



America Invents Act, H.R. 1249, Enables Innovation and Entrepreneurship

April 25, 2011

Dear Member of the U.S. House of Representatives:

The Small Business & Entrepreneurship Council (SBE Council) has been a long-time advocate for patent reform, and I urge your support for the America Invents Act (H.R. 1249).

Entrepreneurs, small businesses and our overall economy need an effective and efficient patent system. As the Congressional Research Service has reported: “Several studies commissioned by U.S. federal agencies have concluded that individuals and small entities constitute a significant source of innovative products and services. Studies have also indicated that entrepreneurs and small, innovative firms rely more heavily upon the patent system than larger enterprises.”

The U.S. ranks as the global leader in entrepreneurship. Innovation and invention are central to that leadership, and it follows that the protection of intellectual property – including patents – is a key driver of U.S. economic growth.

House Judiciary Committee Chairman Lamar Smith (TX), the primary sponsor of H.R. 1249, correctly observed: “Technological innovation from America's intellectual property is linked to three-quarters of our economic growth. American IP industries account for over half of all U.S. exports and provide millions of Americans with well-paying jobs.”

Patent reform is needed to clarify and simplify the system; to properly protect legitimate patents; and to reduce costs in the system, including when it comes to litigation and the international marketplace.

The America Invents Act works to improve the patent system in key ways.

For example, the act would bring the U.S. in step with the rest of the world. The U.S. grants patents on a first-to-invent basis, rather than the first-inventor-to-file system that the rest of the world follows. First-to-invent is inherently ambiguous and costly, and that's bad news for small businesses and individual inventors.

Consider that a 2004 report from the National Research Council of the National Academies (titled “A Patent System for the 21st Century”) noted: “For those subject to challenge under first-to-invent, the proceeding is costly and often very protracted;

frequently it moves from a USPTO administrative proceeding to full court litigation. In both venues it is not only evidence of who first reduced the invention to practice that is at issue but also questions of proof of conception, diligence, abandonment, suppression, and concealment, some of them requiring inquiry into what an inventor thought and when the inventor thought it.” The costs of this entire process fall more heavily on small businesses and individual inventors.

Meanwhile, patent harmonization among nations will make it easier, including less costly, for small firms and inventors to gain patent protection in other nations, which is critical to being able to compete internationally. The result will be expanded opportunities in international markets.

In addition, it is important that reform protect the USPTO against being a “profit center” for the federal budget. That is, the USPTO fees should not be raided to aid Congress in spending more taxpayer dollars. Fees should be used to make for a quicker, more predictable patent process, and the America Invents Act would help to do that.

For good measure, regarding fees, the act would provide lower fees for small and micro entities.

The America Invents Act (H.R. 1249) would make much-needed improvements to the U.S. patent system, and it deserves your support.

Thank you for considering the views of the small business community. Please feel free to contact SBE Council with questions or if we can be of assistance on this important issue for small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Kerrigan". The signature is fluid and cursive, with the first name "Karen" written in a larger, more prominent script than the last name "Kerrigan".

Karen Kerrigan
President & CEO

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Protecting Small Business, Promoting Entrepreneurship