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[Patent Reform is Patently Offensive to Start-ups](#)

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*Editors Note: NASVF is always interested in publishing editorials and Op-Eds on issues that impact both innovation capital and the entrepreneurial community. The Patent Reform changes are scheduled for a vote on June 12, 2011 and I wanted to bring this issue to the attention of all NASVF members and our NetNews readers. NASVF is against the Patent Reform changes and encourages you to write to your Congressional leaders and tell them to vote NO on S.23 and HR 1249. We have included a link that will deliver your personal letters to your Congressional leaders. Please feel free to comment on NASVF's blog and Linked-In sections on our website---
Richard Miller*

As Edmund Burke stated: "The true danger is when liberty is nibbled away, for expedients, and by parts"

Patent Reform is scheduled for a vote during the week of June 12. If you are a start-up company or someone who invests in start-ups, you are not going to like what Congress is planning to do. Awarding patents to the highest bidder and not the first innovator in the name of expediency puts yet another financial roadblock in front of small entrepreneurs, start-ups (and their investors) attempting to innovate and to challenge old technologies.

While there are better ways to fix a broken patent system of endless backlogs and inefficiencies and litigation, drastically changing a patent system that has made the United States a leader in innovation for 220 years is wrong and a slap in the face to all Americans. The combination of changes being proposed in S. 23 and HR 1249 will instead exacerbate the patent backlog, make it

harder for early stage companies to raise capital and will ultimately cost jobs instead of creating them.

Both S. 23 and HR 1249, touted as exemplars of “patent reform” and “harmonization” were passed with unseemly haste and with little to no input from small business and individual inventors. As a result, both bills are replete with flaws, any one of which should cause readers to oppose it until members of Congress are able to provide more thoughtful and meaningful attention to the subject. Both are bad for the budding entrepreneur and could only serve to discourage the investors who invest in them. Some of the provisions include the following:

1. Changing from "First to Invent" to "First to File." This proposed change will simply increase expenses for a small start-up. Awarding patents to only those who can afford them is unfair and pretty un-American. When a company must use all of their capital (often from outside investors) filing patents, especially when a logbook will do, leaves little money left for jobs and innovation. Investor dollars should be spent on jobs and innovation, not paperwork. This change will also create a race to the Patent Office with every new idea. Not only will this measure increase the number of patents filed, they will be of much lower quality as entrepreneurs attempt to paper their way to success. It should be noted that while the US is contemplating the change to First to File, several other countries like the UK and Japan which did that in the last decade have noted a decline in innovation and are now contemplating a change back to First to Invent.

2. Elimination of the grace period. The grace period is currently an integral part of a start-ups ability to launch a product since it is impossible to file an application that describes a workable invention before its public use or sale which tests and validates an inventive solution and its market. This proposed change reduces the time that a company can perfect their product and generate revenue. Thus, investors will be unlikely to invest in a company or technology that doesn't have some market acceptance. Essentially, investors won't invest without a proven market. And, a proven market can not be achieved without investment.

3. Extension of post grant review. This proposed change extends the time when a patent may be challenged after approved. This simply increases the risk of investors. The changes also provide additional tools for infringers with no compensating benefits for patent owners. It will thus, increase the cost of opposition - with expanded discovery - and reduce the chances that a start-ups patent infringement suit will be heard in court before the start-ups financial resources - often angel investor money - is exhausted in the opposition.

4. Expands the role of the USPTO. This proposed change removes the checks and balances on the USPTO fee-setting authority.

The backlog in the Patent and Trademark Office means is that inventors are inventing, investors are investing, but that the Government is failing to keep up with the inventors' filings. While the legislation may be well intended, it will have serious long lasting consequences to American Innovation.

Please contact your legislator and let them know that patent reform is indeed important but that you oppose both H.R. 1249 and S. 23 in their current forms.

Edmund Burke also stated that "all that is necessary for the triumph of evil is for good men to do nothing" Please act now. Click on this link to be connected to software that will deliver your personal letters to members in Congress who represent you.

(HERE IS THE LINK http://www.bipac.net/alert_2.asp?g=PIPAC&parent=PIPAC)

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BACKGROUND (If you want to add it somewhere):

On March 8, 2011, the Senate overwhelmingly passed the America Invents Act (S. 23); a bill of dubious legality that would make fundamental adverse changes to a patent system that has made the United States the world leader in generating new inventions and fueling start-up companies that historically have been the greatest engines of job creation. Furthermore, On April 14, 2011, the House Judiciary Committee voted 32-3 to send an amended version of H.R. 1249 to the House floor for debate. With the Senate having passed a patent bill by such a broad margin, it is imperative that H.R. 1249 be stopped.

Both S. 23 and HR 1249, touted as exemplars of "patent reform" and "harmonization" were passed with unseemly haste and with little to no input from small business and individual inventors. As a result, both bills are replete with flaws, any one of which should cause readers to oppose it until members of Congress are able to provide more thoughtful and meaningful attention to the subject. Both are bad for the budding entrepreneur and could only serve to discourage the investors who invest in them.

Please contact your legislator and let them know that patent reform is indeed important but that you oppose this legislation in its current form. Please take the time to read more about the legislation and how it may affect your company specifically. For more detailed information on this subject, a draft letter, and instructions on how to write to your Congressman and Senator please use the following link: <http://www.pipacusa.org>

Additional reading:

http://en.wikipedia.org/wiki/America_Invents_Act

http://www.rearden.com/public/110319_Patent_Reform_Isnt_1.pdf

<http://bit.ly/Grace-Period-USA>

http://www.huffingtonpost.com/gary-lauder/patently-absurd-or-how-to_b_832703.html