Amendment to the America Invents Act, H.R. 1249.

Specifically, I am troubled by language in the amendment that would weaken the ability of the U.S. Patent and Trademark Office to retain the fees it collects from inventors for use in improving the patent application process.

As reported by the Judiciary Committee, Section 22 of the underlying bill would establish a revolving fund at Treasury to collect all user fees from USPTO and restrict their use to only funding USPTO activities.

This section was necessary because Congress has habitually underfunded the Patent Office, siphoning more than $875 million over the past two decades from fees collected from inventors to fund other discretionary programs.

This fee diversion has severely hampered the ability of USPTO to promptly process patent applications, leading to a current backlog of 1.2 million applications and an average pendency time of 3 years.

This is entirely unacceptable and a direct result of our decision not to provide full funding to the USPTO. Delays in processing patent applications drive up the costs and risks for inventors, harm our nation's global competitiveness, and literally stall the creation of jobs.

While I appreciate the efforts of Director Kappos over the past two years to reduce this backlog, USPTO will not be fully successful in this goal unless they are provided with the proper resources...resources, remember, they collect from the users of Patent Office services.

That is why I have concerns about a provision in the manager's amendment that would undermine this dedicated funding source, instead leaving USPTO funding up to annual appropriations.

While the amendment creates a specific fund for USPTO fees and contains promises that this funding will be made available only for activities at the patent office, there is no guarantee this pledge will be honored in subsequent Congresses.

I am concerned this modified language does not give USPTO the predictability in funding and access to fees that are necessary to ensure it best serves the innovation community.

Now, I understand USPTO has reluctantly agreed to support this compromise language, and I therefore plan to support the Manager's Amendment.

But we cannot let jurisdictional concerns here in Congress undermine the efficient functioning of the patent process.

I encourage my colleagues to support the Manager's Amendment as a necessary compromise to move this legislation forward, but I plan to remain vigilant on this matter to ensure the promises made in this Manager's Amendment are kept and that USPTO has ready access to the fees it collects.

SHENANDOAH NATIONAL PARK RESOLUTION

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 23, 2011

Mr. GOODLATTE. Mr. Speaker, I rise today to introduce a resolution celebrating the 75th anniversary of the Shenandoah National Park.

The Shenandoah National Park is the crown jewel of Virginia's natural resources. Through the Shenandoah National Park, I believe that we have preserved a vast, beautiful piece of land for the enjoyment of American families. Additionally, Shenandoah National Park is an exemplary example of the efforts of the United States Government and the Commonwealth of Virginia in preserving our country's natural resources.

Shenandoah National Park has a rich history and showcases the conservation work of the Civilian Conservation Corps (CCC). The park has been committed to adhering to these principles of stewardship and conservation, and thus allowing the legacy of the CCC to inspire many generations of Americans.

Additionally, Shenandoah National Park is the home of Skyline Drive, one of America's treasured byways. Skyline Drive winds along the crest of the Blue Ridge Mountains for 105 miles in the Shenandoah National Park. The 75 overlooks along the route afford travelers extraordinary vistas of the Shenandoah Valley and the Piedmont region in Virginia. No other road in the northeast provides access to 80,000 acres of wilderness.

What the Park's visitors take away from their visit to Shenandoah National Park and their drive along Skyline Drive is that the hills and valleys are directly connected to the character and aesthetics of the Park and its neighboring cities, towns, and counties. By conservative estimates, Shenandoah National Park has a $70 million impact on the counties surrounding the park. The health of the Shenandoah's resources and the health of its neighbors will forever be entwined.

The 75th anniversary of the Shenandoah National Park is an important milestone. For 75 years the Shenandoah National Park has been a treasure for all Americans, but there are many stories waiting to be told. We must all be diligent to make sure that the Park's views and natural areas are around for tomorrow's visitors and for future generations to enjoy. I hope that we can continue to preserve the beauty of the Park, a world of beauty that can renew and bring peace to the spirit.

CONGRATULATIONS TO THE FULSHEAR GIRL SCOUTS

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 23, 2011

Mr. PAUL. Mr. Speaker, on July 2, the Girl Scouts of Fulshear, Texas, in my congressional district, will gather for the Fulshear Freedom Feast, where they will commemorate the upcoming centennial of the founding of the Girl Scouts of America. It is with great pleasure that I join the Fulshear Girl Scouts in celebrating the 100th anniversary of the Girl Scouts of America.

