

Jobs have been the subject of a lot of talk in Washington. One bill has that will cost jobs and harm innovation has already sneaked through the Senate with short notice, and is now poised for passage in the House of Representatives. The America Invents Act (H.R. 1249, formerly the Patent Reform Act), will do exactly the opposite of its title. This bill is opposed by the National Small Business Association, the U.S. Business and Industry Council (small manufacturers), IEEE-USA (electrical engineers, the world's largest professional organization), the International Federation of Professional & Technical Engineers, the American Institute for Medical and Biological Engineering, many of the largest research universities, and several groups of independent inventors' groups. But the groups don't vote—you do, so you must act.

It's urgent that you contact your Congressional representative and ask that he/she oppose the America Invents Act. The bill restacks the deck of the patent law to make it much harder for startups and small companies, the companies that create jobs. It's a giveaway to big companies. Where American patent law has fostered American innovation, and favored American inventors, the bill changes the law to be more like the far-less-successful laws of Europe, where company formation, job growth, and innovation have been much lower.

Congress is on recess April 18 to May 2, so you have a two-week window to meet with your representative. Go to www.house.gov to find your representative's contact info. Stopping this bill requires only a few thousand people to act. Please take the opportunity to *meet* with your representative, or *phone*, or email (a phone call has several times the weight of an email, and a meeting will have many times the impact of a phone call). To schedule a meeting, many will want you to FAX in a letter, so you have to act soon. But something is better than nothing. www.reformaia.org can help you with some of these contacts.

If several people go together, you are more likely to meet with the representative rather than a staffer. But a single contact from a single person is better than nothing.

If you live in Ohio, call Governor Kasich's office, (614) 466-3555. Ask how the \$700,000,000 Ohio Third Frontier jobs program can work, and how the Innovation Ohio Loan Fund will be repaid, if the federal Patent Act is changed to deter investment in startups, and to make it harder for new businesses to succeed.

The person you will talk to will almost certainly know nothing about patents—you know far more. Start out by asking, "Please oppose H.R.1249, the America Invents Act." Then pick one or two of the following items. Your total phone call or email can be three or four sentences. The person answering the phone will want only the short form, the longer form is for you.

1. The bill restacks the deck in favor of big companies and firms that dominate their markets, and against small companies, startups, disruptive innovators, and individual inventors, and takes away the flexibility that small companies need in order to create jobs

Current law provides new companies with a long deadline, called the grace period, before a patent application must be filed, during which a new company can talk to investors, find marketing and manufacturing partners, and test the invention, before bearing the cost (on average, about \$10,000) of filing a patent application—and not file at all if the invention is a dud. H.R. 1249 changes the deadlines, so that inventors will have to file their patent applications *before talking to investors*. That will make it all but impossible for small companies to get started. Startups have been responsible for all net job growth for 30 years, this bill will cut job growth.

2. H.R.1249 takes rights away from younger people and younger companies in favor of large older companies. This bill will make it harder for young people to solve problems and create jobs.

Younger people need all the tools they can use to create jobs and to deal with looming energy and environmental problems; technological invention and a patent system that works for younger smaller companies is such an important tool.

3. American patent law is a great success—we shouldn't "harmonize" to other countries that don't invent like we do. American companies create more jobs—why should we change?

One of the key goals of H.R.1249 is to "harmonize" with other countries. "Harmonize" means to make our laws the same as other countries. But the U.S. is the world leader in innovation, in part because our patent system gives new ideas a chance. Startups and new ideas fare much better in the U.S. because of our patent system than they do in other countries. What truly transforming invention can you think of that was invented outside the United States in the last 50 years? There aren't many. Congress should not tamper with this best element of American exceptionalism.

4. H.R.1249 contains another bailout for large Wall Street banks that want to use inventions for free without paying for them.

The Act has a provision to allow Wall Street banks to invalidate "business method" patents that they are infringing. This doesn't extend to any other industry, only business methods—another Wall Street giveaway.

5. H.R.1249's first-to-file provision, which would often give a patent to an inventor that is not the first to invent, is of questionable constitutional validity.

Should Congress give patents to someone who wins the race to the Patent Office, even if someone else has been working on the invention diligently for far longer?

6. The bill creates two expensive new procedures that allow competitors to tie each other up in repeated fights in the Patent Office, which will increase the Patent Office's delays.

If the patent is invalid, current law gives a competitor several options for asking the Patent Office to revoke or amend the patent. H.R.1249 creates several new routes, already being called "patent assassination," for competitors to ask the Patent Office to review and rereview granted patents, whether valid or invalid. A patentee with no intent to enforce the patent may well find itself with a half million dollars in costs defending itself from an infringer's attack. This will discourage investment in small companies with inventions and stop job creation.

If you are a "patent skeptic" concerned that the patent system is broken, this bill makes things even worse:

7. The bill lets companies use an invention in secret for years, and then patent it years later.

Under current law, companies have to play fair with competitors, by filing patent applications within a year of putting an invention into commercial use. H.R. 1249 changes the rules: a company can use an invention in secret, and then patent it years later.

8. A company can patent and repatent the same invention, to extend patent term for years.

The bill removes the requirement for "one patent per invention," at least if the multiple patents are filed by the same company. This helps big companies, but hurts the ability of new companies to enter the market and compete.

9. The bill essentially repeals the "best mode" requirement—companies will be able to patent all ways to practice an invention, while keeping the *best* way secret, as long as they disclose a fictitious way to practice the invention.

10. Various statutory requirements that an applicant act "without deceptive intention" are repealed—in the future, applicants will have incentive to act *with* deceptive intent

What else is there to say—9 and 10 are the way big companies want it, so the rest of the public loses the benefit of proper disclosure of the invention.

11. The bill changes the fundamentals of the law, so that neither inventors nor the public will know what the law is for decades. Until the courts have decided hundreds of lawsuits to establish new precedent, the legal costs and commercial uncertainty will create costs for American companies in the hundreds of millions, and perhaps billions, of dollars.