

117TH CONGRESS  
1ST SESSION

# H. R. 5874

To promote the leadership of the United States in global innovation by establishing a robust patent system that restores and protects the right of inventors to own and enforce private property rights in inventions and discoveries, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2021

Mr. MASSIE (for himself, Mr. GOHMERT, Mr. GOSAR, and Mr. MCCLINTOCK) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To promote the leadership of the United States in global innovation by establishing a robust patent system that restores and protects the right of inventors to own and enforce private property rights in inventions and discoveries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Restoring America’s Leadership in Innovation Act of  
6 2021”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Restoring the right of the first inventor to secure a patent.
- Sec. 4. Abolishing inter partes and post-grant review.
- Sec. 5. Abolishing the Patent Trial and Appeal Board.
- Sec. 6. Elimination of fee diversion and full funding of the United States patent and trademark office.
- Sec. 7. Patentability of scientific discoveries and software inventions.
- Sec. 8. Limitations on prior art.
- Sec. 9. Restoring patents as a property right.
- Sec. 10. Ending automatic publication of patent applications.
- Sec. 11. Presumption of validity; defenses.
- Sec. 12. Injunction.
- Sec. 13. Best mode requirement.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) The Congress created a patent system to  
6 “promote the Progress of Science and useful Arts,  
7 by securing for limited Times to Authors and Inven-  
8 tors the exclusive Right to their respective Writings  
9 and Discoveries,” as provided for in the Constitution  
10 of the United States.

11 (2) The Leahy-Smith America Invents Act  
12 (Public Law 112–29) enacted on September 16,  
13 2011, and several decisions of the Supreme Court  
14 have harmed the progress of Science and the useful  
15 Arts by eroding the strength and value of the patent  
16 system.

17 (3) The United States Government exists to  
18 protect life, liberty, and property, which includes in-  
19 tellectual property.

1           (4) A United States patent secures a private  
2           property right to an inventor.

3           (5) This Act restores the patent system as envi-  
4           sioned by the Constitution of the United States.

5 **SEC. 3. RESTORING THE RIGHT OF THE FIRST INVENTOR**  
6 **TO SECURE A PATENT.**

7           (a) REPEAL OF FIRST-TO-FILE SYSTEM UNDER THE  
8 AMERICA INVENTS ACT.—Section 3 of the Leahy-Smith  
9 America Invents Act (Public Law 112–29), including each  
10 amendment made by such section, is repealed and any  
11 amendment made by such section to any provision shall  
12 be effective as if the provision had not been amended by  
13 such section.

14          (b) FIRST-TO-INVENT.—Notwithstanding any other  
15 provision under title 35, United States Code, a person  
16 shall be entitled to a patent where the inventor is first  
17 to conceive of the invention and diligently reduces the in-  
18 vention to practice.

19          (c) ONE-YEAR GRACE PERIOD.—Notwithstanding  
20 any other provision under title 35, United States Code,  
21 a person shall be entitled to a one-year grace period before  
22 filing an application for a patent, as the grace period ex-  
23 isted before the date of the enactment of the Leahy-Smith  
24 America Invents Act under section 102 of title 35, United  
25 States Code, and with the same meaning of the terms “in

1 public use” and “on sale in this country” as interpreted  
2 before the enactment of the Leahy-Smith America Invents  
3 Act.

4 (d) SENSE OF CONGRESS.—It is the sense of Con-  
5 gress that—

6 (1) reverting the United States patent system  
7 from a “first-to-file” system back to “first-to-in-  
8 vent” system will promote the progress of science  
9 and the useful arts by securing for limited times to  
10 inventors the exclusive rights to their discoveries and  
11 incentivize innovation and protect inventors’ rights;

12 (2) restoring the one-year grace period before  
13 the first and true inventor must file a patent appli-  
14 cation on an invention will promote the progress of  
15 science and useful arts by enabling inventors once  
16 again to disclose inventions in order to attract in-  
17 vestment, complete research and development on the  
18 invention, test, improve, and perfect the invention so  
19 as to improve the invention and the quality of the  
20 patent application; and

21 (3) the repeal of section 3, and the amendments  
22 made by section 3, of the Leahy-Smith America In-  
23 vents Act, restore sections 100, 102, 103, 135, and  
24 291 of title 35, United States Code, to the way such

1 sections read on the day before the date of the en-  
2 actment of such Act.

