

June 14, 2011

Dear Member of Congress:

As the House considers H.R. 1249, the America Invents Act, we would like to voice our strong support for Section 18 of the bill, which addresses the issue of poor-quality business-method patents. With inclusion of this vital language, the undersigned trade associations support H.R. 1249. **We strongly urge you to oppose efforts to strike or weaken the language in Section 18, which creates a program to review business-method patents against the best prior art.**

Poor-quality business-method patents represent an extremely problematic aspect of the current system for granting, reviewing and litigating patents. The problems with low-quality patents are well documented and beyond dispute. On an escalating basis, financial firms are the target of meritless patent lawsuits brought by non-practicing entities. Such entities exploit flaws in the current system by bringing action in friendly venues, where they wring money from legitimate businesses by asserting low-quality business-method patents.

Section 18 addresses this problem by establishing an oppositional proceeding at the United States Patent and Trademark Office (PTO), where business-method patents can be re-examined, using the best prior art, as an alternative to costly litigation. This program applies only to business-method patents, which are defined using suggestions proffered by the PTO. Concerns about the scope of the definition have been addressed by exclusion of technological innovations. Additionally, it has been well-settled law for over 25 years that post-grant review of patent validity by the PTO is constitutional. The Federal Circuit explained that a defectively examined and therefore erroneously granted patent must yield to the reasonable Congressional purpose of facilitating the correction of governmental mistakes. This Congressional purpose is presumptively correct and constitutional. Congress has given the PTO a tool to ensure confidence in the validity of patents. Section 18 furthers this important public purpose by restoring confidence in business-method patents.

We urge you to oppose changes to Section 18, including changes that would create a loophole allowing low-quality business-method patent holders to wall off their patents from review by the PTO. Congress should ensure that final patent-reform legislation addresses the fundamental, and increasingly costly, problem of poor-quality business-method patents.

Sincerely,

American Bankers Association
American Council of Life Insurers
American Financial Services Association
American Insurance Association
The Clearing House Association
Consumer Bankers Association

Credit Union National Association
The Financial Services Roundtable
The Independent Community Bankers of America
Mortgage Bankers Association
National Association of Mutual Insurance Companies
Property Casualty Insurers Association of America
Securities Industry and Financial Markets Association