of the current money we owe. The famous Harvard economic historian Niall Ferguson said you can mark the decline of a country when it pays more money to its lenders than to its army. We have already crossed that point. This year the Congressional Budget Office estimates that interest payments we will pay to our money lenders will top $225 billion. That is more than the cost of our Army, which we currently estimate costs about $195 billion, or our Air Force, which we estimate costs $201 billion, or even our Navy, which will cost $217 billion this year.

Our money lender costs now are higher than the entire gross domestic product of the country of Denmark, at $201 billion. We must pay $4 billion per week in interest or $616 million per day to our money lenders. What is worse, interest payments are expected to more than double over the next decade and will top $778 billion. That means soon we will have to pay our money lenders more than it costs to operate our Army, Navy, and Air Force combined at $623 billion.

Remember also that interest payments on the debt are a form of wealth transfer from hard-working middle-class Americans who pay Federal taxes to wealthy lenders, many of whom live abroad. For those in the Senate who are opposing budget constraints put in by the House, we should force them to admit that they are either for higher taxes for the American people or more borrowing that transfers wealth from hard-working middle-class Americans to high-income money lenders, most of whom now live abroad.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator withhold his request?

Mr. KIRK. I withhold.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FIRST-TO-FILE PROVISIONS

Mr. KYL. Mr. President, I wish to speak on the pending business before the Senate. We are hoping in maybe 45 minutes or so we will actually be able to vote on the Feinstein amendment to the patent bill. I am hoping that my colleagues will vote against the Feinstein amendment and support the authors of the legislation.

I noted yesterday that every version of the patent bill from 2005 forward has included the primary, centerpiece reform of the bill, which is the so-called first-to-file system. It may seem strange, but it has not been the case before this bill that you have a patent's priority from when you file it; that is to say, the first person to file on the patent is the one who has the patent; that the patent dates to the day it is filed. That is what we do in law and virtually every other situation I can imagine.

Instead, what has been the law is called the first-to-invent system. One of the reasons the whole patent reform movement began 5 or 6 years ago was that this system is very costly and difficult to administer because it relies on a lot of legal discovery and legal process to resolve questions or disputes between who actually conceived of the idea first and then did they apply the necessary diligence to get it patented. As a result, every other industrialized country uses the first-to-file system. Most of the companies in the United States are obviously used to that system because of their patents that are worldwide in scope.

The fundamental reform of the patent legislation to simplify, to reduce costs, to reduce the potential for litigation was to conform our system to that of the rest of the world—the first-to-file system.

What the Feinstein amendment would do is to throw that over and say: No, we are going to go back to the concept of this first-to-conceive-of-the-idea or first-to-invent notion. Whether intended or not, that will kill the bill. It is a poison pill amendment because the whole concept of the legislation and everything that follows from it is based on this first-to-file reform.

As I will note a little bit later, the bill simply would not work otherwise. We would have to scrap it and start from scratch. In fact, most of the reforms that are in the bill would not exist because we would have to go back to that concept of first-to-invent. So all of the savings and simplified procedures would simply not be possible.

Unfortunately, I note that if my colleagues have any notion of supporting the Feinstein amendment, they should realize that were it to be adopted, it would kill the bill. I do not think that is what we want to do. There have been so many improvements made in the bill. So many groups—all three of the major groups that have been working on the legislation are in support of the legislation and oppose the Feinstein amendment because they want us to move forward. We have not had patent reform in many years. Everybody recognizes it is time.

First and foremost, the administration and the Patent Office itself support the legislation and oppose the Feinstein amendment. In fact, one of the good changes made by the bill from the Patent Office's point of view is that it will stop fee diversion. In the past, the fees that have been collected, the filing fees from the inventors, have not all gone to the Patent Office. They are woefully understaffed and underfunded in working through the tens and hundreds of thousands of patent applications that are filed every year.

As we can all appreciate, our competitiveness in the world depends, first, on the ability of our people to invent and, second, to acquire the legal rights to those inventions so they have a property interest in them, and investors can then count on a return of their investment if they supply the capital for the invention to be brought to market.

What we are talking about is critical. I urge my colleagues who perhaps have not focused as much on this amendment and on the patent reform legislation to understand that we are talking about something very important, something that can create jobs, that is important to the competitiveness of our country.

The beauty is, unlike a lot of what we do around here, this is totally bipartisan. I am a Republican. The administration supports the legislation. It has Senator LEAHY's name on it as chairman of the Judiciary Committee. In the House, it is supported by Democrats and Republicans. It is important we move this legislation through.

As I said, unfortunately, the Feinstein amendment would result in having to scrap the bill. There is no point in enacting it if we are not going to include the change to first to file.

Let me be a little more specific. One of the reasons we would not be able to move forward with the bill is the bill's entire post-grant review process, which is a big part of the bill, would be impossible for the Patent Office to administer under the discovery-intensive invention date issues that arise under the first-to-invent system. That is because, as I said, under that system you come before the Patent Office and say: I realize nobody else had a record of this, but I actually thought of this idea way back in 1999. I have a couple of notes that I made to myself. I dated them. One can see that all of a sudden they are getting into a big discovery and legal process. That is what we are trying to get away from. The whole post-grant review process would be turned upside down if we went back to the first-to-invent principle.

Also, striking the first-to-file provisions would greatly increase the workload for the Patent and Trademark Office. What we are trying to do is simplify procedures so they can get their work done, get the patents approved so our businesses can better compete in the world, and also provide more money for them to do that job. That also would be jeopardized as a result of this amendment. We will just add backlogs and delays and not enable our Patent Office to do what we are asking it to do.

