The Patent Act Is A Cheat On Americans

by Phyllis Schlafly October 31, 2007

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When displaced American workers complain about outsourcing U.S. manufacturing jobs to take advantage of cheap Chinese factory labor, and about insourcing low-paid Asians on H-1B visas to take engineering and computer jobs, the globalists and multinational corporations have a ready answer. They recite in chorus: don't worry, be happy, because American technology and innovation enable us to compete in the global market.

But now those same globalists and multinationals are trying to outsource our technology and innovation advantage by delivering a body-blow to our unique and original patent system. This plan comes under the deceptive label Patent "Reform" Act (H.R. 1908), and it's already been rushed through the U.S. House.

Our patent system is the reason why nearly all the world's great inventions are American, giving us a standard of living that is the envy of the world. The right of inventors, large and small, to own their own inventions, is so important that it (along with copyright) is the only "right" protected in the original U.S. Constitution (preceding all the more famous rights spelled out in constitutional amendments).

A combination of foreigners who make a business of stealing our intellectual property, and the multinationals who want to avoid paying royalties to small

inventors, have ganged up to get Congress to do their bidding. The battle is going on behind closed doors between the corporations with highly-paid lobbyists vs. the small inventors and businesses who produce 40 percent of U.S. innovation.

This attempt to bully the small guys with legislation doesn't make sense. But it's rolling through the halls of Congress because it has dodged publicity.

Item #1: The Patent "Reform" Act would change the rule for granting patents from the American first-to-invent requirement to the foreign procedure called first-to-file. This provision is arguably unconstitutional: the U.S. Constitution protects the ownership "right" for "inventors," not filers.

There is no good reason to prefer any foreign procedure over the successful American system. And there is a mighty good reason not to: first-to-file would bring a tsunami of applications ground out by the multinationals' large staffs, leaving the small inventors buried in paper.

Item #2: The Act would make it mandatory for the U.S. Patent Office to publish (i.e., post on the internet) all inventions 18 months after date of application, thereby repealing the option now used by 37 percent of American inventors to prevent publication by agreeing not to file in foreign countries. The big winner of this nasty provision would be the Asian pirates who sit at their computers and steal American inventions between publication at 18 months and 32 months, which is the average time it takes for a patent to be granted.

Item #3: The Act would create post-grant review, a process that would enable patent infringers to challenge the validity of a patent after it is issued without going to court, thereby making the inventor's ownership vulnerable and reducing his ability to attract venture capital to produce it. The big winners would be the multinationals with lots of lawyers.

Item #4: The Act would reduce the damages that a judge and jury can award to an inventor after proof that his invention has been stolen or infringed. Again, the winners would be the multinationals with big legal departments and deep pockets.

Item #5: The Act would weaken protections under U.S. trade laws that prevent foreign pirates from exporting their products made with stolen intellectual property into the United States. The result would be a perverse incentive to export our technology and jobs to foreign countries.

The advocates of the Patent Act say that it is needed to reduce patent litigation. Au contraire: the bill is more likely to increase not reduce litigation, and the percentage of lawsuits has remained constant for the last 15 years at about only 1.5 percent of all patents granted.

In 2007, the Supreme Court and the Federal Circuit (which hears patent appeals) handed down several precedent-changing decisions about patents which appear to shift the balance of power away from independent inventors and small businesses. The Patent "Reform" Act was written before any of these important decisions, and we should wait and see their effect before rushing in with new legislation.

There are a couple of problems with our current patent process that need fixing, but the Patent Reform Act doesn't address those. Congress should restore to the U.S. Patent Office the revenue from the fees paid by inventors with their applications, which Congress took away in 1999 in order to divert the money to federal spending projects.

With more revenue, the Patent Office could hire and train more qualified examiners so that patent applications could be processed within 18 months.

Americans cannot afford to get it wrong about protecting our patent system. It is crucial to maintaining our world leadership in technology and innovation.