3 **SEC. 4. ABOLISHING INTER PARTES AND POST-GRANT RE-**  
4 **VIEW.**

5 (a) REPEAL OF INTER PARTES AND POST-GRANT  
6 REVIEW.—Section 6 of the Leahy-Smith America Invents  
7 Act (Public Law 112–29), including each amendment  
8 made by such section, is repealed and any amendment  
9 made by such section to any provision shall be effective  
10 as if the provision had not been amended by such section.

11 (b) REPEAL OF CODIFIED TITLES.—Chapters 31 and  
12 32 of title 35, United States Code, are repealed.

13 (c) SENSE OF CONGRESS.—It is the sense of Con-  
14 gress that—

15 (1) inter partes review and post-grant review  
16 proceedings introduced by the Leahy-Smith America  
17 Invents Act have harmed the progress of science and  
18 the useful arts by subjecting inventors to serial chal-  
19 lenges to patents;

20 (2) inter partes review and post-grant review  
21 proceedings invalidate patents at an unreasonably  
22 high rate;

23 (3) patent rights should be protected from un-  
24 fair adjudication at the Patent and Trademark Of-

1        fice and duly issued patents should be adjudicated in  
2        a judicial proceeding;

3            (4) repealing section 6 of the Leahy-Smith  
4        America Invents Act abolishes inter partes review,  
5        post-grant review, and the previously available inter  
6        partes reexamination proceedings; and

7            (5) it is the intent of Congress to preserve ex  
8        parte reexamination proceedings under chapter 30 of  
9        title 35, United States Code.

10 **SEC. 5. ABOLISHING THE PATENT TRIAL AND APPEAL**  
11 **BOARD.**

12        (a) REPEAL OF PATENT TRIAL AND APPEAL  
13 BOARD.—Section 7 of the Leahy-Smith America Invents  
14 Act (Public Law 112–29) is repealed, including each  
15 amendment made by such section, and any amendment  
16 made by such section to any provision shall be effective  
17 as if the provision had not been amended by such section.

18        (b) BOARD OF PATENT APPEALS AND INTER-  
19 FERENCES.—

20            (1) AMENDMENT.—Section 6 of title 35, United  
21 States Code, is amended to read as follows:

22 **“§ 6. Board of Patent Appeals and Interferences**

23        “(a) ESTABLISHMENT AND COMPOSITION.—There  
24 shall be in the Patent and Trademark Office a Board of  
25 Patent Appeals and Interferences. The Director, the Dep-

1   uty Director, the Commissioner for Patents, the Commis-  
2   sioner for Trademarks, and the administrative patent  
3   judges shall constitute the Board. The administrative pat-  
4   ent judges shall be persons of competent legal knowledge  
5   and scientific ability who are appointed by the Secretary  
6   of Commerce, in consultation with the Director.

7       “(b) DUTIES.—The Board of Patent Appeals and  
8   Interferences shall, on written appeal of an applicant, re-  
9   view adverse decisions of examiners upon applications for  
10  patents and shall determine priority and patentability of  
11  invention in interferences declared under section 135(a).  
12  Each appeal and interference shall be heard by at least  
13  three members of the Board, who shall be designated by  
14  the Director. Only the Board of Patent Appeals and Inter-  
15  ferences may grant rehearings. The Board shall not invali-  
16  date an issued patent except in an ex parte reexamination  
17  under chapter 30.

18       “(c) AUTHORITY OF THE SECRETARY.—The Sec-  
19  retary of Commerce may, in the Secretary’s discretion,  
20  deem the appointment of an administrative patent judge  
21  who, before the date of the enactment of this subsection,  
22  held office pursuant to an appointment by the Director,  
23  to take effect on the date on which the Director initially  
24  appointed the administrative patent judge.

1       “(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—  
2 It shall be a defense to a challenge to the appointment  
3 of an administrative patent judge on the basis of the  
4 judge’s having been originally appointed by the Director  
5 that the administrative patent judge so appointed was act-  
6 ing as a de facto officer.”.

7           (2) TECHNICAL AND CONFORMING AMEND-  
8       MENT.—The table of sections for chapter 1 of title  
9       35, United States Code, is amended by striking the  
10      item relating to section 6 and inserting the following  
11      new item:

“6. Board of patent appeals and interferences.”.

