[118H8134]

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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To promote the leadership of the United States in global innovation by establishing a robust patent system that restores and protects the right of inventors to own and enforce private property rights in inventions and discoveries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MASSIE introduced the following bill; which was referred to the Committee on _____

A BILL

To promote the leadership of the United States in global innovation by establishing a robust patent system that restores and protects the right of inventors to own and enforce private property rights in inventions and discoveries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Restoring America's Leadership in Innovation Act of 2025''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Congress created a patent system 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,'' as provided for in the Constitution of the United States.

(2) The Leahy-Smith America Invents Act (Public Law 112–29) enacted on September 16, 2011, and several decisions of the Supreme Court have harmed the progress of Science and the useful Arts by eroding the strength and value of the patent system.

(3) The United States Government exists to protect life, liberty, and property, which includes intellectual property.

(4) A United States patent secures a private property right to an inventor.

(5) This Act restores the patent system as envisioned by the Constitution of the United States.

SEC. 3. RESTORING THE RIGHT OF THE FIRST INVENTOR TO SECURE A PATENT.

(a) REPEAL OF FIRST-TO-FILE SYSTEM UNDER THE AMERICA INVENTS ACT.—Section 3 of the Leahy-Smith America Invents Act (Public Law 112–29), including each amendment made by such section, is repealed and any amendment made by such section to any provision shall be effective as if the provision had not been amended by such section.

(b) FIRST-TO-INVENT.—Notwithstanding any other provision under title 35, United States Code, a person shall be entitled to a patent where the inventor is first to conceive of the invention and diligently reduces the invention to practice.

(c) ONE-YEAR GRACE PERIOD.—Notwithstanding any other provision under title 35, United States Code, a person shall be entitled to a one-year grace period before filing an application for a patent, as the grace period existed before the date of the enactment of the Leahy-Smith America Invents Act under section 102 of title 35, United States Code, and with the same meaning of the terms ''in

public use'' and ''on sale in this country'' as interpreted before the enactment of the Leahy-Smith America Invents Act.

(d) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) reverting the United States patent system from a ''first-to-file'' system back to ''first-to-invent'' system will promote the progress of science and the useful arts by securing for limited times to inventors the exclusive rights to their discoveries and incentivize innovation and protect inventors' rights;

(2) restoring the one-year grace period before the first and true inventor must file a patent application on an invention will promote the progress of science and useful arts by enabling inventors once again to disclose inventions in order to attract investment, complete research and development on the invention, test, improve, and perfect the invention so as to improve the invention and the quality of the patent application; and

(3) the repeal of section 3, and the amendments made by section 3, of the Leahy-Smith America Invents Act, restore sections 100, 102, 103, 135, and 291 of title 35, United States Code, to the way such

sections read on the day before the date of the enactment of such Act.

SEC. 4. ABOLISHING INTER PARTES AND POST-GRANT REVIEW.

(a) REPEAL OF INTER PARTES AND POST-GRANT REVIEW.—Section 6 of the Leahy-Smith America Invents Act (Public Law 112–29), including each amendment made by such section, is repealed and any amendment made by such section to any provision shall be effective as if the provision had not been amended by such section.

(b) REPEAL OF CODIFIED TITLES.—Chapters 31 and 32 of title 35, United States Code, are repealed.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) inter partes review and post-grant review proceedings introduced by the Leahy-Smith America Invents Act have harmed the progress of science and the useful arts by subjecting inventors to serial challenges to patents;

(2) inter partes review and post-grant review proceedings invalidate patents at an unreasonably high rate;

(3) patent rights should be protected from unfair adjudication at the Patent and Trademark Of-

fice and duly issued patents should be adjudicated in a judicial proceeding;

(4) repealing section 6 of the Leahy-Smith America Invents Act abolishes inter partes review, post-grant review, and the previously available inter partes reexamination proceedings; and

(5) it is the intent of Congress to preserve ex parte reexamination proceedings under chapter 30 of title 35, United States Code.

SEC. 5. ABOLISHING THE PATENT TRIAL AND APPEAL BOARD.

(a) REPEAL OF PATENT TRIAL AND APPEAL BOARD.—Section 7 of the Leahy-Smith America Invents Act (Public Law 112–29) is repealed, including each amendment made by such section, and any amendment made by such section to any provision shall be effective as if the provision had not been amended by such section.

(b) BOARD OF PATENT APPEALS AND INTERFERENCES.—

(1) AMENDMENT.—Section 6 of title 35, United States Code, is amended to read as follows:

"§ 6. Board of Patent Appeals and Interferences

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Patent and Trademark Office a Board of Patent Appeals and Interferences. The Director, the Dep-

uty Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary of Commerce, in consultation with the Director.

