Patent Reform Is A Patent Giveaway

by Phyllis Schlafly March 5, 2010

Americans should beware when Members of Congress talk about "reform" and "comprehensive" because those words usually cover a lot of mischief. The latest example of this legerdemain is the so-called Patent Reform now aggressively pushed by Senate Judiciary Committee Chairman Patrick Leahy (D-VT).

Since we've outsourced millions of well-paying American jobs overseas, the one asset we have to maintain our American standard of living is innovation superiority. The United States is the world's leader in technology innovation, which is due to our private enterprise economic system, our constitutional protections of private property, and most especially our unique system of granting patents to inventors.

Other countries can produce things we invent more cheaply because of the pitiful wages they pay, but they have a dismal record of inventing anything. Lacking expertise in innovation, some foreign countries concentrate on stealing ours.

Communist China is the world's top producer of illegal copies of music, movies, software, designer apparel, medicines, and other U.S. products. Chinese agents stole or illegally purchased high-tech machines and systems, restricted electronic components, embargoed components for military weapons, and communications systems, in order to copy them.

Now that Communist China has become America's banker, China is flexing its muscles in a new way that threatens our economy and our jobs. The buzzword is "indigenous innovation."

China has promulgated new anti-American trade rules that prohibit imports of our products unless they are based on intellectual property that is developed and/or owned in China, and associated trademarks are originally registered in China.

These rules mean that U.S. products cannot be sold in China unless the U.S. companies give China their current patents plus their research and development of new products. This targets our most innovative manufacturing and service industries, including computers, software, and telecommunications.

The Chinese government has issued a catalog of products that are subject to this obnoxious rule, and the list is expected to be expanded soon to other industries. China's "indigenous innovation" rule will exclude many major U.S. firms from the Chinese market or require them to give China their patents and advanced technology.

Yongshun Cheng, former senior judge and deputy director of the Intellectual Property Division of Beijing High People's Court, stated bluntly that the proposed U.S. patent bill is bad news for American innovation and good news for foreign infringers. He pointed out that the bill "is friendlier to the infringers than to the patentees in general as it will make the patent less reliable, easier to be challenged, and cheaper to be infringed."

President Obama has promised that exports are the key to our recovery from the current recession. But China's "China First" policy drives a dagger into our hope for more exports. Free trade now means free to China.

Nineteen U.S. trade associations, including the U.S. Chamber of Commerce, the National Association of Manufacturers, and the Business Roundtable, signed a joint letter to six Obama Administration agencies calling China's behavior "alarming." The letter warns that this rule poses "an immediate danger to U.S. companies" and to their "ability to create jobs here at home."

The longtime consensus among government and business elites has been that as China became richer, its interests would become more like ours. It didn't work out that way because China is a Communist totalitarian country striving for military and economic superiority.

Our American patent system is a precious American property right which the Founding Fathers put into the U.S. Constitution even before they added freedom of religion and speech. The inventor's exclusive right to his discovery for limited times was unique in 1787; it still is unique, and 220 years of experience have proved it is the world's best system because the overwhelming majority of great inventions are American.

Our successful system is under attack not only by the foreigners who want to steal our innovations, but also by some big corporations. Most of our breakthrough inventions have come, not from big corporations, but from independent inventors and small companies.

The big corporations, however, have the lobbyists and the lawyers, and they are breathing hard on Congress to change our patent law to make it easier to challenge the patents granted to small inventors. The big corporations want to challenge a patent after it is issued (known as post-grant review), thereby delaying for many years the inventor's ability to use his own invention and forcing him to spend a fortune on litigation.

Congress should hold a new hearing to listen to the views of real inventors. We also want to hear what the Obama Administration and Congress will do to protect U.S. innovation, inventors and small businesses from Chinese theft and arrogant attempts to force us to give away all our patents.