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I am fundamentally opposed to the proposed Patent Reform Act of 2009. The proposed reforms cover many issues already addressed by the courts; they are at best superfluous and at worst damaging to innovation in the US.

The apportionment of damages, for example, will result in devaluing patents – the currency of a knowledge-based economy – and will make them more difficult to enforce, which will inevitably slow down innovation, weaken the economy and ultimately result in job loss.

We need to strengthen our patent system not weaken it; we need to reform it, not to deform it - which is what is going to happen if this proposed legislation becomes the law.

The US patent system does need legislative reform, but of a completely different nature – reform that fixes the ills plaguing the USPTO, modernises patent law, strengthens patent protection and encourages innovation. Here are some reforms worth considering:

- First of all, we need the Congress to clarify the right of a patent owner to exclude others — that is, to obtain a permanent injunction upon the finding of infringement — regardless of whether the patent owner practices the patented invention. A patent is a *quid-pro-quo* for invention disclosure, not practice of the invention.
- We also need the Congress to clarify the ambiguous status of so-called business method patents, which has been thrown in limbo by the recent decision of the Court of Appeals for the Federal Circuit (CAFC) in *In re Bilski*.

- We need to strengthen penalties for wilful infringement. The current Bill does the opposite, making it more difficult to prove wilfulness. This will only encourage infringement and promote litigiousness.
- The Congress may also wish to consider a two-tier patent system in order to address the issues of obviousness, with which the Supreme Court grappled in the 2008 *KSR* case. In a single-tier patent system, break-through inventions are accorded the same patent protection as relatively minor improvements, which makes it impossible to create clear criteria of obviousness against which such diverse inventions can be judged.
- The ineffective and slow USPTO, which is clogged with patent applications it cannot process in a timely manner, is a serious problem that needs to be addressed head-on by the legislators... but it isn't.

One can only wonder why the Congress is not addressing real problems and is busy deforming rather than reforming our patent code.

