The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Madam President, what is the pending business?

PATENT REFORM ACT OF 2011—Continued

The PRESIDING OFFICER. The clerk will report the pending business.

The bill clerk read as follows:

A bill (S. 23) to amend title 35, United States Code, to provide for patent reform.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, since this debate began, we have heard a lot about how the America Invents Act will help unleash the American inventive spirit. As a matter of personal pride, I point out that Vermonters have a long history of innovation and invention, and it is that creative spirit which has given rise to some interesting and even revolutionary inventions.

Few people may know that Vermont is issued the most patents per capita of any State in the country. Fewer still may know that the first-ever patent issued in the United States, which was reviewed by Secretary of State Thomas Jefferson and signed by George Washington, was granted to a Vermonter in 1790. It was Samuel Hopkins of Pittsford who began the great tradition of American innovation.

Throughout America's history, Vermont has contributed to our economic prosperity with inventive ideas. Thaddeus Fairbanks of St. Johnsbury patented the platform scale in 1830, which revolutionized the way in which large objects were weighed. Charles Orvis, of Manchester, the founder of the well-known sporting goods retailer Orvis, patented the open fly fishing reel in 1874. Many other inventions originated from Vermont in the early years of America, including an electric motor, an internal combustion engine, and the paddle wheel steamship.

Today, that innovative Vermont spirit continues. Vermonters have been contributing to the American economy through innovation and invention every year.

Exploring new ways to modify existing products to limit the environmental impact is a quintessentially Vermont idea. Researchers at the University of Vermont have developed and are now seeking a patent for a wood finish that releases fewer toxins into the air than standard finishes. They do it by utilizing whey protein instead of petroleum. In the State of the Union Address, President Obama noted that advances in green technology will be a key driver of our economy in the 21st century. Vermont inventors have been and will continue to be out in front in this area.

Computer technology will also be a driver of our 21st-century economy. Vermonters are active in producing the next generation of this technology as well. Viewers across the country were fascinated by the recent appearance of IBM's Watson supercomputer on ''Jeopardy.'' Components used to power Watson were invented by IBM researchers in Vermont, and I am sure those Vermonters watched proudly as Watson defeated Jeopardy legends Ken Jennings and Brad Rutter in the recent man-versus-machine matchup.

Modernizing the patent system will help to ensure Vermont inventors will still be able to compete, not just on a national stage but in the international marketplace.

Much has changed since Samuel Hopkins received the first U.S. patent in 1790, but the need for a flexible and efficient patent system has remained constant. Inventors from Burlington to the Bay Area require the appropriate incentives to invest in the research required to create the next platform scale or the next Watson computer or the next lifesaving medical device.

Over the last 6 years, I have worked on meaningful, comprehensive patent reform legislation. During that time, I have kept in mind the tradition of great Vermont innovators such as Thaddeus Fairbanks and Charles Orvis. I was also pleased that we had key Republicans and Democrats working together to get this legislation before the Senate.

The next generation of Vermonters is as eager as the last to show America and the world what they can produce. Vermont may be one of the smallest States in our Nation, but it is busting with creativity. The America Invents Act will ensure that the next Samuel Hopkins can flourish well into the 21st century.

Senator GRASSLEY and I had a couple of matters we were going to take care of. I see a distinguished colleague seeking recognition. Before I yield the floor, might I ask my friend how much time he may need?

Mr. CORKER. I will speak briefly. I apologize. The chairman has done such a wonderful job working this bill through. I came down earlier, but I wasn't able to speak.

Mr. LEAHY. I will yield so my colleague can speak, and then the Senator from Iowa will be back, and we can continue with our other business.

The PRESIDING OFFICER. The Senator from Tennessee.

FUNDING THE GOVERNMENT

Mr. CORKER. Madam President, as in morning business, I rise to speak on another topic that is actually related to us being competitive.

I think everybody understands that we had another bipartisan event that just occurred recently where we kept government funded, if you will, for another couple of weeks beyond the deadline that was coming in the next day or so. I applaud the efforts of both sides to work together to make that happen.

Speaking of competitiveness, it is very difficult for a government to function having short-term CRs every 2 weeks. What I urge, while this work is going on on the floor, is that the House and the Senate, both sides of the aisle, work toward a longer term CR. I know we are working on reductions in spending which have to take place to keep our government in check and keep our country in the place it needs to be, but the work we need to do to fund the government for the rest of the year is actually the easy work we are going to be facing as it relates to spending.

Today, I saw where Vice President BIDEN has been asked by the White House—the President—to take the lead on this issue. I take that as a good sign. I saw Secretary Geithner today. He is planning on engaging on this issue.

I urge that we do the work we need to do. We all know there are going to be painful and tough decisions coming. A lot of people have been arguing and debating against spending cuts and are talking about the havoc it is going to create for government. I imagine that Secretary Gates over at the Defense Department is trying to deal with overseas operations and trying to deal with investing in the future, and other agencies of government would much rather see what these cuts are going to be and plan accordingly versus working on a 2-week CR.

I am just urging that we do the tough work we have to do. All of us know it will be painful. All of us know we are going to have to prioritize. All of us know there will be a number of constituencies around the country that will be less than happy. But for the good of our country, let's go ahead and together, Democrats and Republicans, Independents and the administration, work together toward a solution.

I know the House sent over a continuing resolution bill that takes us through the rest of the year. We have not yet seen what the Democratic majority in the Senate might offer. It is my hope that something is being worked on. I think the American people in the functioning of this government—those who cause this government to function—need to know what those cuts will be, where we are going.

Speaking on that note—and I will close with this—one of the things most frustrating to me as a Senator who came from the world of business is that we never know where we are going. We debate the current issues. We never plan for the future.

I hope that as a part of all we are doing this spring, this incredible opportunity we have in this body to deal with the issue of spending, with the issue of deficits, it is my hope that as a part of this, what we will do is pass a global cap on spending, a comprehensive cap that takes us from where we are today into a place that has been a 40-year historic average. Senator MCCASKILL and many others have joined me in something called the CAP Act. It is the type of responsible legislation we need to pass to get our country back where it needs to be.

We know we have a huge spending problem today. There are many explanations for that. But as a country, to

make ourselves competitive, as the Senator from Vermont talked about and I am sure the Senator from Iowa is getting ready to talk about, we also need to make sure we keep our fiscal house in order.

Let's deal with these tough issues and solve this problem for this year and move on to the longer term issues.

I thank the Chair, and I thank the Senator from Vermont.

I yield the floor.

Mr. LEAHY. Madam President, I ask unanimous consent to set aside the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I ask unanimous consent to bring up and agree to amendment No. 132, the Cardin-Landrieu amendment.

The PRESIDING OFFICER. The clerk will report.

Mr. GRASSLEY. Mr. President, do we report it first and then object or do we object even to the reporting of it? I heard the Presiding Officer say report the amendment.

The PRESIDING OFFICER. The Senator can object to laying aside the pending amendment.

Mr. GRASSLEY. OK. I object on behalf of Senator COBURN of Oklahoma.

The PRESIDING OFFICER. Objection is heard.

Mr. LEAHY. Madam President, I ask unanimous consent that we revert to the pending amendment, which I believe was the Leahy amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LEAHY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

DELIVERY SYSTEM REFORM

Mr. WHITEHOUSE. Mr. President, I am here to speak about a report that was released by the Centers for Disease Control, which I think is instructive for the American health care system. We are currently in a process of change in health care. Changing the way health care is delivered in our country is going to take years of hard work, of experimentation, and of learning. There are stakeholders on both the Federal and State level who are out there right now, working to implement models of care that increase the coordination and efficiency with which health care is delivered, improve the quality of the care that is delivered, improve the outcomes that patients experience, and control costs—bring down costs. This delivery system reform is the real issue of health care reform in our time. I emphasize, it is a win-win for system—improving the quality of care while lowering the cost for the system.

