The Phyllis Schlafly Report

VOL. 31, NO. 8 | P.O. BOX 618, ALTON, ILLINOIS 62002 | MARCH 1998

The Ominous Attack on American Inventors

The high-priced lobbyists for the big multinationals are crawling all over Capitol Hill this month to urge passage of Senator Orrin Hatch's bill, S.507. It is called the Omnibus Patent bill, but it ought to be called the Ominous Patent bill because it would take away the traditional rights of American inventors in order to accommodate the multinationals and their foreign trading partners.

This is a classic battle of giant U.S. corporations versus the little guys. In this case, the little guys are the independent inventors, who are the mainspring of American progress and prosperity, plus the small businessmen, who are the source of nearly all the new jobs that are created.

S.507 was slightly amended before it came out of Hatch's Judiciary Committee, as was its companion bill H.R.400 before it passed the House last year, but both bills are so totally bad that they cannot be amended to make them acceptable. The bills' proponents arrogantly continue to argue for the original purposes of the bills, stating their intent to achieve them either by restoring the deleted sections or by implementing them afterwards by bureaucratic fiat.

At stake in S.507 is one of our most important constitutional rights: the right of inventors to have, for limited times, "the exclusive right to their . . . discoveries," thus giving the inventor the time to perfect his invention and raise the resources to market it. This powerful incentive is unique to America, and is the chief reason why America has produced ten times as many significant inventions as the rest of the world combined.

Under our highly successful system, when the inventor applies for a patent, his application is held in total secrecy by the U.S. Patent Office until the patent is issued. The patent then gives the inventor the legal safeguard to protect his invention against those who want to steal it or infringe it.

Publication of an inventor's application before the patent is issued would serve the financial interests of the multinational corporations, who could use their enormous resources to bully the independent inventor into making a cheap deal, or to invalidate his patent application, or to steal his idea and beat him into production.

The Japanese, who don't invent anything but are mighty clever copycats, have been trying for years to break our system. They have been demanding that all the details of every invention be made public 18 months after the application is filed, regardless of whether or not a patent is ever issued.

The American and Japanese systems are very different. Japan's economy is based on a partnership between government and the big corporations, and the Japanese patent system operates to make sure that industry controls and uses new innovations.

The U.S. system, on the other hand, favors private property, individual innovation and ingenuity, and an open door of opportunity for entrepreneurs. Our patent system is the centerpiece of this system and is designed to protect the rights of the individual inventors.

S.507 is a disgraceful attempt to codify a backroom deal made by then-Secretary of Commerce Ron Brown on August 16, 1994 with Japanese Ambassador Takakazu Kuriyama promising that our patent law would be changed to acquiesce in the Japanese demands. Nobody denied this paper trail in the two days of House debate last year.

S.507 also includes another Japanese demand, a change in our reexamination process. The bill would allow outside parties, both foreign and domestic, to challenge all existing U.S. patents.

The main, indeed the only, argument for S.507 is that we should "harmonize" our patent system with the rest of the world, but that's a false description of this bill. It does nothing to get U.S. patents recognized worldwide; instead, it just diminishes the rights of U.S. inventors.

The text of S.507 makes clear why the multinational corporations are lobbying so intensely for S.507. It would transform the U.S. Patent Office into a private corporation, whose board of directors must include representatives of big corporations.

Patent Commissioner Bruce Lehman is lobbying for S.507 because the private corporation status would facilitate plans to build a $1.3 billion Patent and Trademark Office headquarters in Virginia so lavish that it has been dubbed the PTO Taj Mahal. Lehman has shown his disdain for independent inventors by calling them "weekend hobbyists."

Some might think that the importance of independent inventors has diminished because of the large research labs of multinational corporations. But a Harvard study in the 1960s found that, of 703 innovations introduced after 1945, only 133 came out of the laboratories of big corporations.

Another study in 1970 of 61 of the most significant 20th century inventions found that half of the inventions had been produced by individuals. Business consultant Paul Herbig states in his 1994 book, *The Innovation Matrix*, that independent inventors tend to make the most radical innovations in technology because they are not held back by corporate group-think.

Nobel Laureates Denounce Patent Bill

Senator Orrin Hatch's Ominous Patent bill was blasted at a national news conference in Boston on September 11, 1997 by a distinguished group of 25 Nobel Laureates in economics, physics, chemistry and medicine. Remarkably, the signers of this joint statement include lifelong antagonists Milton Friedman and Paul Samuelson.

