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COMMENTARY

**Smith: Encouraging invention and innovation**  
**U.S. Rep. Lamar Smith, R-San Antonio**

Tuesday, May 12, 2009

Few issues are as important to the economic stability of the United States as our ability to create and protect intellectual property. Whether it's a mouse trap in your home or Dell laptop on your desk, intellectual property plays a critical role in the global economy.

Austin has made a name for itself as a leading city producing intellectual property, from our unique music scene and Austin film festival to the growing high-tech and bio-tech communities. But part of keeping Austin's economy vibrant means protecting the creative products generated by individuals and high-tech companies in this town.

Patents protect intellectual property and preserve the financial and competitive incentives that drive invention. That's why we need a legal system that allows people to own their inventions and other creative works.

But to continue leading the world in innovation and invention, our patent system must be updated. Our system has become plagued with lawsuits from holders of questionable patents seeking to extort millions of dollars from high-tech companies. These lawsuits discourage the very innovation that we need to help lift our economy out of a recession.

That's why a bipartisan group of members of Congress in Washington has been working diligently to enact patent reform. For more than five years, we have negotiated, compromised and debated the issues surrounding the ownership of ideas.

But after five years of debate, the time to act is now. We need a bill that enhances patent quality, discourages frivolous litigation, streamlines international patent principles and enforces core property rights. In other words, we need to update the law to help inventors invent.

One of the biggest problems in our patent system is that it is susceptible to abusive litigation tactics. Under the current system, a plaintiff could hold three patents on a product that includes 1,000 patented parts. If a jury finds in favor of the plaintiff, the jurors are then responsible for determining how much the three patents contribute to the worth of the entire product. That's not an easy task, especially when the guidance given is vague and often overwhelmingly technical. Juries end up playing guessing games with damages, and often the award is far greater than the worth of the patent.

American intellectual property industries account for more than half of all U.S. exports and represent 40 percent of our economic growth. These industries provide millions of Americans with high-paying jobs. But in the last five years, frivolous lawsuits against high-tech companies have doubled.

It costs high-tech companies an average of \$5 million to defeat a frivolous suit. So often defendants pay large sums just to make the case go away. This money is diverted from worthwhile research and development that could go to innovation leading to more jobs and economic growth.

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The American economy is in critical need of invention and innovation. But if we want intellectual property industries to help invent a way out of the recession, we must put an end to the legal gamesmanship that rewards lawsuit abuse over creativity.

All industries directly or indirectly affected by patents — including finance, automotive manufacturing, high-tech, bio-tech and pharmaceuticals — will benefit from patent reform. It will encourage innovation — from the lone inventor in his or her garage to the high-tech company that files a thousand patents each year, and all businesses in between.

Smith represents the 21st Congressional District, which includes portions of Bexar and Travis counties and all of Comal, Real, Kerr, Bandera, Kendall and Blanco counties.

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**Hank Nothhaft** wrote:

Patent reform legislation that weakens patents is bad for the U.S. economy, bad for innovation and bad for anyone who believes in fundamental property rights. That is the danger of this proposed legislation. Sure, it's good for the Big Tech companies that control the channel -- lower damages for infringing other's patent rights means lower product costs . But as the CEO of a small, thriving technology company, I believe this bill is a threat to innovators everywhere - including the tech-savvy folks of Austin. We need a patent system that protects the thing we do better than any other nation: make new discoveries and create new products. This legislation makes it more costly to protect our inventions, and that's a threat to our entire economy. Are there frivolous lawsuits? Of course. There are frivolous lawsuits throughout our legal system. But the problem isn't nearly as significant as Big Tech would have us believe. The truth is, numerous studies show that there is no pattern of runaway jury verdicts and that judges routinely set aside awards that are not supported by the evidence. If Congress really wants to help innovation in our country, then it should focus more attention on the U.S. PTO. Raising the quality of patents and the speed with which they're examined would be the best and most dramatic step toward strengthening the patent system. It also would address most of the concerns about bad patents and frivolous litigation raised by the Big Tech companies that are pushing for this misguided legislative reform. To learn more: <http://www.tessera.com/abouttessera/innovation>

Posted on 5/12/2009 10:45:00 PM

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**Texas Taxpayer** wrote:

Mr. Congressman, You have filled this page with platitudes but you forgot one thing ... you didn't describe the solution for us. Please don't insult us with another puff piece - tell us how you plan to solve this so we can decide whether to support you.