This report, called ''Vital Signs,'' released this week by the Centers for Disease Control, illustrates how just one type of quality reform, reducing hospital-acquired infections, has already improved health outcomes and resulted in significant cost savings. Hospital-acquired infections are a tragic reality of our health care system. Nearly 1 in every 20 hospitalized patients in the United States is affected by a hospital-acquired infection each year. The most deadly of these infections occurs when a tube inserted into a patient's vein is either not put in properly or not kept clean. Bloodstream infections resulting from these tubes—what are called central line infections—kill as many as 1 in 4 patients who become infected.

I suspect, if we sat all the Members of the Senate down, there would be very few of us who could not identify a friend, a loved one, a family member, somebody we knew who had been exposed to a hospital-acquired infection.

The deaths from hospital-acquired infections are not only numerous but tragic and particularly tragic because they are largely preventable. These are what should be considered a zero event.

Studies have shown that when providers follow a strict checklist of very basic instructions, including things as simple as washing your hands with soap, cleaning a patient's skin with antiseptic, and placing full sterile drapes over the patient, those rates of hospital-acquired infection plummet.

The CDC's ''Vital Signs'' report is further evidence of how effective these guidelines are at reducing and in some cases nearly eliminating central line bloodstream infections from intensive care units. The report's findings show that from 2001 to 2009, State and Federal efforts to promote and adopt CDC guidelines and best practices for preventing hospital-acquired infections contributed to a 58-percent decrease in the number of central line bloodstream infections among ICU patients—58 percent decrease in just 8 years, from 2001 to 2009.

A percentage is a fine thing, it is a statistic, but it does not have a lot of meat on its bones. What does this 58 percent mean? It represents up to 27,000 lives saved, 27,000 families who got their loved one home from the hospital instead of having that terrible conversation with the doctor, explaining to them why their loved one passed away. If that were not enough, it also represents approximately $1.8 billion in cost savings to our health care system—27,000 lives and $1.8 billion saved from reductions in just one type of hospital-acquired infection in just one type of care setting.

The promising news from the CDC report is that the steps health care providers are taking to prevent this type of infection are working. The bad news is, we are not doing enough to reduce the occurrence of bloodstream infections in other health care settings. The report found that in 2009, approximately 60,000 central line bloodstream infections occurred in nonintensive care unit settings such as hospital wards or kidney dialysis clinics. This should not be acceptable to us, especially given the tools we know we have to prevent these infections from happening.

Simply put, we can do better. We can save more lives. We can improve the quality of care people receive and, in the process, save billions of dollars in our health care system. The CDC is already working to support partnerships between health care providers to more broadly implement these now-proven quality reforms. This is a good start.

In my home State, I have very proudly watched the Rhode Island Intensive Care Unit Collaborative, a partnership of health care stakeholders led by an organization called the Rhode Island Quality Institute, take the lead in implementing similar quality reforms to reduce the rate of hospital-acquired infections in our intensive care units. Rhode Island is the only State in the country to have 100 percent of its adult intensive care units participating in a collaborative of this kind, and I commend it to any one of my colleagues. It began years ago in Michigan with the Keystone Project and it spread across the country to the Pronovost principles, and in Rhode Island we have run with it. It has only been a few years, but the results, much like those reported by the CDC, are eye-opening. I will quantify this by saying we began with very first-rate hospitals in Rhode Island. We are in that high-tech Northeast corridor. We are near the Boston medical centers, so we are starting from a very high base of care in Rhode Island hospitals. But even from that good base, the collaborative reported significant improvements in two types of deadly infections: central line bloodstream infections and pneumonia, among patients on ventilators.

The collaborative estimates from 2007 to June 2010, just over 7 years, the effort had saved 73 intensive care unit lives—73 lives of intensive care unit patients—it eliminated the need for over 3,200 expensive hospital days, and it saved hospitals, patients, and insurers $11.5 million.

This evidence underscores the potential for similar types of delivery system reforms which, by improving the quality of care, lower the cost. An array of different strategies can lead to these savings, quality reforms such as this that avoid errors and adverse consequences; prevention programs that save lives and money by getting in there before the disease takes off; a robust health information infrastructure that allows for safer and better coordinated care between your primary health care provider, your specialists, your imaging place, the laboratory, the hospital where you had to be admitted; payment policies that reward better results, not just more procedures; and, finally, better administrative efficiency

so more health care dollars actually go to health care instead of being burned up on bureaucracies and battles over who gets paid and all the rest that weighs down our health care system.

The President's Council of Economic Advisers noted recently that up to 30 percent of health care costs, or about 5 percent of GDP, could be saved without compromising health outcomes. Five percent of GDP is around $700 billion. Mr. President, $700 billion a year saved through this kind of win-win is a target worth fighting hard to achieve. I agree with the Council's observation, but from my experience, I think we can achieve these savings not just without compromising health outcomes, I think we can achieve these savings while improving health outcomes.

Implementing these reforms and achieving these reforms will not be easy. It is not just flipping a switch, it is a journey and that journey will have turns and it will have obstacles. It is a process, as very expert reviewers have said, of learning, of experimentation, of adaptation. But we have been down paths such as that before with great success, and the evidence I presented today shows how well it can work in health care.

So I urge my colleagues, I urge the administration and State leaders to continue working together in all of these areas to make reforming our health care delivery system a priority. The future of our health care system and the good health of our constituents and the good health of our country's fisc all depend on it.

I will conclude by saying something I have said before, which is that I give great credit to the Obama administration for working in this area. I believe our health care reform bill put every possible pilot, experiment program, and model for testing these different types of delivery reform systems on the table. Very expert reviewers have looked at it and said: I cannot think of a thing they did not try. Everything is in there. On top of that, the Obama administration has put first-rate people who really get this side of the equation, people such as Don Berwick and David Blumenthal, in charge. So a lot of very good things have lined up to take full advantage of these kinds of win-win savings.

The only thing that I think is missing is that the administration has not yet set a hard goal for itself to hit. It still talks about bending the health care cost curve. Well, fine, but that is not a measurable goal.

We are coming up on the anniversary of President Kennedy's pledge to put a man on the Moon. Way back then, when we feared losing the space race to the Soviet Union, if the President of the United States had said: I am committed to bending the curve of the rate of America's space exploration, that would have been an unmemorable and an ineffective Presidential intervention. Instead, President Kennedy put a hard benchmark out there that everybody in the world would know we had failed at if we missed it. That was to put a man on the Moon within a decade and bring him home safely. We did not know then how we could do it. We believed we could. We are optimists. We are innovators.

This is a country of innovation and of the ''big idea.'' By putting that marker out there, President Kennedy drove what was then a smaller Federal bureaucracy toward that goal. I believe we need an equally specific goal from the administration on this front in order to make sure our considerably larger Federal bureaucracy is fully purposed toward achieving that because the goals are going to be so significant.

I congratulate the CDC on their report. I wish to remind my colleagues how valuable this kind of health care reform is. It is not what we yell about here, but it is out there right now saving lives and saving money. We need to encourage it and we need to expand it, and the more the administration can put a hard goal out there for itself, the quicker we will get where we need to be, to the great benefit of ourselves as a country and our individual fellow American citizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

(The remarks of Mr. WHITEHOUSE pertaining to the introduction of S. 486 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

AMENDMENT NO. 142

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to set aside the pending amendments and, on behalf of Senator BINGAMAN, call up amendment No. 142.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant editor of the Daily Digest read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE], for Mr. BINGAMAN, proposes an amendment numbered 142.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 142

(Purpose: To require the PTO to disclose the length of time between the commencement of each inter partes and post-grant review and the conclusion of that review)

On page 50, between lines 2 and 3, insert the following:

''(c) DATA ON LENGTH OF REVIEW.—The Patent and Trademark Office shall make available to the public data describing the length of time between the commencement of each inter partes review and the conclusion of that review.''.

On page 65, between lines 9 and 10, insert the following:

''(c) DATA ON LENGTH OF REVIEW.—The Patent and Trademark Office shall make available to the public data describing the length of time between the commencement of each post-grant review and the conclusion of that review.''.

Mr. WHITEHOUSE. Mr. President, it is my understanding that this amendment is agreeable to both sides; therefore, I ask for its adoption.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 142) was agreed to.

