Turner	West	Woodall
Upton	Westmoreland	Yoder
Visclosky	Whitfield	Young (AK)
Walberg	Wilson (SC)	Young (FL)
Walden	Wittman	Young (IN)
Walsh (IL)	Wolf	
Webster	Womack	

NOES—173

Ackerman	Fudge	Owens
Andrews	Garamendi	Pallone
Baca	Gonzalez	Pascrell
Bachmann	Green, Al	Pastor (AZ)
Baldwin	Green, Gene	Payne
Barrow	Grijalva	Pelosi
Bass (CA)	Gutierrez	Perlmutter
Becerra	Hanabusa	Peters
Berkley	Hastings (FL)	Pingree (ME)
Berman	Heinrich	Polis
Bishop (NY)	Higgins	Price (NC)
Blumenauer	Himes	Quigley
Boswell	Hinchey	Rahall
Brady (PA)	Hinojosa	Reyes
Braley (IA)	Hirono	Richardson
Brown (FL)	Hochul	Richmond
Butterfield	Holt	Rothman (NJ)
Capps	Honda	Roybal-Allard
Capuano	Hoyer	Ruppersberger
Cardoza	Israel	Rush
Carnahan	Jackson (IL)	Ryan (OH)
Carney	Jackson Lee (TX)	Sánchez, Linda T.
Carson (IN)	Johnson (GA)	Sanchez, Loretta
Castor (FL)	Johnson, E. B.	Sarbanes
Chu	Kaptur	Schakowsky
Cicilline	Keating	Schiff
Clarke (MI)	Kildee	Schrader
Clarke (NY)	Kind	Schwartz
Clay	Kucinich	Scott (VA)
Cleaver	Langevin	Scott, David
Clyburn	Larson (CT)	Serrano
Cohen	Lee (CA)	Sewell
Connolly (VA)	Levin	Sherman
Conyers	Lewis (GA)	Sires
Cooper	Lipinski	Slaughter
Costa	Loebsack	Speier
Costello	Lofgren, Zoe	Stark
Courtney	Lowey	Sutton
Critz	Luján	Thompson (CA)
Crowley	Lynch	Thompson (MS)
Cuellar	Maloney	Tierney
Cummings	Markey	Tonko
Davis (CA)	Matsui	Towns
Davis (IL)	McCarthy (NY)	Tsongas
DeFazio	McCollum	Van Hollen
DeGette	McDermott	Velázquez
DeLauro	McGovern	Walz (MN)
Deutch	McNerney	Wasserman Schultz
Dingell	Meeks	Waters
Doggett	Michaud	Watt
Doyle	Miller (NC)	Waxman
Edwards	Miller, George	Welch
Ellison	Moore	Wilson (FL)
Engel	Moran	Woolsey
Eshoo	Murphy (CT)	Wu
Farr	Nadler	Yarmuth
Fattah	Neal	
Filner	Olver	
Frank (MA)		

NOT VOTING—7

Giffords	Hurt	Stivers
Gingrey (GA)	Napolitano	
Holden	Rangel	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1351

Mr. BERMAN changed his vote from ''aye'' to ''no.''

Mr. MCINTYRE changed his vote from ''no'' to ''aye.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mrs. BACHMANN. Mr. Speaker, when rollcall vote 480 was called, I registered my vote as ''aye'' and then proceeded to an Intelligence briefing. When I returned to the floor, it was my intention to vote ''no'' on the next amendment and I registered my vote as such. Unfortunately, due to a staffing error, it was still the same rollcall vote 480, and my ''aye'' was mistakenly changed to ''no.'' To be clear, I do support the rule providing for consideration of the FY2012 Department of Defense Appropriations Bill.

Stated against:

Ms. NAPOLITANO. Mr. Speaker, on Thursday, June 23, 2011, I was absent during rollcall vote No. 480 in order to attend my grandson's graduation. Had I been present, I would have voted ''no'' on H. Res. 320—Rule providing for consideration of H.R. 2219—Department of Defense Appropriations Act, 2012.

AMERICA INVENTS ACT

The SPEAKER pro tempore (Mr. WOODALL). Pursuant to House Resolution 316 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1249.

