

Senator Coons – Patents are about the American Dream



By [Gene Quinn](#) on March 5, 2015



Senator Chris Coons (D-DE) at the Newseum on March 4, 2015.

Yesterday [Senator Chris Coons](#) (D-DE) gave a speech at *Inventing America: Patents, Innovation, Jobs and the Economy*, which was held at the Newseum in Washington, DC. Senator Coons is unlike many Members of Congress for a variety of reasons. For example, his official website has a [page dedicated to Intellectual Property](#), which doesn't sound remarkable but is rather rare unfortunately. Senator Coons is also a scientist by training, having received a B.A. in Chemistry from Amherst College prior to attending Yale Law School, which means unlike many members of Congress he understands innovation issues down to the scientific level. Senator Coons is also unusual due to the fact that he believes in the need for a strong patent system and is very supportive of the innovative community who relies so heavily on patents.

Rather than summarize his remarks we have transcribed his speech below. Our transcript begins with the substance of Senator Coon's speech, beginning after his introductory and welcoming remarks.

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I am excited to have a chance to join you today to talk about patents, their importance and what I am doing and hope to do in the Senate to protect them. It is seemingly symbolic that as you look at the Capital Dome, it is encased in a super structure designed to help repair it. Our Congress is badly in need of repair. It is in need of some outside support so that it can provide the function it historically has. The way, I think, that an ill advised and poorly crafted bill to defeat patent trolls raced through the house last year,

woke many of us up to the possibility that there might be some members of Congress who are not deeply and fully informed about intellectual property policy and about the importance of patents. So I want to thank you at the onset, for being that super structure that will help support a well thought out, balanced and reasonable path forward on dealing with issued that have been raised about patent litigation, while still sustaining, strengthening and making more durable the super structure of our intellectual property system that has for so long encouraged and invested in innovation.

I think too many of us, certainly in Congress and maybe in the whole country just take for granted that the United States is a country of ceaseless innovation, where remarkable things that seemed impossible decades or even a few years ago just appear in front of us as new products, new services, new pharmaceuticals or new devices. But you know all too well, it is not by accident. It is the result of a very important system that has been imbedded into our constitution and a core part of our national character and has made possible the move from the industrial revolution at the turn of the 19th Century to today's exploration of everything from artificial intelligence to cell therapies.

And in my view, patents are not just foundational. Patents are really about the American Dream. They are about what it means to come to this country or be from this country and believe in the possibility that you and a team of folks that you work with can invent and develop and then protect a groundbreaking innovation. Patents are about constantly laying a stronger foundation upon which future generations can continue to innovate and about insuring we will find solutions to the challenges that face us, not just here but around the world.

Inventors, as you know, are found all across America today and from all sorts of different backgrounds. They help us achieve groundbreaking things nobody thought possible. Since Thomas Edison was granted patent number 223,898 for the light bulb, one of his dozens of patents, our patent system has laid the foundation for billions of dollars of investments in cures, in technologies and materials and an incredible array of scientific advances.

Unfortunately, when you hear about patents in the news, in the last few years it is overwhelmingly in the negative context. It is usually associated with a word that means a bridge dwelling creature that is large and green. Although I enjoyed Shrek as a film, I really have not enjoyed the

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characterization of patent asserting entities as Trolls. I sort of hope we can find a way to turn it into a more positive thing. You know, Shrek really produced a loveable troll, a really enjoyable troll.

I do think it is important for us to look hard at the ways in which the patent system has been mischaracterized, and how those who rely on it to defend their inventions and innovations have been mischaracterized in the debate and discussions of the last few years. You may hear about trolls, but you typically will not hear about the billions of dollars invested, about the literally millions of jobs that will rely on strong patent systems and the companies that they support. And I think it is unfortunate because it creates a groundless divide that is false and unnecessary.

I don't think there is any sector in the American economy that hates patents and that is fundamentally opposed to the idea of patent protection. Every software developer, every chip designer would like to see the next generation of Wi-Fi or 5G and every retailer would like to see their store shelves stocked with new and innovative products. Every part of our service economy from hotels to financial services benefits from innovations that help them steadily advance and improve the customer experience and deliver their services in a more cost effective and secure ways. Innovation is central to every sector of the American economy, and because patents influence so much of what we have and will accomplish in America, our pro-patent coalition is much larger than the few companies and individuals who get involved in patent litigation.

Strong US Patent protections create high paying American jobs which are only possible when our market place allows more than just a reductive race to the cheapest labor for manufacturing or the most lightened labor environmental protections. Community is effected by everything from life wasting diseases who hope for strong patents because they hope for cures to those who believe in the possibility of greater communication and greater innovation in everything from the apps we download from software stores to the ways that we communicate financially and hope that they will be secure.

