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FIFTH DISTRICT, WISCONSIN

COMMITTEE ON THE JUDICIARY

COMMITTEE ON SCIENCE
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Congress of the United States
House of Representatives
Washington, DC 20515-4905

June 5, 2007

The Honorable John Conyers
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers:

I am writing about H.R. 1908, the Patent Reform Act of 2007, currently pending before the full Judiciary Committee. As I stated at the subcommittee markup last month, I do not believe that we have adequately considered all relevant issues concerning this legislation. I am concerned that the Courts, the Internet, and Intellectual Property Subcommittee has thrust a bill into the hands of the full committee without an adequate hearing record and requisite consensus achieved in advance.

Here are ten examples of issues that have received little or no debate.

1. Views of the Federal Judicial Branch: Chief Judge Paul Michel of the U.S. Court of Appeals for the Federal Circuit recently wrote Senators Leahy and Hatch to say that S. 1145/H.R. 1908 would impose significant administrative burdens on an already-stressed federal bench. We should learn more about the judicial impact of the proposed legislation.
2. Administration Views: The General Counsel of the U.S. Department of Commerce, the parent agency for the U.S. Patent and Trademark Office, recently voiced a number of serious concerns about the legislation. It is important to hear from the Administration on this matter and take its views into consideration.
3. Impact on Non-profits and Universities: The subcommittee did include a representative of the University of California system, who expressed a number of concerns about the legislation. Universities in my home state have echoed those concerns, as have a group of national university associations. We must take time to determine if these concerns are the consensus of American universities and consider the impact H.R. 1908 would have on technology transfer programs.
4. Impact on Small Businesses and the Venture Capital Industry: Although a small high-tech company was included in the subcommittee's closed-door session on the legislation, no small business representative was included in the subcommittee's only public hearing on the bill. In comparison, the House Small Business Committee held its own hearing on this matter a few weeks ago, which may indicate that the small business and venture capital communities feel ignored by the House Judiciary Committee. This concerns me greatly, and I think we must reach out to small businesses and venture firms on this matter.

5. Impact on U.S. Manufacturing: The National Association of Manufacturers recently stated that its membership opposes the bill as currently written, and the Medical Device Manufacturers Association has taken the same position. I am concerned that H.R. 1908 could have the unintended consequence of undermining American manufacturing. We need to hear more from these organizations.

6. Impact on Emerging U.S. Industries: The key proponent of the legislation appears to be the information technology sector which, while important, should not be our only consideration. There are other important emerging industries, such as the nanotech industry, with a huge potential for the future. We need to consider the bill's impact on these industries.

7. Impact on U.S. Agriculture: Eighteen members of the Biotechnology Industry Organization recently wrote that H.R. 1908 would have a negative impact on their ability to develop pest and drought-resistant crops, environmentally-safe products, and clean and renewable biofuels. This important constituency's views should be heard and addressed.

8. Impact on Negotiations with China and other Developing Nations: In April 2006, the United States complained that China imposes inadequate fines on patent infringement. (Statement of Ambassador Peter Allgeier, U.S. Trade Representative to the World Trade Organization, Geneva, April 19, 2006.) Now, Section 5 of H.R. 1908 would reduce infringement damages in the United States by giving more prominence to apportionment and reducing the consideration of other factors. This may negatively affect our ability to press the Chinese and other developing nations to impose greater intellectual property protections within their borders.

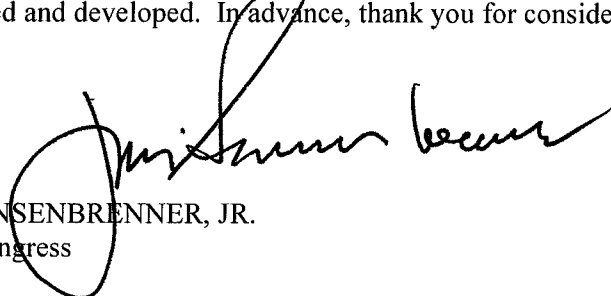
9. Impact of Recent U.S. Supreme Court Cases: The Supreme Court has recently issued a number of decisions regarding patent law, and I feel the Committee must take time to analyze the extent to which those decisions impact the problems H.R. 1908 aims to address. Specifically, the decisions in *KSR*, *E-Bay*, and *MedImmune* would appear relevant.

10. Impact on American Jobs: H.R. 1908 contains a number of provisions that will contribute to the continued off-shoring of American jobs. To the extent that we reduce intellectual property protections domestically, we reduce the willingness of investments in start-up activities and job growth. We also unwittingly contribute to overseas competition. The proposed legislation should be assessed in terms of job creation and retention.

In sum, I am concerned that very fundamental questions regarding this critical legislation remain unasked and unanswered, and I feel it is incumbent upon us to investigate these and other relevant issues more fully before moving the bill through the full committee. Therefore, I hereby request additional hearings to address these and other important issues before moving to a full committee markup. Without further hearings, the only alternative will be to stimulate debate on these issues through the amendment process.

I look forward to discussing this matter with you and working with you to pass a patent reform bill that is fully considered and developed. In advance, thank you for considering my views.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Member of Congress