding.

Madam Chairman, I rise in opposition to this amendment. The Senate-passed patent bill granted the PTO fee-setting authority in perpetuity for regulatory and efficiency issues. We have, as you know, a very long backlog—3 years, 1 million patents. However, I had strong concerns with granting this much authority to a government agency.

Currently, the PTO must come before Congress to request any fee increases. This forces the PTO to use its current resources in the most efficient manner and also strengthens Congress’ hand when it comes to oversight over the agency. Thus, I worked to get a provision in the bill that would sunset the PTO’s fee-setting authority. The bill now terminates the fee-setting authority after 7 years unless Congress proactively acts to extend it. This will allow the PTO sufficient time to structure its fees to ensure that Congress continues to have a strong influence over that process.

And I might add that the manager’s amendment to the bill also strengthens Congress’ hand and limits the objective of the PTO to arbitrarily raise its fees because the Congress still appropriates the funds and can only escrow funds—can’t divert them to another purpose, but escrows them. PTO will have to come back to the Congress and justify additional funds it receives.

I believe the bill, as it is written right now, strikes the right balance. And I urge Members to oppose this amendment, which would altogether eliminate PTO fee-setting authority.

Mr. MANZULLO. I yield myself the balance of my time.

Madam Chair, you don’t strike the right balance between an inventor’s constitutional right to file for an invention and giving a patent czar the authority to keep him out of the box by allowing him to raise the fees. Mr. SMITH from Texas said it himself; he coupled patent backlog with the ability of the patent director to set the fees. That can only lead to one conclusion: They know this fee is needed to cut down on the patent backlog. It doesn’t make sense.

This is the people’s House. The Patent Office is the people’s house for the little inventor. He must have every opportunity to exercise his constitutional right and file that patent. But if Congress cedes the authority to set those fees to a new authority of the patent director—or we can call him now the patent czar—that patent czar will control for 7 years, at the minimum, the flow of innovation through a law that was laudable. And you know who gets slowed? Do you know who gets hurt? It’s the little guy. And the purpose of my amendment is to protect the little guy to make sure those fees are not raised, and also to make sure that the people in this country elect representatives in Congress because it’s our job to set the fees, not the job of an unelected person, the person in charge of the Patent Office.

I would therefore urge my colleagues to vote for the Manzullo amendment, to support the little inventor, to support the spirit of entrepreneurship in this country.

Madam Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Illinois (Mr. MANZULLO).

The question was taken; and the Acting Chair announced that the yea votes appeared to have it.

Mr. MANZULLO. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Illinois will be postponed.

Amendment No. 14 Offered by Mr. ROHRABACHER

The Acting CHAIR. It is now in order to consider the amendment offered by Mr. ROHRABACHER printed in part B of House Report 112–111.

Mr. ROHRABACHER. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 73, after line 2, insert the following new subsection:

(1) INAPPLICABILITY OF POST-GRANT REVIEW TO CERTAIN SMALL ENTITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a patent granted to a United States citizen, an individually lawfully admitted for permanent residence in the United States, or a United States company with less than 100 employees shall not be subject to any form of post-grant review or reexamination.

(2) RULEMAKING.—The Director shall issue such regulations as may be necessary to carry out this subsection.

The Acting CHAIR. Pursuant to House Resolution 516, the gentleman from California (Mr. ROHRABACHER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. ROHRABACHER. In this debate, many of my colleagues have heard over and over and over again about the gridlock at the Patent Office, which is supposed what we’re trying to correct with this legislation, H.R. 1249, which I have been contending is not designed to help the Patent Office, but to harmonize American law with the rest of the world and make it weaker patent protection for our people.

But what does it do about the backlog, if that’s really what people are concerned about? H.R. 1249 would actually tremendously add to the PTO backlog by requiring further post-grant review proceedings at the Patent Office, proceedings which would consume even more limited personnel and money. Added procedures add to the gridlock at the PTO, at the Patent Office, and it will also do what? It will break the back of small inventors and startup companies who are trying to get a new product on the market.

It will empower the multinational and foreign corporations who can grind down the little guy, because what we are doing in this bill is adding even further procedures they have to go through, even after they have got their patent issued to them.

This is the big guy versus little guy legislation. That was even pointed out by the Hoover Institution, which did an analysis of this bill and said, “The American Invents Act will protect large entrenched companies at the expense of market challenging competition.”

“A patent should be challenged in court, not in the U.S. Patent Office.”

“A politicized patent system will further entrench those companies with the largest lobbying shops on K Street.”

“The bill wreaks havoc on property rights, and predictable property rights are essential for economic growth.”

“If America weakens its patent enforcement at home, it will set a dangerous precedent overseas.”

“The America Invents Act would inject massive uncertainty into the patent system.’’

This is a travesty. It is an attack on American well-being, because we depend on our small inventors to come up with the ideas. The Kaptur-Rohrabacher amendment limits this new burden. If we can’t get rid of it, at least we can limit this new burden of all these post-grant reviews they are going to add to companies that have more than 100 employees. It frees up the Patent Office personnel to do their job, helps with that gridlock, and protects the small business and small inventors at the same time.