Mr. WHITEHOUSE. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

BUDGET CHOICES

Mr. SANDERS. Mr. President, as you well know, Congress is now engaged in a debate of huge consequence; that is, the budget. The budget of a nation, like the budget of a family, expresses who we are as a people and what our priorities are. Where you spend your money, where you make your investments tells you everything about what we believe in.

I am more than aware that this country faces a $1.6 trillion deficit and a $14 trillion national debt. And these are enormously important issues, but they are issues that have to be dealt with in a sensible way, and they are issues that have to be dealt with within a broader context.

So I think the very first question we have to ask is, How did we get to where we are today? Is the problem, in fact, that we spend too much money on Head Start and childcare, that we just shower so much on our children, or is the converse the truth in that we have the highest rate of childhood poverty of any major country on Earth?

How did we get into the deficit? Well, let me tick it off. And when we discuss how we got into the deficit situation, the irony here is that those people who are yelling loudest about the deficit, who are fighting hardest to make savage and Draconian cuts on basic programs, are precisely the people who led us to where we are today.

I voted against the war in Iraq for a number of reasons, one of them being that it was not paid for. Do you happen to recall that as we went into the war in Iraq—which will end up costing us about $3 trillion by the time we take care of our last veteran—do you recall much discussion about how that war was going to be paid for? In fact, do you remember one word of how that war was going to be paid for? I don't remember that. I was in the middle of that debate. Mr. President, $3 trillion, and no one said: Oh, we cannot afford it.

When the crooks on Wall Street, through their illegal behavior, their reckless behavior, drove this country into the recession we are in right now and they came begging to the Congress for their welfare check of some $800 billion, do you recall too many of the people who voted for that saying: Gee, we cannot afford to do it. It is going to drive up the deficit. How are we going to provide Wall Street with an $800 billion bailout? I don't recall that discussion.

When I was in the House a number of years ago, Congress passed an initiative from President Bush for a Medicare Part D prescription drug program. I believe seniors must have prescription drugs, but that legislation, which was written by the insurance companies and the drug companies, was not paid for.

When our Republican friends fought vigorously for tax breaks for billionaires, which would result in significantly less money coming into the Treasury, driving up the deficit, do you recall much discussion about how we were going to pay for that? I don't recall that discussion.

I find it ironic that when we give tax breaks to billionaires, no worry about the deficit. When we bail out Wall Street, no worry about the deficit. But suddenly when we provide childcare to low-income children who are in desperate need of help in the midst of a recession, suddenly everybody is concerned about the deficit. Frankly, I call that absolute hypocrisy. It is hypocrisy to say we can give tax breaks to billionaires and not worry about the deficit, but we have to cut back on the needs of working families, the middle class, the sick, the poor, and the elderly.

This country, at this particular moment, has to make some very basic decisions. The decision we must make is whether, in the midst of this horrendous recession, when the middle class is hurting, when poverty is increasing, do we go after, as our Republican friends in the House want us to, programs that are virtually life and death for millions and millions of working-class and lower income people.

I don't know about West Virginia, but I can tell my colleagues that in Vermont it is very hard for working families to get adequate, affordable, and good-quality childcare, early education for their children. It is a major problem all over the country. Yet our Republican friends say we should balance the budget by cutting Head Start $1.1 billion, a 20-percent cut from 2010, and throwing over 200,000 kids off Head Start. If you are a working mom who sends her kids to Head Start now, it feels pretty good that your kid is getting a good quality, early childhood education, getting nourishment. They watch these kids for health care problems. We are going to throw over 200,000 kids off Head Start.

I worked very hard to expand the community health center program, which I know is so important in West Virginia and Vermont. The Presiding Officer and I argue about which State has the greater coverage. It is enormously important. A few years ago, about 20 million people accessed the community health center program. We are now working so that in 5 years 40 million Americans will be able to walk in the door, regardless of their income, get health care, dental care, low-cost prescription drugs, and mental health counseling. It is working. President Obama has been very strong on this issue. Secretary of HHS Kathleen Sebelius has been very strong on this issue. It is working.

Here is the irony. When we give people good quality primary health care, they don't have to go to the emergency room. The emergency room costs 10 times more than treatment at a community health center. When we open the doors for primary health care, people do not get very sick. They don't end up in the hospital. Study after study shows that when we invest in community health centers, we save the taxpayers money. We save Medicaid money and Medicare money because people have access to medical care when they need it. The Republican House wants to cut community health centers by $1.3 billion, denying 11 million Americans the opportunity to receive the health care they need.

In my State—and I am sure all over the country—people who are applying for disability help, for Social Security are upset about how long the process takes. Our Republican friends want to make major cuts in the Social Security Administration, which means that half a million people are going to find delays in getting their claims processed.

Everybody in America knows that one of the great problems we face is the expense of college. We know hundreds of thousands of bright young people can't even afford to go to college. We know that many people are graduating deeply in debt. One of the accomplishments we have managed to bring about in the last few years is to significantly expand the Pell grant program so low- and moderate-income families will find it easier to send their children to college. Our Republican friends in the House have decided, in their wisdom, that what they want to do is reduce by 17 percent Pell grants, which means that 9.4 million lower income college student would lose some or all of their Pell grants. Here we are, trying to compete with the rest of the world. We are falling, in many cases, further and further behind in terms of the percentage of our young people graduating college. The costs of college are soaring. The Republican solution is to cut the major program which makes it easier for working families to send their kids to college.

The Community Services Block Grant Program is the infrastructure by which we get emergency services, food, help to pay for emergency services for lower income people, housing needs, making sure people keep the electricity on. That would be decimated by the Republicans.

In the midst of a recession, what they want to do is to cut $2 billion from the Workforce Investment Act and other job training programs when we desperately need that job training to make sure our people can get the jobs that are out there and available. Often they don't have the skills to do that.

My point is a pretty simple one. As a nation, we have to make some choices. The top 1 percent today are doing phenomenally well. That is a fact. Our friends on Wall Street whom we bailed out are now making more money than they did before they caused this recession. The top 1 percent now earns about 23 percent of all income in America, more than the bottom 50 percent. The top 1 percent, the richest people in terms of their effective tax rate, what they pay is now lower than at any time in memory. So we have the wealthy doing phenomenally well, tax rates going down. We have showered huge tax breaks on them. Then we say, to balance the budget, we have to cut nutrition programs for our kids, Social Security Administration, Pell grants, Head Start, and many other programs which millions of people depend upon.

The question we as Americans have to decide is, When the rich get richer, do we give them more tax breaks while the poor get poorer and we cut programs for them? I don't think, frankly, that is what the American people want.

There was a poll that came out yesterday or today. It was an NBC News and Wall Street Journal poll. The questions dealt with the deficit and how the American people think we should go forward in dealing with the deficit. Here are some interesting results. When asked what do Americans want the Federal Government to do to reduce the deficit, the highest percentage said it is totally acceptable or mostly acceptable to impose a surtax on millionaires to reduce the deficit. Eighty-one percent of the people said that for obvious reasons. The rich are getting richer. Given the choice of asking people who are already doing well to pay a little more in taxes or to cut programs that working families need, the choice is not terribly hard.

Seventy-four percent of the American people believe it is totally acceptable or mostly acceptable to eliminate tax credits for the oil and gas industry. Sixty-eight percent of the public believe it is totally acceptable or mostly acceptable to phase out the Bush tax cuts for families earning over $250,000 a year.

What the American people are saying in this poll, and I believe all over the country, is obvious. Given the choice of decimating programs that working families depend upon or asking the wealthiest people who have been receiving huge amounts of tax breaks to start paying their fair share, it ''ain't'' a tough answer. The answer the American people are saying is: We cannot move toward a balanced budget just by cutting, cutting, and cutting. A budget has two parts. Everybody in America understands that. It is the money we spend; it is the money that comes in. In the case of the U.S. Government, we have to address our budget deficit in both ways. We have to raise revenue. We do that primarily by asking the wealthiest to pay a little bit more in taxes. Yes, we do have to cut some programs. There is waste out there. There

are programs that can and should be cut. That is what we do. We don't just cut, cut, cut and then give tax breaks to the very wealthiest people.

