

Patent Reform:

The Pharmaceutical Industry Prescription For Post-Grant Opposition And Remedies

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Introduction

The United States patent system is an essential component of everyone's daily life. Upon issuance, a patent is rightly considered to be at the forefront of innovation and technology. Although the statutes allowing and governing patents have changed over time, the vision of intellectual property originally conceived in the Constitution has remained constant.¹

Today, the issuance of patents is grounded upon the Patent Act of 1952.² Monumental transformations, ranging from life-saving drugs to integrated com-

puter systems, have taken place in the world of science and technology during the past fifty years. However, the process of obtaining and protecting patents for these scientific breakthroughs has not changed on an appreciable scale.

The concept of patent reform in the United States has slowly gained momentum in recent years. Following reports by the Federal Trade Commission in 2003³ and the National Academy of Sciences in 2004,⁴ Congress decided to take action and the Patent Reform Act of 2005 was proposed.⁵ However, the bill was not enacted.⁶

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1 U.S. Const. art. I, § 8, cl. 8 (“[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”).

2 See 35 U.S.C. §§ 1-318 (2006).

3 FEDERAL TRADE COMMISSION, *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy* (2003), <http://www.ftc.gov/os/2003/10/innovationrpt.pdf>.

4 PATENT SYSTEM FOR THE 21ST CENTURY (Stephen A. Merrill et al. eds., 2005).

5 Patent Reform Act of 2005, H.R. 2795, 109th Cong. (2005).

6 Dennis Crouch, *Patent Reform 2005 — It is Over*, Dec. 8, 2005, http://patentlaw.typepad.com/patent/2005/12/patent_reform_2.html. Possible reasons for failure of enactment include a lack of time to devote to the topic and a possible “overreaching” of the bill. *Id.* In addition, the major reform might not have built up “enough inertia to get through both the House and Senate.” *Id.*