12      (c) APPEAL TO THE BOARD OF PATENT APPEALS  
13      AND INTERFERENCES.—

14           (1) AMENDMENT.—Section 134 of title 35,  
15      United States Code, as reinstated by section 3(a) of  
16      this Act, is amended by striking subsection (c).

17           (2) TECHNICAL AND CONFORMING AMEND-  
18      MENT.—The table of sections for chapter 12 of title  
19      35, United States Code, is amended by striking the  
20      item relating to section 134 and inserting the fol-  
21      lowing new item:

“134. Appeal to the Board of Patent Appeals and Interferences.”.

22      (d) APPEAL TO THE COURT OF APPEALS FOR THE  
23      FEDERAL CIRCUIT.—Section 141 of title 35, United  
24      States Code, is amended to read as follows:



1 **“§ 141. Appeal to the Court of Appeals for the Federal**  
2 **Circuit**

3 “(a) EXAMINATIONS.—An applicant dissatisfied with  
4 the decision in an appeal to the Board of Patent Appeals  
5 and Interferences under section 134 may appeal the deci-  
6 sion directly to the United States Court of Appeals for  
7 the Federal Circuit, or may seek review de novo in any  
8 district court of the United States of competent jurisdic-  
9 tion.

10 “(b) REEXAMINATIONS.—A patent owner who is, in  
11 a reexamination proceeding, dissatisfied with the final de-  
12 cision in an appeal to the Board of Patent Appeals and  
13 Interferences under section 134 may appeal the decision  
14 directly to the United States Court of Appeals for the Fed-  
15 eral Circuit, or may seek review de novo in a district court  
16 of the United States of competent jurisdiction.

17 “(c) INTERFERENCE.—A party to an interference  
18 dissatisfied with the decision of the Board of Patent Ap-  
19 peals and Interferences on the interference may appeal the  
20 decision to the United States Court of Appeals for the  
21 Federal Circuit, but such appeal shall be dismissed if any  
22 adverse party to such interference, within twenty days  
23 after the appellant has filed notice of appeal in accordance  
24 with section 142, files notice with the Director that the  
25 party elects to have all further proceedings conducted as  
26 provided in section 146. If the appellant does not, within

1 thirty days after filing of such notice by the adverse party,  
2 file a civil action under section 146, the decision appealed  
3 from shall govern the further proceedings in the case.”.

4 (e) SENSE OF CONGRESS.—It is the sense of Con-  
5 gress that—

6 (1) the Patent Trial and Appeal Board shall be  
7 replaced with the former Board of Patent Appeals  
8 and Interferences;

9 (2) with the abolishment of inter partes review  
10 and post-grant review proceedings, the Patent Trial  
11 and Appeal Board is no longer needed to conduct  
12 these duties;

13 (3) unless otherwise in the context of an ex  
14 parte reexamination under chapter 30 of title 35,  
15 United States Code, the Board of Patent Appeals  
16 and Interferences will not be used to invalidate an  
17 already issued patent;

18 (4) the changes described in paragraphs (1)  
19 through (3) will protect the rights of patent owners  
20 who have been granted a patent and ensure a fair,  
21 fully adjudicated proceeding to invalidate an issued  
22 patent;

23 (5) the amendment to section 6 of title 35,  
24 United States Code, reflects Congress’s intent to re-

1       quire a judicial proceeding to invalidate an issued  
2       patent; and

3               (6) the amendments to section 134 of title 35,  
4       United States Code, and section 141 of title 35,  
5       United States Code, are intended to restore each re-  
6       spective section to its prior state, but delete any ref-  
7       erence to inter partes reexamination, which is no  
8       longer available.

9       **SEC. 6. ELIMINATION OF FEE DIVERSION AND FULL FUND-**  
10                               **ING OF THE UNITED STATES PATENT AND**  
11                               **TRADEMARK OFFICE.**

12       (a) PATENT AND TRADEMARK OFFICE FUNDING.—  
13       Section 42 of title 35, United States Code, is amended—

14               (1) in subsection (a), by striking “(a) All fees”  
15       and inserting “(a) IN GENERAL.—Fees”;

16               (2) in subsection (b)—

17                       (A) by striking “(b) All fees” and inserting  
18       “(b) CREDIT OF FEES.—Fees”; and

19                       (B) by striking “Patent and Trademark  
20       Office Appropriation Account” and inserting  
21       “United States Patent and Trademark Office  
22       Innovation Promotion Fund”;