These luminaries released an open letter to the U.S. Senate that began unequivocally: "We urge the Senate to oppose the passage of the pending U.S. Senate Bill 507." Their reason? "It will prove very damaging to American small inventors and thereby discourage the flow of new inventions that have contributed so much to America's superior performance in the advancement of science and technology."

If anybody understands the importance of innovation and creativity to the unparalleled American achievements, it is the Nobel Laureates. They stated flatly that "S.507 could result in lasting harm to the United States and the world." Their letter praised the "wonderful institution that is represented by the American patent system established in the Constitution in 1787, which is based on the principle that the inventor is given complete protection for a limited length of time, after which the patent . . . becomes in the public domain, and can be used by anyone, under competitive conditions for the benefit of all final users."

The Nobel Laureates' letter brought out on the table the fact that S.507 toadies to the "large multinational corporations" at the expense of the constitutional rights of independent inventors. Indeed, the chief advocates of S.507 are the well-heeled lobbyists for the multinationals who look upon independent inventors working in their garages or bicycle shops as nuisances they would rather not deal with.

Dr. Franco Modigliani, 1985 winner of the Economics Nobel prize, emphasized, "It is against the spirit of the U.S. patent system which is a great economic and cultural invention." Dr. Dudley Herschback, 1986 Laureate in chemistry, said that S.507 "would create total chaos and of course it is conducive to fraud and deceit. This is a piracy bill."

Congressman Dana Rohrabacher (R-CA), the chief opponent of patent-law revision in the House, has received letters from foreign inventors who plead with America not to "harmonize" our system by adopting the patent system of other countries. Foreign inventors know only too well that the patent systems of most foreign countries are rigged in favor of powerful vested interests and the politically well-connected and against independent inventors.

It is noteworthy that S.507's sponsor, Orrin Hatch, is pushing another proposal to extend the term of songwriters' copyright protection from 50 to 70 years beyond the author's life. Hatch has a personal interest in that bill; he holds the copyright on a compact disc of religious songs he wrote. Senator Hatch wants to protect the property rights of songwriters for 70 years, but strip away the rights of inventors only 18 months after their patent applications are filed, whether or not the patent is ever granted!

Inventors' creations should have at least as much protection as songwriters'!

Bond's Defense of Small Business

Senate Small Business Committee Chairman Kit Bond is circulating a Dear Colleague letter pointing out that, even as amended, S.507 will "jeopardize the value, certainty and protection of the American patent, threatening the ability of independent inventors and small businesses to continue their incredible work." Here is why:

(1) Hatch's S.507 would greatly expand the procedures for reexamination of all existing patents, making it much easier for foreign and domestic corporations to challenge a patent immediately and to invalidate patents already issued. This would dramatically decrease the existing rights of all current U.S. patent holders. Challenging and defending a patent are very expensive processes. Forcing the inventor to defend his patent in a second examination puts a very costly burden on inventors and small businesses and would be a significant advantage to deep-pocket corporations. As Senator Bond explains, this "will destroy the certainty of a patent that is critical for the small guy to attract investors."

(2) S.507 would undercut our whole patent system by creating a new defense for patent infringers called "prior use." This would exempt from the payment of royalties an infringer who asserts he was using the idea before it was patented, thereby diluting the U.S. patent holder's constitutional "exclusive right." Small

businesses that have spent time and money creating a new idea and bringing it to market would thus have the value of their patent dramatically reduced. The advantage would shift to the big firms that poach on the ideas of individuals, then use large legal resources to avoid the patent process and the payment of royalties.

(3) S.507 would change the patent office from a government agency to a corporation with an outside board of directors and employees excluded from civil service. Orrin Hatch's big-business bias is painfully obvious: the text of S.507 actually states that the directors shall include "individuals" (in the plural) with "achievement" in "corporate finance and management." Hatch has now agreed to allow one member of the board to be an independent inventor; but, as Bond points out, no space is reserved for a small-business representative. Hatch's gesture is tokenism, and it certainly does not protect inventors' rights.

The bill would even allow corporations to influence the patent office through "gifts" (a.k.a. bribes). Hatch bragged in his press release that he "accommodated the Administration" by "fend[ing] off the unjustified but politically appealing attacks on the corporation's gift provision."