I would ask my colleagues to support the Kaptur-Rohrabacher amendment. I yield such time as she may consume to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. I thank the gentleman for yielding and urge my colleagues to support the Rohrabacher-Kaptur amendment, which ensures fairness for small and independent inventors. Without it, this bill will destroy American job creation and innovation since it throws out 220 years of patent protections for individual inventors.

Our amendment addresses a major shortcoming of the bill by eliminating the burden of post-grant reviews and reexaminations on individual inventors and small businesses with 100 or fewer employees.

The new procedures and regulations in this bill will make it extremely difficult for the average citizen to ever get a new product on the market without our amendment. Our amendment clearly gives the Patent Office the authority to issue appropriate regulations that
ensure that the new regulatory burdens in this bill do not disproportionately impact individual inventors. This amendment is about ensuring fairness for small inventors.

We urge our colleagues to support the Kaptur-Rohrabacher amendment so all inventors, especially our small businesses, have a chance to realize their dreams, and, in realizing their dreams, assuring that we will have robust innovation and job creation in our country.

The Acting CHAIR. The gentleman from California has 1½ minutes remaining.

Mr. ROHRABACHER. Let me just note, our amendment empowers the Director of the Patent Office to extend this 100-employee standard to other small businesses and individual inventors overseas if this is required by a treaty; yes, small businesses and individual inventors overseas. So our amendment does nothing to violate any treaty obligations by giving our own inventors special rights over foreign individuals.

What it does do, however, is prevent foreign corporations from grinding down our inventors here, like they grind down their inventors overseas. This amendment is doing to prevent a harmonization of our laws, because we don’t want weaker patent protection for our people. They already got it overseas against their foreign corporations that grind them down. We want to protect our people.

I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chair, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Madam Chair, almost everyone in Congress wants to help small businesses. They are the foundation of our economy and are the primary job creators. But this amendment includes certain terms or phrases that are confusing to do with the underlying goal that it purports to achieve.

This amendment appears to focus on small businesses, but in reality the amendment attempts to provide the trial lawyer lobby and patent trolls with an exemption from PTO reexamination, allowing them to continue suing job creators using frivolous or questionable patents. This amendment has nothing to do with small businesses but allows the Patent Office to issue relevant examiners for properly implementing this amendment that says it will violate WTO obligations, specifically citing TRIPS. He seems to object to the use of references to American citizens and U.S. companies, but obviously failed to read the entire amendment which allows the Patent Office to issue relevant examiners for properly implementing this amendment. And if he was so concerned about WTO compliance, he should strike section 18 of his own bill which is clearly WTO noncompliant because it creates a special class for only one industry, the banking industry.

I urge my colleagues to vote against the bill and for the Rohrabacher-Kaptur amendment.

The Acting CHAIR. The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. ROHRABACHER. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. ROHRABACHER) are suspended.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. ROHRABACHER).

The Acting CHAIR. The gentleman from Virginia (Mr. GOODLATTE).

The Acting CHAIR. The gentleman from Virginia is recognized for 2 minutes.

Mr. GOODLATTE. Madam Chairman, I rise in strong opposition to this amendment, which is a bad idea. Post-grant proceedings are designed to provide a check on patent trolls, those entities who do not create jobs or innovation but simply game the legal system. Additionally, this amendment appears to violate our international obligations under the TRIPS agreement. Under TRIPS, we are obligated not to discriminate against any field of technology or categories of patent holders. By providing an exemption for some of the reexamination proceedings on the amendment offered by the gentleman from Virginia, this amendment creates a huge loophole in our patent system by exempting entities with 100 or fewer employees. This is not will not help small businesses but will allow patent troll entities, foreign companies, and foreign governments to manipulate our patent system. It would bar use of the business-methods transitional proceeding against most business-method patents.

This amendment is a recipe for allowing patent trolls and foreign companies and their governments to bypass normal post-grant challenges and enables weak or questionable patents to bypass further scrutiny. There is no legitimate public policy objective in exempting large numbers of those who manipulate our patent system from the rules of the road. It is for these reasons that I strongly oppose this amendment.

I yield the balance of my time to the gentleman from Virginia (Mr. GOODLATTE).

The Acting CHAIR. The gentleman from Virginia is recognized for 2 minutes.

Mr. GOODLATTE. Madam Chairman, I rise in strong opposition to this amendment, which is a bad idea. Post-grant proceedings are designed to provide a check on patent trolls, those entities who do not create jobs or innovation but simply game the legal system. Additionally, this amendment appears to violate our international obligations under the TRIPS agreement. Under TRIPS, we are obligated not to discriminate against any field of technology or categories of patent holders. By providing an exemption for some of the reexamination proceedings on the amendment offered by the gentleman from Virginia, this amendment creates a huge loophole in our patent system by exempting entities with 100 or fewer employees. This is not will not help small businesses but will allow patent troll entities, foreign companies, and foreign governments to manipulate our patent system. It would bar use of the business-methods transitional proceeding against most business-method patents.