23               (3) in subsection (c)—

1 (A) by striking “(1) To the extent” and all  
2 that follows through “fees” and inserting “(c)  
3 USE OF FEES.—(1) Fees”;

4 (B) in paragraph (1), by striking “shall be  
5 collected by and shall, subject to paragraph (3),  
6 be available to the Director” and inserting  
7 “shall be collected by the Director and shall be  
8 available to the Director until expended”;

9 (C) by striking paragraph (2); and

10 (D) by redesignating paragraph (3) as  
11 paragraph (2);

12 (4) by redesignating subsections (d) and (e) as  
13 subsections (e) and (f), respectively;

14 (5) by inserting after subsection (c) the fol-  
15 lowing:

16 “(d) REVOLVING FUND.—

17 “(1) DEFINITIONS.—In this subsection:

18 “(A) FUND.—The term ‘Fund’ means the  
19 United States Patent and Trademark Office In-  
20 novation Promotion Fund established under  
21 paragraph (2).

22 “(B) TRADEMARK ACT OF 1946.—The term  
23 ‘Trademark Act of 1946’ means the Act enti-  
24 tled ‘An Act to provide for the registration and  
25 protection of trademarks used in commerce, to

1 carry out the provisions of certain international  
2 conventions, and for other purposes’, approved  
3 July 5, 1946 (15 U.S.C. 1051 et seq.) (com-  
4 monly referred to as the ‘Trademark Act of  
5 1946’ or the ‘Lanham Act’).

6 “(2) ESTABLISHMENT.—There is established in  
7 the Treasury a revolving fund to be known as the  
8 ‘United States Patent and Trademark Office Inno-  
9 vation Promotion Fund’.

10 “(3) DERIVATION OF RESOURCES.—There shall  
11 be deposited into the Fund any fees collected  
12 under—

13 “(A) this title; or

14 “(B) the Trademark Act of 1946.

15 “(4) EXPENSES.—Amounts deposited into the  
16 Fund under paragraph (3) shall be available, with-  
17 out fiscal year limitation, to cover—

18 “(A) all expenses to the extent consistent  
19 with the limitation on the use of fees set forth  
20 in subsection (c), including all administrative  
21 and operating expenses, determined in the dis-  
22 cretion of the Director to be ordinary and rea-  
23 sonable, incurred by the Director for the contin-  
24 ued operation of all services, programs, activi-  
25 ties, and duties of the Office relating to patents

1 and trademarks, as such services, programs, ac-  
2 tivities, and duties are described under—

3 “(i) this title; and

4 “(ii) the Trademark Act of 1946; and

5 “(B) all expenses incurred pursuant to any  
6 obligation, representation, or other commitment  
7 of the Office.”;

8 (6) in subsection (e), as so redesignated, by  
9 striking “The Director” and inserting “REFUNDS.—  
10 The Director”; and

11 (7) in subsection (f), as so redesignated, by  
12 striking “The Secretary” and inserting “REPORT.—  
13 The Secretary”.

14 (b) EFFECTIVE DATE; TRANSFER FROM AND TERMI-  
15 NATION OF OBSOLETE FUNDS.—

16 (1) EFFECTIVE DATE.—The amendments made  
17 by subsection (a) shall take effect on the first day  
18 of the first fiscal year that begins on or after the  
19 date of the enactment of this Act.

20 (2) REMAINING BALANCES.—There shall be de-  
21 posited in the Fund, on the effective date described  
22 in paragraph (1), any available unobligated balances  
23 remaining in the Patent and Trademark Office Ap-  
24 propriation Account, and in the Patent and Trade-  
25 mark Fee Reserve Fund established under section

1 42(c)(2) of title 35, United States Code, as in effect  
2 on the day before the effective date.

3 (3) TERMINATION OF RESERVE FUND.—Upon  
4 the payment of all obligated amounts in the Patent  
5 and Trademark Fee Reserve Fund under paragraph  
6 (2), the Patent and Trademark Fee Reserve Fund  
7 shall be terminated.

8 **SEC. 7. PATENTABILITY OF SCIENTIFIC DISCOVERIES AND**  
9 **SOFTWARE INVENTIONS.**

10 (a) AMENDMENT.—Section 101 of title 35, United  
11 States Code, is amended to read as follows:

12 **“§ 101. Inventions patentable**

13 “(a) IN GENERAL.—Whoever invents or discovers  
14 any new and useful process, machine, manufacture, or  
15 composition of matter, or any new and useful improvement  
16 thereof, may obtain a patent therefor, subject to the condi-  
17 tions and requirements of this title.