The Senate has, along with our friends in the House, the responsibility, the constitutional responsibility of coming up with a budget. I certainly hope the President intends to play an active role. I hope the President is prepared to do the right thing and to understand that revenue, asking the wealthiest to start paying their fair share of taxes, is one important component of how we move forward toward a balanced budget. But if the President chooses not to participate or if the President chooses not to take that avenue, that does not mean to say that we in the Senate should not go forward. I intend to work as hard as I can to come up with a deficit reduction program which is fair but responsible. Being responsible means it includes revenue and not only cuts. There are a whole lot of ways to bring in revenue in a fair and progressive way. It is not only asking the wealthiest to pay their fair share of taxes, it is ending abusive and illegal offshore tax shelters. According to a number of studies, we will lose $100 billion this year because corporations and wealthy individuals are stashing their money in tax havens in the Cayman Islands and in Bermuda. Before we cut nutrition programs for pregnant women, maybe we do away with those tax havens.

We have to begin the process of ending tax breaks for big oil and gas companies. ExxonMobil, the most profitable corporation in the history of the world, not only paid nothing in Federal income taxes in 2009, but they received a $156 million tax refund from the IRS, according to their own shareholders report. Maybe before we start cutting the Social Security Administration or Pell grants for college students, we might want to ask the most profitable corporation in America to start paying some Federal income tax.

On and on it goes. My point is, now is the moment when we have to do the right thing for working families. There is a lot of pain out there. A lot of people are hurting. This recession has taken a heavy toll. In the middle of these tough times, we don't stick a knife into the people and make it even worse. We have to move toward deficit reduction. I believe that. But I believe we don't do it on the backs of the sick, the elderly, the poor, and the most vulnerable. I think we need shared sacrifice. Some of the wealthiest people are going to have to play their part in deficit reduction as well.

Mr. President, on behalf of the majority leader, there will be no further rollcall votes today. The next rollcall vote is expected on Monday at 5:30 p.m.

Mr. KYL. Mr. President, I rise to submit for the RECORD some of the materials I have quoted from during the Senate's debate on the first-to-file provisions of the America Invents Act. These materials are produced by the National Association of Manufacturers and by the 21st Century Coalition for Patent Reform, an industry group that has been the leading advocate for the bill. They offer a detailed explanation of and case for the bill's shift from the current first-to-invent system to a first-to-file system of establishing patent priority.

I ask unanimous consent that the following materials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Coalition for 21st Century Patent Reform, Mar. 2, 2011]

S. 23 AMERICA INVENTS ACT REQUIRES FIRST-INVENTOR-TO-FILE PROVISIONS

Any language that dilutes, delays or deletes FITF will gut meaningful patent reform.

An amendment to dilute, delay or delete the first-inventor-to-file provisions of S. 23 would effectively gut the substance of the America Invents Act. The Coalition opposes any such amendment and, were such an amendment to pass, we would oppose passage of the stripped- down bill that would result.

The first-inventor-to-file provisions currently in S. 23 form the lynchpin that makes possible the quality improvements that S. 23 promises. The Statement of Administration Policy lays out precisely what is at stake: ''By moving the United States to a first-to-file system, the bill simplifies the process of acquiring rights. This essential provision will reduce legal costs, improve fairness, and support U.S. innovators seeking to market their products and services in a global marketplace.''

Most of the arguments in opposition to the bill and FITF appear be to decades-old contentions that have been fully and persuasively rebutted. As one example, the National Research Council of the National Academies assembled a group of leading patent professionals, economists and academics who spent four years intensely studying these issues and concluded in 2004 that the move to FITF represented a necessary change for our patent system to operate fairly, effectively and efficiently in the 21st century.

Without retaining S. 23's current FITF provisions, the bill would no longer provide meaningful patent reform. As an example, the new provisions on post-grant review of patents, an important new mechanism for assuring patent quality, could no longer be made to work. Instead of a patent reform bill, what would remain of S. 23 would be essentially an empty shell.

Thus, we could not continue our support for passage of S. 23 without the first-inventor-to-file provisions present in the bill. It would place us in the unfortunate position of opposing moving forward with a bill where we have been among the longest, most ardent supporters.

After yesterday's 97 to 2 vote, it is time to move this excellent vehicle for comprehensive patent reform—in its current form—through to final Senate passage.

S. 23 MEANS NEW IDEAS CREATING NEW PRODUCTS CREATING NEW MANUFACTURING JOBS

Let S. 23 Make the Patent System Work for the 21st Century U.S. Economy

Keep the first-inventor-to-file provisions of S. 23 in the bill to afford all inventors the benefits for a more transparent, objective, predictable and simple patent law:

The first-inventor-to-file provisions of S. 23 protect independent inventors—they will particularly benefit from the simplicity of the first-inventor-to-file rule and actually gain patents that they otherwise would forfeit.

Eliminate the potential prejudice to U.S. patent inventors arising from the 1994 law that opened our patent system to foreign-origin invention date proofs.

Simplify the rules for patent applications so they can be processed more rapidly, at reduced cost, and become more effective patents for investing in new products:

Limit ''prior art'' used to bar a patent from issuing to only those disclosures made available to the public before the patent was sought and disclosures in earlier-filed patent applications.

Remove all arcane and subjective tests for deciding whether to issue a patent.

Repeal the ''patent interference'' provisions that inject delay, cost and uncertainty into the patenting process.

Let members of the public provide patent examiners with relevant publications and other public documents, before deciding whether a patent can be granted.

Keep and apply rigorous standards for issuing patents, but assure that they are simple, transparent and objective—making patenting rules more predictable.

Assure the highest possible quality for patents that have been granted:

Permit members of the public to challenge whether newly issued patents meet each of the rigorous standards for patenting—and require the United States Patent and Trademark Office to promptly cancel any patents that do not.

Authorize supplemental examination proceedings, before a patent is enforced, to allow patent owners to present the USPTO with information that may be used to assure the scope of the patent is commensurate with its contribution.

Allow the USPTO to set fees for the services it performs for processing patent applications sufficient to cover the costs of promptly completing a high-quality examination.

Make patent lawsuits fair and just for both patent owners and accused infringers.

Limit the ability of a party to recover false patent marking to the amount of the party's actual competitive injuries.

S. 23 PROTECTS INVENTORS ONCE THEY PUBLICLY DISCLOSE THEIR WORK

Protections the 1994 WTO Agreement Took Away, S. 23 Puts Back.

After inventors publicly disclose their work, competitors should not be able to take advantage of those disclosures by filing for patents on the disclosed work.

Once inventors have published on their work—or have made it available to the public using any other means—their competitors should not be able to run off to the USPTO and seek patents on the work that the inventor has already publicly disclosed. The same goes for permitting a competitor to belatedly seek a patent on a trivial or obvious variation of what the inventor had earlier disclosed publicly. This common-sense truth should apply even if competitors can lay claim to having themselves done the same work, but elected to keep secret the work that other inventors have publicly disclosed.

In a word, a competitor seeking a patent on what such an inventor has already published can be thought of as being akin to interloping. The competitor who is spurred into action by another inventor's publication can be regarded as interfering with the understandable and justifiable expectation of inventors who have promptly disclosed their work: they expect that they themselves should be the ones able to secure patents on

the disclosed work or, by publishing without later seeking patents, that they (as well as other members of the public) should remain free to continue to use what they have publicly disclosed.

S. 23 would increase the protection for inventors once they make their inventions available to the public by cutting off the potential for any sort of interloping. S. 23 operates to solidify an inventor's ''grace period'' that applies after the inventor has published or otherwise made available to the public his or her work. In brief, under S. 23, interloping in any form is prohibited—an inventor who elects to publish an invention will no longer need to have any concern that the publication will spur a competitor into a subsequent patent filing that could preclude the inventor from obtaining a patent or—even worse—from continuing to use his or her published work.

S. 23 better protects inventors than does current U.S. patent law in addressing interloping—by making the one-year ''grace period'' bulletproof.

