

EXHIBIT 2012



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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JEFF MERKLEY, a Senator from the State of Oregon.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, whose word has taught us to pray without ceasing, guide us to pray according to Your will. May our Senators pray not only in challenging times, or to ask for special blessings, but because they love You and desire to do Your will. Remind them that our Nation was born in the spirit of prayer and that the intercession of righteous people has helped America survive and prosper. Use their vibrant prayer life to make them kind but firm, compassionate but resolute, loyal but independent. May Your grace be sufficient for all their needs.

We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JEFF MERKLEY led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUE).

The assistant legislative clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 8, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEFF MERKLEY, a Sen-

ator from the State of Oregon, to perform the duties of the Chair.

DANIEL K. INOUE,
President pro tempore.

Mr. MERKLEY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for 2 hours, with Senators permitted to speak therein for up to 10 minutes each, with the time divided or controlled between the two leaders or their designees, with the minority controlling the first hour and the majority controlling the next hour, with 30 minutes under the control of the Senator from Massachusetts.

The Senator from Wyoming is recognized.

GASOLINE PRICES

Mr. BARRASSO. Mr. President, I come to the floor of the Senate to discuss an issue that is critically facing the American people: It is the price of gasoline at the pump. It is something that, in my opinion, will impact our economy, impact the economic recovery we are all hoping will continue in this country. But with every penny the cost of gasoline goes up, it has been estimated it takes about a billion dollars away from the amount of money that can be spent on other things in this country and to growing the economy.

We are at a point where the American people, who have to balance their budgets every year—and States have to do it, of course. Washington doesn't do that, but the American people do. They

have to focus on their pocketbooks. When they are going to fill up with gas at the pump and are noticing that they are approaching a point where it is going to be \$100 to get a fill-up, they worry about the impact on the quality of their life, their ability to put food on the table for their children, and clothing on their children, and even have the money to get back and forth to work—those fortunate enough to have jobs.

One can say: Well, is it really a problem? I believe it is. I filled up yesterday morning in Casper. A young man in front of me at the filling station was filling up his pickup truck. He was watching the numbers go up and up. I filled up a week ago in Wyoming as well. We use a lot of gasoline in Wyoming. We travel long distances. I was filling up in the evening. I put my credit card in, and it stopped at \$75 because apparently they have to reset these pumps. One would think that with \$75 one would have enough money to fill up. But not as these gas prices continue to rise.

My concern is that so much of this money is being sent overseas to people who are trying to blow us up. We have an opportunity to be much more secure in our energy resources by developing our energy resources at home. It just seems that this administration's policies are making it that much harder.

One may say: How high can gasoline prices go? With the unrest in the Middle East, a front-page story a few days ago in USA TODAY said: "If unrest spreads, gas may hit \$5 a gallon"—\$5 a gallon by summer.

We need to do some things in this country that this administration has continued to block. We need to find more of our own energy, be reliant more on ourselves and less on foreign sources of energy. That means doing three things: exploring offshore, exploring on Federal land, and exploring in Alaska. We know there are huge reserves of oil, of energy in those locations. Yet day by day those efforts are

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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We need to be smart about where we are going here. The GDP of our country is measured by our total expenditures of consumption of the American people, it is measured by our investments, it is measured by government spending and investment, and by our exports minus our imports. That is the GDP. That is how you measure GDP. How can these folks sit here and say if you cut the government spending you are not going to cut the GDP, which is what every major economic analysis has said?

So yes, we have to cut waste; yes, we have to cut some spending; yes, we have to be responsible. But let us be responsible in a responsible way, by looking at the overall budget and the places we can reduce, at a tempo that doesn't do injury to our ability to invest in America's future, to create the jobs for the future, but nevertheless send the right message to the marketplace and to the American people.

We have done that before. We saw the longest expansion in America's history. Staring us in the face is the largest economic opportunity of a lifetime. The energy marketplace is a \$6 trillion market with 6 billion potential users today, rising to about 9 billion over the next 30 years. But we are not engaged in that. Two years ago, China produced 5 percent of the world's solar panels. Today, they produce 60 percent, and the United States doesn't have one company in the top 10 companies of the world's solar panel producers. What are we doing? The biggest transformational market staring the United States in the face is the energy market, and we should be here putting an energy policy in place, an education policy in place, an infrastructure investment policy in place, and a research policy for technology and medical that soars, that takes America into the future, creates the jobs we need for the next generations, and reduces the deficit in responsible ways, not in this unbelievable reckless, meat axe, hatchet budget that is being presented to us by the House of Representatives. We need to find common ground.