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I yield the balance of my time to the gentleman from Virginia (Mr. GOODLATTE).

The Acting CHAIR. The gentleman from Virginia is recognized for 2 minutes.

Mr. GOODLATTE. Madam Chairman, I rise in strong opposition to this amendment, which is a bad idea. Post-grant proceedings are designed to provide a check on patent trolls, those entities who do not create jobs or innovation but simply game the legal system. Additionally, this amendment appears to violate our international obligations under the TRIPS agreement. Under TRIPS, we are obligated not to discriminate against any field of technology or categories of patent holders. By providing an exemption for some of the reexamination proceedings on the amendment offered by the gentleman from Virginia, this amendment creates a huge loophole in our patent system by exempting entities with 100 or fewer employees. This is not will not help small businesses but will allow patent troll entities, foreign companies, and foreign governments to manipulate our patent system. It would bar use of the business-methods transitional proceeding against most business-method patents.

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I yield the balance of my time to the gentleman from Virginia (Mr. GOODLATTE).

The Acting CHAIR. The gentleman from Virginia is recognized for 2 minutes.

Mr. GOODLATTE. Madam Chairman, I rise in strong opposition to this amendment, which is a bad idea. Post-grant proceedings are designed to provide a check on patent trolls, those entities who do not create jobs or innovation but simply game the legal system. Additionally, this amendment appears to violate our international obligations under the TRIPS agreement. Under TRIPS, we are obligated not to discriminate against any field of technology or categories of patent holders. By providing an exemption for some of the reexamination proceedings on the amendment offered by the gentleman from Virginia, this amendment creates a huge loophole in our patent system by exempting entities with 100 or fewer employees. This is not will...
The Chair recognizes the gentleman from Illinois.

Mr. SCHOCK. I thought when we started this Congress that we had agreed to no more earmarks, no more handouts, no more special privileges for anybody. But even reading H.R. 1249, it’s obvious to see that it includes controversial language which does just that—section 18, which sets forth a new and different process for certain business method patents for any one-time approval.

Section 18 carves out a niche of business method patents covering technology used specifically in the financial industry and would create a special class of patents in the financial services field subject to their own distinctive post-grant administrative review. This new process allows for retroactive reviews of already-proven patents that have undergone initial scrutiny, review, and have even been upheld in court. Now these patents will be subjected to an unprecedented new level of interrogation.

The other side will argue that somehow magically a number of these financially related patents will be subjected to an unprecedented new level of interrogation. The other side will argue that somehow magically a number of these financially related patents will be subjected to an unprecedented new level of interrogation.

At a time when these small entrepreneurs and innovators need to dedicate their resources and new advancements to innovation, they will instead, because of section 18, be required to divert research funds to lawyers to fight the deep pockets of Wall Street, who will now attempt to attack their right to hold these financially related patents.

With that, Madam Chair, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Chair, I rise to Oppose the Amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. I yield myself 1 minute.

Madam Chair, I strongly oppose this amendment. It strikes a useful provision that would provide a way to review the validity of certain business method patents. The proceeding would create an inexpensive and faster alternative to resolve their disputes rather than spending millions of dollars that litigation now costs. In the process, the proceeding would also prevent nuisance or extortion lawsuits.

This provision is strongly supported by community banks, credit unions, and other institutions that are an important source of lending to homeowners and small businesses. Finally, this bill only creates a new mechanism for reviewing the validity of business method patents. It does not alter the validity of those patents. Under settled precedent, the transitional review program is absolutely constitutional.

Madam Chair, I now yield 1 minute to the gentleman from New York (Mr. GRIMM), a member of the Financial Services Committee.

Mr. GRIMM. I rise today to call on my colleagues to oppose the Schock-Waters amendment. This amendment would strike section 18, which is one of the most important reforms, a crackdown on low-quality business method patents, which have weakened the patent system and cost companies and their customers millions of dollars. Infringement patents, who aggressively try to enforce patents through courts in friendly venues—have made business method patents their specialty in recent years. These same patent trolls have funded an elaborate propaganda campaign targeting the reforms in section 18.

Let us simply set the record straight. Section 18 allows patent experts to re-examine through temporary pilot programs legally questionable business method patents. Section 18 allows patent experts to re-examine through temporary pilot programs legally questionable business method patents. The Patent Office has already said it is ready and willing to tackle. Opponents have asserted that the measure would help only the banks. This isn’t true. The National Retail Federation and the U.S. Chamber of Commerce have endorsed this provision. Companies impacted include McDonald’s, Walmart, Costco, Home Depot, Best Buy, and Lowes. These don’t sound like banks to me.

Opponents also claim that this section is unconstitutional.

The Acting CHAIR. The time of the gentleman has expired.

Mr. SMITH of Texas. I yield the gentleman an additional 15 seconds.

Mr. GRIMM. Again, there has been a tremendous propaganda campaign basically to sell untruths that we simply need to get past. The truth is, this is best for the small guy. If we really care about the small inventors that create innovation in our country, then we should oppose this amendment.

