

CARPER joined with me in co-sponsoring this bill.

This bill, the Patent and Trademark Authorization Act of 2002, will send a strong message to America's innovators and inventors that the Congress intends to protect and enhance our patent system. The PTO serves a critical role in the promotion and development of commercial activity in the United States by granting patents and trademark registrations to our Nation's innovators and businesses.

The costs of running the PTO are entirely paid for by fees collected by the PTO from users, individuals and companies that seek to benefit from patent and trademark protections. However, since 1992 Congress has diverted over \$800 million of those fees for other government programs unrelated to the PTO.

This bill sends a strong message that Congress should appropriate to the PTO a funding level equal to these fees. The reason for this is simple: the creation of intellectual property by Americans, individuals and businesses, is a massive positive driving force for our economy and is a huge plus for our trade balance with the rest of the world. In recent years, the number of patent applications has risen dramatically, and that trend is expected to continue. Our patent examiners are very overworked, and emerging areas such as biotechnology and business method patents may overwhelm the system.

If fully implemented as intended, this bill can greatly assist the PTO in issuing quality patents more quickly, which means more investment, more jobs and greater productivity for American businesses.

The House of Representatives has passed a bill, H.R. 2047, which contains some similar provisions but just for fiscal year 2002 regarding the authorization of appropriations. That bill, H.R. 2047, was also passed by the Senate but amended to include the text of S. 1754, as reported out of the Judiciary Committee. This will provide the Congress the greatest opportunity to get this reform on the President's desk for signature.

Note that the Judiciary Committee reported out a substitute bill, with the assistance of Senator HATCH, which simply moved back some dates in S. 1754, as originally introduced. I am including a short explanation of S. 1754, as reported. This explanation also applies to the version of H.R. 2047 as passed by the Senate.

Section 1 of the bill sets forth the title, "The Patent and Trademark Office Authorization Act of 2002."

Section 2 authorizes Congress to appropriate to the PTO, in each of fiscal years 2003 through 2008, an amount equal to the fees estimated by the Secretary of Commerce to be collected in each of the next 5 fiscal years. The Secretary shall make this report to the Congress by February 15 of each such fiscal year.

This bill thus sets forth the goal, strongly supported by users of the patent system, that the PTO should have a budget equal to the fees collected for each year. In recent years, the appropriations' committees have not provided annual appropriations equal to the fees collected. This bill sets forth the wishes of the committee, and now the Senate as a whole, that the PTO be funded at levels determined by the anticipated fee collections.

Section 3 of the bill directs the PTO to develop, in the next three years, an electronic system for the filing and processing of all patent and trademark applications that is user friendly and that will allow the Office to process and maintain electronically the contents and history of all applications. Of the amount appropriated under section 2, section 3 authorizes Congress to appropriate not more than \$50 million in fiscal years 2003 and 2004 for the electronic filing system. The PTO is working on this electronic system.

In section 4, the bill requires the Secretary of Commerce to annually report to the Judiciary Committees of the House of Representatives and the Senate on the progress made in implementing its strategic plan. The PTO issued a short version of its "21st Century Strategic Plan" on June 3, 2002, which is available on their website.

The bill also contains two sections which will clarify two provisions of current law and thus provide certainty and guidance to the PTO as well as inventors and businesses.

Section 5 of S. 1754 expands the scope of matters that may be raised during the reexamination process to a level which had been the case for many years. In background, Congress established the patent reexamination system in 1980 for three purposes: to attempt to settle patent validity questions quickly and less expensively than litigation; to allow courts to rely on PTO expertise; and, third, to reinforce investor confidence in the certainty of patent rights by affording an opportunity to review patents of doubtful validity.

This system of encouraging third parties to pursue reexamination as an efficient method of settling patent disputes is still a good idea. However, by clarifying current law this bill increases the discretion of the PTO and enhances the effectiveness of the reexamination process. It does this by permitting the use of relevant evidence that was considered by the PTO, but not necessarily cited. Thus, adding this new language to current law will help prevent the misuse of defective patents, especially those concerning business method patents.

It permits a reexamination based on prior art cited by an applicant that the examiner failed to adequately consider. Thus, this change allows the PTO to correct some examiner errors that it would not otherwise be able to correct. In a sense it deals with *In re Portola Packaging*, 110 F.3d 786, Fed. Cir. 1997,

in a manner which should reduce the number of cases which will be handled in Federal court in a manner that fully protects the rights of interested parties, and the public interest. Thus, section 5 does not change the basic approach of current law but rather eliminates a presumption which could be wrong, allowing for mistakes to be fixed without expensive litigation.

Section 6 of the bill modestly improves the usefulness of inter partes reexamination procedures by enhancing the ability of third-party requesters to participate in that process by allowing such a third party to appeal an adverse reexamine decision in Federal court or to participate in the appeal brought by the patentee. This may make inter partes reexamination a somewhat more attractive option for challenging a patent in that a third party should feel more comfortable that the courts can be accessed to rectify a mistaken reexamination decision. This section should increase the use of the reexamine system and thus decrease the number of patent matters adjudicated in Federal court.

I look forward to working with the other body to assure that this bill becomes law as soon as possible. I appreciate the work of Herb Wamsley of the Intellectual Property Owners Association on this bill, and of Marla Grossman who worked with us in this effort. Also, I want to thank Mike Kirk of the American Intellectual Property Law Association for his help on these patent fee matters over the years.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in August 2001 in Monmouth County, N.J. Seven people assaulted a 23-year-old learning disabled man with hearing and speech impediments. The victim was lured to a party, bound, and physically and verbally assaulted for three hours. Later, he was taken to a wooded area where the torture continued until he was able to escape. The perpetrators were sentenced on multiple counts in connection with the incident, including aggravated assault and harassment by bias intimidation.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.