The minority continues to criticize President Obama about the lack of progress in creating jobs. Last month, the economy added 192,000 jobs and the unemployment rate declined from 9 percent to 8.9 percent. This is one of the best job reports since the recession began more than 3 years ago. It shows that the economic recovery is beginning to gain momentum. However the unemployment rate is still too high and we need both small and big businesses to increase jobs if we are going to see a meaningful decrease in unemployment. The House continuing resolution will make that more difficult.

Republican economist Mark Zandi says that now is not the time to implement the cuts included in the House continuing resolution. In a recent report, Zandi said. "The economy is adding between 100,000 and 150,000 per

month—but it must add closer to 200,000 jobs per month before we can say the economy is truly expanding again. Imposing additional government spending cuts before this has happened, as House Republicans want, would be taking an unnecessary chance with the recovery."

Zandi estimates that the cuts included in the Republican continuing resolution would lead to 700,000 fewer jobs by the end of 2012. Federal Reserve Chairman Ben Bernanke said last week that the Republican continuing resolution would reduce growth and cost our economy about a couple hundred thousand jobs.

Last month, a Goldman Sachs economist warned that the Republican cuts could reduce economic growth in the United States by 1.5 to 2 percentage points this year.

Additional spending cuts would also go against the thrust of our economic policies. The Federal Reserve is holding short-term interest rates close to zero and purchasing hundreds of billions of dollars in long-term Treasury bonds, in an effort to hold down long-term interest rates. The tax cut agreement we made last year is also helping to create jobs and boost our economy. It doesn't raise taxes, includes a 2 percent payroll tax holiday, extends emergency unemployment insurance benefits and allows businesses to expense their investments this year.

The American people deserve better than the approach taken by the House of Representatives that cuts critically needed research funding, eliminates jobs and reduce economic growth, hurts our competitiveness and could push our economy into a "double dip" recession.

There is a better way for us to resolve our budget problems. Let's go back to what worked before and can work again if we are willing to bite the bullet. In the early 1990s, our economy was faltering because deficits and debt were freezing capital. We had to send a signal to the market that we were capable of being fiscally responsible. We did just that and as a result we saw the longest economic expansion in history, created more than 22 million jobs, and generated unprecedented wealth in America, with every income bracket rising. But we did it by making tough choices.

Now is the moment for America to reach for the brass energy ring—to go for the Moon here on Earth by building our new energy future—and, in doing so, create millions of steady, higher paying jobs at every level of the economy. Make no mistake: Jobs that produce energy in America are jobs that stay in America. The amount of work to be done here is just stunning. It is the work of many lifetimes. And it must begin now. This shouldn't be a partisan issue, but instead of coming together to meet the defining test of a new energy economy and our future.

There is a bipartisan consensus just waiting to lift our country and our fu-

ture if Senators are willing to sit down and forge it and make it real. The President's fiscal commission made very clear that our budget cannot be balanced by cutting spending alone. The American people deserve a serious dialogue and adult conversation within the Congress about our fiscal situation, discretionary spending, entitlements, and revenues. We need to work together in a bipartisan process to develop a long-term solution to reduce both our current budget deficit and our staggering debt. And, yes, we will need to reduce Federal spending and make appropriate changes to our entitlement programs to meet the fiscal challenges facing our country. But everything everything—tax reform, spending and entitlements—needs to be on the table.

Mr. President, this is one of the moments the Senate was intended to live up to to provide leadership. To find common ground. To level with the American people and be honest with each other. We will no doubt continue to be frustrated and angry from time to time, but I believe that more often than not, we can rise to the common ground of great national purpose. A lot of us like to talk about American exceptionalism. But now we need to get beyond the permanent campaign and the ideological agenda—and instead do the exceptional things that will keep America exceptional for generations to come.

I thank the Chair, and I yield the floor.

THE PRESIDING OFFICER. The Senator from Vermont.

CONCLUSION OF MORNING BUSINESS

Mr. LEAHY. Mr. President, I ask unanimous consent that all remaining morning business time be yielded back.

THE PRESIDING OFFICER. Without objection, morning business is closed.