Today, inventors enjoy a one-year ''grace period'' under U.S. patent law. What this means is that inventors themselves can still seek patents on their inventions even if they have made those inventions available to the public before seeking any patents on them. When inventors file for patents during the one-year period after making a public disclosure, their own disclosures are not useable as ''prior art'' against their patents.

However, the ''first to invent'' principle of current U.S. patent law makes relying on the one-year ''grace period'' fraught with some significant risk. The risk comes from the ability of a competitor who learns of the inventor's work through the public disclosure to race off to the USPTO and seek a patent for itself on the disclosed invention. The competitor can interlope in this manner by filing a patent application and alleging its own ''date of invention'' at some point before the inventor's public disclosure was made.

This makes relying on the current ''grace period'' a risky hit or miss. If an inventor waits until the end of the one-year ''grace period'' to seek a patent on the invention he or she made available to the public, an interloping competitor, spurred into quickly filing a patent application, may be issued a patent before the USPTO acts on the ''grace period'' inventor's patent application. The ''grace period'' inventor may be forced to fight to get into a patent interference against a competitor's already-issued patent, hoping to get the USPTO to cancel the competitor's patent so the inventor's own patent can be issued.

Interferences are notoriously difficult to win for an inventor who is not the ''first to file.'' The number of situations where someone other than the first to file for a patent on an invention actually succeeds in proving an earlier invention date are very few and very far between. Indeed, the most recent estimate is that striking down a competitor's earlier filed application or patent in a patent interference is less likely than the competitor being struck down by lightning.

What does S. 23 do about this defect in the ''grace period'' under current U.S. patent law? Quite simply, it wholly excises the defect—it will be gone in its entirety. It makes an inventor's public disclosure of the inventor's own work a bar to anyone thereafter seeking to patent that work itself, as well as any obvious variations of what the inventor made available to the public. In short, it is a complete fix to the risk a competitor will use the inventor's public disclosure as a spur to filing its own patents based on its own work.

S. 23 closes the door to interloping by foreign-based competitors that was opened in 1995 when the WTO agreement forced changes to U.S. law.

Under the World Trade Organization agreement reached in 1994, the United States was forced to change its patent law to benefit foreign-based entities seeking U.S. patents. This change allowed foreign-based entities to take advantage of their secret activities, undertaken outside the United States, in order to establish ''invention dates'' that could be used under U.S. patent law to obtain valid patents. Specifically—and for the very first time—foreign-based competitors could seek U.S. patents on products that had already been publicly disclosed by U.S.-based inventors. The Uruguay Round Agreements Act, which took effect in 1995, implemented this treaty obligation.

Before this change in U.S. patent law, foreign-based competitors could not use their secret activities outside the United States as a basis for showing that they had made an invention before its publication by a U.S.-based inventor. Up until 1995, once a U.S. inventor published information on a new product or otherwise publicly disclosed an invention, foreign-based competitors were barred from obtaining U.S. patents on the disclosed product and any aspect of it, including trivial and obvious modifications of it.

S. 23, if enacted, would put foreign-based entities back into the position they were in prior to 1995—once a U.S. inventor publishes or makes any other type of public disclosure of a new product, the ability for a foreign-based competitor to then file patent applications seeking to patent the disclosed product would be totally cut off.

Congress should act promptly to end the potential for interloping by foreign-based competitors once U.S.-based inventors have published on their work.

With each passing year, the percentage of U.S. patent filings made by foreign-based entities increases. In 1966, 1 in 5 U.S. patent filings was by a foreign-based entity. That ratio became 1 in 4 in 1969, and 1 in 3 in 1974, before reaching 1 out of every 2 in 2008. Since 2008, the majority of patent filings in the United States came from foreign-based entities. Given the rapid growth in patent filings by Asian (especially Chinese) inventors, this trend may well accelerate in the decade ahead.

As foreign-based entities become more sophisticated in their use of the U.S. patent system, U.S. inventors are put at an ever-greater risk that patenting strategies by foreign-based entities will disadvantage U.S.-based inventors, either in electing to use the ''grace period'' or even when they file for a patent before making a public disclosure.

How S. 23 operates to protect inventors once they make their work public

S. 23 puts an end to any use of ''dates of invention'' in order to determine whether a U.S. patent is valid or not. In addition, S. 23 strips out of the U.S. patent law any grounds for invalidating a U.S. patent based on any type of secret activity undertaken by inventors themselves, such as secret ''offers for sale'' of their inventions before seeking patents. Finally, it further secures the benefits of the one-year ''grace period'' by preventing the contemporaneous work of an inventor's co-workers or research partners from being cited as a basis for barring the inventor from obtaining a patent.

The consequence of placing this collection of inventor-friendly features into S. 23 is that, once a U.S. inventor publishes or otherwise makes a public disclosure of his or her inventions, the potential for interloping is entirely removed and the ability of the publicly-disclosing inventor to patent the disclosed invention is fully preserved during a one-year ''grace period.'' The public disclosure by U.S. small business or other U.S.-based small entity, for example, is a bar to anyone else seeking a patent, not only on the publicly disclosed subject matter, but on any trivial or obvious variations of it. Similarly, once a U.S. inventor initially files a patent application (even a provisional one) that subsequently forms the basis for a published patent application or patent, the same protections against competitor efforts to patent the inventor's prior-disclosed work apply.

How can Congress accomplish all of this good for the country? Enact S. 23!

Reverse the WTO's impact, end interloping threats, and protect U.S. inventors.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
March 2, 2011.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The National Association of Manufacturers (NAM), the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states, urges you to oppose amendment 133 offered by Sen. Dianne Feinstein (D-CA) to S. 23, The America Invents Act.

The amendment would remove a key provision in S. 23, The America Invents Act, which is strongly supported by manufacturers, the creation of a ''first-inventor-to-file'' system.

The NAM supports transitioning the United States from a ''first-to-invent'' system to a ''first-to-file'' system to eliminate unnecessary cost and complexity in the U.S. patent system. Manufacturers large and small operate in the global marketplace and the United States needs to move toward a system that will provide more patent protection around the world for our innovative member companies. The ''first-to-file'' provision currently included in S. 23 achieves this goal.

Thank you for your consideration and your support for the ''first-to-file'' system.

Sincerely,

DOROTHY COLEMAN.

Mr. COBURN. Mr. President, I want to thank all of the cosponsors who joined in support of my amendment, particularly Senators BOXER and GRASSLEY, who recognized the importance of this amendment for the proper functioning of the PTO and for the underlying legislation. Furthermore, I want to thank Chairman LEAHY and Ranking Member GRASSLEY for including my amendment in the managers' amendment to the patent reform legislation.

Our Founding Fathers recognized the value that intellectual property provides to this country and sought to protect innovation as they did physical property. Article I, section 8 of our Constitution states ''The Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.''

It is necessary for the Federal Government to protect and enforce intellectual property rights domestically and internationally. Intellectual property is important to our country, businesses and individual rights holders, and I believe a strong patent system is one crucial element in maintaining our

country's leadership in innovation, invention and investments. While I do believe it is the goal of this patent reform legislation to strengthen and improve our patent system, I do not believe that such goals are possible without reform to the financial crisis facing the patent office.

My amendment would provide an immediate solution to this crisis. The amendment creates a lockbox—a new revolving fund at the Treasury—where user fees that are paid to the PTO for a patent or a trademark go directly into the revolving fund for PTO to use to cover its operating expenses. Congress would not have the ability to take those fees and divert them to other general revenue purposes.

I do not think everyone in this body understands what it means for the PTO to be a wholly fee-supported agency. PTO does not receive any taxpayer funds. PTO receives fees through the payment of patent and trademark user fees—fees paid by small inventors, companies and universities to protect their ideas and technology. While those that pay these fees expect efficiency and quality from the PTO, they do not receive it. Because of the current PTO funding structure—where PTO user fees are deposited into the Treasury, but PTO is then required to ask for annual appropriations—Congress, who only has authority over taxpayer funds, maintains control over the user-funded PTO. When PTO's fee income is greater than what Congress provides via appropriations, we spend the ''excess'' on other general revenue purposes. As a result, those that pay to use the patent system are not receiving the quality service they deserve.

