

AIMBE POSITION STATEMENT

AIMBE OPPOSES PATENT REFORM ACT OF 2009

ISSUE

The Patent Reform Act of 2009 (S. 515) as written will create additional barriers to innovation by stifling job growth and removing financial rewards for innovators in U.S. industry and academia.

BACKGROUND

AIMBE believes that fostering an environment for innovation will keep the U.S. competitive, and the proposed changes to the patent system will not allow individuals and U.S. companies to protect their innovations. Ultimately, this legislation will create an environment where there is less reward for research and development, thus prohibiting the release of products and services which may benefit the end user: Americans in need of life enhancing and life saving technologies.

While the legislation has some positive aspects, AIMBE believes that the following components of the Bill will adversely impact the medical and biological engineering community:

First to file: AIMBE opposes changing from the first-to-invent system to a first-to-file system without concessions from foreign countries. The current first-to-invent system is especially important to smaller entities and does not require concessions from patent systems in foreign countries. While global harmonization of patent policy is an admirable goal, the results of the change from first-to-invent to first-to-file may result in a loss of competition and favor large corporations by decreasing the ability of entrepreneurs and non-profit institutions to protect intellectual property with patents. AIMBE strongly suggests further investigation into the implications of this change by the Congressional Budget Office and/or an objective economic institution to determine the long-term consequences.

Regulatory authority: Existing limitations of the PTO's regulatory authority should remain as is, and not be expanded. The Director's authority should be restricted to promulgating regulations and procedural rules, which the Director determines are necessary to carry out provisions of this legislation. AIMBE believes that, rather than provide more rule-making authority, Congress should consider funding the PTO at an appropriate level so that it may realize its main purpose: to ensure that patents are granted as efficiently and effectively as possible.



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Standards of patentability: AIMBE strongly opposes the revisions to the elimination of 35 USC§285. AIMBE believes that mandatory apportionment will reduce the amount a patent holder may receive for patent infringement as result of trial. Under this act, back damages could be received for only the two previous years, rather than the six years that are currently applicable. These changes may inadequately compensate patent holders for the harm caused by the infringement, since they will not take into account the cost of the research and development producing the invention.

Rights of the inventor to obtain damages: AIMBE is concerned about the rights of inventors as proposed. Inventors should receive compensation based on the value of the inventions. It would be difficult to consistently and fairly attribute a value to patents based on improvements, and apportionment of damages might not fully value a patented contribution. This is especially true since many innovations in medical and biological engineering include components of other inventions. The passage of this bill would likely overwhelm the judicial system with subsequent lawsuits to define the financial damages to be apportioned according to each individual patent's contribution to the overall value of a product. We encourage further study into the how the legal system will be impacted by this change.

Post-grant procedures: AIMBE is opposed to creating post-grant procedures. Post-grant procedures challenge the validity of issued patents, thereby reducing the value of patents held by start-up companies and universities. Additionally, the proposed procedures could be used as strategic litigation to delay a product's development, giving larger businesses an unnecessary competitive advantage.

Third party submissions: AIMBE believes that the attempt to provide pre-grant submissions may favor large corporations and believes that under the proposed reform equal review may not be provided to small and large companies alike. AIMBE fears that larger companies may be able to interfere with the ability of smaller companies and universities to protect their innovations.

RECOMMENDATION

While the legislation has some positive aspects, we believe that the Patent Reform Act should not be adopted until there is more study on its impacts to U.S. business and the economy.

For more information, please contact Benjamin Corb, Director of Legislative Affairs, via e-mail at bcorb@aimbe.org, or via telephone at 202.496.9660.

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The American Institute for Medical and Biological Engineering (AIMBE) is a non-profit organization representing 50,000 individuals and the top 2% of medical and biological engineers. Also, AIMBE represents academic institutions, private industry, and other professional engineering societies. AIMBE was founded in 1991 to establish a clear and comprehensive identity for the field of medical and biological engineering - which is the bridge between the principles of engineering science and practice, and the problems and issues of biological and medical science and practice.

