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Patent Reform Act of 2009- What Will Congress Do This Time?

Once again lawmakers have introduced a patent reform bill into Congress. The 2009 patent reform bill contains controversial provisions that call for major reform and even mirrors previous unsuccessful patent reform efforts.

The 2009 bill seeks to change the fundamental nature of US Patent Law from a first-to-invent system to the international standard of first-to-file which grants patent rights to the first applicant to file a claimed invention. Secondly, a proposed amendment to the way damages are calculated seeks to reduce damages related to patent infringement. Under this controversial amendment, the court is required to analyze the invention's "specific contribution over the prior art" to determine a reasonable royalty. Enhanced damages available in cases of willful infringement would be restricted to instances where the patent owner demonstrates by clear and convincing evidence that the infringer acted with objective recklessness.

Under the proposed legislation, reexamination proceedings would be expanded to allow any individual to request reexamination of any claim based on published prior art, or documentary evidence of prior public use or sale in the United States. Also a new additional period of post grant review would allow any party to challenge a patent's validity within 12 months of issuance. And finally, parties would be allowed to submit timely prior art, including a brief statement of the relevance of the art, anytime while the patent application is pending.



Other proposed changes include limitation of venue selections and the introduction of interlocutory claim construction appeals (appeals in the middle of the case) to the US Court of Appeals for the Federal Circuit. A new Patent Trial and Appeal Board (PTAB) would replace the Board of Patent Appeals and Interferences. Also, the PTO would have rule-making authority to set, adjust, and/or reduce fees. The proposal would simplify the oath requirement, with the intent of making it easier for patent owners to file applications. Another proposal would change the rule to allow judges of the US Court of Appeals for the Federal Circuit to live outside the 50-mile radius from Washington, DC.

While some of these proposed changes may have merit, the overall result of the changes would likely create a system less favorable to patent applicants and owners. The proposed changes appear to be supported by companies with little reliance on Intellectual Property and significant exposure to patent suits of allegedly marginal merit.

For additional information please see: www.patentlyo.com/patent/2009/03/patent-reform-act-of-2009.html