It is more than mere coincidence that the two major problems at the PTO, (1) the growing number of unexamined patent applications or ''backlog,'' and (2) the increased time it takes to have a patent application examined or ''pendency,'' are the result of a ''lack of connection between the monies flowing into the agency and those available for expenditure.'' In fact, the latest data from the PTO shows that the patent processing backlog is almost 26 months. That is, it takes 26 months for the patent examiner to even pick up the application to take his ''first action.'' Total overall pendency—from filing to final action—is approximately 35 months. The PTO also states the total number of patent applications pending is over 1.16 million, with over 718,000 of those waiting for a patent examiner to take his first action. One of the primary reasons for these incredibly long waiting periods is a lack of resources at the PTO. By providing a permanent end to fee diversion, Congress has the ability to contribute greatly to the enhanced efficiency of this agency.

This is not the first time Congress has been confronted with its diversion of PTO user fees. Since the early 1980s, Congress has addressed issues related to this issue. Beginning in the late 1990s, our own congressional reports have documented the problems with fee diversion from the PTO, and the domino effect it has on PTO's efficient operation.

In 1997, the House Report on the Patent and Trademark Office Modernization Act stated: ''Unfortunately, experience has shown us that user fees paid into the surcharge account have become a target of opportunity to fund other, unrelated, taxpayer-funded government programs. The temptation to use the surcharge, and thus a significant portion of the operating budget of the PTO, has proven increasingly irresistible, to the detriment and sound functioning of our nation's patent and trademark systems . . . this, of course, has had a debilitating impact on the [PTO].''

It is disturbing to me, and should be to all Members, that many of the same practices that this 1997 report notes as those that suffer from lack of consistent PTO funding still occur today—14 years later.

Yet Congress continued to grapple with PTO's funding problem into the early 2000s. In 2003, the House noted in its report on the Patent and Trademark Fee Modernization Act that ''by denying PTO the ability to spend fee revenue in the same fiscal year in which it collects the revenue, an equivalent amount may be appropriated to some other program without exceeding their budget caps. Although the money is technically available to PTO the following year, it has already been spent.'' In 2007, I offered a different version of my current amendment to patent reform legislation considered by the Judiciary Committee. My amendment passed without opposition. Last year, I offered this amendment in the Judiciary Committee, and it was tabled by a vote of 10–9. Yet, in 2008, this body adopted by unanimous consent an amendment by Senator HATCH to the fiscal year 2009 budget resolution that condemns the diversion of funds from the PTO.

Clearly, for more than a decade, both Houses of Congress have recognized that many of the efficiency and operational problems at the PTO could be remedied by giving the PTO authority over its own fee collections. However, we have yet to take the responsibility to relinquish the control over these user fees that we think we deserve. In fact, in the current arrangement, Congress cannot resist the temptation to take what is not ours and divert it to nonpatent related functions. This is especially tempting during bad economic times, which we have recently been experiencing. Such an arrangement flies in the face of logic, commonsense budgeting and overwhelming support from the entire patent industry for providing the PTO with a consistent source of funding. Ending fee diversion is one of the only areas of 100 percent agreement within an industry that has often been divided on other issues in this bill. My amendment is supported by: PTO; Intellectual Property Owners Association, IPO; American Intellectual Property Law Association, AIPLA; International Trademark Association, INTA; The 21st Century Coalition; Coalition for Patent Fairness, CPF; Innovation Alliance; American Bar Association, ABA; U.S. Chamber of Commerce; Wisconsin Alumni Research Foundation, WARF; BIO; Intellectual Ventures; National Treasury Employees Union, NTEU; Intel; and IBM.

The PTO cannot effectively manage the changes made in this legislation without permanent access to its user fees. I agree that there are aspects of the patent system that need to be updated and modernized to better serve those that use the PTO, and this bill makes reforms to the current patent system. In fact, one of those changes involves giving the PTO fee setting authority. Section 9 of the bill states that the PTO shall have authority to set or adjust any fee established or charged by the office provided that the fee amounts are set to recover the estimated cost to the PTO for its activities. This is a great provision to put in the bill, but it is only one side of the funding story. In fact, providing the PTO with fee setting authority alone is at odds with the way Congress currently funds the PTO. If I were the PTO director, why would I take advantage of this provision by increasing fees to a point where I think they would cover my operational costs, when I know that Congress has the ability to take whatever it wants of those increased fees and spend it on something other than what I budgeted those fees to cover?

In fact, PTO Director Kappos has specifically commented on fee diversion at the PTO. During his confirmation hearing in 2009, Director Kappos stated in his testimony that the PTO faces many challenges and one of the most immediate is ''the need for a stable and sustainable funding model.'' In his private meeting with me prior to his hearing, he discussed his experience as a high-level manager, officer and counsel at IBM. He acknowledged that, despite the vast knowledge and experience that he can bring to the PTO, he could not run PTO efficiently without access to sustainable funding.

In March 2010, Director Kappos appeared before the House CJS Appropriations Subcommittee and stated the PTO was likely to collect at least $146 million more than its 2010 appropriation. He was right, and in July 2010, the PTO had to ask for more funds from Congress in separate legislation, but it was only given $129 million. As a result, PTO ended up collecting at least $53 million above that amount, which it could not access.

In April 2010, Director Kappos made similar comments at a meeting in Reno, NV. When discussing the pending Senate legislation, Director Kappos stated, ''I am going to make USPTO much better whether we get new legislation or not . . . There is more than

one way to solve our problems. Lack of funding is a real issue . . . It's very hard to cut down on a huge backlog with a lack of funding . . . Lack of funding hits you at every corner at the USPTO. Just do the math . . . We'll all be dead and gone by the time we get rid of the backlog of appeals at the current rate. It is so overwhelming and it all comes down to the resources you need. It comes down to money.''

In January 2011, Director Kappos appeared at a House Judiciary Committee PTO Oversight hearing. He stated, ''uncertainty about funding constrained our ability to hire or allow examiners to work overtime on pending applications during the last year.''

It baffles me that these comments have not been heeded by Congress. Director Kappos believes much progress can be made without legislation as long as there is a sustainable funding model.

Similar words appear in the House Report on the 2003 Patent and Trademark Fee Modernization Act: ''While the agency has demonstrated a commitment to embrace top-to-bottom reform consistent with congressional mandates, it is equally clear that PTO requires additional revenue to implement these changes.'' Yet, our PTO director, who has incredible plans for this agency, cannot accomplish those due to revenue shortfalls that have plagued the agency for decades—a problem Congress has the ability to permanently fix.

Congress has not ended its diversion of fees from the PTO.

On a regular basis, from 1992 to 2004, the amount Congress ''allowed'' the PTO to keep via appropriations was less than the fees PTO collected. At the height of this problem in 1998, Congress withheld $200 million from the PTO and diverted it to other general revenue purposes. As recently as 2004, Congress diverted $100 million from the PTO, in 2007, it was $12 million, and in 2010, it was $53 million. In total, since 1992, Congress has diverted more than $800 million that the PTO will never be able to recover.

Now, beyond the concern that appropriators have with relinquishing control over PTO funding, some might say that the practice of fee diversion has ended in recent years, making this amendment unnecessary. Under public pressure from numerous sectors of the American innovation industry, in 2005 and 2006 and 2008 and 2009, it is true Congress gave PTO all of the funds it estimated in its budget request. So, some argue that no permanent solution to PTO fee diversion is necessary because of Congress's proven restraint.

However, it is not entirely true that all fee diversion has ended. First, it is inaccurate to say there has been no fee diversion since 2004. According to the PTO, $12 million was diverted in 2007, and $53 million in 2010—a type of diversion slightly different from the past. From 1992–2004, PTO provided an estimate of its fees, but appropriators diverted funds by appropriating to the PTO less than its estimate and applying the difference to other purposes. In 2007 and 2010, PTO provided its estimate and, it is true, appropriators provided an amount equal to that estimate. But, PTO collected more than what appropriators gave them, and those fees were diverted to other purposes rather than being returned to PTO the following year. Without access to those funds, PTO lost $12 million in 2007 and $53 million 2010, for a total of $65 million.