The Girl Scouts of America were established in Savannah, Georgia on March 16, 1912 in order to provide young woman with an organization that would help them reach their full potential. From the very start, Girls Scouts' programs emphasized community service, personal and spiritual growth, positive values, leadership, and teamwork. Today, over 23 million American girls participate in Girl Scout programs such as field trips, sports clinics, community service projects, cultural exchanges, and environmental initiatives. Perhaps the Girl Scouts' best-known project is the annual cookie sale, which not only raises funds for the Girl Scout's many projects, it helps girls across the national get practical business experience.

Participating in Girl Scouts helps young woman build confidence, develop new skills, learn about and explore career opportunities, help their communities, and make friendships that can last a lifetime. Therefore, Mr. Speaker, I encourage all my collages to join me in celebrating the Girls Scouts of America's centennial and in sending best wishes to the Fulshear Girl Scouts as they prepare for the Fulshear Freedom Feast.

AMERICA INVENTS ACT

SPEECH OF

HON. MAZIE K. HIRONO

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 22, 2011

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 1249) to amend title 35, United States Code, to provide for patent reform:

Ms. HIRONO. Madam Chair, I rise today in reluctant opposition to H.R. 1249, the America Invents Act.

In Hawaii, independent inventors and small businesses are at the forefront of the innovation that we need to strengthen our state's economic future. Year after year, small businesses have been responsible for the majority of net job growth nationwide. Congress must modernize and fully fund the U.S. Patent and Trademark Office (PTO) to address the massive application backlog that stifles innovation and job creation.

However, I have heard from independent inventors and small businesses in Hawaii who express grave concerns about H.R. 1249. This bill's shift to a ''first inventor to file'' system could create a ''race to file,'' allowing large corporations to use early and repeat filings to threaten independent inventors' and small businesses' rights.

Further, to speed up patent processing and job creation, the PTO must be able to use inventors' application fees for their intended use: processing patents. The PTO receives no taxpayer money, and is funded entirely by fees. I voted against the manager's amendment that diverts these user fees to the vagaries of the annual congressional budget process.

I also have concerns about Section 18 of the bill. This section establishes an administrative review process for financially related business method patents whose validity has been questioned. This review process is retroactive, and even previously awarded patents whose validity had been upheld by federal courts would be subject to challenge. This is unfair to inventors, who would have to defend themselves again for patents they have already been awarded and already defended in court.

Innovation and technology development is essential to growing Hawaii's economy of the future. For this reason, I support patent reform but cannot support the bill before us today.

PERSONAL EXPLANATION

HON. STEVEN M. PALAZZO

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 23, 2011

Mr. PALAZZO. Mr. Speaker, on rollcall No. 454 I inadvertently voted "no" on an amendment where I meant to vote "yes" in support of the Flake amendment.

PERSONAL EXPLANATION

HON. PHIL GINGREY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 23, 2011

Mr. GINGREY of Georgia. Mr. Speaker, on rollcall No. 478 on final passage of H.R. 2021, the Jobs and Energy Permitting Act of 2011, I am not recorded because I was absent due to a death in my family which required me to immediately return to Georgia. Had I been present, I would have voted, "aye."

AMERICA INVENTS ACT

SPEECH OF

HON. ALLEN B. WEST

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 22, 2011

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 1249) to amend title 35, United States Code, to provide for patent reform:

Mr. WEST. Madam Chair, the most sweeping patent reform legislation that has come before the House of Representatives in over half a century, the America Invents Act, H.R. 1249, makes significant substantive, procedural, and technical changes to current United States patent law.

Article I, Section 8 gives the United States Congress the 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."

Congress passed the first patent law just one year after ratifying the Constitution when it enacted the Patent Act of 1790. The law granted patent applicants the "sole and exclusive right and liberty of making, constructing, using and vending to others to be used" of his or her invention, clearly maintaining the intentions of patent protections the Framers had when they drafted Article I, Section 8, Clause 8 of the Constitution, commonly referred to as the Intellectual Property Clause.

Before discussing the ramifications of the America Invents Act, it is important for the American people to understand the reasoning behind the Intellectual Property Clause of the Constitution. The Framers recognized that a crucial component for success of the newly formed United States was economic strength and security, and they knew that American ingenuity and innovation was key to economic success.

Thus, for more than 200 years, American patent law has used a first to invent system that addresses the circumstances when two or more persons independently develop identical or similar inventions at approximately the same time. When more than one patent application is filed at the Patent and Trademark Office (PTO) claiming the same invention, the patent is awarded to the applicant who was the first inventor, even if the inventor was not the first person to file a patent application at the PTO.