□ 1351

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1249) to amend title 35, United States Code, to provide for patent reform, with Mr. POE of Texas (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Wednesday, June 22, 2011, a request for a recorded vote on amendment No. 1 printed in part B of House Report 112–111 offered by the gentleman from Texas (Mr. SMITH) had been postponed.

AMENDMENT NO. 1 OFFERED BY MR. SMITH OF TEXAS

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on the amendment printed in part B of House Report 112–111 on which further proceedings were postponed.

The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. SMITH) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 283, noes 140, not voting 8, as follows:

[Roll No. 481]

AYES—283

Ackerman	Austria	Barton (TX)
Adams	Bachus	Bass (NH)
Aderholt	Barletta	Benishek
Alexander	Barrow	Berkley
Altmire	Bartlett	Biggert
Bilirakis	Guthrie	Paulsen
Bishop (GA)	Hall	Pearce
Bishop (UT)	Hanabusa	Pence
Black	Hanna	Perlmutter
Blackburn	Harper	Peterson
Bonner	Harris	Petri
Bono Mack	Hastings (WA)	Pitts
Boren	Hayworth	Platts
Boswell	Heck	Poe (TX)
Boustany	Hensarling	Pompeo
Brady (TX)	Herger	Price (GA)
Braley (IA)	Herrera Beutler	Price (NC)
Buchanan	Himes	Quayle
Bucshon	Hinchey	Quigley
Buerkle	Hochul	Rahall
Burgess	Hoyer	Reed
Burton (IN)	Huelskamp	Rehberg
Butterfield	Huizenga (MI)	Reichert
Calvert	Hultgren	Renacci
Camp	Inslee	Ribble
Campbell	Issa	Richardson
Canseco	Jackson Lee (TX)	Richmond
Cantor	Jenkins	Rigell
Capito	Johnson (GA)	Rivera
Capuano	Johnson (OH)	Roby
Carnahan	Johnson, Sam	Roe (TN)
Carney	Jordan	Rogers (AL)
Carter	Keating	Rogers (KY)
Cassidy	Kelly	Rogers (MI)
Chabot	King (NY)	Rokita
Chaffetz	Kingston	Rooney
Chandler	Kinzinger (IL)	Ros-Lehtinen
Cicilline	Kissell	Roskam
Coble	Kline	Ross (AR)
Coffman (CO)	Labrador	Ross (FL)
Cohen	Lamborn	Rothman (NJ)
Cole	Langevin	Runyan
Conaway	Lankford	Ruppersberger
Connolly (VA)	Larsen (WA)	Rush
Cooper	Larson (CT)	Ryan (WI)
Costello	Latham	Sánchez, Linda T.
Courtney	LaTourette	Sarbanes
Cravaack	Latta	Scalise
Crawford	Lewis (CA)	Schilling
Crenshaw	LoBiondo	Schmidt
Critz	Loebsack	Schrader
Crowley	Long	Schwartz
Cuellar	Lowey	Schweikert
Culberson	Lucas	Serrano
Davis (KY)	Luetkemeyer	Sessions
DeLauro	Lummis	Sewell
Denham	Lungren, Daniel E.	Shimkus
Dent	Maloney	Shuler
DesJarlais	Marchant	Shuster
Diaz-Balart	Marino	Simpson
Dicks	Matheson	Sires
Dold	McCarthy (CA)	Smith (NE)
Donnelly (IN)	McCarthy (NY)	Smith (NJ)
Dreier	McCaul	Smith (TX)
Duffy	McCollum	Smith (WA)
Duncan (TN)	McCotter	Southerland
Ellmers	McGovern	Stutzman
Emerson	McHenry	Sullivan
Engel	McIntyre	Thompson (PA)
Farenthold	McKeon	Thornberry
Fattah	McKinley	Tiberi
Fincher	McMorris Rodgers	Tipton
Fitzpatrick	Meehan	Upton
Fleischmann	Meeks	Visclosky
Fleming	Mica	Walberg
Flores	Michaud	Walden
Forbes	Miller (MI)	Walsh (IL)
Fortenberry	Miller, Gary	Wasserman Schultz
Foxx	Moran	Welch
Frelinghuysen	Mulvaney	West
Gallegly	Murphy (CT)	Westmoreland
Gardner	Murphy (PA)	Whitfield
Gerlach	Myrick	Wilson (FL)
Gibbs	Neal	Wilson (SC)
Gibson	Neugebauer	Wittman
Gohmert	Noem	Wolf
Goodlatte	Nugent	Womack
Gosar	Nunes	Woodall
Gowdy	Nunnelee	Wu
Granger	Olson	Yarmuth
Graves (GA)	Olver	Yoder
Graves (MO)	Owens	Young (AK)
Griffin (AR)	Palazzo	Young (FL)
Griffith (VA)		Young (IN)
Grimm		
Guinta		