(4) S.507 as originally introduced would have eliminated our traditional rule that all patent applications remain secret unless and until a patent is actually issued. Although the amended S.507 now includes a limited exception for U.S. inventors willing to forgo applying for a foreign patent, early publication was and is the primary goal of the extraordinary lobbying effort to change our patent system being made by the Japanese, the multinationals and the Clinton Administration.

Senator Bond accurately points out that the initial secrecy about an invention is "the cornerstone of our patent system" because it preserves the property right of the inventor until he gets his legal rights recognized in a patent. Publication of the details of an invention before a patent is issued would set it up to be stolen by infringers and copycats all over the world who are, as Bond says, just "waiting around for American ideas to take to market."

Even if S.507 is amended to mitigate some of its most disastrous features, the game plan of the foreigners and multinationals is to use the newly created corporation, with a board dominated by big-corporation types, to accomplish the original goal through regulations that never go through Congress.

Senator Bond says that S.507's changes in our patent system would have "enormous consequences." Indeed, they would. The consequences are all bad. S.507 has no redeeming value.

Anti-American and Ugly Arguments

The patent bill (S.507 in the Senate and H.R.400 in the House) is not a controversy between Republicans and Democrats, or between conservatives and liberals. It is an epic battle that pits the multinationals (their lobbyists and the politicians to whom they make financial contributions), plus those involved in shady Asian trade deals made by Ron Brown, against the independent inventors who are responsible for the marvelous scientific discoveries that have made the American standard of living the envy of the world.

The chief, in fact the only, argument advanced in behalf of S.507 is "harmonization" to serve the global economy. That argument is not only anti-American, it is downright false. "Harmonization" might make a little sense if it meant that American patents would be recognized worldwide, like the recent harmonization of copyright laws, which gives American authors copyright protection throughout the world. S.507 doesn't do that; instead, it just reduces the rights of U.S. inventors, who still have to apply in foreign countries in order to protect their patents overseas.

Independent American inventors seldom file overseas because it's far too expensive and far too difficult to enforce a patent. In Japan, filing would expose them to patent piracy of their technology through "patent flooding," *i.e.*, inundating the Japanese Patent Office with hundreds of unworthy patent applications using minuscule modifications of the American invention, followed by bullying tactics to get cross-licensing agreements. S.507 does nothing to protect U.S. inventors from these typical Japanese patent abuses, plus inordinate delays and a judicial system rigged against independent innovation.

Unable to present any sound arguments for changing our fantastically successful patent system that is the key to more than 90% of the world's inventions, the Clinton Administration is using James Carville-style tactics against independent inventors. Patent Commissioner Bruce Lehman, a Clinton appointee and Friend of Bill, called those who oppose the patent bill "in the Timothy McVeigh category" and on "the lunatic fringe."

Lehman displayed his personal bias in favor of the big corporations when he expressed disdain for independent inventors who just invent but don't manufacture products, *i.e.*, are independent of big corporations. Many of America's greatest inventors didn't manufacture products; they just invented all those wonderful things such as electric lights. The Founding Fathers were farsighted enough to establish a system that promotes that kind of individual ingenuity. S.507 would destroy it.

There is no reason to change our superior patent system when 90% of the world's patents are American. No reason, that is, unless the purpose of S.507 is to appease the Japanese and favor the multinationals that contribute generously to the reelection campaigns of Members of Congress.

Rep. Roscoe Bartlett, a Member of Congress who is a real inventor holding 20 patents, said it best: "Don't vote to give away our secrets to every copycat around the world."

An Open Letter to the U.S. Senate by 25 Nobel Laureates

September 11, 1997

We urge the Senate to oppose the passage of the pending U.S. Senate Bill S.507.... We believe that S.507 could result in lasting harm to the United States and the world.

First, it will prove very damaging to American small inventors and thereby discourage the flow of new inventions that have contributed so much to America's superior performance in the advancement of science and technology. It will do so by curtailing the protection they obtain through patents relative to the large multinational corporations.

Second, the principle of prior user rights saps the very spirit of that wonderful institution that is represented by the American patent system established in the Constitution in 1787, which is based on the principle that the inventor is given complete protection but for a limited length of time, after which the patent, fully disclosed in the application and published at the time of issue, becomes in the public domain, and can be used by anyone, under competitive conditions for the benefit of all final users. . . .