Second, Congress has engaged in ''soft diversion'' of PTO funds through earmarking PTO fees. From 2005–2010, appropriators directed PTO to spend its user fees on specific, earmarked items in appropriations bills totaling over $29 million. Such items included: $20 million for ''initiatives to protect U.S. intellectual property overseas;'' $1.75 million for the National Intellectual Property Law Enforcement Coordination Council, NIPLECC; $8 million for PTO to participate in a cooperative with a nonprofit to conduct policy studies on the activities of the UN and other international organizations, as well as conferences. While we all agree it is important to protect intellectual property rights abroad, PTO should be able to have discretion to decide how much of its budget should be directed for those purposes.

Third, the PTO faces a huge backlog of unexamined patents, as well as an enormous patent pendency problem for those applications already being processed. Fee diversion from the PTO has exacerbated these waiting periods through a congressional Ponzi-scheme. Even if we were to accept that fee diversion stopped in 2005, CBO states that approximately $750 million was diverted from 1992–2007. With the addition of the $53 million diverted last year, the PTO has lost over $800 million due to fee diversion. Thus, PTO has been constantly trying to recover from years of a ''starvation funding diet.''

So, when the PTO presents a budget of what it needs to process applications in the next 1-year period, that money is actually going towards processing applications sitting in the backlog. As a result, Congress is really not providing PTO with what it needs for the year in which it receives appropriations. Rather, it is giving short-shrift to the current year's needs because PTO must apply its fees not to the inventor who submitted his application this year, but to those who paid and submitted applications years ago.

Lack of funding is exacerbated under a continuing resolution. In fact, PTO's lack of access to its user fees is further amplified in a year with a continuing resolution, such as this fiscal year. Under this CR, the PTO can only spend at the level given to it by the Appropriations Committee in 2010, which is approximately $1.5 million per day less than the President's fiscal year 2011 budget request.

PTO already has to wait on year-to-year funding that may not materialize, and under a CR the problem is worse since PTO cannot get access to their fees until the CR is lifted. In January, the PTO Director noted at the House Judiciary PTO oversight hearing, ''our spending authority under the continuing funding resolutions and the lack of a surcharge assessment through early March, however, represent foregone revenue of approximately $115 million as compared to what was proposed in the President's fiscal year 2011 budget request.''

Thus, under the House-proposed CR, without a specific provision inserted to allow the PTO to collect all of the fees it collects, PTO will not be able to access its future fee collections. My amendment would solve this problem of constantly using time and resources at both the PTO and Congress to ensure the PTO receives the funding it deserves and does not suffer from Congress's inability to properly fund the government.

As the above problems show, even without direct diversion, PTO still faces the possibility of having its fees diverted by other means. Thus, while I recognize that some effort has been made by Congress, it is no consolation to me or to the PTO Director that, in recent years, appropriators have ''restrained'' themselves and provided the PTO with all of the fees that it collected. ''But, such recent restraint does not guard against future diversion.''

In 2007, the American Intellectual Property Law Association stated in a letter to House Speaker NANCY PELOSI, ''there is nothing to prevent the devastating practice of fee diversion from returning . . . While everyone wishes for a more rapid recovery by the Office, it must be remembered that the current situation is the result of a 12 year starvation funding diet. It will take permanent, continued full funding of the USPTO . . . to overcome these challenges.''

An amendment to permanently end fee diversion is the only effective remedy. The only true solution to the problem of PTO fee diversion that will give solace to those in the patent community and to the PTO Director is a permanent end to fee diversion so the PTO can effectively and efficiently budget for its future operational needs.

The President's fiscal year 2012 Budget also supports a sustainable funding model for the PTO. It states, ''another immediate priority is to implement a sustainable funding model that will allow the agency to manage fluctuations in filings and revenues while sustaining operations on a multi-year basis. A sustainable funding model includes: (1) ensuring access to fee collections to support the agency's objectives; [and] (2) instituting an interim patent fee increase. . . .''

In fact, as I stated earlier, in 2008, this body approved, by unanimous consent, an amendment to the 2009 budget resolution by Senator HATCH that condemns the diversion of funds from the

PTO. My amendment is in the same vein—if we will vote to condemn fee diversion, we should also vote to remedy the problem.

I believe we cannot have true patent reform without ending fee diversion and providing the PTO with a permanent, consistent source of funding, which is why I believe very strongly that this amendment should be adopted. As my colleague Senator HATCH so effectively stated in Judiciary Committee markup this year, ''fee diversion is nothing less than a tax on innovation.''

Finally, I would like to point out that nothing in this amendment allows the PTO to escape congressional oversight and accountability. You have all heard me talk about the need for more transparency in all areas of our government, and this is no exception. Enacting this amendment will not put the PTO on ''auto-pilot'' or reduce oversight of PTO operations. In fact, the amendment requires extensive transparency and accountability from the PTO, giving Congress plenty of opportunities to conduct vigorous oversight.

My amendment provides four different methods by which Congress will hold PTO accountable: (1) an annual report, (2) an annual spending plan to be submitted to the Appropriations Committees of both Houses, (3) an independent audit, and (4) an annual budget to be submitted to the President each year during the budget cycle. Furthermore, nothing in this amendment changes the current jurisdiction of any congressional committee, Appropriations or Judiciary, to call PTO before it to demand information, answers and accountability. In fact, it has the potential to yield more information to Congress via the four reporting requirements than provided by other agencies.

This amendment is not about authorizers versus appropriators, but rather it is about giving the PTO and its very capable and experienced director the opportunity to improve the agency and provided top-notch service to PTO applicants. It is also about making oversight of the PTO a priority for all committees of jurisdiction. It is about stimulating our economy because when the PTO is fully funded, patents are actually granted, which creates jobs in new companies and in the development and marketing of innovative new products. It is about fulfilling our responsibility to ensure efficiency, accountability and transparency in our government so that we reduce our deficit and provide our grandchildren relief from the immense financial burden they currently bear.

Thus, to truly reform the patent system in this country, more than any legislation, it is necessary for the PTO to be able to permanently and consistently access the user fees—not taxpayer funds—it collects. Therefore, I urge my colleagues to support this amendment.

Mr. BAUCUS. Mr. President, I want to take a few minutes to explain in detail the tax strategy patent provision in the pending patent reform legislation that was drafted jointly by Judiciary Committee Ranking Member CHUCK GRASSLEY and me. As chairman of the Senate Finance Committee, I am concerned by the growth in the number of patents that have been sought and issued for tax strategies for reducing, avoiding, or deferring a taxpayer's tax liability. Section 14 of S. 23 would prevent the granting of patents on these tax strategies so that the Internal Revenue Code can be applied uniformly while balancing the critical need to protect intellectual property.

Let me explain. Our Federal tax system relies on the voluntary compliance of millions of taxpayers. In order for the system to work, the rules must be applied in a fair and uniform manner. To that end, everyone has the right to arrange financial affairs so as to pay the minimum amount legally required under the Internal Revenue Code.

Patents granted on tax strategies take away this right and undermine the integrity and fairness of the tax system. These patents have been on ideas as simple as funding a certain type of tax-favored trust with a specific type of financial product or calculating the ways to minimize the tax burden of converting to an alternative retirement plan. Rather than allowing these tax planning approaches to be available to everyone, these patents give the holder the exclusive right to exclude others from the transaction or financial arrangement. As a result, they place taxpayers in the undesirable position of having to choose between paying more than legally required in taxes or paying a royalty to a third party for use of a tax planning invention that reduces those taxes.

The patentability of tax strategies also adds another layer of complexity to the tax laws by requiring taxpayers or their advisors to conduct patent searches and exposing them to potential patent infringement suits. And, in situations where a patent is obtained on a tax shelter designed to illegally evade taxes, the fact that a patent was granted may mislead unknowing taxpayers into believing that the strategy is valid under the tax law.