NOES—140

Akin	Bass (CA)	Blumenauer
Amash	Becerra	Brady (PA)
Andrews	Berg	Brooks
Baca	Berman	Broun (GA)
Bachmann	Bilbray	Brown (FL)
Baldwin	Bishop (NY)	Capps

Cardoza	Hinojosa	Pelosi
Carson (IN)	Hirono	Peters
Castor (FL)	Holt	Pingree (ME)
Chu	Honda	Polis
Clarke (MI)	Hunter	Posey
Clarke (NY)	Israel	Reyes
Clay	Jackson (IL)	Rohrabacher
Cleaver	Johnson (IL)	Roybal-Allard
Clyburn	Johnson, E. B.	Royce
Conyers	Jones	Ryan (OH)
Costa	Kaptur	Sanchez, Loretta
Cummings	Kildee	Schakowsky
Davis (CA)	Kind	Schiff
Davis (IL)	King (IA)	Schock
DeFazio	Kucinich	Scott (SC)
DeGette	Lance	Scott (VA)
Deutch	Landry	Scott, David
Dingell	Lee (CA)	Sensenbrenner
Doggett	Levin	Sherman
Doyle	Lewis (GA)	Slaughter
Duncan (SC)	Lipinski	Speier
Edwards	Lofgren, Zoe	Stark
Ellison	Luján	Stearns
Eshoo	Lynch	Sutton
Farr	Mack	Terry
Filner	Manzullo	Thompson (CA)
Flake	Markey	Thompson (MS)
Frank (MA)	Matsui	Tierney
Franks (AZ)	McClintock	Tonko
Fudge	McDermott	Towns
Garamendi	McNerney	Tsongas
Garrett	Miller (FL)	Turner
Gonzalez	Miller (NC)	Van Hollen
Green, Al	Miller, George	Velázquez
Green, Gene	Moore	Walz (MN)
Grijalva	Nadler	Waters
Gutierrez	Pallone	Watt
Hartzler	Pascrell	Waxman
Hastings (FL)	Pastor (AZ)	Webster
Heinrich	Paul	Woolsey
Higgins	Payne	

NOT VOTING—8

Giffords	Hurt	Scott, Austin
Gingrey (GA)	Napolitano	Stivers
Holden	Rangel	

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (Mrs. CAPITO) (during the vote). There are 2 minutes remaining in this vote.

□ 1410

Mr. MACK changed his vote from ''aye'' to ''no.''

Messrs. BARTLETT and MULVANEY changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Mr. AUSTIN SCOTT of Georgia. Madam Chair, on rollcall No. 481 I was unavoidably detained. Had I been present, I would have voted ''nay.''

Mrs. NAPOLITANO. Madam Chair, on Thursday, June 23, 2011, I was absent during rollcall vote No. 481 in order to attend my grandson's graduation. Had I been present, I would have voted ''nay'' on the Smith (TX) Manager's Amendment.

AMENDMENT NO. 2 OFFERED BY MR. CONYERS

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in part B of House Report 112–111.

Mr. CONYERS. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 24, strike line 3 and all that follows through page 25, line 12, and insert the following:

(n) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section—

(A) shall take effect 90 days after the date on which the President issues an Executive order containing the President's finding that major patenting authorities have adopted a grace period having substantially the same effect as that contained under the amendments made by this section; and

(B) shall apply to all applications for patent that are filed on or after the effective date under subparagraph (A).

(2) DEFINITIONS.—In this subsection:

(A) MAJOR PATENTING AUTHORITIES.—The term ''major patenting authorities'' means at least the patenting authorities in Europe and Japan.

(B) GRACE PERIOD.—The term ''grace period'' means the 1-year period ending on the effective filing date of a claimed invention, during which disclosures of the subject matter by the inventor or a joint inventor, or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor, do not qualify as prior art to the claimed invention.