Don’t take my word for it—read the words of Judge Michael McConnell—once the most influential federal appeal court judge in the nation—and now the head of the Constitutional Law Center at Stanford Law School:

"He said, ‘There is nothing novel or unprecedented, much less unconstitutional, about the procedures proposed,’ and ‘we can state with confidence that the proposed legislation is supported by settled precedent.’"

I think it is time we stop listening to patent trolls who abuse our court system, and start listening to the businesses that drive job creation and economic growth in this country.

Madam Chairman, I strongly urge my colleagues to support this bill and oppose the Schock-Waters amendment to strike Section 18.

Mr. SCHOCK. Madam Chair, I yield 1 minute to my friend, the cosponsor of this amendment, the gentlewoman from California (Ms. WATERS).

Ms. WATERS. As a member of the Judiciary Committee, I strongly support the Schock-Boren-Waters-Sensenbrenner-Franks-Kaptur amendment to strike section 18. For years, the too-big-to-fail banks have attempted to eliminate their patent infringement liabilities to smaller companies and inventors that have patented financial services-related business method patents. They are now coming to Congress in hopes that you will help them with this type of innovation and legislatively take other financial services-related business method patents referenced in H.R. 1249, section 18. This is simply wrong.

Elected Members of Congress should not help the banks who steal legally issued and valid patents. Financial services-related business method patents have saved financial services companies billions of dollars. But that’s not enough for the banks. Because the banks have failed at every attempt to void these patents, they’re attempting to use their power to write into law what they could not achieve at PTO or in the courts.

Don’t be tricked, don’t be fooled, and don’t be used. I urge my colleagues to listen to the floor debates.

Mr. SMITH of Texas. Madam Chair, I yield 1½ minutes to the gentleman from New York (Mr. CROWLEY), who is a member of the Ways and Means Committee.

Mr. CROWLEY. I thank the gentleman for yielding.

Madam Chair, I rise in strong opposition to the amendment that would eliminate section 18 of the underlying patent reform bill. Section 18 empowers the Patent and Trademark Office to review the validity of so-called business method patents. This language was drafted in close cooperation with the Patent and Trademark Office and the Department of Commerce. It also enjoys the wide bipartisan support of the Judiciary Committee, which defeated a similar amendment during committee consideration of this bill.

Further, this amendment does not hurt any legitimate patent, only allows for the review of abstract patents issued since 1988 when a Federal court ruled that business methods could be patented—a ruling which the U.S. Supreme Court limited significantly last year.

What are these business methods I’m talking about? In one case, a business method patent was issued for interactive fund-raising across a data packet transferring computer network. In another, a patent was sued for soliciting charitable contributions on the Internet, claiming that his patent covers this entire field. In another example, a patent was granted covering the printing of marketing materials on billing statements. These patents, and many others in this space, are not legitimate patents that help advance America. They are nuisance patents used to sue legitimate businesses and nonprofit business organizations like the Red Cross or any other merchants who engage in normal activity that should never be patented.

In fact, this language will not go after any legitimate patent, but only allow a
review of illegitimate patents, like those looking to patent the “office water cooler discussion.” No legitimate inventor needs to worry about a post-grant review. In fact, under this section, the PTO cannot even look at a patent unless they determine that it “more likely than not” would be invalid. That’s a very high standard.

Let’s help America grow and succeed and oppose this amendment.

Mr. SCHOCK. Mr. Chairman, I yield 30 seconds to my friend and cosponsor of this amendment, the gentleman from Oklahoma (Mr. BOREN).

Mr. BOREN. Mr. Chairman, I rise today in support of the amendment that I’ve coauthored with Mr. SCHOCK. During my time in Congress I have been a consistent supporter of small businesses. Here on the House floor we are told nearly every day that small businesses are the engine of our Nation’s merit over the years. Many of these patents are still on the books. Unfortunately, many of these patents are being used by aggressive trial lawyers to extort money from deep pocket section 18 of the bill simply creates a pilot program that allows the PTO to reexamine the types of business method patents that the PTO believes to be of the poorest quality. This section was drafted in close coordination with the USPTO and is a pilot program that simply allows them to review certain business methods against the best prior art in a reexamination process.

I urge Members to reject this amendment, which strikes an important litigation reform provision in the underlying bill.

Mr. SCHOCK. Mr. Chairman, I would like to inquire of my time remaining.

The Acting CHAIR. The gentleman from Illinois has 1½ minutes remaining.

Mr. SCHOCK. I now yield 1 minute to my friend from California (Mr. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I might just say that, in answer to the question raised by my friend from Virginia “why would anyone oppose this?” it is because of the Constitution. This provision, section 18, is clearly violative of the Constitution. It would have you believe that you could go to court, an article III court, and have a final decision—a final judgment—rendered by a court, including a jury. Then after that, there’s not an appeal to an appellate court but an appeal somehow back to an administrative agency? Does anybody sense there is a violation of the separation of powers? Does anybody understand what the Court said in the Plaut case, which said that the Constitution gives the Federal judiciary the power to not merely rule on cases but to decide them subject to review only by superior courts in article III hierarchy? You can argue all you want, but that’s what the Supreme Court says.

