

Patent Reform as Implemented in
the America Invents Act:
“Leahy-Smith” ≈ “Sarbanes-Oxley”

Senate Staff Briefing
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by Gary Lauder

Intro

- My name is Gary Lauder & I'm a venture capitalist (Lauder Partners LLC)
 - Have invested about \$500M in VC over past 26 yrs.
 - In > 75 companies and > 50 VC funds
 - Not a lawyer
 - Co-inventor on a dozen patents
- Survey: Audience composition
- Grateful you all are here

My Expertise

- How VC's consider what to invest in
 - The role that patents (issued & apps) play in that
- Over the past 4 years, studying PRA/AIA
- Sympathetic to senators having too much on plate to fully analyze issues
- Surprised that congress did not look into the other side of this issue

Various lines of reasoning

- Pros & Cons of the bill itself
 - Best, but complex & time-consuming
- Who's for & against it (Argumentum ad Verecundiam = Argument by Authority)
- Process defects (e.g exclusion of small companies/inventors)
- Political blowback (what happens when affected parties find out about the bill)
 - Pissed-off public & centimillionaires

Who's against it

- Individuals (notable ones)
 - Judge Paul Michel: Retired early from his lifetime appointment to lobby against this bill
 - Every famous living inventor:
 - Dean Kamen (Insulin pump, stents, Segway, etc.)
 - Ray Damadian (MRI)
 - Steve Perlman (QuickTime, WebTV, OnLive & more)
 - He was the one to have alerted me to this issue in 2007
 - Patent attorneys (many)
- Trade organizations ...
 - Before getting to those, let's talk about JOBS

Jobs (not Steve)

- Kauffman Foundation study found that all net new US jobs came from startups
- Large companies are net jobs EXPORTERS
- Jobs are always important, but more so now
- Startups are harmed by this bill
- Therefore it will have an adverse jobs impact
- Proponents claims that this would create 200K jobs is unsubstantiated and suspect

Trade Organizations Against

- National Venture Capital Association (NVCA)
 - I'm a member
- US Business and Industry Council (Kevin Kearns)
- National Small Business Association (NSBA)
- Institute of Electrical and Electronics Engineers (IEEE)
- National Association of Seed and Venture Funds (NASVF)

Other groups opposed

- Angel Venture Forum
- Patriotic Veterans, Inc.
- Family-Pac Illinois
- American Civil Liberties Union (ACLU)
- American Innovators for Patent Reform
- American Institute for Medical & Biological Engineering
- America Invents Act 2011 Organization
- American Medical Association
- CONNECT
- Eagle Forum
- International Federation of Professional and Technical Engineers
- IP Advocate
- The National Association of Patent Practitioners
- The National Congress of Inventor Organizations
- Patent Office Professional Association
- Private Investors in Entrepreneurial Endeavors (PiPAC)
- The Professional Inventors Alliance
- The Small Business Coalition on Patent Legislation
- The Union of U.S. Patent Examiners

Process defects

- Tens of millions spent lobbying FOR the AIA
- Senate hearings excluded SMB & inventors
 - Derelict neglect of duty to seek out other side of story
- Head of PTO lobbied for these changes at IBM
 - Continued to do so inside administration in violation of administration's revolving door rules
 - Paraded around the few small business people he could find to pretend it was good for small businesses
 - Same w/Louis Foreman (inv. promotion scammer)

Another process defect: lies

- Too many to enumerate all
- Misrep: need FTF since small co.'s can't afford interference proceedings.
 - >99.9% of patents don't have interferences
 - >99.9% of inventors will have burden of applying early and often when they can ill afford it
 - Replaced with an even more expensive proceeding: derivation (theft).
 - Even less likely to prevail

Cons of the bill itself: FTF

- Worst effect is companies between age 0-1
 - Often still individual inventor then
- FTF creates much greater risk of theft
- Overseas advice: apply prior to talking to anyone (investors, customers, potential empl.)
- Changing threatens our unique open innovation system
- Enormous boon to Cybercriminals (stolen IP has much more value)

Grace period

- Public use or offer for sale => prior art
- = trip-wire to lose patents. Worse than any other country.
- Can come back to bite years later when patent is asserted.
- Investors can't rely on patent system since can't know whether inventor might have publicly used or offered for sale.

Post-grant review

- Another means of enabling infringers to oppress companies that can't afford to defend
- The main reason the NVCA opposes it
- European-style opposition procedure was adopted by Japan, China and South Korea two decades ago, and was subsequently abolished in each of those countries within a decade

Harmonization

- So much would remain different that not a meaningful savings %.
 - Disharmonizes in some ways.
- Patent system is not working for small companies in Europe
- Angel + VC investment in the USA is 10X Europe's
 - They should adopt our system, not vice versa

Conclusion/Epitaph

- This bill will be yet another nail in the coffin of VC in America
 - It has declined by 10X 2000-2010 & by 4X 2007-10
- More than 10% of our GDP comes from VC-backed companies
- Leahy-Smith America Invents Act will develop the same pejorative meaning as Sarbanes-Oxley, which passed 99-0 in Senate.
- “When all think alike, no one thinks very much.” – Walter Lippman

Thank you for your attention

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