

February 1, 2011

The Honorable John Boehner  
The Honorable Harry Reid  
The Honorable Mitch McConnell  
The Honorable Nancy Pelosi

Dear Speaker Boehner, Senators Reid and McConnell, and Rep. Pelosi:

We are writing to ask that you prevent the passage in this Congress of patent legislation that hampers U.S. competitiveness and threatens American jobs by undermining property rights. With our economy in crisis and millions of Americans out of work, this is the wrong time to jeopardize our recovery by passing legislation to remove incentives for innovation and commercialization of new products and processes.

Now being discussed is so-called "patent reform" legislation, like that offered by Rep. John Conyers and Senator Patrick Leahy in the 111th Congress, which would cripple most of America's smaller inventors, research consortia and universities, and even the larger industrial firms that depend on patents. Downgrading patent rights -- which are fundamental property rights -- will hamper innovation and domestic manufacturing. Unfortunately, some Members of Congress are poised to move ill-considered patent legislation through the House and Senate this year. Diminishing patent rights would be dangerous to the future of our economy and our country's global leadership, and must be stopped.

The Federal Government does many things that exceed its constitutional authority and hamper our free-enterprise system. In contrast, issuing patents is one of the few things specifically mentioned in the Constitution. According to Article 1, Section 8: "The Congress shall have Power . . . [t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The Founders understood that protection of intellectual property was vital to innovation and progress. President Washington urged the first Congress of the United States to pass laws encouraging American innovation. James Madison wrote in the Federalist Papers, "The utility of this power will scarcely be questioned." Yet, today it is being threatened in the Senate and the House -- at the behest of a minority of large technology companies.

Sadly, the Federal Government has fallen down in its patent responsibilities and has become a bottleneck to genuine innovation. According to the United States Patent & Trademark Office (USPTO), the average patent applicant must wait 25 months before his or her application is first acted upon. The logical remedy to this problem is to fully fund the USPTO, allowing it to set user fees and keep them to run USPTO efficiently and effectively, rather than letting them be diverted to other parts of the government. In recent years, approximately \$700 million originally

allocated to the USPTO has been used for general government spending, causing a huge backlog of approximately 720,000 patent applications. This is the situation that must be reformed immediately.

Instead, some in Congress – again following the lead of several large multinational companies – want to make it easier to infringe patents, easier to challenge patent rights in administrative proceedings and in the courts, and more expensive for inventors to defend their patents. By creating a new, expensive procedure to challenge the validity of a patent throughout its life, the benefits to patent-holders become far less certain. Incentives to seek patents are severely weakened, and venture capitalists face much higher risks when backing new ideas. The cumulative effect of such "reforms" would be to raise barriers to innovation and dis-incentivize commercialization of those ideas. Changes along these lines will certainly not help us to remain economically competitive in the world economy, which is why officials in China and India have hailed the proposed "reforms" as helpful to their economic interests.

Additionally, some of these so-called reforms have been proposed in the name of "harmonization" with foreign law. Frankly, this notion is misguided. Our competitors should have to "harmonize up" to our superior intellectual property regime, rather than our having to weaken our patent system and "harmonize down" to their levels. Does the United States really need to be "harmonized" with a calcified European system or the impossibly unfair Japanese system, not to mention the Chinese system, where intellectual property theft is a way of life? Such "patent reform" will lead to the plundering of American intellectual property and the loss of American factories and jobs to overseas competitors.

The proposed reforms really benefit large, established corporate market players at the expense of U.S. economic growth. Start-up companies drive innovation and job creation. About one-third of all patent applications are made by independent inventors, small companies, universities, and nonprofit research groups. Some large companies, however, which ironically benefitted greatly from the current patent system when they were start-ups, fear having their market positions disrupted or constrained by new ideas outside their control. They want current law rewritten to make challenges to patents easier and more frequent after they are granted.

This phony, market-distorting "patent reform" is bad for America. We ask that you stop any such legislation from reaching the floor and protect the property rights enshrined in the Constitution. Our nation's economic future depends on your cooperation.

Sincerely,

Phyllis Schlafly  
Eagle Forum

Kevin L. Kearns  
US Business and Industry Council

Edwin Meese, III  
Former Attorney General of the United  
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Morton Blackwell  
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