Section 14 of S. 23 addresses these concerns by providing that any strategy for reducing, avoiding, or deterring tax liability, whether known or unknown by anyone other than the inventor at the time of the invention or application for patent, will be deemed insufficient to differentiate a claimed invention from the prior art for purposes of evaluating an invention under section 102 or under section 103 of the Patent Act. Applicants will not be able to rely on the novelty or nonobviousness of a tax strategy embodied in their claims in order to distinguish their claims from prior art. The ability to interpret the tax law and implement such interpretations remains in the public domain, available to all taxpayers and their advisers.

Under the provision, the term ''tax liability'' refers to any liability for a tax under any Federal, State, or local law, or law of any foreign jurisdiction, including any statute, rule, regulation, or ordinance that levies, imposes, or assesses such tax liability.

Generally, tax strategies rely on tax law to produce the desired outcome; that is, the reduction, avoidance, or deferral of tax liability. Tax law can include regulations or other guidance, as well as interpretations and applications thereof. Inventions subject to this provision would include, for example, those especially suitable for use with tax-favored structures that must meet certain requirements, such as employee benefit plans, deferred compensation arrangements, tax-exempt organizations, or any other entities or transactions that must be structured or operated in a particular manner to obtain certain tax consequences. The provision applies whether the effect of an invention is to aid in satisfying the qualification requirements for the desired tax-favored entity status, to take advantage of the specific tax benefits offered in a tax-favored structure, or to allow for tax reduction, avoidance, or deferral not otherwise automatically available to such entity or structure.

Inventions can serve multiple purposes. In many cases, however, the tax strategy will be inseparable from any other aspect of the invention. For example, a structured financial instrument or arrangement that reduces the after-tax cost of raising capital or providing employee benefits is within the scope of the provision, even if such instrument or arrangement has utility to issuers, investors, or other users that is independent of the tax benefit consequences. No taxpayer should be precluded from using such an instrument or arrangement to obtain any reduction, avoidance, or deferral of tax that attends it.

At the same time, there may be situations in which some aspects of an invention are separable from the tax strategy. For example, a patent application may contain multiple claims. In this case, any claim that encompasses a tax strategy will be subject to the provision and the novelty or nonobviousness of the tax strategy will be deemed insufficient to differentiate that claim from the prior art. However, any other claim that does not involve a tax strategy would not be subject to the provision. In such a case, if the invention includes claims that are separable from the tax strategy, such claims could, if otherwise enforceable, be enforced.

The mere fact that any computations necessary to implement an invention that is a strategy for reducing, avoiding, or deferring tax liability are done on a computer, or that the invention is claimed as computer implemented, does not exclude the strategy from the provision. In such a case, the claims, if separable from the tax strategy, would be evaluated under sections 102 and 103

without regard to the tax strategy. If those nontax related and separable claims still met the requirements for patentability, a patent would issue, but not on the tax strategy.

The provision is not intended to deny patent protection for inventions that do not comprise or include a business method. For example, an otherwise valid patent on a process to distill ethanol would not violate the rule set forth in this provision merely because a tax credit for the production of ethanol for use as a fuel may be available. Similarly, the mere fact that implementation of an otherwise patentable invention could result in reduced consumption of products subject to an excise tax would not make the invention subject to this provision.

The provision is also not intended to deny patent protection for tax return preparation software that is used solely for preparing a tax or information return or other tax filing, including one that records, transmits, transfers, or organizes data related to such filing. Similar to the review of computer-implemented strategies, such software would still be entitled to patent protection to the extent otherwise patentable. Such patents, however, could not preclude non-users of such software from implementing any tax strategy. No inference is intended as to whether any software is entitled under present law to patent protection as distinct from copyright protection. Nor is an inference intended as to whether any particular strategy for reducing, avoiding, or deferring tax liability is otherwise patentable under present law.

In general, the U.S. Patent and Trademark Office may seek advice and assistance from Treasury and the IRS to better recognize tax strategies. Such consultation should help ensure that patents do not infringe on the ability of others to interpret the tax law and that implementing such interpretations remains in the public domain, available to all taxpayers and their advisors.

The practical result of this provision is that no one can be granted an exclusive right to utilize a tax strategy. The provision is intended to provide equal access to tax strategies.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FRANKEN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 23, the America Invents Act.

Harry Reid, Patrick J. Leahy, Debbie Stabenow, John F. Kerry, Jeanne Shaheen, Christopher A. Coons, Tom Harkin, Mark Begich, Jeff Bingaman, Al Franken, Kay R. Hagan, Michael F. Bennet, Richard Blumenthal, Sheldon Whitehouse, Amy Klobuchar, Bill Nelson, Benjamin L. Cardin, Richard J. Durbin.

Mr. REID. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture occur immediately upon disposition of the judicial nominations in executive session on Monday, March 7; further, that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNIZING THE GOVERNMENT PRINTING OFFICE

Mr. REID. Mr. President, I rise today to recognize the Government Printing Office, GPO, on the occasion of its 150th anniversary. GPO opened its doors on March 4, 1861, the same day President Abraham Lincoln took the oath of office. Since then GPO has used ever changing technologies to produce and deliver government information for Congress, Federal agencies, and the public. GPO plays a vital role in providing the printed and electronic documents necessary for Congress to conduct its legislative business.

I ask my colleagues to join me in congratulating the GPO on its 150th anniversary.

REMEMBERING LEONARD TRUMAN ''BUCK'' FERRELL

Mrs. MCCASKILL. Mr. President, today I pay tribute to a patriot, a businessman, a loyal father, and an American hero. Though Leonard Truman Ferrell—''Buck'' to his many family and friends—was laid to rest at Arlington Cemetery this morning, I know that his legacy lives on in the community that he helped build, the family that he nurtured, and the soldiers with whom he served. Today I would like to take a few moments to honor Buck's life and the contributions he made to his community.

Born and raised in southeast Missouri, Buck was imbued from an early age with those quintessential American values so prevalent among the members of the Greatest Generation: integrity, service to others, determination, and an undying sense of patriotism. Since Buck's family didn't have much money growing up, he learned at a young age to live within his means and to place little value on worldly possessions. ''My father didn't have a lot of worldly goods,'' Buck once said, ''but he was a rich man in character.'' I know I speak for many when I say that Buck, first and foremost, was also a man rich in character.

Buck was also a patriot of the highest order. Having served in the U.S. Army during the Korean war, he fought for 2 years on the Korean Peninsula and earned, among other decorations, the Combat Infantry Badge, the Presidential Unit Citation, two Silver Stars, and two Purple Hearts. Wounded multiple times, Buck never faltered and steadfastly manned his post, whether in a frontline foxhole or as a heavy weapons trainer for new recruits. In light of his outstanding service, Buck was even offered a battlefield commission. Though he chose not to accept the commission, Buck returned home and remained an active member in a number of veterans' organizations, like the American Legion and the Veterans of Foreign Wars, for the rest of his life. Never forgetting the country that he fought to protect, he raised—every morning—an American flag in his front yard.

As you can guess, Buck's dedication to others and stalwart work ethic continued long after his military service ended. For 25 years, he worked at the McCrate Equipment store in Caruthersville, MO, and retired as the general manager. As a member and former deacon at First Baptist Church, Buck helped sustain a thriving congregation, and he also took on a number of leadership roles in the local Masonic Lodge and Kiwanis Club. His extensive community involvement earned him the Pioneer Heritage Award from the Pemiscot County Historical Society and recognition by the Missouri State Legislature for his enduring impact in southeast Missouri.

But even with all of these commitments, Buck always had time for family. He and his wife Patsy Malin Ferrell raised four wonderful children, were the beloved grandparents to four grandchildren, and one great-granddaughter. In fact, I can personally attest to the great job the Ferrells did with their children—their talented daughter Christy is currently an invaluable member of my staff and is seated along with many other members of the Ferrell family, in the gallery today. My prayers are with them all in this time of loss.

Mr. President, I ask today that my fellow Senators join me in recognizing Buck Ferrell, not only because he was a great Missourian, but also because he embodied the true American values that have cemented American society for generations. Buck worked hard, served God, fought for his country, and loved his family. In short, he lived a life worth living.