PATENT REFORM ACT OF 2011

THE PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 23, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 23) to amend title 35, United States Code, to provide for patent reform.

Pending:

Reid/Ensign amendment No. 143, to include public institutions of higher education in EPSCOR jurisdictions in the definition of a micro entity.

Reid amendment No. 152 (to Reid amendment No. 143), to provide an effective date.

THE PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, American ingenuity and innovation have been a cornerstone of the American economy from the time Thomas Jefferson examined the first patent to today. The Founders recognized the importance of promoting innovation. The Constitution explicitly grants Congress the

power to “promote the progress of science and useful arts by securing for limited times to inventors the exclusive rights to their respective discoveries.”

The discoveries made by American inventors and research institutions, commercialized by American companies and protected and promoted by American patent laws, have made our system the envy of the world.

The Senate has before it the America Invents Act. This will keep America in its longstanding position at the pinnacle of innovation. This bill will establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party’s access to court is denied.

I was glad to see the overwhelming bipartisan vote in favor of ending debate and invoking cloture that was cast yesterday. Yesterday was one of the rare instances ever in Vermont where snow impeded us and made it impossible for us to get back. I am delighted to be back here for what I hope will be the successful conclusion and vote on our legislation.

This is, after all, the product of eight hearings over the last three Congresses, hundreds of meetings, and dozens of briefings. I again thank Secretary Locke and PTO Director Kappos for their involvement, their wise counsel and their support.

Last Congress, I introduced the Patent Reform Act of 2009 as a precursor to the America Invents Act today, along with Senator HATCH and others, and our bill was the subject of consideration and amendments over several thoughtful sessions of markups in the Senate Judiciary Committee in March and April of 2009. At that time, Senator KYL asked that I convene a meeting with the Director of the Patent and Trademark Office to discuss whether there were further changes the office needed in the legislation to improve the office’s efficiency. We held those discussions, and we held countless other meetings and briefings with interested parties in an effort to improve the legislation, again on a bipartisan basis. Bruce Cohen in my office, Aaron Cooper, Ed Pagano and others, had meeting after meeting just as predecessors of theirs had. In short, we spent a whole lot of time making sure this was done right and we did it in a bipartisan manner. Bolstering the American economic recovery and strengthening our efforts in global competition should not be matters of partisanship or political advantage.

The process of discussions, debates and deliberation has resulted in legislation that is going to be a much-needed boon to our economy. It is also a model for our legislative process. It shows what you can do when you set aside partisan rhetoric and instead negotiate and collaborate together in good faith.

I know I speak for Senator KOHL, Senator WHITEHOUSE, Senator

KLOBUCHAR, Senator GILLIBRAND, Senator COONS and the other Democratic cosponsors of the bill when I thank the four senior Republican members of the Judiciary Committee, Senator HATCH, Senator GRASSLEY, Senator KYL and Senator SESSIONS for working with us. Innovation and economic development are not uniquely Democrat or Republican objectives, so we worked together to find the proper balance for America—for our economy, for our inventors, for our consumers. It is both a process and a result that should make us all proud.

The last time Congress significantly updated the patent system was more than a half century ago. In the intervening decades, our economy has changed dramatically. A patent system developed in our 1952 economy before the Internet, before cell phones, before computers, before photocopiers, even before the IBM Selectric typewriter, needs to be reconsidered in light of 21st century realities, while staying true to the consistent constitutional imperative of encouraging innovation and invention.

Our patent laws that were the envy of the world in the 20th century desperately need to be updated if we are going to compete effectively and win the future. China and the European Union are improving their patent laws. We can’t remain complacent. If we are going to win the global competition by out-innovating the rest of the world, we need a patent system that works in the 21st century.

The array of voices heard in this debate represent virtually all sectors of our economy, all interests in the patent system. They have not been uniform, as expected, but they know the legislative process is one of compromise and accommodation where possible, and it has been that way during the 6 years we have been at work on this bill. Three major areas of concern emerge from this discussion. The America Invents Act addresses each one of them.

First, there is significant concern about delays in the patent application process. The Patent and Trademark Office, PTO, currently has a backlog of more than 700,000 unexamined patent applications. There are several reasons for this, not the least of which is the PTO is overwhelmed with patent applications and doesn’t have the resources necessary to work through that backlog.