Any person who believes that individual rights should not be curtailed when they run up against large companies with an army of lawyers believes in strong patents because the patents level the playing field. We have to continue to work together to make sure we have not just strong patents but strong patent litigation systems so you level the playing field in a sustainable and meaningful way.

So here is the truth. We need to both strengthen patents and target real abuse. They are not mutually exclusive and so that is why I have introduced the bill, [The Strong Patents Act of 2015](#), along with my great colleagues, Senators Durbin and Hirono. It tackles the two forms of abuse we know to be prevalent enough to have generated so much enthusiasm for erasing or changing or erasing much of the rules of litigations. And those two issues are demand letters and pleading standards. First, it cracks down on abuse of demand letters by meaningfully empowering the Federal Trade Commission to target firms that abuse start-ups rather than inventing things. Second, it ensures that the pleading standards for patent infringement cases matches the standards of all other forms of civil litigation creating a higher barrier to frivolous lawsuits before any funds are spent on discovery. And I think those are two important, meaningful moves that do not fundamentally deflect or realign the greater system of patent litigation.

My bill also targets another kind of abuse which we have seen recently in an attack, for example, on Acorda (Therapeutics), a biotechnology firm focused on therapies for patients with MS in which we have been told to expect across a wide range of biotech and pharmaceutical industries, this misuse of post grant proceedings. I think it is not intended to increase competition but instead to scare away investment. That is why my bill also addresses some of the imbalance in how PGR Post Grant proceedings in review at the Patent Trademark office occur. Including a standard of review consistent with district court litigation which will even the opportunities to present evidence and a standing requirement that would have prevented the harmful actions on Acorda that I am sure you are all familiar with.

My bill will also achieve what, for me, has been a long time priority and dream, ending patent fee diversion from the patent and trademark office. I am a lot of fun at parties in Delaware. It is scary but that really is something I have been passionate about for about 15 years now. Litigating fee diversion from PTO so we can ensure that those who examine patents have adequate training, reliable funding and we stop using the PTO as a kitty for Congress to fund other pet projects as it was for much of the last 20 years. And it will also analyze the impact that it has on small business from the prospective of start ups relying on patent protection and small businesses facing allegations of infringement so we can add current facts to our sometimes over heated argument about what is best for small business growth in this country.

We have to address these pressing issues and I believe that we can do so and do more harm than good. That should be our first goal under that dome, is to first do no harm and second, hopefully, do some real good. I look forward to engaging with my colleagues, both republicans and democrats, both on and off the judiciary community, to educate them about how we can hit the right balance. It is my hope that the introduction of the bill is the next stage in an ongoing conversation about how we can get to the right place, how we can get a piece of legislation that can actually be enacted by Congress and make it to the President's desk, and how we can avoid unintended significant harm to the Patent System that we have relied on for so long to be the foundation of our growth.

I have been encouraged by the receptiveness and concern that some of my Senate colleagues have expressed when I have spoken to them about what is really at stake in this debate. And I know they are also eager to hear your stories. Frankly they are probably more eager to hear from you than from me. And I appreciate the work that you are doing to make sure that the voices of American inventors and innovators are really heard on Capital Hill. That is absolutely essential. Relatively few members of Congress have family members who are patent holders. Relatively few members of Congress have spent any time in a research lab or working for a company that harnesses inventions and innovations and then delivers

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them to the market place. So I hope you recognize just how significantly behind the curve we are in trying to engage members in meaningful but sometimes difficult conversation.

Innovation happens in lots of sectors all over our country and that is why we have to keep adjusting our legislative goals to the reality of the changing landscape. Something I remind my colleagues of all of the time, is that the Leahy-Smith Invents Act was a significant landmark thought that reset a lot of the rules going forward. We have had relatively little time to fully digest and adapt to it and there have been recent changes from Supreme Court opinions on fee shifting and patentability to actions by the judicial conference, the recommendations of discovery and on actions by individual's judges from the district of Delaware. All of which change long standing court room procedures and reduce the cost of litigation in ways that I think meaningfully respond to concerns about discovery and litigation costs.

Inventors, in my experience, want the same thing across a wide range of backgrounds and innovation, the freedom to create, the ability to work with world-class teams and the capacity to turn their ideas into reality. They want the chance to change our world. That is why you work every day to move our nation forward and that is why I am working hard to ensure you have the right tools to do so. Our goal must be to protect the patent system so it works for everyone and to pass on an even stronger system so that future generations can use it for a platform for the inventions and innovations we can hardly dream of today.

So thank you for what you do. Thank you for your energy, your partnership, and most importantly, your ideas so that together we can continue to solve problems and move the world forward.

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Bravo!