''(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a). Each appeal and interference shall be heard by at least three members of the Board, who shall be designated by the Director. Only the Board of Patent Appeals and Interferences may grant rehearings. The Board shall not invalidate an issued patent except in an ex parte reexamination under chapter 30.

''(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in the Secretary's discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director, to take effect on the date on which the Director initially appointed the administrative patent judge.

''(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 35, United States Code, is amended by striking the item relating to section 6 and inserting the following new item:

''6. Board of patent appeals and interferences.''.

(c) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—

(1) AMENDMENT.—Section 134 of title 35, United States Code, as reinstated by section 3(a) of this Act, is amended by striking subsection (c).

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 12 of title 35, United States Code, is amended by striking the item relating to section 134 and inserting the following new item:

''134. Appeal to the Board of Patent Appeals and Interferences.''.

(d) APPEAL TO THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended to read as follows:

"§ 141. Appeal to the Court of Appeals for the Federal Circuit

''(a) EXAMINATIONS.—An applicant dissatisfied with the decision in an appeal to the Board of Patent Appeals and Interferences under section 134 may appeal the decision directly to the United States Court of Appeals for the Federal Circuit, or may seek review de novo in any district court of the United States of competent jurisdiction.

''(b) REEXAMINATIONS.—A patent owner who is, in a reexamination proceeding, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 may appeal the decision directly to the United States Court of Appeals for the Federal Circuit, or may seek review de novo in a district court of the United States of competent jurisdiction.

''(c) INTERFERENCE.—A party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences on the interference may appeal the decision to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal in accordance with section 142, files notice with the Director that the party elects to have all further proceedings conducted as provided in section 146. If the appellant does not, within

thirty days after filing of such notice by the adverse party, file a civil action under section 146, the decision appealed from shall govern the further proceedings in the case.''.

(e) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Patent Trial and Appeal Board shall be replaced with the former Board of Patent Appeals and Interferences;

(2) with the abolishment of inter partes review and post-grant review proceedings, the Patent Trial and Appeal Board is no longer needed to conduct these duties;

(3) unless otherwise in the context of an ex parte reexamination under chapter 30 of title 35, United States Code, the Board of Patent Appeals and Interferences will not be used to invalidate an already issued patent;

(4) the changes described in paragraphs (1) through (3) will protect the rights of patent owners who have been granted a patent and ensure a fair, fully adjudicated proceeding to invalidate an issued patent;

(5) the amendment to section 6 of title 35, United States Code, reflects Congress's intent to re-

quire a judicial proceeding to invalidate an issued patent; and

(6) the amendments to section 134 of title 35, United States Code, and section 141 of title 35, United States Code, are intended to restore each respective section to its prior state, but delete any reference to inter partes reexamination, which is no longer available.

SEC. 6. ELIMINATION OF FEE DIVERSION AND FULL FUNDING OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

(a) PATENT AND TRADEMARK OFFICE FUNDING.—Section 42 of title 35, United States Code, is amended—

(1) in subsection (a), by striking ''(a) All fees'' and inserting ''(a) IN GENERAL.—Fees'';

(2) in subsection (b)—

(A) by striking ''(b) All fees'' and inserting ''(b) CREDIT OF FEES.—Fees''; and

(B) by striking ''Patent and Trademark Office Appropriation Account'' and inserting ''United States Patent and Trademark Office Innovation Promotion Fund'';

(3) in subsection (c)—

(A) by striking ''(1) To the extent'' and all that follows through ''fees'' and inserting ''(c) USE OF FEES.—(1) Fees'';

(B) in paragraph (1), by striking ''shall be collected by and shall, subject to paragraph (3), be available to the Director'' and inserting ''shall be collected by the Director and shall be available to the Director until expended'';

(C) by striking paragraph (2); and

(D) by redesignating paragraph (3) as paragraph (2);

(4) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(5) by inserting after subsection (c) the following:

''(d) REVOLVING FUND.—

''(1) DEFINITIONS.—In this subsection:

''(A) FUND.—The term 'Fund' means the United States Patent and Trademark Office Innovation Promotion Fund established under paragraph (2).

''(B) TRADEMARK ACT OF 1946.—The term 'Trademark Act of 1946' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to

carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the 'Trademark Act of 1946' or the 'Lanham Act').

''(2) ESTABLISHMENT.—There is established in the Treasury a revolving fund to be known as the 'United States Patent and Trademark Office Innovation Promotion Fund'.

''(3) DERIVATION OF RESOURCES.—There shall be deposited into the Fund any fees collected under—

''(A) this title; or

''(B) the Trademark Act of 1946.