(C) EFFECTIVE FILING DATE.— The term ''effective filing date of a claimed invention'' means, with respect to a patenting authority in another country, a date equivalent to the effective filing date of a claimed invention as defined in section 100(i) of title 35, United States Code, as added by subsection (a) of this section.

(3) RETENTION OF INTERFERENCE PROCEDURES WITH RESPECT TO APPLICATIONS FILED BEFORE EFFECTIVE DATE.—In the case of any application for patent that is filed before the effective date under paragraph (1)(A), the provisions of law amended by subsections (h) and (i) shall apply to such application as such provisions of law were in effect on the day before such effective date.

Page 11, lines 21-23, strike ''upon the expiration of the 18-month period beginning on the date of the enactment of this Act,'' and insert ''on the effective date provided in subsection (n)''.

The Acting CHAIR. Pursuant to House Resolution 316, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. CONYERS. I ask unanimous consent that the gentleman from California, DANA ROHRABACHER, be added to this amendment as a cosponsor.

The Acting CHAIR. The Chair would advise the gentleman that amendments do not have cosponsors.

Mr. CONYERS. I yield myself 2½ minutes.

Ladies and gentlemen, this bipartisan amendment adds an important provision to H.R. 1249. It would permit the conversion of the United States to a first-to-file system only upon a Presidential finding that other nations have adopted a similar one-year grace period. This one-year grace period protects the ability of an inventor to discuss or write about his or her ideas for a patent up to a year before he or she actually files for patent protection. And without this grace period, an inventor could lose his or her own patent.

This grace period provision within H.R. 1249 would grant an inventor a one-year period between the time he first publishes his invention to the time when he's required to file a patent. During this time, this would prohibit anyone else from seeing this publication, stealing the idea, and quickly filing a patent behind the inventor's back. Yet the only way for American inventors to benefit from the grace period provision contained in 1249 is to ensure that the foreign countries adopt a similar grace period as well.

The amendment would encourage other countries to adopt a similar period in their patent system consistent with a recommendation by the National Academy's National Research Council. Current law in the United States allows a grace period of 1 year, during which an applicant can disclose or commercialize an invention before filing for a patent. Japan offers a limited grace period, and Europe provides none.

If the first-to-file provision in the bill is implemented, we must ensure that American inventors are not disadvantaged. Small American inventors and universities are disadvantaged abroad in those nations where there is no grace period.

The grace period provision within H.R. 1249 would grant an inventor a one-year period between the time he first publishes his invention to the time when he is required to file a patent.

During this time, this would prohibit anyone else from seeing this publication, stealing the idea, and quickly filing a patent behind the inventor's back.

Yet, the only way for American inventors to benefit from the grace period provision contained in H.R. 1249 is to ensure that foreign countries adopt a grace period, as well.

Small American inventors and universities are disadvantaged abroad in those nations where there is no grace period. As a result, they often lose the right to patent because these other countries do not care about protecting small business and university research.

The United States needs to do more to protect the small inventor and universities not just here but abroad.

Unfortunately, other countries will not do it on their own even though they want the United States to convert to a ''first-to-file'' system.

If H.R. 1249 passes without my Amendment, we will be giving away a critical bargaining chip that we can use to encourage other countries to follow our lead.

My Amendment ensures that the only way to benefit from the grace period in H.R. 1249 is to have foreign countries adopt a grace period.

Without this Amendment, we will be unilaterally transitioning the United States to a ''first-to-file'' system with a weak grace period without any incentive for foreign countries to adopt a grace period.

I should also note that identical language was included in H.R. 1908, the ''Patent Reform Act of 2007,'' which the House passed on September 7, 2007.

Accordingly, I urge my colleagues to support this Amendment.

Mr. SMITH of Texas. I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Madam Chair, the Conyers amendment to tie the changes proposed in the America Invents Act to future changes that would

be made in foreign law is unworkable. I oppose providing a trigger in U.S. law that leaves our patent system at the mercy of actions to be taken at a future date by the Chinese, Russians, French, or any other country. It is our constitutional duty to write the laws for this great land. We cannot delegate that responsibility to the whims of foreign powers.