18 “(b) EXCEPTION.—A claimed invention is ineligible  
19 patent subject matter under subsection (a) if the claimed  
20 invention as a whole, as understood by a person having  
21 ordinary skill in the art, exists in nature independently  
22 of and prior to any human activity, or exists solely in the  
23 human mind.

24 “(c) ELIGIBILITY STANDARD.—The eligibility of a  
25 claimed invention under subsections (a) and (b) shall be

1 determined without regard as to the requirements or con-  
2 ditions of sections 102, 103, and 112 of this title, or the  
3 claimed invention’s inventive concept.”.

4 (b) SENSE OF CONGRESS.—It is the sense of Con-  
5 gress that—

6 (1) the Supreme Court’s recent jurisprudence  
7 concerning subject matter patentability has harmed  
8 the progress of science and the useful arts;

9 (2) the United States patent system must pro-  
10 tect and encourage research and development in  
11 such scientific disciplines as would promote the  
12 progress of science and the useful arts by securing  
13 for limited times to inventors the exclusive rights to  
14 their discoveries and provide scientists in the life  
15 sciences, computer sciences, and other disciplines,  
16 with certainty that their discoveries and inventions  
17 are entitled to patent protection; and

18 (3) this amendment effectively abrogates *Alice*  
19 *Corp. v. CLS Bank International*, 573 U.S. 208  
20 (2014), *Bilski v. Kappos*, 561 U.S. 593 (2010), *As-*  
21 *sociation for Molecular Pathology v. Myriad Genet-*  
22 *ics*, 569 U.S. 576 (2013), *Mayo Collaborative Serv-*  
23 *ices v. Prometheus Laboratories*, 566 U.S. 66  
24 (2012), and its predecessors to ensure that life  
25 sciences discoveries, computer software, and similar



1 inventions and discoveries are patentable, and that  
2 those patents are enforceable.

3 **SEC. 8. LIMITATIONS ON PRIOR ART.**

4 Section 102 of title 35, United States Code, is  
5 amended to read as follows:

6 **“§ 102. Conditions for patentability; novelty**

7 “(a) IN GENERAL.—A person shall be entitled to a  
8 patent unless—

9 “(1) the invention was known or used by others  
10 in this country, or patented or described in a printed  
11 publication in this or a foreign country, before the  
12 invention thereof by the applicant for patent;

13 “(2) the invention was patented or described in  
14 a printed publication in this or a foreign country or  
15 in public use or on sale in this country, more than  
16 one year prior to the date of the application for pat-  
17 ent in the United States;

18 “(3) he has abandoned the invention;

19 “(4) the invention was first patented or caused  
20 to be patented, or was the subject of an inventor’s  
21 certificate, by the applicant or his legal representa-  
22 tives or assigns in a foreign country prior to the  
23 date of the application for patent in this country on  
24 an application for patent or inventor’s certificate

1 filed more than twelve months before the filing of  
2 the application in the United States;

3 “(5) the invention was described in (1) an ap-  
4 plication for patent, published under section 122(b),  
5 by another filed in the United States before the in-  
6 vention by the applicant for patent or (2) a patent  
7 granted on an application for patent by another filed  
8 in the United States before the invention by the ap-  
9 plicant for patent, except that an international appli-  
10 cation filed under the treaty defined in section  
11 351(a) shall have the effects for the purposes of this  
12 subsection of an application filed in the United  
13 States only if the international application des-  
14 ignated the United States and was published under  
15 Article 21(2) of such treaty in the English language;

16 “(6) he did not himself invent the subject mat-  
17 ter sought to be patented; or

18 “(7)(A) during the course of an interference  
19 conducted under section 135 or section 291, another  
20 inventor involved therein establishes, to the extent  
21 permitted in section 104, that before such person’s  
22 invention thereof the invention was made by such  
23 other inventor and not abandoned, suppressed, or  
24 concealed; or

1           “(B) before such person’s invention thereof, the  
2           invention was made in this country by another in-  
3           ventor who had not abandoned, suppressed, or con-  
4           cealed it. In determining priority of invention under  
5           this subsection, there shall be considered not only  
6           the respective dates of conception and reduction to  
7           practice of the invention, but also the reasonable  
8           diligence of one who was first to conceive and last  
9           to reduce to practice, from a time prior to concep-  
10          tion by the other.

