



# THE PATENT TRUTH

June 20, 2011

A radical overhaul of the U.S. Patent system is rapidly approaching. S23 passed 95-5 in the Senate in January and HR 1249 seems to be on track to be called in the House in the next few days. And now suddenly there is pushback. Congressmen are confused. Staffers are confused. The public is largely unaware and the pressure is on...from someone...somewhere to get this sweeping overhaul passed quickly.

How does one navigate a position on this? Harry Reid, Pat Leahy, Orrin Hatch, Lamar Smith, and Eric Cantor sing the bill's praises. So do President Obama and Gary Locke. International corporations like Intel and Google are eager for its passage. Smaller companies and entrepreneurs fiercely oppose. James Sensenbrenner, Dana Rohrbacher and Phyllis Schlafly claim it is blatantly unconstitutional. Patent attorneys paid by multinational corporations swear it is not. Given the confusion, which side does one take when one must take one?

## COMMON SENSE

What is the rush? If the bill is as good as proponents claim, can't it withstand a bit more scrutiny? Didn't we recoil as a nation when the healthcare bill was pushed through Congress without careful scrutiny?

Since it is multi-national corporations pushing this, what is their motive? Is it concern over producing more American jobs? Building the domestic economy? Or will their ability to lay claim on patents more easily allow these global giants to give away American superiority in invention to the Chinese in return for market access?

Should Congress be concerned that passage of HR 1249 will allow corporations like G.E. and Microsoft (major backers of 1249) to dominate the U.S. patent process as never before, freezing out thousands of small inventors from a process that has made the U.S. the leader in innovation for the past 200 years? Opponents of the bill warn "yes!"

## CONSTITUTIONALITY

Several Congressmen have signed a letter requesting a review of the constitutionality of HR1249. What is their motive? Will they become rich by the challenge? Is there any personal gain?

Patent attorneys paid by international conglomerates are eloquent in their emphatic declaration that HR1249 is constitutional. They assure us Article I Section 8 doesn't really mean the "first to invent" gets the patent, but instead actually means the "first to file" the papers. Trouble is, in spite of their explanations, there is enough historical evidence on the matter to prove the opposite. Chief Justice John Roberts, writing June 6th the 7-2-majority opinion on a patent challenge stated this, "Since 1790 the patent law has operated on the premise that rights in an invention belong to the inventor."

Anyone interpreting Article I Section 8 and the subsequent decisions of 1790 differently will eventually have to make their case to the current justices when HR1249 is inevitably challenged in court; And to the Tea Party to whom constitutionality is a preeminent issue.

## DANGERS FROM CHINA

Is there real danger from China on this bill? In a letter to Speaker John Boehner in April of this year, the Inventors Network of the Capital Area, a group of entrepreneur inventors, wrote the following:

“We are deeply concerned that the proposed ‘first to file’ provision has an overlooked but unusually dangerous defect that seriously threatens our national defense... Under the ‘first to file’ provision of H.R. 1249, Chinese hackers who steal U.S. R& D secrets can easily become the very first to file U.S. application patents covering those technology secrets and thereby own that new technology even in the U.S., instead of now just being able to copy it in China.”

The Chinese have been able to copy much of what we have, but they don’t create it. Already, GE, headed by Obama Jobs Council Chief Jeffrey Emmelt, has turned over many GE patents and technology to China in return for entry into the Chinese Market.

In 2007 when a similar “patent reform bill” was being considered by the House, Yongshun Cheng, Senior Judge of Beijing’s High Peoples Court said, “the bill is friendlier to the infringers (China) than to the patentees...this is not bad news for developing countries.”

General Electric has already signed agreements making available to the Red Chinese important patent and trade secret information, which they possess. Microsoft is now building a new invention/technology complex in China. And China is demanding this intellectual property information from U.S. corporations as a condition of trade.

Do we seriously think the Chinese have American jobs in mind as they enter these agreements?

Awareness of these troubling truths may make a decision on this patent reform bill not so confusing after all.