I know that this idea has been floated in the past, but after working on several pieces of patent legislation over the past several Congresses, and particularly this year on H.R. 1249, it has become clear that this type of trigger idea is simply not workable and is counterproductive.

The move to a first-inventor-to-file system creates a more efficient and reliable patent system that benefits all inventors, including independent inventors. The bill provides a more transparent and certain grace period, a key feature of U.S. law, and a more definite filing date that enables inventors to promote, fund, and market their technology, while making them less vulnerable to costly patent challenges that disadvantage independent inventors.

Under first-inventor-to-file, an inventor submits an application to the Patent Office that describes their invention and how to make it. That, along with a $110 fee, gets them a provisional application and preserves their filing date. This allows the inventor an entire year to complete the application, while retaining the earlier filing date. By contrast, the cost of an interference proceeding before the PTO often runs to $500,000.

The current first-to-invent system harms small businesses and independent inventors. Former PTO Commissioner Gerald Mossinghoff conducted a study that proves smaller entities are disadvantaged in PTO interference proceedings that arise from disputes over patent ownership under the current system. Independent inventors and small companies lose more often than they win in these disputes, plus bigger companies are better able to absorb the cost of participating in these protracted proceedings.

In addition, many inventors also want protection for their patents outside the United States. If you plan on selling your product overseas, you need to secure an early filing date. If you don't have a clear filing date, you can be shut off from the overseas market. A change to first-inventor-to-file will help our businesses grow and ensure that American goods and services will be available in markets across the globe.

In the last 7 years, only one independent inventor out of 3 million patent applications filed has prevailed over the inventor who filed first. One out of 3 million. So there is no need for this amendment. Independent inventors lose to other applicants with deeper pockets that are better equipped to exploit the current complex legal environment.

So the first-to-file change makes it easier and less complicated for U.S. inventors to get patent protection around the world. And it eliminates the legal bills that come with the interference proceedings under the current system. It is a key provision of this bill that should not be contingent upon actions by foreign powers and delay what would be positive reforms for independent inventors and our patent system.

The first-inventor-to-file provision is necessary for U.S. competitiveness and innovation. It makes our patent system stronger, increases patent certainty, and reduces the cost of frivolous litigation.

However, if you support the U.N. having military control over our troops, or if you support the concept of an international court at The Hague, then you would support this amendment's proposal of a trigger that subjects U.S. domestic law to the whims of governments in Europe, China, or Russia.

It really would be unprecedented to hold U.S. law hostage to legal changes made overseas, and would completely go against what this great country stands for and what our Founders fought for: the independent rights and liberties we have today.

For these reasons, Madam Chair, I am strongly opposed to the amendment.

I yield back the balance of my time.

□ 1420

Mr. CONYERS. I yield the balance of my time to the gentleman from California (Mr. ROHRABACHER).

The Acting CHAIR. The gentleman from California is recognized for 2½ minutes.

Mr. ROHRABACHER. Let's just note that Ms. LOFGREN last night presented a case to this body which I felt demonstrated the danger that we have in this law. A move to first-to-file system, which is what this bill would do, without a corresponding 1-year grace period in other countries dramatically undermines the patent protection of American inventors. Some of us believe that's the purpose of this bill because they want to harmonize American law with the weak systems overseas.

Well, without this amendment that we are talking about right now, without the Conyers-Rohrabacher amendment, if an inventor discloses his discoveries, perhaps to potential investors, his right to patent protection is essentially gone. It's not gone from just Americans. Yes, he would be protected under American law; but from all those people in foreign countries without a similar grace period to what we have here in our system, these people are not restricted. Thus, they could, once an American inventor discloses it, at any time they can go and file a patent and steal our inventors' discoveries.

The only way for American inventors to benefit from a grace period here, which this bill is all about, is to ensure that foreign countries adopt the same grace period. And that's what this amendment would do. It would say our bill, which will make our inventors vulnerable to foreign theft, will not go into place until those foreign countries have put in place a similar grace period, which then would prevent them and their citizens from coming in and stealing our technology. Ms. LOFGREN detailed last night in great detail how that would work.

