

March 09, 2009

VIA FAX:

U.S. Congress
Washington, D.C.

Dear Representative/Senator:

We are writing to seek your help in ensuring that efforts to alter our nation's patent laws do not undermine innovation, production and job creation here in America. While the bills recently introduced by Chairmen Leahy and Conyers and Senator Hatch and Congressman Smith represent improvements over last year's legislation, we remain very concerned about its approach on the key issue of how to calculate damages for infringed patents.

The legislation, if enacted, would deal a serious blow to those manufacturers who rely on strong intellectual property protection to justify their investments in producing products domestically. Some companies have argued that Congress should "reform" the way damages are calculated and thereby reduce their penalties when they infringe upon someone else's patents. We believe that such a change would encourage more intellectual property theft and discourage needed domestic investment in plant and equipment that will employ our members and other working Americans in the 21st century economy. If penalties are reduced for patent infringement, one important reason to stay and produce in the US will be gone.

Intellectual property protection – "patent reform" – isn't an esoteric issue; it's a jobs issue, plain and simple. At any time, but certainly as our economy remains in crisis, the last thing we should be pursuing are approaches that could undermine investments in our future. The Federal Reserve has reported that capacity utilization for manufacturing stood at 68% in January of this year, far lower than at any point in more than 20 years. Millions of manufacturing jobs have disappeared, wages have been stagnant or falling, worker's health care and pensions are under attack, income inequality has grown, and scores of communities across this nation have been devastated. We need to enact reforms to reverse this decline, not contribute to it.

Recently, noted economist Scott Shane authored a study on the potential impact of patent reform legislation. Among the study's principal findings are that the proposed changes in the treatment of damages alone would have the following impacts:

1. Between 51,000 and 298,000 U.S. manufacturing jobs put at risk
2. Reduction in value of U.S. public companies of between \$38.4 billion and \$225.4 billion.
3. Reduction in R&D of between \$33.9 billion and \$66 billion per year.
4. Reduction in U.S. patent value of between \$34.4 billion and \$85.3 billion
5. Industries employing fewer people favored over those employing more people

These findings only heighten our concern.

We recognize however that some changes to the U.S. patent system may be in order. Certainly, providing the PTO with the necessary resources and structure to address the backlog of pending patent applications should be seriously considered. But, we do not see a patent "crisis" and certainly do not see proposals that would reduce penalties for infringers as being in the interest of US workers. Rather, we see the fabric of our nation's intellectual property protection

laws as a key ingredient in our fight to stay competitive. Indeed, it's ironic that we are, on the one hand, arguing for stronger enforcement of intellectual property rights in China while, on the other hand, considering legislation that would minimize the strength of our own system.

While patent reform legislation encompasses a broad range of issues, we have focused our attention on three elements: damages, post grant review, and publication. Each of these is important in its own right. The authors of this year's bill are to be commended for their efforts to address our concerns: We appreciate that they struck the language on publication and have agreed to use the House-passed language on post grant review as a starting point for action this year. Unfortunately, the issue of damages – which goes to the heart of the debate – has not been resolved and we believe this proposal if left unchanged could put the jobs of our members, and our economic strength, at risk.

We hope that you will join with us in taking a strong stand to protect the integrity of our patent system and the jobs engine it fuels. We are encouraged by the willingness of the authors to continue discussions on the contentious issue of damages as well as other matters and we stand ready to work with the Chairmen, the Committees and all members to try and find an approach that will promote economic growth and domestic employment.

Sincerely,

Building & Construction Trades Department (BCTD), AFL-CIO
Communications Workers of America (CWA)
Department for Professional Employees (DPE), AFL-CIO
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths,
Forgers & Helpers (IBB)
International Brotherhood of Teamsters (IBT)
International Federation of Professional and Technical Engineers (IFPTE)
Metal Trades Department, AFL-CIO
United Association of Plumbers and Pipe Fitters (UA)
UNITE HERE
United Steelworkers (USW)
International Association of Bridge, Structural, Ornamental, and Reinforcing Iron
Workers (Iron Workers)
Sheet Metal Workers International Association (SMWIA)
International Union of Painters and Allied Trades (IUPAT)