11          “(b) DISCLOSURES IN PATENT APPLICATIONS AND  
12          PATENTS.—A disclosure shall not be prior art to a claimed  
13          invention under this section if before the issuance of a pat-  
14          ent—

15                 “(1) the information disclosed was obtained di-  
16                 rectly or indirectly from the inventor or a joint in-  
17                 ventor;

18                 “(2) the information disclosed to the Office or  
19                 another party during the one-year period prior to  
20                 the date of the application for patent had, before a  
21                 patent application for the information was effectively  
22                 filed, been publicly disclosed by the inventor or a  
23                 joint inventor; or

24                 “(3) the information disclosed and the claimed  
25                 invention, not later than the effective filing date of

1 the claimed invention, were owned by the same per-  
2 son or subject to an obligation of assignment to the  
3 same person.”.

4 **SEC. 9. RESTORING PATENTS AS A PROPERTY RIGHT.**

5 (a) PRIVATE PROPERTY PATENT RIGHT.—

6 (1) AMENDMENT.—Chapter 10 of title 35,  
7 United States Code, is amended by adding at the  
8 end the following new section:

9 **“§ 106. Private property patent right**

10 “A patent right is a private property right secured  
11 to an inventor upon issuance of the patent that shall only  
12 be revoked by a court ruling in a judicial proceeding, un-  
13 less the patent owner consents to an administrative or  
14 other procedure.”.

15 (2) TECHNICAL AND CONFORMING AMEND-  
16 MENT.—The table of sections for chapter 10 of title  
17 35, United States Code, is amended by adding at  
18 the end the following new item:

“106. Private property patent right.”.

19 (b) OWNERSHIP; ASSIGNMENT.—Section 261 of title  
20 35, United States Code, is amended—

21 (1) in the first sentence, by striking “patents  
22 shall have the attributes of personal property” and  
23 inserting the following: “patents shall be recognized  
24 as private property rights”; and

1           (2) by inserting after the second sentence the  
2 following:

3           “As private property rights, applications for patents,  
4 patents, and interests therein shall be freely transferrable,  
5 in whole or in part, including conveyance by assignment  
6 or license. Any successors, heirs, assigns, or licensees of  
7 a patent owner, who receive a lesser interest in a patent,  
8 shall be subject to any and all restrictions of their interest  
9 in the patent, provided that the successors, heirs, assigns,  
10 or licensees have actual or constructive notice of such re-  
11 strictions.”.

12           (c) SENSE OF CONGRESS.—It is the sense of Con-  
13 gress that—

14           (1) recent jurisprudence of the United States  
15 Supreme Court, including *Oil States Energy Serv-*  
16 *ices v. Greene’s Energy Group*, 138 S. Ct. 1365  
17 (2018), have harmed the progress of science and the  
18 useful arts by unconstitutionally changing the treat-  
19 ment of fundamental patent rights to government-  
20 bestowed public franchises from the Founders’ origi-  
21 nal intent of exclusive private property rights of lim-  
22 ited duration;

23           (2) recent jurisprudence of the United States  
24 Supreme Court, including *Impression Products Inc.*  
25 *v. Lexmark International, Inc.*, have harmed the

1 progress of science and the useful arts by limiting  
2 the ability of patent owners to exclude unlicensed  
3 customers from their supply chains; and

4 (3) meaningful patent rights must permit pat-  
5 ent owners to freely assign their rights in whole, or  
6 in part, and to ensure that successors, heirs, or as-  
7 signs of a patent owner, or their assigns, are duly  
8 bound by restrictions or exclusions set by patent  
9 owners on the use of their property.

10 **SEC. 10. ENDING AUTOMATIC PUBLICATION OF PATENT AP-**  
11 **PLICATIONS.**

12 (a) AMENDMENT.—Section 122(b) of title 35, United  
13 States Code, is amended to read as follows:

14 “(b) PUBLICATION.—

15 “(1) IN GENERAL.—Each application for a pat-  
16 ent shall be published, in accordance with procedures  
17 determined by the Director, only upon the request of  
18 the patent applicant.