I call this bill basically the Unilateral Disclosure Act, if not the Patent Rip-Off Act, because we are disclosing to the world what we've got. And our people can't follow up on it because there's a grace period here, but overseas they don't have that same grace period. So what we're saying is, to prevent foreigners from stealing American technology, this will not go into effect until the President has issued a statement verifying that the other countries of the world have a similar grace period so they can't just at will rip off America's greatest entrepreneurs and inventors.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. CONYERS. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 3 OFFERED BY MS. BALDWIN

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in part B of House Report 112–111.

Ms. BALDWIN. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike section 5 (''Defense to Infringement Based on Prior Commercial Use''), as amended, and redesignate succeeding sections and references thereto (and conform the table of contents) accordingly.

Page 68, line 9, strike ''section 18'' and insert ''section 17''.

Page 115, line 10, strike ''6(f)(2)(A)'' and insert ''5(f)(2)(A)''.

The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Wisconsin (Ms. BALDWIN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Wisconsin.

Ms. BALDWIN. I yield myself 3½ minutes.

Madam Chair, I rise to urge adoption of the Baldwin-Sensenbrenner amendment that strikes section 5 in the America Invents Act. Section 5 expands the prior-user rights defense from its present narrow scope to broadly apply to all patents with minimal exceptions.

As we work to rebuild our economy, Congress should be doing all that it can

to foster small business innovation and investment. I believe that section 5 will do just the opposite. Expanding prior-user rights will be disastrous for small American innovators, as well as university researchers, and ultimately slow job creation.

Despite current challenges, the U.S. patent system remains the envy of the world. Since the founding of our Nation, inventions have been awarded exclusive rights in exchange for public disclosure. This system also creates incentives for investing in new ideas, fostering new ways of thinking, and encouraging further advancement and disclosures. It promotes progress.

If proponents of expanding prior-user rights have their way with this legislation, they will give new rights to those who have previously developed and used the same process or product even if they never publicly divulged their innovation and never even applied for a patent. It will transform our patent system from one that values transparency to one that rewards secrecy.

To understand why expanding prior-user rights runs counter to the public interest, it is important to reiterate how critical exclusive rights are for inventions to gain marketplace value and acquire capital. For start-ups and small businesses, raising necessary capital is vital and challenging. The expansion of prior-user rights would only make that task all the more difficult.

Under the system proposed in the American Invents Act, investors would have no way of determining whether anyone had previously developed and used the process or product that they were seeking to patent. In such a scenario, a patent might be valuable or relatively worthless; and the inventor and potential investors would have no means of determining which was true.

Madam Chairwoman, I would like to boast for a moment if I could about Stratatech, a fiercely innovative small business in Madison run by a top researcher at the University of Wisconsin who, through her research there, developed a human living skin substitute. This living skin is a groundbreaking treatment method that we hope will ultimately save the lives of American troops who have suffered burns while serving in Iraq and Afghanistan.

The company was recently awarded nearly $4 million to continue clinical trials for their tissue product. And what can save lives in a desert combat setting abroad will assuredly transform the way doctors save lives of burn victims in hospitals around our country and around the world.

Now, I wonder if Stratatech would have been able to drive this phenomenal innovation and life-saving technology as far as they have with a patent that provides only conditional exclusivity. Would investors have felt as secure advancing this technology in a system shrouded in secrecy? What if Stratatech's patent was subject to the claims of an unlimited number of people or companies who could later claim ''prior use''?

The Acting CHAIR. The time of the gentlewoman has expired.

Ms. BALDWIN. I yield myself 15 additional seconds.

If we let section 5 stand, it is unclear to me whether a similar company would ever secure the funding that they need to grow.

I urge my colleagues to adopt the Baldwin-Sensenbrenner amendment.

I reserve the balance of my time.

Mr. SMITH of Texas. I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. SMITH of Texas. Madam Chair, this amendment strikes the prior-user rights provision from the bill. I strongly oppose this amendment.

The bill expands prior-user rights—a strong, pro-job, pro-manufacturing provision. This provision will help bring manufacturing jobs back to this country. It allows factories to continue using manufacturing processes without fear of costly litigation. It is absolutely a key component of this bill.

This provision has the strong support of American manufacturers and the support of all the major university associations and technology-transfer associations. These include the Association of American Universities, American Council on Education, Association of American Medical Colleges, Association of Public and Land Grant Universities, Association of University Technology Managers, and the Council on Government Relations representing the vast majority of American Universities. Prior-user rights ensure that the first inventor of a new process or product using manufacturing can continue to do so.

