

IPO Blasts Prof. Crouch on Patent Reform: Is it D.O.A.?

With much fanfare, the House leadership is moving forward with a patent reform proposal lobbyists around town are predicting will pass that body in September. Whether this comes about or not is hardly the crucial step: At present, there is no reason for optimism that the United States Senate will approve any patent reform proposal even remotely resembling the current House proposal, H.R. 1908.

An August 30, 2007, letter from Republican Leader John Boehner and Whip Roy Blunt outlines a core opposition to the legislation which is unlikely to block *House* passage but surely will be able to defeat *Senate* passage necessary for enactment.

IPO vs. Professor Crouch: In a rare attack on an academic's view, IPO notes the pronouncement by Professor Dennis Crouch that the legislation will not be enacted by Congress, *Congressional Patent Reform is Dead; Long Live Administrative Patent Reform*, *Patently O* (August 30, 2007). Prof. Crouch reminded his readers that several months ago he had "declared that new patent legislation [to be] effectively blocked within Congress....[L]egislative reform is, for the most part, a sideshow as the executive and judicial branches are still running with the ball." *Id.*

IPO patronizingly notes that "a majority of lobbyists in Washington, who talk to members of Congress every day for and against the legislation, are convinced that some form of it will pass this year or next." *IPO Daily News (attached).*

It would be good to take a deep, deep breath, step back, and see just why there are entrenched interests that will be big losers if the current patent reform proposals are enacted, which is precisely why Professor Crouch will be vindicated at the end of the day as patent reform legislation ultimately stalls in the United States Senate.

Attached are the *IPO Daily News* attack and the GOP letter.

Regards,

Hal

IPO DAILY NEWS

FRIDAY, AUGUST 31, 2007, 9:30 a.m.

PATENT REFORM LEGISLATION IS NOT DEAD – Despite a pronouncement yesterday by the most widely read patent law blogger, Dennis Crouch, who has an excellent record for accuracy, that “Congressional patent reform is dead,” lobbying on patent reform in Washington is continuing at a torrid pace. Crouch posted yesterday’s letter by the top two Republicans in the House of Representatives to Speaker Nancy Pelosi asking that the bill not be rushed to the floor of the House. However, the House and Senate patent reform bills are very much alive. IPO Daily News has the impression that a majority in the patent community outside Washington may believe patent reform is dead, but a majority of lobbyists in Washington, who talk to members of Congress every day for and against the legislation, are convinced that some form of it will pass this year or next. Daily News will increase its coverage of patent reform legislation when Congress returns next week.

Congress of the United States
Washington, DC 20515

August 30, 2007

The Honorable Nancy Pelosi
Speaker
H-232, U.S. Capitol
Washington, D.C. 20515

Dear Speaker Pelosi

We are writing to express concerns about the pending patent reform legislation (H.R. 1908). As you know, patents are the lifeblood of the enormously diverse economic engines that drive our economy. That diversity is one of the reasons that the United States economy is the strongest in the world. While our patent system is in need of reform, we are very concerned that the bill in its present form picks winners and losers among industries with different business models in a way that has never before been attempted in patent law or practice.

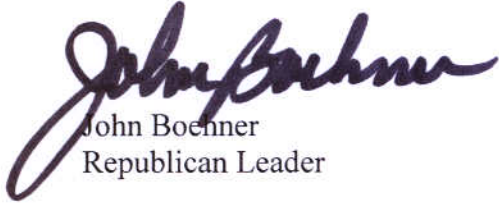
Unquestionably, improving our patent system and the quality of patents is of paramount importance. However, those improvements cannot come at the cost of some domestic industries over others. There is no doubt that the bill's sponsors have worked hard on the legislation, but a bill of this importance and impact should not be rushed to the floor for quick passage. In our current political climate it is rare to find an issue that unites groups from the AFL-CIO to Eagle Forum in opposition to a bill they view as undermining the patent system that created quality jobs and American innovation. With manufacturers, labor unions, universities, biotech companies, high tech innovators, independent inventors, and others all expressing concerns about the patent bill in its present form, it is a strong and clear signal that more work needs to be done to reach consensus on patent reform.

We agree that some progress has been made, for example, on the post grant opposition issue, nonetheless we remain concerned that the right balance has not yet been struck on many other crucial issues within the patent reform debate—such as damages, rulemaking authority for the Patent & Trademark Office (PTO), inequitable conduct, and others.

Rather than scheduling this bill for quick consideration by the House, we are asking you to work with the sponsors in urging them to continue to work to find

consensus so that all U.S. companies benefit from reforming the patent system rather than advantaging one business model over another. If that course is pursued, we stand ready to work with you in a bipartisan manner for an outcome that benefits the entire U.S. economy.

Sincerely,



John Boehner
Republican Leader



Roy Blunt
Republican Whip

cc: Hon. John Conyers
Hon. Lamar Smith
Hon. Howard Berman
Hon. Howard Coble