The Director of the PTO often says the next great invention that may drive our economic growth may be waiting on the shelf, waiting to be granted. Some estimate that each issued patent represents three to 10 jobs. We can ill-afford to keep so many job-creating patents backlogged at the PTO. The America Invents Act authorizes the PTO to set its fees and ensures that the PTO will have access to those fees. We want the PTO to work through its backlog and be current. In his white board presentation on the need for pat-

ent reform this week, Austan Goolsbee, the chair of the President’s Council of Economic Advisers, illustrated this point by noting that when Alexander Graham Bell applied for a patent that led to the telephone, it was granted in a month. The patent in 1974 that led to the cell phone took less than three years. The average time this year for a patent to be processed is almost three years and several thousand take far longer.

I want to commend Austan Goolsbee, the chairman of the Council of Economic Advisers. His white board presentation this week on the importance of patent reform shows we need to help America win global competition and create jobs. The creation of more than 220,000 jobs in the private sector last month, the creation of 1.5 million jobs over the last 12 months, and the unemployment rate finally being reduced to 8.9 percent are all signs that the efforts we have made over the last two years to stave off the worst recession since the Great Depression are paying off and the economic recovery is taking hold. The almost full percent point drop in the unemployment rate over the last three months is the largest decline in unemployment since 1983. Despite interruptions of economic activity in many parts of the country caused by winter weather over the last months and days, despite the extraordinary rise in oil prices, the Dow Jones industrial average has climbed back to over 12,000 from a low point of 6,500. Passage of the America Invents Act should help bolster our economic recovery and keep us on the right path toward business development and job creation.

According to an article in the New York Times just a couple of weeks ago, patent applications last year amounted to 2,000 a day. There are currently 1.2 million patent applications in the pipeline. Among them could be the next medical miracle, the next energy breakthrough, the next leap in computing ability, or the next killer app. We should be doing all we can to help the PTO Director. It makes no sense that it takes 2 years for an inventor to get an initial ruling on his or her patent application and another year or more to receive a patent, this during a time when technology changes sometimes by the hour, to say nothing by the year and the 2 year and 3 year. As the New York Times reporter Edward Wyatt notes: “The delays and inefficiencies are more than a nuisance for inventors [P]atent delays cost jobs, slow the economy and threaten the ability of American companies to compete with foreign businesses.”

Second, there is a concern about the quality of patents that have issued. Just as high quality patents are the key to innovation, low quality patents are a drag on the economy because they provide monopoly rents over products or processes that were not inventive.

Patent examiners are facing a difficult task given the explosion in the

number of applications and the increasing complexity of those applications. When Congress last overhauled the patent system in 1952, the PTO received approximately 60,000 patent applications; in 2009, it received more than 480,000.

The America Invents Act will improve the quality of patents issued by the PTO in several ways. At the outset, our legislation makes the common-sense change that third parties who see a patent application and know that it is not novel and nonobvious, can assist the PTO examiners by providing relevant information and explaining its relevance.

The bill will also create a new post-grant review process for patents that recently issued to improve the quality of patents in the system, as recommended by the National Academy of Sciences, and it will streamline the current “inter partes” system so that it will be a more efficient alternative to litigation.

The third concern is that as business competition has gone global, and patent applicants are increasingly filing applications in the United States and other countries for protection of their inventions, our system puts American inventors and businesses at a disadvantage. The filing system in the United States differs from that in other patent-issuing jurisdictions, which have “first-inventor-to-file” systems. The difference causes confusion and inefficiencies for American companies and innovators. The inefficiencies exist both in the application process and in determining what counts as “prior art” in litigation. I ask unanimous consent to have printed in the RECORD an editorial from today’s New York Times, which calls the transition to first-inventor-to-file “simpler and cheaper” and says it “should benefit the little guy.”

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. The America Invents Act transitions to a first-inventor-to-file process, as recommended by the administration, while retaining the important grace period that will protect universities and small inventors, in particular. We debated this change at some length in connection with the Feinstein amendment. That amendment was rejected by the Senate by a vote of 87 to 13. The Senate has come down firmly and decisively in favor of modernizing and harmonizing the American patent system with the rest of the world.

When we began the patent reform debate 6 years ago, there was also a significant concern that the costs and uncertainty associated with patent litigation had been escalating, which was resulting in a drag on innovation. Damage awards had been inconsistent and not always related to the value of the invention. This disconnect and uncertainty was a problem that also led to unreasonable posturing during licensing negotiations.