This provision has been carefully crafted between stakeholders and the university community. The language provides an effective exclusion for most university patents, so this provision focuses on helping those in the private sector.

The prior-use defense is not overly expansive and will protect American manufacturers from having to patent the hundreds or thousands of processes they already use in their plants.

After getting initial input from the university community, they recommended that we make the additional changes reflected in this bill to ensure that prior-user rights will work effectively for all private sector stakeholders.

Prior-user rights are important as part of our change to a first-to-file system. I believe it is important to ensure that we include these rights to help our job-creating manufacturers across the United States. The philosophical objections of a lone tech-transfer office in Wisconsin should not counter the potential of this provision for job creation throughout America.

There are potentially thousands or hundreds of thousands of unemployed Americans who are looking for manufacturing jobs and could benefit from this provision. Without this provision, businesses say they may be unable to expand their factories and hire American workers if they are prevented from continuing to operate their facilities the way they have for years.

□ 1430

For many manufacturers, the patent system presents a catch-22. If they patent a process, they disclose it to the world and foreign manufacturers will learn of it and, in many cases, use it in secret without paying licensing fees. The patents issued on manufacturing processes are very difficult to police, and oftentimes patenting the idea simply means giving the invention away to foreign competitors. On the other hand, if the U.S. manufacturer doesn't patent the process, then under the current system a later party can get a patent and force the manufacturer to stop using a process that they independently invented and used.

In recent years, it has become easier for a factory owner to idle or shut down parts of his plant and move operations and jobs overseas rather than risk their livelihood through an interference proceeding before the PTO. The America Invents Act does away with these proceedings and includes the pro-manufacturing and constitutional provision of prior-user rights.

This provision creates a powerful incentive for manufacturers to build new plants and new facilities in the United States. Right now, all foreign countries recognize prior-user rights, and that has played a large role in attracting American manufacturing jobs and facilities to these countries. H.R. 1249 finally corrects this imbalance and strongly encourages businesses to create manufacturing jobs in this country.

The prior-user rights provision promotes job creation in America. Prior-user rights will help manufacturers, small business and other innovative industries strengthen our economy. It will help our businesses grow and allow innovation to flourish.

I strongly support prior-user rights, and so I oppose this amendment.

I yield back the balance of my time.

Ms. BALDWIN. I yield the balance of my time to the gentleman from Wisconsin (Mr. SENSENBRENNER).

The Acting CHAIR. The gentleman from Wisconsin is recognized for 1¼ minutes.

Mr. SENSENBRENNER. Madam Chair, this expansion of prior-user rights is a step in the wrong direction. It goes against what this House determined 4 years ago when we last debated this issue, and also it is different than what the Senate has done in March of this year.

The fundamental principle of patent law is disclosure, and the provision in this bill that the amendment seeks to strike goes directly against disclosure and instead encourages people who may invent not to even file for a patent, and that will slow down research

and expanding the knowledge of humans.

The gentleman from Texas talks about manufacturing. I am all for manufacturing. I think we all are all for manufacturing. But what this does is it helps old manufacturing, which we need to help, but it also puts new manufacturing in the deep freeze because they use the disclosures that are required as a part of a patent application.

You vote for the amendment if you want disclosure and advancement of human knowledge. You vote against the amendment if you want secrecy in this process.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentlewoman from Wisconsin (Ms. BALDWIN).

The question was taken; and the Acting CHAIR announced that the noes appeared to have it.

Ms. BALDWIN. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Wisconsin will be postponed.

AMENDMENT NO. 4 OFFERED BY MS. MOORE

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in part B of House Report 112–111.

Ms. MOORE. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 139, insert the following after line 12 and redesignate succeeding sections (and conform the table of contents) accordingly:

SEC. 29. ESTABLISHMENT OF METHODS FOR STUDYING THE DIVERSITY OF APPLICANTS.

The Director shall, not later than the end of the 6-month period beginning on the date of the enactment of this Act, establish methods for studying the diversity of patent applicants, including those applicants who are minorities, women, or veterans. The Director shall not use the results of such study to provide any preferential treatment to patent applicants.

