

Senate to Take Up Patent Reform Legislation

The Senate Committee on the Judiciary has passed patent reform legislation and the full Senate may take up the bill as early as next month, sources say. The Senate's bill is similar to legislation passed by the House last September (*CW Sept. 19, 2007, p. 49*). Both bills would eliminate the first-to-invent protections currently offered by the U.S. to those who are first to develop a new technology, and grant those protections instead to those who are the first to submit their paperwork to the U.S. patent office. The patent reform bills also intend to limit infringement claims.

The U.S. is the only country with the first-to-

invent clause, and the proposed reforms would harmonize the U.S. system with those in Asia and Europe. But small businesses, entrepreneurs, and others say the first-to-file system would weaken the U.S. patent system in part by flooding it with poor quality patents.

The chemical industry does not have a unified position on patent reform, although the Biotechnology Industry Association (BIO; Washington) has opposed the current reforms. General Electric, 3M, and Dow Corning also opposed the patent reform measures included in the House and Senate bills, while firms including Google, Intel, and SAP voiced support for those measures.

Firms that rely on a fewer number of core patents tend to oppose patent reform, says Paul Fleischut, an attorney specializing in chemicals and materials patents for law firm Senniger Powers (St. Louis). The companies that support the reform effort rely more on marketing

and market power than on intellectual property that requires robust patent protection, Fleischut says. The supporters of reform also tend to file hundreds of patents a year, and legal challenges to those can cost them a lot of time and money in litigation, Fleischut says.

"The impetus for the reform seems to be a desire to harmonize with the rest of the world and to simplify and eliminate litigation on the timing of one's invention, Fleischut says.

Senator Patrick Leahy (D., VT), when introducing the Patent Reform Act of 2007 last April, said that patent litigation has created a system that has deviated from the one intended by Congress when

the system was set up in the 1950s. "Over the years, our patent laws have served our inventors and our economy well, but they were crafted for a different time when smokestacks, rather than microchips, were the emblems of industry," Leahy said.

—KARA SISSELL



Leahy: U.S. system needs an update.

Climate Worries Killed Plans for Coal-Fired Plants in 2007

Environmental groups say concerns about climate change contributed to 59 proposed coal-fired power plants being cancelled or shelved in 2007. The decline in coal-fired power plants concerns the chemical industry because a shift away from coal-fired power plants could lead to a sharp increase in natural gas units, which in turn will increase feedstock pricing for the industry.

Rainforest Action Network (Washington) and Coal Moratorium NOW (Washington) recently released a joint report tallying reasons for cancellation or postponement. "Climate concerns played a role in at least 15 of the plant cancellations. These include five plants in Florida, where Governor Charlie Crist (R.) has made global warming a top issue; a three-unit plant in Kansas opposed by Governor Kathleen Sibelius (D.); and several plants affected by strict new carbon regulations in Western states," the report says.

Of the 59 plants, more were abandoned than rejected, the report says. "Of the 59 cancelled or sidetracked projects, only 15 were rejected outright by regulators, courts, or local authorities. In the remaining 44 cases, the decision was made by the sponsors themselves."

Other reasons for abandoning plants include rapidly rising construction costs, insufficient financing, and lowered demand estimates.

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PRODUCT SAFETY

U.S. Lawmakers Probe Use of BPA in Infant Formula Containers

The U.S. House Energy and Commerce Committee has asked FDA officials for more information about their decision last November that the use of bisphenol A (BPA) in some canned foods and baby bottles does not warrant regulatory action. The lawmakers' inquiry focuses in part on FDA's conclusion that a dietary exposure of 3.7 parts per billion (ppb) does not warrant regulatory action.

"On what studies is FDA basing the claim that there is no 'safety concern at the current exposure level,'" committee chairman John Dingell (D., MI) says in a January 17 letter to FDA commissioner Andrew von Eschenbach.

"At best, the scientific community has concerns about the safety of BPA," says Representative Bart Stupak (D., MD), who chairs the House Energy and Commerce's

subcommittee on oversight and investigations. "Our investigation intends to examine how the FDA determined this chemical to be safe for use in infant formula cans."

The lawmakers also want FDA to submit all BPA-related correspondence between officials and consultants since 1998. Meanwhile, the lawmakers sent letters to eight infant formula makers asking if formula container linings used for their products contain BPA and, if so, whether they have tested the formula for the existence of BPA and what methodology they used.

The lawmakers have asked that FDA and the infant formula manufacturers respond by January 31.

ACC says BPA is one of the most extensively tested materials in use today. "Based on these evaluations, BPA is not banned or restricted anywhere in the world," ACC says.

—KS



Stupak: At best, there are concerns.