Sidney Altman, (1989, Chemistry) Yale
Herbert C. Brown, (1979, Chemistry) Purdue
Robert F. Curl, (1996, Chemistry) Rice
Gertrude Elion, (1988, Medicine) Wellcome Research Laboratories
Jerome Friedman, (1990, Physics) MIT
Milton Friedman, (1976, Economics) Univ. of Chicago
John C. Harsanyi, (1994, Economics) University of California at Berkeley
Herbert Hauptman, (1985, Chemistry) Hauptman-Woodward Medical Research Institute
Dudley Herschbach, (1986, Chemistry) Harvard
Roald Hoffman, (1981, Chemistry) Cornell
Henry Kendall, (1990, Physics) MIT
Har Gobind Khorana, (1968, Medicine) MIT
David M. Lee, (1996, Physics) Cornell
Merton Miller, (1990, Economics) University of Chicago
Franco Modigliani, (1985, Economics) MIT
Mario Molina, (1995, Chemistry) MIT
Daniel Nathans, (1978, Medicine) Johns Hopkins
Douglass North, (1993, Economics) Washington University
Paul Samuelson, (1970, Economics) MIT
William Sharpe, (1990, Economics) Stanford
Clifford Shull, (1994, Physics) MIT
Herbert A. Simon, (1978, Economics) Carnegie-Mellon
Richard Smalley, (1996, Chemistry) Rice
Robert Solow, (1987, Economics) MIT
James Tobin, (1981, Economics) Yale

A BAD PATENT BILL. "The Senate is considering a misguided bill to recast the patent laws in ways that would threaten small inventors and dampen the innovative spirit that helps sustain America's economy. . . . The Senate bill would weaken patent protection for small inventors by requiring inventors who file for both American and foreign patents to publish their secrets 18 months after filing rather than when the patent is issued. . . . The economy thrives on independent initiative. Small inventors need iron-clad patent protection so that they are not forced into a legal scrum with financial giants. The House of Representatives and the Senate Judiciary Committee approved the patent bill without hearing the country's leading economists and scientists make their case."

From *The New York Times*, October 17, 1997

DON'T UNDERMINE THE FOUNDATION OF AMERICAN TECHNICAL SUCCESS. "In a few places in our Constitution, the political genius of the Founding Fathers was matched by their economic dexterity. . . . James Madison and the other framers created the mother of invention, a national patent system. . . . Americans have a majority of the world's Nobel laureates in science. Of the people enshrined in the Inventor's Hall of Fame, 91% did their work in the U.S. Our patent system has produced 10 times as many significant inventions as the rest of the world combined. . . .

"A good deal of the patent agenda [of pending bills] was literally made in Japan. In 1994 Japanese trade diplomats snookered the Commerce Department in talks aimed at creating a single world patent system. Ignoring the lessons of American innovation, the Commerce Department agreed to change the system that has served the U.S. so well and make it more like the one that well serves big Japanese companies. . . . James Chandler of the National Intellectual Property Law Institute expects a simple effect on small inventors: `If Mitsubishi, with gross revenues greater than the country of Sweden, comes in under expanded re-examination and says an inventor doesn't deserve the patents, what do you think a lawyer will advise the inventor of limited means? Take whatever peanuts they offer and be satisfied.' . . .

"Publication at 18 months, long before many of the most original ideas pass muster with patent examiners, would effectively legalize industrial espionage, especially against those who can afford only to file and enforce U.S. patents. . . . They learn the lessons taught at the Tonya Harding Business School. The goals are to maintain market share by keeping down competitors. . . . The pending patent proposals in Congress will destroy the balance between large and small interests that is at the heart of the U.S. patent system. Small entities contribute a large share of patents and most breakthrough discoveries. . . .

"The U.S. should not allow Japan to negotiate and legislate the American patent system out of existence."

From *Barron's*, August 4, 1997

The Phyllis Schlafly Report
PO Box 618, Alton, Illinois 62002
ISSN0556-0152
Published monthly by the Eagle Trust Fund, PO Box 618, Alton, Illinois 62002. Periodicals Postage Paid at Alton, Illinois. Postmaster: Address Corrections should be sent to the Phyllis Schlafly Report, PO Box 618, Alton, Illinois 62002. Phone: (618) 462-5415.
Subscription Price: $20 per year. Extra copies available: 50¢ each; 3 copies $1; 30 copies $5; 100 copies $10.
http://www.eagleforum.org **eagle@eagleforum.org**