This is an obvious, blatant violation of the Constitution. That’s the answer to my friends who say we have to have this provision. Yes, it may be that the U.S. Constitution is the inconvenient truth here. We are not allowed to violate it even though we do it with the best of intentions.

The Acting CHAIR. The gentleman from Illinois is recognized for 30 seconds.

Mr. SCHOCK. Mr. Chairman, for so many reasons, this provision of the bill is flawed. I ask my colleagues to join me in supporting the repeal of section 18, and simply ask this: Regardless of where your support lies as to the underlying bill, why are we doing something separate for financial services patents? Why are we doing something separate for the business method patents? Shouldn’t all reforms affect all patents and all industries? I would argue this is an earmark and a special provision for one industry, and for so many reasons would ask for a “yes” vote on my amendment.

Mr. SMITH of Texas. Mr. Chair, I want to clarify that section 18 is designed to address the problem of low-quality business method patents that are commonly associated with the Federal Circuit’s 1998 State Street decision. Not all business method patents are eligible for review by the patent office under Section 18. Towards that end, section 18 of the bill specifies low-quality patents for technological inventions” from review. Patents for technological inventions are those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution. The technological innovation exception does not exclude a patent simply because it recites technology. Inventions related to manufacturing and machines do not necessarily require technology to accomplish a novel business process would be excluded from review under section 18.

Section 18 would not cover patents related to manufacturing and distribution of machinery to count, sort, and authenticate currency. It is the intention of section 18 to not review mechanical inventions related to the manufacture and distribution of machinery to count, sort and authenticate currency like change counting machines, machines that dispense currency whose novelty turns on a technological innovation over the prior art. These types of patents would not be eligible for review under this program.

Mr. SHUSTER. Mr. Chair, I would like to point in the record my understanding that the definition of “covered business method patent,” section 18(d)(1) of H.R. 1249, the America Invents Act, is intended to be narrowly construed to target only those business method patents that are unique to the financial services industry. They are patents which only a financial services provider would use to furnish a financial product or service. The example that I have been given is a patent relating to electronic check scanning, which is the type of invention that only the financial services industry would use as a means of providing improved or more efficient banking services. In contrast, section 18 would not encompass a patent that can be used in other industries, but which a financial services provider might also use. Lastly, it is also my understanding from discussions with the Committee that section 18 is targeted only towards patents for non-technical inventions.

Mr. GRIMM. Mr. Chair, I rise in strong support of the America Invents Act. This is a historic bill. It will drive innovation, create jobs, improve patent quality, and reduce frivolous litigation. This is a good bill for current and future patent holders—big and small. I do rise today with some disappointment, however, that opponents of this bill have recklessly spread misinformation about the bill and some of its most important provisions. The move to first inventor to file is wholly constitutional and it will strengthen the patent system for entrepreneurs and small businesses. They no longer have to compete with big business to prove the validity of their patents after filing.

Mr. Chair, I would also like to speak to one of the legislation’s most important reforms—a pilot program on low-quality business method patents, which have weakened the patent system and cost companies and their customers millions of dollars in extra fees. Infamous “patent trolls”—people who aggressively try to enforce patents through the courts in friendly venues—have made business-method patents their specialty in recent years.

These same patent trolls have funded an elaborate propaganda campaign targeting the reforms in section 18. Let us set the record straight—section 18 simply allows patent experts to re-examine—through a temporary, pilot program—legally questionable business-method patents. A problem the patent office has said it is ready and willing to tackle.
Opponents have asserted that the measure would help only banks. That isn’t true. The National Retail Federation and the U.S. Chamber of Commerce have endorsed this bill. Companies impacted include Wal-Mart, Costco, McDonalds, Best Buy, Home Depot, and Lowe’s. Does any of these companies sound like banks to you? They don’t to me, either.

Opponents also claim that this section too is unconstitutional—and another untruth. Don’t take my word for it—read the words of Judge Michael McConnell—once the most influential federal appeal court judge in the nation—and now the head of the Constitutional Law Center at Stanford Law School: He said, “There is nothing novel or unprecedented, much less unconstitutional, about the procedures proposed.” And “we can state with confidence that the proposed legislation is supported by settled precedent.”

I think it is time we stop listening to patent trolls who abuse our court system, and start listening to the businesses that drive job creation and economic growth in this country. Support this bill and oppose the Schock-Amash amendment to strike Section 18.

The Chair notes a disturbance in the gallery in contravention of the laws and rules of the House. The Sergeant at Arms will remove those persons responsible for the disturbance and restore order to the gallery.

ANNOUNCEMENT BY THE ACTING CHAIR

The Chair notes a disturbance in the gallery in contravention of the laws and rules of the House. The Sergeant at Arms will remove those persons responsible for the disturbance and restore order to the gallery.
Arms will remove those persons responsible for the disturbance and restore order to the gallery.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). The Chair notes a disturbance in the gallery in contravention of the laws and rules of the House. The Sergeant at Arms will remove those persons responsible for the disturbance and restore order to the gallery.