''(4) EXPENSES.—Amounts deposited into the Fund under paragraph (3) shall be available, without fiscal year limitation, to cover—

''(A) all expenses to the extent consistent with the limitation on the use of fees set forth in subsection (c), including all administrative and operating expenses, determined in the discretion of the Director to be ordinary and reasonable, incurred by the Director for the continued operation of all services, programs, activities, and duties of the Office relating to patents

and trademarks, as such services, programs, activities, and duties are described under—

''(i) this title; and

''(ii) the Trademark Act of 1946; and

''(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.'';

(6) in subsection (e), as so redesignated, by striking ''The Director'' and inserting ''REFUNDS.—The Director''; and

(7) in subsection (f), as so redesignated, by striking ''The Secretary'' and inserting ''REPORT.—The Secretary''.

(b) EFFECTIVE DATE; TRANSFER FROM AND TERMINATION OF OBSOLETE FUNDS.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first fiscal year that begins on or after the date of the enactment of this Act.

(2) REMAINING BALANCES.—There shall be deposited in the Fund, on the effective date described in paragraph (1), any available unobligated balances remaining in the Patent and Trademark Office Appropriation Account, and in the Patent and Trademark Fee Reserve Fund established under section

42(c)(2) of title 35, United States Code, as in effect on the day before the effective date.

(3) TERMINATION OF RESERVE FUND.—Upon the payment of all obligated amounts in the Patent and Trademark Fee Reserve Fund under paragraph (2), the Patent and Trademark Fee Reserve Fund shall be terminated.

SEC. 7. PATENTABILITY OF SCIENTIFIC DISCOVERIES AND SOFTWARE INVENTIONS.

(a) AMENDMENT.—Section 101 of title 35, United States Code, is amended to read as follows:

"§ 101. Inventions patentable

''(a) IN GENERAL.—Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

''(b) EXCEPTION.—A claimed invention is ineligible patent subject matter under subsection (a) if the claimed invention as a whole, as understood by a person having ordinary skill in the art, exists in nature independently of and prior to any human activity, or exists solely in the human mind.

''(c) ELIGIBILITY STANDARD.—The eligibility of a claimed invention under subsections (a) and (b) shall be

determined without regard as to the requirements or conditions of sections 102, 103, and 112 of this title, or the claimed invention's inventive concept.''.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Supreme Court's recent jurisprudence concerning subject matter patentability has harmed the progress of science and the useful arts;

(2) the United States patent system must protect and encourage research and development in such scientific disciplines as would promote the progress of science and the useful arts by securing for limited times to inventors the exclusive rights to their discoveries and provide scientists in the life sciences, computer sciences, and other disciplines, with certainty that their discoveries and inventions are entitled to patent protection; and

(3) this amendment effectively abrogates Alice Corp. v. CLS Bank International, 573 U.S. 208 (2014), Bilski v. Kappos, 561 U.S. 593 (2010), Association for Molecular Pathology v. Myriad Genetics, 569 U.S. 576 (2013), Mayo Collaborative Services v. Prometheus Laboratories, 566 U.S. 66 (2012), and its predecessors to ensure that life sciences discoveries, computer software, and similar

inventions and discoveries are patentable, and that those patents are enforceable.

SEC. 8. LIMITATIONS ON PRIOR ART.

Section 102 of title 35, United States Code, is amended to read as follows:

"§ 102. Conditions for patentability; novelty

''(a) IN GENERAL.—A person shall be entitled to a patent unless—

''(1) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent;

''(2) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States;

''(3) he has abandoned the invention;

''(4) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate

filed more than twelve months before the filing of the application in the United States;

''(5) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

''(6) he did not himself invent the subject matter sought to be patented; or

''(7)(A) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed; or

''(B) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

''(b) DISCLOSURES IN PATENT APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under this section if before the issuance of a patent—

''(1) the information disclosed was obtained directly or indirectly from the inventor or a joint inventor;

''(2) the information disclosed to the Office or another party during the one-year period prior to the date of the application for patent had, before a patent application for the information was effectively filed, been publicly disclosed by the inventor or a joint inventor; or

''(3) the information disclosed and the claimed invention, not later than the effective filing date of

the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.''.

SEC. 9. RESTORING PATENTS AS A PROPERTY RIGHT.

(a) PRIVATE PROPERTY PATENT RIGHT.—

(1) AMENDMENT.—Chapter 10 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 106. Private property patent right

''A patent right is a private property right secured to an inventor upon issuance of the patent that shall only be revoked by a court ruling in a judicial proceeding, unless the patent owner consents to an administrative or other procedure.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 10 of title 35, United States Code, is amended by adding at the end the following new item:

''106. Private property patent right.''.

