Death for Innovation

by Phyllis Schlafly March 11, 2011

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The Democratic Senate is itching to pass a bill that will mean death for innovation, which is the backbone of American economic growth. Senator Patrick Leahy's (D-VT) bill, S.23, is called patent reform, but it's not reform; it will kill innovation by litigation.

Now that the globalists have transferred millions of good American jobs to Asians willing to work for as little as 30 cents an hour with no benefits, all we have left to maintain and restore our economic well-being is our innovation superiority. The United States is the world leader in inventing useful and important products and processes, while other countries build their economies by copying our innovations.

The mainspring of our success is the American patent system, unique when the Founding Fathers put it into the U.S. Constitution even before freedom of speech and religion, and still unique today. Unfortunately, some globalists outside and even inside the United States want to reduce the American standard of living.

The core of our time-tested patent-granting system goes under the label first-to-invent, plus a one-year grace period. It is only common sense that the patent should be granted to the first person who actually invents something, and our Constitution specifically identifies "inventors" as the owner of the property right.

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The one-year grace period allows an inventor time to experiment with his invention, perfect it, make sure it works, offer it for sale, perhaps begin

commercialization, find funds to complete his work and apply for a patent, and seek partners and investors. This system is essential for the protection of individual inventors and small businesses.

Other countries are free to imitate our system, but foreign countries haven't copied our system. Instead, they want to copy our inventions, and they devise all sorts of tactics to cheat us.

Their code word is harmonization; we are hammered with the agitprop that globalization requires us to harmonize our laws with the rest of the world (which does not include obligating foreigners to respect U.S. patents). It's a betrayal of American inventors to harmonize down to inferior foreign practices; we should encourage them to harmonize up to our proven system.

Leahy's bill would replace the first-to-invent plus grace period with first-to-file plus litigation. That would grant the patent to the first to file an application at the U.S. Patent Office, even if another person actually built the invention first.

That change would create a paper race to the Patent Office, which already has a backlog of 700,000 applications. Advocates of the Senate bill claim this will facilitate deciding who is the real inventor.

However, that's not a problem with first-to-invent. Last year there were only 47 challenges out of 500,000 first-to-invent patent applications.

The core principle of our system is awarding the patent to the true inventor. It's wrong, and probably unconstitutional, to take that away for presumed administrative ease.

The Senate bill would also institute a European-style post-grant challenge process to invalidate the patent. In Europe, competitors use this process to tie up the patent

in expensive administrative legal proceedings which independent inventors and small businesses can't afford.

Canada recently shifted to a first-to-file system and found that it imposed a special hardship on independent inventors, startups, and small businesses that don't have in-house lawyers or resources to hire expensive outside counsel.

The Leahy bill eliminates the grace period from offering an invention for sale or making public use of it, leaving only a grace period from "disclosure" of the invention. The bill does not define disclosure, so bring on the lawyers to litigate its meaning.

The value of first-to-invent over first-to-file was explained by inventor Steve Perlman, CEO of Reardon, OnLive and MOVA. He experimented with 100 inventions over five years of development, but only six were actually used and filed for patents.

He explained that a large part of invention is trying out a vast number of ideas, such as Edison with thousands of light bulb filaments and the Wright Brothers with many wing shapes. First-to-file means flooding the Patent Office with dead-end applications.

Another unfair and biased aspect of the Leahy bill is that not a single practicing inventor or representative of small business was called to testify during five years of Senate hearings on patents.

The first-to-invent system has served us well. If it ain't broke, don't fix it.