Messes. AUSTRIA, WHITFIELD, BLUMENAUER, Mrs. CAPPS, Messrs. GARAMENDI, NUGENT, FLEMMING, MEEHAN, BRALEY, Ms. SCHA-KOWSKY, Messrs. DICKS and LANG-EVIN changed their vote from “aye” to “no.”

Ms. ESHOO, Messrs. HONDA, PAUL, McNERNEY, and Mrs. BACHMANN changed their vote from “no” to “aye.” So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against: Mr. DOLD. Mr. Chairman, on roll call No. 482, I was unavoidably detained. Had I been present, I would have voted “no.”

Ms. MYRICK on the other side of the aisle.

The Chair notes a disturbance in the gallery in contravention of the laws and rules of the House. The Sergeant at Arms will remove those persons responsible for the disturbance and restore order to the gallery.

AMENDMENT NO. 3 OFFERED BY MS. BALDWIN

The Acting CHAIR. Without objection, 2-minute voting will continue.

There was no objection.

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from Wisconsin (Ms. BALDWIN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk redesignates the amendment.

The Clerk redesignates the amendment.

RECORDED VOTING

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were 81 ayes, 342 noes, 8 not voting, as follows:

[Roll No. 483]

AYES—81


NOES—342

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated at:

Mrs. NAPOLITANO. Mr. Chair, on Thursday, June 23, 2011, I was absent during rollcall vote No. 483 in order to attend my grandson's graduation. Had I been present, I would have voted "aye" on the Conyers (MI)/Markey (MA)/Neal (MD)/Posey (GA) Amendment. Had I been present, I would have voted "nay" on the Neel (SC)/Barrett (KS)/Young (IN) Amendment (#9).

So the amendment was agreed to. The result of the vote was announced as above recorded.

Stated for:

Ms. NAPOLITANO. Mr. Chair, on Thursday, June 23, 2011, I was absent during rollcall vote #485 in order to attend my grandson's graduation. Had I been present, I would have voted "aye" on the Conyers (MI)/Markey (MA)/Neal (MD)/Posey (GA) Amendment. Had I been present, I would have voted "nay" on the Neel (SC)/Barrett (KS)/Young (IN) Amendment (#9).
Mr. THOMPSON of California changed his vote from "aye" to "no." Therefore the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for: Mr. WOODALL, Mr. Chair, on rollcall No. 486, had I been present, I would have voted "yes." Stated against:

Mrs. NAPOLITANO, Mr. Chair, on Thursday, June 23, 2011, I was absent during rollcall vote No. 486 in order to attend my grandson's graduation. Had I been present, I would have voted "nay" on the Sensenbrenner (WI) Amendment.

AMENDMENT NO. 13 OFFERED BY MR. MANZULLO

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Illinois (Mr. MANZULLO) on which further proceedings were postponed and on which the noes prevailed by voice vote. The Clerk will redesignate the amendment. The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 129, noes 295, not voting 7, as follows:

(Roll No. 487)

AYES—129

Aderholt
Alaska
Amash
Bachman
Baldwin
Bartlett
Benishke
Bilirakis
Blackburn
Brady (PA)
Brooks
Broun (GA)
Buck
Burr
Burgess
Burr (TN)
Chaffetz
Clay
Cole
Coffman (CO)
Cole
Conyers
Costello
Cravaack
Crenshaw
Davis (CA)
Davis (KY)
Defazio
DeLauro
Duncan (TN)
Edwards
Eliot
Emerson
Esper
Farr
Filner
Flake
Fortenberry
Frelinghuysen
Garamendi
Garrett
Gibson
Gohmert

NOES—295

Crisis
Crowley
Cuellar
Culherson
Cummings
Davis (IL)
DeLauro
Denham
DesJarlais
Diaz-Balart
Dicks
Dingle
Doggett
Dold
Donnelly (IN)
Dreier
Duffy
Duncan (SC)
Ellison
Engel
Farenthold
Fattah
Fincher
Fitzpatrick
Fleischmann
Fleming
Fioresi
Forbes
Fox
Frank (MA)
Fudge
Gallegly
Gardner
Gerlach
Gibbs
Goodlatte
Gowdy
Granger
Graves (MO)
Green, AI
Griffin (AR)
Griffith (VA)
Grimm
Guinta
Guthrie
Hall
Hanna
Harrington
Hastings (FL)
Hastings (WA)
Hayworth
Heck
Heinrich
Hensarling
Herger
Herrera Beutler
Higgins
Hinojosa
Holt
House
Inouye
Isa
Isaacs
Jackson (TX)
Jackson Lee
Johnson (GA)
Johnson (IL)
Johnson (OH)
Jordan

NOT VOTING—7

Berg
Gilfords
Ginrey (GA)

Hawkins
Herrera Beutler
Himes
Hinojosa
Holt
Hoyer
Inouye
Isaacs
Jackson (TX)
Jackson Lee
Johnson (GA)
Johnson (IL)
Johnson (OH)
Jordan