(b) OWNERSHIP; ASSIGNMENT.—Section 261 of title 35, United States Code, is amended—

(1) in the first sentence, by striking ''patents shall have the attributes of personal property'' and inserting the following: ''patents shall be recognized as private property rights''; and

(2) by inserting after the second sentence the following:

''As private property rights, applications for patents, patents, and interests therein shall be freely transferrable, in whole or in part, including conveyance by assignment or license. Any successors, heirs, assigns, or licensees of a patent owner, who receive a lesser interest in a patent, shall be subject to any and all restrictions of their interest in the patent, provided that the successors, heirs, assigns, or licensees have actual or constructive notice of such restrictions.''.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) recent jurisprudence of the United States Supreme Court, including Oil States Energy Services v. Greene's Energy Group, 138 S. Ct. 1365 (2018), have harmed the progress of science and the useful arts by unconstitutionally changing the treatment of fundamental patent rights to government-bestowed public franchises from the Founders' original intent of exclusive private property rights of limited duration;

(2) recent jurisprudence of the United States Supreme Court, including Impression Products Inc. v. Lexmark International, Inc., have harmed the

progress of science and the useful arts by limiting the ability of patent owners to exclude unlicensed customers from their supply chains; and

(3) meaningful patent rights must permit patent owners to freely assign their rights in whole, or in part, and to ensure that successors, heirs, or assigns of a patent owner, or their assigns, are duly bound by restrictions or exclusions set by patent owners on the use of their property.

SEC. 10. ENDING AUTOMATIC PUBLICATION OF PATENT APPLICATIONS.

(a) AMENDMENT.—Section 122(b) of title 35, United States Code, is amended to read as follows:

''(b) PUBLICATION.—

''(1) IN GENERAL.—Each application for a patent shall be published, in accordance with procedures determined by the Director, only upon the request of the patent applicant.

''(2) INFORMATION RELEASED ONCE A PATENT ISSUES.—No information concerning a patent application shall be available to the public unless and until a patent issues.''.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) automatic publication of patent applications after 18 months has harmed the progress of science and the useful arts by creating ''prior art'' by operation of law that prevents a patent owner from applying for a patent on the same invention if a patent does not issue; and

(2) automatic publication of patent applications encourages early disclosure of claimed inventions and subjects innovative inventions and discoveries reduced to practice in the United States to theft or appropriation by foreign competitors.

SEC. 11. PRESUMPTION OF VALIDITY; DEFENSES.

(a) VALIDITY OF A PATENT IN ADJUDICATORY PROCEEDINGS.—Section 282(a) of title 35, United States Code, is amended to read as follows:

''(a) IN GENERAL.—

''(1) PRESUMPTION OF VALIDITY FOR A PATENT.—In any judicial or administrative proceeding conducted in any court or Federal agency (as defined in section 201) or of any State, a patent issued under this title shall be presumed valid.

''(2) PRESUMPTION OF VALIDITY FOR CLAIMS OF A PATENT.—In any proceeding described under paragraph (1)—

''(A) each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; and

''(B) dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim.

''(3) BURDEN OF ESTABLISHING INVALIDITY.—In any proceeding described under paragraph (1) in which the validity of a patent is at issue, the burden of establishing invalidity of a patent or any claim thereof rests on the party asserting the invalidity by clear and convincing evidence.''.

(b) TOLLING PATENT TERM DURING JUDICIAL CHALLENGE.—Section 282 of title 35, United States Code, is amended by adding at the end the following:

''(d) TOLLING OF PATENT TERM DURING VALIDITY CHALLENGE.—In an action involving a patent where the validity of the patent has been challenged, the patent term shall be tolled from the time the validity of the patent is challenged to the time of resolution of the validity issue by the court. The patent term shall resume once the validity challenge is resolved. The court may award damages to the patent owner in a case in which another party brought a validity claim against the patent in bad faith.''.

SEC. 12. INJUNCTION.

(a) AMENDMENT.—Section 283 of title 35, United States Code, is amended—

(1) by striking ''The'' and inserting the following:

''(a) IN GENERAL.—The''; and

(2) by adding at the end the following new subsection:

''(b) PERMANENT INJUNCTION.—

''(1) IN GENERAL.—Upon a finding of infringement of a patent, the court shall presume that further infringement of the patent would cause the patent owner irreparable harm. This presumption may be overcome only by a showing of clear and convincing evidence by the infringing party that the patent owner would not be irreparably harmed by further infringement of the patent. The patent owner is not required to make or sell a product covered by the patent to show irreparable harm.

''(2) PATENT OWNER DEFINED.—In this subsection, a 'patent owner' means the owner of the patent or an exclusive licensee of the patent.''.

(b) SENSE OF CONGRESS.—It is the sense of Congress that this section abrogates the Supreme Court's ruling in and subsequent lower court interpretations of eBay v. MercExchange, 547 U.S. 388 (2006), which has been

applied as a de facto presumption against granting patent owners injunctive relief.

SEC. 13. BEST MODE REQUIREMENT.

Section 15 of the Leahy-Smith America Invents Act (Public Law 112–29), including each amendment made by such section, is repealed and any provision amended by such section shall be amended to read as in effect on the day before the date of the enactment of such Act.