

STORMING THE LAST BASTION: THE PATENT REFORM ACT OF 2007 AND ITS ASSAULT ON THE SUPERIOR FIRST-TO-INVENT RULE

I. INTRODUCTION

The current United States patent laws were drafted in 1952, but unlike nuclear fallout shelters, beatnik poetry, and the Ed Sullivan show, they still hold sway over American life. Recently, Congress took a major step toward its goal of refashioning these decades-old laws. On September 7, 2007, the United States House of Representatives narrowly passed a bill titled the “Patent Reform Act of 2007,”¹ which proposes drastic changes to the current United States patent system.² The bill, currently on the Senate’s legislative calendar and likely to come up for vote soon, faces heavy opposition from several interest groups, particularly small inventors and the biotechnology industry.³ The bill proposes many significant revisions of the current system, including expansion of criteria for determining damages in infringement suits,⁴ elimination of the “best mode” requirement,⁵ and restriction of venue in patent litigation suits.⁶

Perhaps the most sweeping and controversial proposed change, however, is a series of proposed revisions amounting to a switch from the “first-to-invent” system currently used in the United

1. Patent Reform Act of 2007, H.R. 1908, 110th Cong. (2007); *see also* S. 1145, 110th Cong. (2007).

2. Tom Ramstack, *Firms Call Patent Reform Bill Too Weak, Say it Increases Incentive to Steal Inventions*, WASH. TIMES, Sept. 14, 2007, at C9.

3. *Id.*

4. *See* H.R. 1908 § 5 (specifying that “reasonable royalty” damages in 35 U.S.C. § 284 are to be limited by determination of their relationship to contributions over prior art and entire market value).

5. *Id.* § 13 (stating that a patent is not invalid under 35 U.S.C. § 112 for failing to set forth the best mode).

6. *Id.* § 11 (amending 28 U.S.C. § 1400 to include that “a party shall not manufacture venue by assignment, incorporation, joinder, or otherwise primarily to invoke the venue of a specific district court”).