

H.R. 1908, The Patent Reform Act of 2007

Since 1790, when Congress enacted the nation's first patent act, the law has nurtured America's inventive spirit. It has been 55 years since the law was last significantly updated. Today our patent system is overburdened with applications on trivial inventions and many now view patent litigation as a way to prevent competition or reap windfall profits. H.R. 1908 will modernize our patent law to ensure it is an engine for economic growth and innovation.

Bipartisan legislation to rebalance the patent system: House IP Subcommittee Chairman Howard Berman (D-CA) and Judiciary Committee Ranking Member Lamar Smith (R-TX) introduced the Patent Reform Act of 2007 ("the PRA") in April. This bipartisan bill will modernize the patent system and maximize U.S. innovation by:

- Improving and ensuring patent quality.
- Restoring fairness and reducing uncertainty in the patent litigation system.
- Ensuring U.S. inventors are not disadvantaged by harmonizing U.S. patent law with other countries.

Six years of in-depth debate and compromise: The PRA was reported out of the Judiciary Committee in July by voice vote. It is the end product of a long and detailed legislative process, including:

- A series of 4 patent reform bills introduced by Reps. Berman and Smith beginning in the 108th Congress.
- 21 hearings on patent issues since 2001, with testimony from universities, small inventors, manufacturers, high tech, financial services, biotech, and pharmaceutical companies.
- Input from the U.S. Patent and Trademark Office, the Federal Trade Commission, the U.S. Solicitor General, the National Academy of Sciences and the American Bar Association.
- More than 150 stakeholder meetings over three years, resulting in numerous compromise changes to the bill.
- Substantial revisions to H.R. 1908 in response to issues raised by universities, financial service companies, manufacturers, drug and biotech companies through, Manager's amendments and amendments in committee.

Broad support for reform:

- *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *Los Angeles Times*, *San Jose Mercury News* and *St. Louis Post-Dispatch* have all called on Congress to pass comprehensive reform this year.
- H.R. 1908 will benefit consumers and the bill is endorsed by a broad range of consumer groups including Consumer Federation of America, United States Public Interest Research Group and Public Knowledge.
- The U.S. Supreme Court has taken up six major patent cases in the past two terms. Each of the Court's decisions has balanced the law – consistent with the proposals of the bipartisan sponsors of H.R. 1908.
- H.R. 1908 is supported by leading U.S. companies in the high tech, financial services, communications, energy, manufacturing and entertainment industries.

Major provisions of H.R. 1908, The Patent Reform Act of 2007:

- **Protect U.S. Inventors At Home and Abroad:** The PRA changes the U.S. system to a first-to-file from a first-to-invent system to create a more efficient process and harmonize U.S. laws with other patent systems.
 - *Compromise:* Universities provided a longer grace period to file patents.
- **Promote Fair Compensation For Infringement:** The PRA clarifies the standard for calculating damages when they should appropriately be based on the actual value of the patented invention, not the value of the entire product.
 - *Compromise:* New standard will not apply where patent is the predominant basis for market demand.
- **Promote Quality Through Post-Grant Review:** The PRA revises the current process for "inter partes re-exam" of a patent to provide a fair and efficient way to review patents and ensure patent quality.
 - *Compromise:* This so-called "second window" has been struck from the bill.
- **Choice of Venue:** Under current patent laws, there are few limits to where many cases may be filed. Today, there is a clear pattern of "forum-shopping." The PRA establishes fair criteria for where cases may be brought.
 - *Compromise:* Exempts universities and individual inventors from new venue requirements.
- **Ensures Deliberate Infringers Are Deterred:** The PRA applies to patent law the traditional standard for "punitive damages" for willful infringement which may result in triple damages.
 - *Compromise:* The bill provides greater guidance for when willful infringement may be alleged.