Restoring America’s Leadership In Innovation Act of 2018

SECTION BY SECTION

Section 1 – Short Title; Table of Contents

Section 2 – Findings

➢ The U.S. Government exists to protect life, liberty, and property, including intellectual property.

➢ A U.S. patent secures a private property right to an inventor.

Section 3 – Restoring the Right of the First Inventor to Secure a Patent and One-Year Grace Period

➢ Repeals the provisions of the Leahy-Smith America Invents Act that converted the United States to a first-inventor-to-file system of awarding patents, and provides that the first inventor to “conceive of the invention and diligently reduce the invention to practice” is entitled to a patent.

➢ Restores the pre-Leahy-Smith America Invents Act one-year grace period between first disclosure and the date by which an inventor must file a patent application.

Section 4 – Abolishing Inter Partes and Post-Grant Review

Repeals provisions of the Leahy-Smith America Invents Act that create the inter partes review and post-grant review proceedings before the Patent Trial and Appeal Board that invalidate patents at an unreasonably high rate.

Section 5 – Abolishing the Patent Trial and Appeal Board

➢ Repeals provisions of the Leahy-Smith America Invents Act that create the Patent Trial and Appeal Board.

➢ Restores the pre-AIA Board of Patent Appeals and Interferences to allow inventors to appeal adverse patent examination decisions.

➢ Provides that the Board shall not have the power to invalidate patents except through ex parte reexamination procedures.

➢ Provides for direct appeal of adverse Board of Patent Appeals and Interferences decisions to the U.S. Court of Appeals for the Federal Circuit.

Section 6 – Elimination of Fee Diversion and Full Funding of the U.S. Patent and Trademark Office

Eliminates fee diversion through the establishment of a new USPTO revolving fund in the U.S. Treasury. Adequate, dependable funding is critical for timely, higher-quality patents.

Section 7 – Patentability of Scientific Discoveries and Software Inventions

➢ Amends Section 101 of the Patent Act, 35 U.S.C. § 101, to clarify that a claimed invention is entitled to a patent unless it “exists in nature independently of and prior to any human activity, or exists solely in the human mind.”
Clarifies that subject-matter eligibility determinations must be made without regard for the requirements of Sections 102, 103, and 112 of the Patent Act, or the claimed invention’s “inventive concept.”

Section 8 – Limitations on Prior Art

Amends Section 102 to ensure that information disclosed to the U.S. Patent and Trademark Office through patent applications is not prior art that would preclude the issuance of a patent.

Section 9 – Restoring Patents As A Property Right

- Adds a new section to the Patent Act to clarify that a patent right is a private property right that may only be revoked through a court order in a judicial proceeding, unless the patent owner expressly consents to an administrative adjudication of his or her patent rights.

- Overrules the Supreme Court’s decision in Impression Products Inc. v. Lexmark International, Inc. by clarifying that, as private property rights, patents are freely transferrable, in whole or in part, including through licensing.

Section 10 – Ending Automatic Publication of Patent Applications

Abolishes the practice of automatic “publication” of patent applications and prohibiting the U.S. Patent and Trademark Office from releasing any information about a patent application unless or until a patent issues.

Section 11 – Presumption of Validity; Defenses

- Provides that a patent issued by the U.S. Patent and Trademark Office shall be entitled to a presumption of validity in any federal or state judicial or administrative proceeding.

- Provides that each individual claim of a patent shall be presumed valid independently of all other claims, whether or not such claim is dependent on another claim, even if such claim is dependent on an invalid claim.

- Clarifies that the burden of demonstrating the invalidity of a patent rests on the party asserting that the patent is invalid.

- Tolls the term of a patent in any action where the validity of such patent has been challenged.

Section 12 – Injunction

- Effectively overrules the Supreme Court’s decision in eBay, Inc. v. MercExchange, LLC by instructing courts to presume, upon finding that a patent has been infringed, that a patent owner (or exclusive licensee) has suffered irreparable harm. Such presumption may only be overcome by clear and convincing evidence.

- Clarifies that a patent owner need not make or sell the patented product to show irreparable harm.

Section 13 – Best Mode Requirement
Repeals certain provisions of the America Invents Act to clarify that patent applicants must disclose their “preferred embodiment” for an invention in their application.