Protect Our Constitutional Patent Rights!

July 18, 1996 by Phyllis Schlafly

One of our most important constitutional rights is the right of inventors to have, for limited times, "the exclusive right to their . . . discoveries." This uniquely American provision in Article I, Section 8 of the U.S. Constitution marked a profound turning point in world history.

Most of the world's inventions are American, and they have proved an essential factor in American economic growth and prosperity. Our marvelous inventions are fundamental to our enviable standard of living and to building America into an industrial super power.

Our basic constitutional patent right is now under attack from the lobbyists for Japanese and multinational corporations. It would be wiped out by a bill that has already passed the House Judiciary Committee and is rushing toward a vote in the House.

H.R. 3460 would order the publication of all inventors' patent applications 18 months after the application is filed, whether or not the inventor has yet been (or will ever be) granted a patent. This would be a dramatic change from our traditional treatment of patents, and would be a grievous injustice to the individual inventor.

Inventors' patent applications have always been held in total secrecy by the U.S. Patent Office until the patent is issued, thus safeguarding the exclusive right of the inventor. It is kept secret forever if he is not granted a patent, so the inventor can continue his work without someone stealing his ideas while they are developing.

Publication of the application before the patent is issued would be a tremendous giveaway to foreign and big-corporation competitors. They could use their enormous resources against the individual inventor to challenge and invalidate a patent application before it is granted, or to steal the idea and beat the individual in getting a patent and going into production with it.

H.R. 3460 would make the U.S. Patent Office a private corporation, inevitably putting all future policies and regulations about patents under control of the giant corporations. This would freeze the

individual inventor and all small entities out of the invention process, wiping out their constitutional patent rights.

H.R. 3460 would allow outside parties, including foreign entities, to challenge all existing U.S. patents in a reexamination process conducted by the U.S. Patent Office rather than in the courts. Previously, once a patent was issued, the invention itself and its claims could not be challenged in the Patent Office without a showing of prior descriptive material about the invention of which the Patent Office was unaware when it issued the patent.

This dramatic change from past procedure would make it easier and far cheaper for outside parties to invalidate a patent. This change would also impede enforcement of the inventor's patent rights because the courts usually suspend patent enforcement litigation while a reexamination is in progress.

H.R. 3460 would thus amount to a major power shift from the courts to the Patent Office. Foreign and multinational corporations might prefer this, but the individual inventor would lose his traditional protections of due process, rules of evidence, and jury trial.

H.R. 3460 is sponsored by Rep. Carlos Moorhead (R-CA) and Rep. Patricia Schroeder (D-CO), the ranking members of the two parties on the Intellectual Property Subcommittee. Both are retiring from Congress this year and will then be available to lobby for the big corporations and foreign interests that will benefit from this bill.

Passage of the Moorhead-Schroeder legislative swan song would bugle taps for the American dream. It would undermine our job base, prevent new companies from forming, and limit our future growth.

Many great American companies, including General Electric, AT&T, Kodak, International Harvester, B.F. Goodrich, Goodyear Tire, Polaroid, John Deere, Westinghouse, and Xerox exist today because the patents issued to their founders gave them exclusive ownership for enough time to start their businesses.

Another serious infringement of inventors' patent rights was concealed in the fine print of the GATT Agreement, passed by Congress in the infamous lame duck session of November 1994. This changed the term of exclusivity granted by a patent from 17 years from date of issuance of the patent to 20 years from the date of application.

This curtails inventors' patent rights in cases where the processing of the patent application suffers delay. The Patent Office may be dilatory in processing the application, big corporations may falsely assert ownership of the patent, or the process may be slowed by the harassing litigation made possible by H.R. 3460.

Fortunately, some Congressmen are alert to the interferences with patent rights under both GATT and the Moorhead-Schroeder bill. Rep. Dana Rohrabacher (R-CA), with 55 cosponsors, is pressing for a vote on H.R. 359. It would correct the mistake in the GATT Agreement by making the term of patents the longer of either 17 years from the date the patent is issued OR 20 years from the date the application was filed.

In introducing the companion bill in the Senate, S. 284, Bob Dole said, "Our inventors and creative Americans all over the country deserve the maximum protection of their intellectual property. We should not jeopardize their investment in ideas. The new [GATT] rule threatens that investment. [We must] restore the most important aspect of an inventor's livelihood: the period of time he owns his invention."