NOES—329

Aderholt
Alaska
Amash
Bachman
Baldwin
Bartlett
Benishke
Bilirakis
Blackburn
Brady (PA)
Brooks
Broun (GA)
Buck
Burr
Burgess
Burr (TN)
Chaffetz
Clay
Cole
Coffman (CO)
Cole
Conyers
Costello
Cravaack
Crenshaw
Davis (CA)
Davis (KY)
Defazio
DeLauro
Duncan (TN)
Edwards
Eliot
Emerson
Esper
Farr
Filner
Flake
Fortenberry
Frelinghuysen
Garamendi
Garrett
Gibson
Gohmert

Mr. WOODALL, Mr. Chair, on rollcall No. 486, had I been present, I would have voted “yes.” Stated against:
grandson’s graduation. Had I been present, I would have voted “nay” on the Manzullo (IL) Amendment.

**AMENDMENT NO. 11 OFFERED BY MR. ROHRABACHER**

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. ROHRABACHER) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

**RECORDED VOTE**

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device and there were — ayes 81, noes 342, not voting 8, as follows:

**[Roll No. 488]**

<table>
<thead>
<tr>
<th>AYES—81</th>
</tr>
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<tbody>
<tr>
<td>Akin (NY)</td>
</tr>
<tr>
<td>Gohmert (TX)</td>
</tr>
<tr>
<td>Hultgren (IL)</td>
</tr>
<tr>
<td>Kaptur (OH)</td>
</tr>
<tr>
<td>Miller (IL)</td>
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</tbody>
</table>
voted “nay” on the Rohrabacher (CA)/Kaptur (OH) Amendment.

AMENDMENT NO. 15 OFFERED BY MR. SCHOCK

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Illinois (Mr. SCHOCK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment. The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded. A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 158, noes 262, answered “present” 1, not voting 10, as above recorded.

June 23, 2011, I was absent during rollcall as above recorded.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LATHAM) having assumed the chair, Mr. YODER, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2149) to amend title 35, United States Code, to provide for patent reform and, pursuant to House Resolution 316, reported the bill back to the House with an amendment adopted in the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole?

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, as was read.

MOTION TO RECOMMIT

Mr. MILLER of North Carolina, Speaker. I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole?

Mr. MILLER of North Carolina. I am, in its current form.

The SPEAKER pro tempore. I move to recommit.

The Clerk read as follows:

Mr. MILLER of North Carolina moves to recommence the bill H.R. 1249 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Add at the end of the bill the following:

SEC. 34. PRIORITY IN PROCESSING PATENT APPLICATIONS.

(a) PRIORITY.—The Director shall prioritize patent applications filed under title 35, United States Code, to develop or manufacture their products, processes, and technologies in the United States, including, specifically, those filed by small businesses and individuals.

(b) DENIAL OF PRIORITY.—The Director shall not grant priority for patent applications filed under title 35, United States Code, to foreign entities that are nationals of any country that the Director has found to deny—

(1) adequate and effective protection for patent rights; or

(2) fair and equitable access for persons that rely on patent protection.
The SPEAKER pro tempore. The gentleman from North Carolina is recognized for 5 minutes.

Mr. MILLER of North Carolina. The consideration of this bill has been bipartisan to this point, and that certainly does not change now. This motion to recommit does not really send it back to committee. It certainly does not kill it. It is consistent with the spirit of the bill. This is simply the last amendment and should be considered in the same bipartisan way all the other amendments have been considered.

Mr. Speaker, our future prosperity does depend upon our being the most innovative country in the world, but most innovative economy in the world. American scientists and American engineers are doing great work. We are doing some of the most advanced, sophisticated research in the world. For instance, we lead the world in solar research. We are making some of the greatest breakthroughs in that technology. Much of it is funded by the Department of Energy or by other Federal research programs. But 60 percent of the manufacturing of solar cells is being done in Asia, mostly in China.

What is happening is that firms are getting Federal funds to do research to improve solar cell technology. They’re developing advanced technology, but when the time comes to manufacture a product coming out of that research, those firms are contracting with Chinese manufacturers to make the products. That is just one example of companies that are doing research here but manufacturing somewhere else when American workers need good manufacturing jobs.

Mr. Speaker, the benefit of innovation should not just be higher profits for American companies. The solar cell should be good jobs for American workers. Under this motion to recommit, those companies will still get their patents, but they don’t go to the front of the line for the people who get to the front of the line are those who will pledge that they will do their manufacturing here in the United States, creating good jobs for American workers. Second, we all know that there are countries in the world that don’t really respect American patent rights and that don’t treat American inventors fairly when they try to get patents in those countries. This motion to recommit will still allow those inventors, people from those countries, to get patents. We will treat them better than their countries treat American inventors. But they go to the back of the line. They do not get priority when it comes time to have their patents considered.