The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Wisconsin (Ms. MOORE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Wisconsin.

Ms. MOORE. Madam Chair, I yield myself such time as I may consume.

My amendment would ensure that we have the proper data to identify and work with sectors of the U.S. economy that are participating in the patent process at significantly lower rates.

Specifically, my amendment allows the USPTO to develop methods for ways to track the diversity of patent applicants. It also specifically prohibits the office from using any such results for any preferential treatment in the application process.

I certainly do applaud the USPTO for their outreach to the Women's Chamber of Commerce and to the National Minority Enterprise Development Conferences to try to increase diversity with utilizing the patent process. But some recent data have raised concern that minorities and women-owned businesses are just not keeping up with the patent process.

Preliminary data from a 2009 Kauffman Foundation survey of new businesses show that minority-owned technology companies hold fewer patents and copyrights after the fifth year of starting than comparable nonminority businesses. In fact, the Kauffman data show that minority-owned firms with patents hold only two on average, compared with the eight of their counterparts. Another survey uses National Science Foundation data to suggest that women commercialize their patents 7 percent less than their male counterparts.

Now, the best example I can think of this is the late great George Washington Carver, who we all know discovered 300 uses for peanuts and hundreds more for other plants. He went on to help local farmers with many improvements to their farm equipment, ingredients, and chemicals. However, Carver only applied for three patents.

Some historians have written on whether or not Eli Whitney was, indeed, the original inventor of the cotton gin or whether the invention could have originated from the slave community. At the time, slaves were unable to register an invention with the Patent Office, and the owner could not patent on their behalf because of the requirement to be an original inventor.

Now, African Americans and women have a long history of inventing some of the most influential products in our society, but we also simply do not have enough information to further explore and explain these results. And as our government and industry leaders look into these problems and possibly fix these deficiencies, they run into a major hurdle.

Currently, the Patent and Trade Office only knows the name and general location of a patent applicant. In most cases, only the physical street address that the office collects is for the listed patent attorney on the application. Such limited information prevents us from fully understanding the nature and scope of the underrepresentation of minority communities in intellectual property. Until we can truly understand the nature of this problem, we cannot address it or do the appropriate outreach.

Mr. SMITH of Texas. Will the gentlewoman yield?

Ms. MOORE. I yield to the gentleman from Texas.

Mr. SMITH of Texas. Madam Chair, I just want to say to the gentlewoman from Wisconsin that I appreciate her offering the amendment, and I urge my colleagues to support it.

Ms. MOORE. I certainly again want to commend efforts from Director Kappos and the Patent and Trade Office that, despite their not having to do it, they do reach out to women and minority communities to try to get them to utilize the Patent Office.

I can say that the ability to innovate and create is just one part of the equation. The key to success for minorities in our community as a whole also depends upon the ability to get protection for their intellectual property.

I urge the body to vote for this amendment.

I would yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from Wisconsin (Ms. MOORE).

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MS. JACKSON LEE OF TEXAS

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in part B of House Report 112–111.

Ms. JACKSON LEE of Texas. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 139, insert the following after line 12 and redesignate succeeding sections (and conform the table of contents) accordingly:

SEC. 29. SENSE OF CONGRESS.

It is the sense of Congress that the patent system should promote industries to continue to develop new technologies that spur growth and create jobs across the country which includes protecting the rights of small businesses and inventors from predatory behavior that could result in the cutting off of innovation.

The Acting CHAIR. Pursuant to House Resolution 316, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON LEE of Texas. Madam Chair, as I rise to offer my amendment, I take just a moment of personal privilege to say that, whatever side Members are on on this issue, I know that Members want to protect the genius of America.

I would like to thank my ranking member, Mr. CONYERS, for that commitment, as he comes from one of the original genius proponents, and that is the auto industry that propelled America into the job creation of the century, and to the chairperson of the committee, Mr. SMITH, who ventured out in efforts to provide opportunities for protecting, again, the opportunities for invention and genius.

□ 1440

My amendment speaks, I think, in particular to the vast population of startups and small businesses that are impacted by this legislation. In particular, it is a reinforcement of Congress' position that indicates that the patent system should promote industries to continue to develop new technologies that spur growth and create jobs across the country, which includes protecting the rights of small businesses and inventors from predatory

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