Posted on 5/12/2009 9:16:50 AM

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**staff** wrote:

"But part of keeping Austin's economy vibrant means protecting the creative products generated by individuals and high-tech companies in this town." The problem is the patent reform bill does not protect individuals. Instead it protects large firms who like to use others' property without paying. patent reform is a fraud on America... please see <http://truereform.piausa.org/> for a different/opposing view on patent reform

Posted on 5/12/2009 8:16:21 AM

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**Stand24** wrote:

"American intellectual property industries account for more than half of all U.S.

exports and represent 40 percent of our economic growth. These industries provide millions of Americans with high-paying jobs. But in the last five years, frivolous lawsuits against high-tech companies have doubled." (Lamar Smith) I would suggest that the right honorable Representative Smith doesn't have the slightest clue as to what he is talking about. I can't help but wonder how much he has been PAID to say what he does. The facts are that the percentage of lawsuits have been Dropping, And Not Increasing, and to say otherwise is very dishonest. If folks like Lamar continue to goof things up so horribly, we might all end up at the back of the intellectual property line, right up there with folks from lower Whereisitstan. If Lamar doesn't understand what he is or may be doing, he should step away from the table. Lamar: So perhaps you can tell us all how this modernization will help me, an independent inventor? How so? I will have to pay an extra \$10,000 per patent application? (Examination support document,ESD or an Applicant Quality Submission (AQS)) It will be able to be challenged multiple times as to the validity of the patent that the USPTO has granted me. My patent will become radically devalued, due to the above, and the fact that the United States Patent and Trademark Office (USPTO) has been so badly mis-managed that it is on the verge of collapsing of it's own weight. This latter is somewhat ironic, since the USPTO is one of only two Federal programs that actually make a profit, paid for by American Inventors, I might add, in case somebody gives a flying whatever. So prey tell us Lamar, how your Patent Reform will help the American economy? There is of course no possible answer to a question like that, because you don't have the slightest clue about what \*modernizing\* our patent system means. What it means to me and many others is that you have become a traitor to the American idea of equality and a belief in hard work that will be rewarded by commensurate recompensation. I tend to like Texans in most instances, but I feel as if Lamar is not an honest man, and can't be trusted.

Posted on 5/11/2009 10:23:37 PM

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**Ronald J Riley** wrote:

American ingenuity is legendary. Over thirty percent of domestically filed patents are by independent, academic and small business inventors. It is a fact that America's patent system is the only patent system in the world that allows upstart start-ups to take on well-heeled vested interests and win. Lamar Smith has long been a stooge of well-heeled corporate interests who hate having their business disrupted by inventors. He is not a friend to inventors and never has been. Smith's actions speak far louder than his words. He is closely associated with members of the Piracy Coalition. OK, they don't call themselves the Piracy Coalition, instead they call themselves the Coalition for Patent Fairness. This group of financial disservices, banking, insurance, and tech companies has an entitlement mentality and is pretty much devoid of ethics. They steal inventors patent properties on a grand scale and then ship the benefits of those inventions to low wage countries. American Ingenuity has always fueled our economic system. Before globalization, big corporate theft of inventions did not destroy jobs, or at least as many jobs because those inventions were produced in America. Nevertheless, the advent of transnational corporations has changed this because they ship most of the economic benefits out of America costing the American people jobs and the prosperity that those inventions produce. It is long past time that Americans demand that their representatives actually represent the people's best interests. Cozying up to the crooks in banking, insurance and tech is not representing the people. I want to make it very clear that this is not a partisan issue; it is a property rights and economic issue. It is an issue of justice. Above all else it is about whether or not transnational corporations are going to call the shots or the people and their small businesses. I sincerely hope it is the latter. Ronald J. Riley, Speaking only on my own behalf. Affiliations: President - [www.PIAUSA.org](http://www.PIAUSA.org) - RJR at PIAUSA.org Executive Director - [www.InventorEd.org](http://www.InventorEd.org) - RJR at InvEd.org Senior Fellow - [www.PatentPolicy.org](http://www.PatentPolicy.org) President - Alliance for American Innovation Caretaker of Intellectual Property Creators on behalf of deceased founder Paul Heckel Washington, DC Direct (810) 597-0194 / (202) 318-1595 - 9 am to 8 pm EST.

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