

# 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.