Help American workers share in the prosperity that comes from American innovation from our research, from our innovation. Support this motion to recommit. I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I rise in opposition to the motion.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Mr. Speaker, I oppose the motion to recommit and urge my colleagues to defeat it. The America Invents Act is the culmination of 6 years of effort. During this time, the House and Senate Judiciary Committees conducted 23 hearings on patent reform and brokered numerous negotiations among Members and stakeholders. H.R. 1249 has garnered bipartisan and widespread support. This bill improves patent integrity in PTO operations. The bill helps businesses from a broad range of industries, independent inventors, and universities.

But the biggest winners are the American people. They will get more job opportunities and greater consumer choices. This amendment would mean that U.S. companies and inventors would be discriminated against all over the world when they file. It would be open season on American innovators and businesses. We would no longer be able to produce products abroad, and IP theft of U.S. goods would become rampant.

Mr. Speaker, this motion to recommit also consigns our patent system to the one created in the 1952 Patent Act, an era of landline telephones, TVs that offered three fuzzy black-and-white channels, and the manual typewriter. We need to update our patent system, and we need to do it now.

Oppose the motion to recommit and support H.R. 1249. I yield back the balance of my time.

Mr. MILLER of North Carolina. Mr. Speaker, I demand a recorded vote.

The Speaker pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 172, noes 251, not voting 6, as follows:

<table>
<thead>
<tr>
<th>AYES</th>
<th>NOES</th>
<th>TOT</th>
<th>VOTE</th>
<th>STATUS</th>
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</table>

RECORDED VOTE

Mr. MILLER of North Carolina. Mr. Speaker, I demand a recorded vote. A recorded vote was ordered.

Mr. MILLER of North Carolina. The motion to recommit does not really need to change now. This motion to recommit does not really does not change now. Partisan to this point, and that certainly does not kill it. It is consistent with the spirit of the bill. This is simply the last amendment and should be considered in the same bipartisan way all the other amendments have been considered.

Mr. Speaker, our future prosperity does depend upon our being the most innovative country in the world, but most innovative economy in the world. American scientists and American engineers are doing great work. We are doing some of the most advanced, sophisticated research in the world. For instance, we lead the world in solar research. We are making some of the greatest breakthroughs in that technology. Much of it is funded by the Department of Energy or by other Federal research programs. But 60 percent of the manufacturing of solar cells is being done in Asia, mostly in China.

What is happening is that firms are getting Federal funds to do research to improve solar cell technology. They’re developing advanced technology, but when the time comes to manufacture a product coming out of that research, those firms are contracting with Chinese manufacturers to make the products. That is just one example of companies that are doing research here but manufacturing somewhere else when American workers need good manufacturing jobs.

Mr. Speaker, the benefit of innovation should not just be higher profits for American companies. The solar cell should be good jobs for American workers. Under this motion to recommit, those companies will still get their patents, but they don’t go to the front of the line for the people who get to the front of the line are those who will pledge that they will do their manufacturing here in the United States, creating good jobs for American workers. Second, we all know that there are countries in the world that don’t really respect American patent rights and that don’t treat American inventors fairly when they try to get patents in those countries. This motion to recommit will still allow those inventors, people from those countries, to get patents. We will treat them better than their countries treat American inventors. But they go to the back of the line. They do not get priority when it comes time to have their patents considered.

Help American workers share in the prosperity that comes from American innovation from our research, from our innovation. Support this motion to recommit. I yield back the balance of my time.
Mr. FRANK of Massachusetts changed his vote from “aye” to “no.”

So the motion to reconsider was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mrs. NAPOLITANO. Mr. Speaker, on Thursday, June 23, 2011, I was absent during roll call vote No. 490 in order to attend my grandson’s graduation. Had I been present, I would have voted “yea” on the Motion to Recommit H.R. 1249, America Invents Act.

The SPEAKER pro tempore (Mr. YODER). The question is on the passage of the bill.

The question was taken, and the Speaker pro tempore announced that the ayes had appeared to have it.

Mr. SMITH of Texas. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were 304 ayes, 117 noes, not voting 10, as follows:

AYES—304

Berg, Zach  D.  Hurd  Hagedorn  Farr  Price  TSAVOLIS  Visclosky
Bilirakis, Gus  złuck  Hinojosa  Price  ROYCE  OFAMERICA
Bishop (GA), Pete  Delaney  Becerra, Jimmy  Bratton, Henry  Boren  Ratcliffe
Biggs, Robert  D.C.  Burdett, Matt  Brown (FL), Vern  Brown, Jack  of America

Not Voting—10

Berg, Zach  D.  Hurd  Hagedorn  Farr  Price  TSAVOLIS  Visclosky
Bilirakis, Gus  złuck  Hinojosa  Price  ROYCE  OFAMERICA
Bishop (GA), Pete  Delaney  Becerra, Jimmy  Bratton, Henry  Boren  Ratcliffe
Biggs, Robert  D.C.  Burdett, Matt  Brown (FL), Vern  Brown, Jack  of America

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that the clerk be authorized to make technical corrections in the engrossment of H.R. 1249, to include corrections in spelling, punctuation, section numbering and cross-referencing, the insertion of appropriate headings, and the insertion of the word “written” in the appropriate place in the instruction in amendment No. 1 to strike material on lines 23 through 25 on page 114.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker’s approval of the