



Written by [Raven Clabough](#) on March 10, 2011

Senate Passes Bill to Overhaul Patent Law

On Tuesday, March 8, the U.S. Senate passed legislation that overhauls the nation's patent system, allowing the Patent and Trademark Office more flexibility to have more control over its financing and implementing a system that rewards the first inventor to file a valid application. The legislation — America Invents Act — passed in the Senate easily and without issue, 95 to 5.



However, the U.S. House of Representatives is unlikely to take up the measure any time soon, and some believe that if taken up by the House, the bill is likely to be significantly different from that which has been approved by the Senate.

Chairman of the House Judiciary Committee, Representative Lamar Smith (R-Texas), is preparing to introduce a patent bill that supports the Senate legislation. Of that bill, the *New York Times* writes:

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It is uncertain whether the House bill will contain many of the Senate bill's changes in litigation procedures, like the post-grant review ... A consortium of technology and computer companies are already lobbying House members to resist addressing procedures to re-examine patents in their bill.

Sponsored by Democratic Senator Patrick Leahy (Vt.) and Republican Senators Charles Grassley (Iowa) and Orrin Hatch (Utah), the Senate bill changes the application system. The *New York Times* explains:

The bill also gives the director of the patent office the ability to set its fees and says Congress cannot siphon off that money for other purposes. The patent office pays for itself through assessments of applicants, with the average approved patent generating roughly \$4,000 in fees.

Under the bill, the patent office could set up an expedited review program under which, for a higher fee, it would guarantee a final decision on an application within a year. It now takes about three years, on average, for a patent application to be approved, and the office has such a backlog that it takes two years for examiners to begin work on a new application. Small businesses would be eligible for a reduction in the fee.

The *Associated Press* adds, "The bill would...switch the United States to a 'first-inventor-to-file' system for patent applications used by all other industrialized countries rather than the current 'first-to-invent' system."

Senator Leahy said during debate on the bill:

A patent system developed for a 1952 economy — before the Internet, before cell phones, before computers, before photocopiers, even before the I.B.M. Selectric typewriter — needs to be



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reconsidered in light of 21st-century realities, while staying true to the consistent constitutional imperative of encouraging innovation and invention.

President Obama praised the Senate vote:

This long-overdue reform is vital to our ongoing efforts to modernize America's patent laws and reduce the backlog of 700,000 patent applications — which won't just increase transparency and certainty for inventors, entrepreneurs and businesses, but help grow our economy and create good jobs.

The patent office is currently sifting through 700,000 applications awaiting initial action and 500,000 applications that have already begun to be processed. Proponents of the legislation believe it will help the patent office navigate through the application process more easily.

Those who supported the bill include large technology and pharmaceutical companies, who contend that the new system will make it easier to settle disputes about rights to innovations.

Opposition to the bill is found among small companies and inventors who believe that the patent law changes favor companies that are able to hire an abundance of lawyers to quickly file applications for new permutations in manufacturing or product design.

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