Fortunately, the courts have made great strides in addressing this issue, and there is general consensus that legislation need not and, in fact, should not affect the law of damages as a result.

The Senate has before it bipartisan legislation that can lead to long-needed improvements in our patent laws and system. This is a measure that can help facilitate invention, innovation and job creation, and do so in the private sector. This can help everyone from startups and small businesses to our largest, cutting edge companies.

The America Invents Act promotes innovation, and will improve our economy, by addressing the impediments to innovation. As the President challenges Americans to win the future, Congress cannot afford to sit idly by while innovation—the engine of our economy—is impeded by outdated laws. Our legislation leverages the ingenuity of our businesses, our universities, and our independent inventors, and creates a system in which that ingenuity can improve our economy. It will create jobs, improve products and reduce costs for American companies and American consumers.

I began working on patent reform years ago, along with Chairman SMITH in the House, because of my belief that we needed a more efficient and streamlined system. For many years, patent law interested only a niche audience, and developments were reported only in trade publications. Now they are discussed everywhere from the front page of the Wall Street Journal to the New York Times, and all three branches of government have taken an active role.

The America Invents Act is about economic development. It is about jobs; it is about innovation; it is about consumers. All benefit under a patent system that reduces unnecessary costs, removes inefficiencies, and holds true to the vision of our Founders that Congress should establish a national policy that promotes the progress of science and the useful arts.

When Thomas Jefferson examined that first patent in 1790—a patent that went to a Vermonter—no one could have predicted how the American economy would develop and what changes would be needed for the law to keep pace, but the purpose then remains the purpose today: promoting progress.

If we are to maintain our position at the forefront of the world’s economy, if we are to continue to lead the globe in innovation and production, if we are to continue to enjoy the fruits of the most creative citizens, then we must have a patent system that produces high quality patents, that limits counterproductive litigation over those patents, and that makes the entire system more streamlined and efficient.

Now is the time to bolster our role as the world leader in innovation. Now is the time to create jobs at home. Now is the time for Congress to act on patent reform. I urge all Senators to support the America Invents Act.

EXHIBIT 1

[From the New York Times, Mar. 7, 2011]

PATENTS, REFORM AND THE LITTLE GUY

In the last decade, Congress has missed several chances to reform a patent system that is slow, costly and puts the United States at odds with the rest of the industrial world. On Wednesday, the Senate has another opportunity to reform the nation’s patent law.

The America Invents Act offers a step toward a more effective and transparent patent protection system. This should encourage investment in inventions and faster diffusion of ideas. The bill, which has broad bipartisan support, would boost the patent office’s resources by letting it keep all the fees it collects. This would enable it to speed up the review of patent applications—which currently takes almost three years to process—and work through an immense backlog of 715,000 applications.

The bill should reduce costly litigation by creating an in-house system to look into claims of patent infringement before they go to court.

The bill would also replace the first-to-invent standard prevailing in the United States—which grants formal protection to the creator of an innovation—with the first-inventor-to-file system used in most nations.

This change would make it cheaper for American patent holders to get patent protection around the world. But it has been met with vocal opposition from some groups of small businesses and inventors who claim the change would benefit big corporations at their expense.

We disagree. The new law would make the process simpler and cheaper. That should benefit the little guy.

Small inventors who needed time and money to fully develop and test their ideas could request a provisional patent until they were ready for a full filing. It costs \$110. And because it is easy to determine who filed a patent first, the new system would better protect small inventors from challenges by corporations with deep pockets, reducing the chance of costly litigation.

Right now, proving who invented something first is difficult and expensive. According to the patent office, it costs \$400,000 to \$500,000 to challenge a patent on the grounds of a prior invention. Most small inventors don’t have that kind of money. Big corporations do.

In fact, the current system mostly protects whoever files first for a patent. Of the last three million applications filed, only 113 were granted to entities who filed second but proved they had invented first. In 88 of these cases, the winners were large corporations.

The patent system is too cumbersome, and it doesn’t protect the small inventor. The America Invents Act is a smart reform.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BUDGET

Mr. WARNER. Mr. President, I rise today to add my voice to the debate that has been going on in the Chamber about spending proposals and how we get through the balance of this current fiscal year and ensure that we do not

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