

Senate Debate - 157 Cong. Rec. S1348-S1352 (March 8, 2011) (Sen. Udall):

“This bill will establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party’s access to court is denied.” S1349.

“The America Invents Act will improve the quality of patents issued by the PTO in several ways. . . . The bill will also create a new post-grant review process for patents that recently issued to improve the quality of patents in the system, as recommended by the National Academy of Sciences, and it will streamline the current “inter partes” system so that it will be a more efficient alternative to litigation.’ S1350.

“Inter partes reexamines a proceeding at the Patent Office that allows for the validity of a patent to be challenged in an administrative proceeding. These proceedings are intended to serve as a less-expensive alternative to the courtroom litigation and provide additional access to the expertise of the Patent Office on questions of patentability.

“Inter partes reexam is often the preferred method of examination because a panel of experts is more likely to reach the correct decision on a technical question compared to a jury composed of laypeople. The inter partes process is not frequently used today because of procedural restrictions in the existing law. Rather than expanding the opportunities to use the inter partes reexamination process, the America Invents Act before us today imposes standards that are more restrictive than current law and are not supported by top high-tech innovators.

“By failing to provide any relief from the huge burden abusive patent lawsuits impose on technology companies and instead reducing the protections in current law, I fear this legislation will force these companies to spend hundreds of millions of dollars on frivolous lawsuits. These are dollars that otherwise would be used to employ engineers, produce and market new goods and services, and help Colorado and America win the global economic race.

“As this legislation moves to the House, we must work to achieve consensus on inter partes reexamination. While I do not believe we have the right balance quite yet, I do believe this bill is a good faith effort to improve our patent system, and I am going to support moving it forward because we cannot let job-creating patents languish any longer.” S1352.

Senate Debate - 157 Cong. Rec. S5319-5321 (Sept. 6, 2011) (Sen. Kyle):

“By allowing post-grant review of patents, especially low quality, business method patents, the bill creates an inexpensive substitute for district court litigation and allows key issues to be addressed by experts in the field.” S5319.

Senate Debate - 157 Cong. Rec. S5322-S5328 (Sept. 6 2011) (Sen. Leahy):

“The bill also implements a National Academy of Sciences recommendation by creating a postgrant review process to weed out recently issued patents that should not have been issued in the first place.” S5326.

Senate Debate - 157 Cong. Rec. S5353-S5356 (Sept. 7, 2011) (Sen. Leahy):

“The America Invents Act will improve patent quality by expanding the role of third parties to the patent examination process, creating a streamlined first-window, postgrant review to quickly challenge and weed out patents that never should have been issued in the first place.” S5354.

“The Patent Reform Act of 2007 (Senate Report 110-259) (Jan. 24, 2008):

“Given the numerous problems and limitations with the reexamination system, and the chorus of concerns heard by the Committee about that process, the Committee determined not to try to adopt another, and necessarily massive, set of amendments to the current system. Rather, the Committee determined that it would be simpler, and ultimately better, to make a clean start. The time has come to eliminate the inter partes reexamination system and replace it with a new post-grant review system at the USPTO that will give third parties a quick, inexpensive, and reliable alternative to district court litigation to resolve questions of patent validity.”

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“The legislation is designed to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs. If the United States is to maintain its competitive edge in the global economy, it needs a system that will support and reward all innovators with high quality patents.

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“The Patent Reform Act of 2007 has three primary goals: . . . (ii) to improve and clarify several aspects of patent litigation, including the creation of a less expensive, more expeditious administrative alternative to litigation patent validity issues[.]”

Patent Quality Improvement: Post-Grant Opposition: Hearing Before the Subcomm. on Courts, the Internet, and Intellectual Property of the H. Comm. on the Judiciary, 108th Cong. 10 (2004) (statement of PTO General Counsel James A. Toupin):

“The []PTO's proposal is thus designed to put review of the propriety of patent claims that the public regards as important in the hands of senior, legally qualified officials with experience in dispute resolution. It is designed to be more efficient than litigation, while preserving enough of the full participation accorded to parties in litigation that challengers will be willing to risk being

bound by the result. By providing for the possibility of amendment of challenged claims, the proposed system would preserve the merited benefits of patent claims better than the win-all or lose-all validity contests in district court.”