Section 3 of H.R. 1249 would change this established system for determining which inventor obtains patent protection to a "first inventor to file" system. Under this new "first inventor to file" system, the law would not recognize the patent of an individual who did not file an invention first even if he or she was the first to complete an invention.

Proponents of Section 3 will argue that the United States is the only patent-issuing nation that does not employ a "first inventor to file" system, and that making this change will simplify the process for acquiring patent rights.

However, I believe that Section 3 on its face is unconstitutional. Over 200 years of evidenced-based, legal determination as to who is the true inventor of an invention should not be overturned because the rest of the world does it, or to make it easier for government bureaucrats to resolve patent disputes.

The United States is the greatest Nation on the face of the earth not because we conform our ways to the rest of the world, but instead because we operate in a way that makes the rest of the world want to follow our example.

Finally, and most importantly, I believe that awarding a patent to an individual who simply files before the inventor, violates the Framers' intent laid out in the Intellectual Property Clause. There can be no such thing as a "first inventor to file" since there can only be one inventor. Small inventors—the backbone of the American spirit of innovation—who do not have the funding or the legal staff to race to the PTO to file a patent will without question lose inventions to well-funded and well-staffed corporations.

I also have constitutional concerns with Section 18 of H.R. 1249. Section 18 of the America Invents Act would create a new Transitional Review proceeding at the Patent and Trademark Office that would only apply to "business method patents" dealing with data processing in the financial services industry. The Transitional Review would be available only to banks sued for patent infringement—even if the patent has already been upheld as valid by the PTO in a reexamination, or upheld by a federal court jury and/or judge in a trial. This new review process would ultimately lead to a delay, via a stay, of court proceedings that would interrupt inventors from capitalizing on their patents.

Constitutional scholars Richard Epstein and Jonathan Massey have concluded that Section 18 language constitutes a government taking by allowing banks to challenge all business method patents—even those that have been reexamined and affirmed by the PTO and upheld by a jury in federal court.

The House Judiciary Committee's consideration of H.R. 1249 proceeded rapidly. The committee held a hearing focused primarily on the broader patent provisions of the bill, and only the banking industry was invited to testify with regard to Section 18. Furthermore, there have been no hearings specifically relating to the implications of Section 18.

I have met with and spoken to a number of individuals representing both sides of this issue in order to fully understand the intent of H.R. 1249, as well as both its intended and unintended consequences. I have spoken to Director Kappos of the Patent and Trademark Office, and more importantly I have spoken with constituents in the 22nd Congressional District of Florida who are inventors that have received patents who would be adversely affected by certain provisions of this bill.

Madam Chair, I voted against H.R. 1249 because I believe that the major sections I have outlined raise serious Constitutional questions. Section 3 clearly violates the intent of our Framers when they drafted the Intellectual Property Clause. Section 18 opens the door for the Executive Branch to overturn the Judicial Branch, a clear violation of the separation of powers laid out by the United States Constitution.

As a 22-year Army combat veteran, and now as a Member of the House of Representatives, I swore an oath to protect and defend the Constitution. Voting in favor of passage of H.R. 1249 I believe goes against this very sacred oath I took, both as a young Second Lieutenant over 25 years ago, and as a Congressman in this body earlier this year.

INTRODUCTION OF THE COMPREHENSIVE PROBLEM GAMBLING ACT OF 2011

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 23, 2011

Mr. MORAN. Mr. Speaker, I rise today to introduce, along with Representatives FRANK WOLF, SHELLEY BERKLEY, and ALCEE HASTINGS, the Comprehensive Problem Gambling Act of 2011. This legislation would, for the first time, authorize federal support for the prevention and treatment of problem and pathological gambling.

According to the National Council on Problem Gambling, approximately 6–9 million American adults meet the criteria for a gambling problem, which includes gambling behavior patterns that compromise, disrupt or damage personal, family or vocational pursuits. Over the past decade, gaming and gambling has grown in the United States and many states have expanded legalized gaming, including regulated casino-style games and lotteries. The recent economic downturn only compounds this situation as many states consider relaxing gaming laws in an effort to raise state revenues.

At the same time, the federal government and most states have devoted very little, if any, resources to the prevention and treatment of compulsive gambling. Problem gambling can destroy a person's career and financial standing, disrupt marriages and personal relationships, and encourage participation in criminal activity. Currently, no federal agency has responsibility for coordinating efforts to treat problem gambling.

The Comprehensive Problem Gambling Act of 2011 would begin to address this deficiency by designating the Substance Abuse and Mental Health Services Administration (SAMHSA) as the lead agency on problem gambling, allowing them to coordinate Federal