As I said, that is one of the reasons the Patent Office opposes the Feinstein amendment and supports the underlying legislation. It is interesting; many American companies already use first-to-file. It is the easiest, most direct way to confirm you have the patent. It is very hard to win a patent contest through what is called an interference proceeding if you were not the first to file, which, of course, is logical. And because all the other countries in

the world use a first-to-file system, if you want your patent to be valid outside the United States you need to comply with first-to-file in any event.

Among many of our most innovative companies, 70 percent of their licensing revenues come from overseas. Obviously, they are already going to be complying with the first-to-file rules. This bill does not, therefore, so much switch the system with which Americans are complying today as it simply allows American companies to only have to comply with one system rather than two. As I said before, the first-to-file concept is clearer, faster, more transparent, and provides more certainty to inventors and manufacturers.

On the other hand, the first-to-invent concept would make it impossible, in many instances, to know who has priority and which of the competing patents is the valid one. To determine who has priority under first to invent, extensive discovery must be conducted and the Patent Office and courts must examine notebooks and other evidence to determine who conceived of the invention first and whether the inventor then diligently reduced it to practice.

Under first-to-file, on the other hand, an inventor can get priority by filing a provisional application. This is an important point. It is easy. It is not as if the first-to-file is hard to do. This provisional application, which only costs $110 for the small inventor, only requires you to write a description of what your invention is and how it works. That is all. That is the same thing that an inventor's notebook would have to contain under the first-to-invent concept if you are ever going to prevail in court by proving your invention date.

Because a provisional application is a government document, the date is clear. There is no opportunity for fraudulently backdating the invention date. There is no need for expensive discovery: What did the inventor know and when did he know it? You are essentially not requiring anything in addition. You file a provisional application. You have an entire year to get all of your work together and file your completed application, but your date is as of the time you file the provisional application.

As I said, for a small entity, the fee is only $110. That grace period makes it clear that the patent will not be invalid because of disclosures made by the inventor or someone who got information from an inventor during 1 year before filing. That is important.

A lot of academics and folks go to trade shows and begin talking about their concepts and what they have done. If you disclose this, you have a year to file after you disclose the information. And under the bill's second, enhanced grace period, no other disclosure, regardless of whether it was obtained from the inventor, can then invalidate the invention.

The bill has been very carefully written to protect the small inventor or the academic. That is what it is designed to do. This is not a case of big versus small, although people both big and small support the legislation. If anybody suggests the Feinstein amendment will protect the small inventor, it does not protect the small inventor. In fact, as I said, the legislation is very carefully crafted to give the small inventor a variety of ways to ensure that he or she is protected.

The first coalition to bring the whole idea of patent reform to the Congress, the Coalition for 21st Century Patent Reform, is very strongly in support of the legislation and in opposition to the Feinstein amendment. In fact, it noted in a statement released Wednesday that not only does it oppose the amendment, it would oppose the entire bill if the amendment were to be adopted and this first-to-file concept were stricken from the bill.

In fact, here is what they said:

The first-inventor-to-file provisions currently in S. 23 form the linchpin that makes possible the quality improvements that S. 23 promises.

Here is what the Obama Statement of Administration Policy says. It lays out exactly 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 the global marketplace.

I am continuing the statement:

Most of the arguments in opposition to the bill and FITF appear to be 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.

They go on to say:

Without retaining S. 23's current FITF provisions, the bill would no longer provide meaningful patent reform.

Let me repeat that. If the Feinstein amendment would prevail, ''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.

Let me finish the statement:

Thus, we could not continue our support of 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.

Just to conclude, the National Association of Manufacturers, which represents both large and small manufacturers in every industrial sector, has also made it clear that it strongly opposes the amendment. I will conclude by quoting from that group's statement in opposition to the Feinstein amendment.

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.

Mr. President, I hope my colleagues will pay close attention to the arguments made by Chairman LEAHY and the arguments I have made in opposition to the Feinstein amendment. Whether intended or not, it would be a poison pill. It would kill the legislation if it were adopted. We need to move this important legislation forward, as the administration notes in its statement of policy, and therefore I urge my colleagues, when we have an opportunity to vote on the Feinstein amendment, to vote against it and to support the legislation as reported.

The ACTING PRESIDENT pro tempore. Morning business is closed.

PATENT REFORM ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 23, which the clerk will report.

The legislative clerk read as follows:

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

Pending:

Leahy amendment No. 114, to improve the bill.

Bennet amendment No. 116, to reduce the fee amounts paid by small entities requesting prioritized examination under Three-Track Examination.

Feinstein amendment No. 133, to strike the first inventor to file requirement.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

AMENDMENT NO. 133, AS MODIFIED

Mr. LEAHY. Mr. President, I understand we have the Feinstein amendment No. 133 at the desk. I ask unanimous consent that the Feinstein amendment No. 133 be modified with the changes that are at the desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 2, line 3, strike ''**FIRST INVENTOR TO FILE.**'' and insert ''**FALSE MARKING.**''

On page 2, strike line 4 and all that follows through page 16, line 21, and insert the following:

(a) FALSE MARKING.—

On page 17, line 18, strike ''(l)'' and insert ''(b)''.

On page 18, strike line 22 and all that follows through page 32, line 11.

On page 66, strike line 9 and all that follows through page 67, line 8.

On page 71, line 1, strike ''derivation'' and insert ''interference''.