19 “(2) INFORMATION RELEASED ONCE A PATENT  
20 ISSUES.—No information concerning a patent appli-  
21 cation shall be available to the public unless and  
22 until a patent issues.”.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-  
24 gress that—

1           (1) automatic publication of patent applications  
2 after 18 months has harmed the progress of science  
3 and the useful arts by creating “prior art” by oper-  
4 ation of law that prevents a patent owner from ap-  
5 plying for a patent on the same invention if a patent  
6 does not issue; and

7           (2) automatic publication of patent applications  
8 encourages early disclosure of claimed inventions  
9 and subjects innovative inventions and discoveries  
10 reduced to practice in the United States to theft or  
11 appropriation by foreign competitors.

12 **SEC. 11. PRESUMPTION OF VALIDITY; DEFENSES.**

13           (a) VALIDITY OF A PATENT IN ADJUDICATORY PRO-  
14 CEEDINGS.—Section 282(a) of title 35, United States  
15 Code, is amended to read as follows:

16           “(a) IN GENERAL.—

17                   “(1) PRESUMPTION OF VALIDITY FOR A PAT-  
18 ENT.—In any judicial or administrative proceeding  
19 conducted in any court or Federal agency (as de-  
20 fined in section 201) or of any State, a patent issued  
21 under this title shall be presumed valid.

22                   “(2) PRESUMPTION OF VALIDITY FOR CLAIMS  
23 OF A PATENT.—In any proceeding described under  
24 paragraph (1)—

1           “(A) each claim of a patent (whether in  
2           independent, dependent, or multiple dependent  
3           form) shall be presumed valid independently of  
4           the validity of other claims; and

5           “(B) dependent or multiple dependent  
6           claims shall be presumed valid even though de-  
7           pendent upon an invalid claim.

8           “(3) BURDEN OF ESTABLISHING INVALIDITY.—  
9           In any proceeding described under paragraph (1) in  
10          which the validity of a patent is at issue, the burden  
11          of establishing invalidity of a patent or any claim  
12          thereof rests on the party asserting the invalidity by  
13          clear and convincing evidence.”.

14          (b) TOLLING PATENT TERM DURING JUDICIAL  
15          CHALLENGE.—Section 282 of title 35, United States  
16          Code, is amended by adding at the end the following:

17          “(d) TOLLING OF PATENT TERM DURING VALIDITY  
18          CHALLENGE.—In an action involving a patent where the  
19          validity of the patent has been challenged, the patent term  
20          shall be tolled from the time the validity of the patent is  
21          challenged to the time of resolution of the validity issue  
22          by the court. The patent term shall resume once the valid-  
23          ity challenge is resolved. The court may award damages  
24          to the patent owner in a case in which another party  
25          brought a validity claim against the patent in bad faith.”.



1 **SEC. 12. INJUNCTION.**

2 (a) AMENDMENT.—Section 283 of title 35, United  
3 States Code, is amended—

4 (1) by striking “The” and inserting the fol-  
5 lowing:

6 “(a) IN GENERAL.—The”; and

7 (2) by adding at the end the following new sub-  
8 section:

9 “(b) PERMANENT INJUNCTION.—

10 “(1) IN GENERAL.—Upon a finding of infringe-  
11 ment of a patent, the court shall presume that fur-  
12 ther infringement of the patent would cause the pat-  
13 ent owner irreparable harm. This presumption may  
14 be overcome only by a showing of clear and con-  
15 vincing evidence by the infringing party that the  
16 patent owner would not be irreparably harmed by  
17 further infringement of the patent. The patent  
18 owner is not required to make or sell a product cov-  
19 ered by the patent to show irreparable harm.

20 “(2) PATENT OWNER DEFINED.—In this sub-  
21 section, a ‘patent owner’ means the owner of the  
22 patent or an exclusive licensee of the patent.”.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-  
24 gress that this section abrogates the Supreme Court’s rul-  
25 ing in and subsequent lower court interpretations of eBay  
26 v. MercExchange, 547 U.S. 388 (2006), which has been

1 applied as a de facto presumption against granting patent  
2 owners injunctive relief.

3 **SEC. 13. BEST MODE REQUIREMENT.**

4 Section 15 of the Leahy-Smith America Invents Act  
5 (Public Law 112–29), including each amendment made by  
6 such section, is repealed and any provision amended by  
7 such section shall be amended to read as in effect on the  
8 day before the date of the enactment of such Act.

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