not so much to do more but for the first time in a long time to do less so they can finally do what it takes to get this economy moving again.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 5 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent to speak for as much time as I might consume.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMERICA INVENTS ACT

Mr. KYL. Mr. President, I rise today to urge my colleagues to support H.R. 1249, the Leahy-Smith America Invents Act. Some other responsibilities may take me from the Senate floor during this coming week when we will be debating the act and therefore I wanted to lay out my views at this time, strongly urging my colleagues to support the bill.

Although the present bill originates in the House of Representatives, it is actually based on and is substantially identical to the bill that passed the Senate in March by a vote of 95 to 5. Also, before Chairman SMITH brought his bill to the House floor, he negotiated final changes to the bill with the lead supporters of the measure in the Senate Judiciary Committee. The House and Senate have now been working on patent reform for 6 years. The present bill is a good bill. It reflects a genuine compromise between the House and the Senate. It is a bill that will provide substantial benefits to the U.S. economy in the coming years, so I hope that, as I said, the Senate will adopt this legislation and be able to pass it on directly to the President for his signature.

The overarching purpose and effect of the present bill is to create a patent system that is clearer, fairer, more transparent, and more objective. It is a system that will ultimately reduce litigation costs and reduce the need to hire patent lawyers. The bill will make it simpler and easier to obtain valid patents and to enforce those patents, and it will cure some very clear litigation abuses that have arisen under the current rules, abuses that have done serious harm to American businesses.

By adopting the first-to-file system, for example, the bill creates a rule that is clear and easy to comply with and that avoids the need for expensive discovery and litigation over what a patent's priority date is. By adopting a simple definition of the term ''prior art,'' the bill will make it easier to assess whether a patent is valid and cheaper for an inventor to enforce his patent. By recognizing a limited prior user right, the bill creates a powerful incentive for manufacturers to build factories and create jobs in this country. By allowing post-grant review of patents, especially low quality, business method patents, the bill creates an inexpensive substitute for district court litigation and allows key issues to be addressed by experts in the field. By eliminating the recent surge of false-marking litigation, the bill effectively repeals what amounts to a litigation tax on American manufacturing.

Let me take a few moments to describe how the provisions of this bill will provide concrete benefits to American inventors, both large and small, and to the American manufacturing economy. First, prior commercial use defense.

A new provision of the present bill that was added by the House of Representatives will provide important advantages to U.S. manufacturers. Section 5 of the bill creates a new defense to patent infringement of prior commercial use. This new defense will ensure that the first inventor of a new process, or of a product used in a manufacturing process, can continue to use the invention in a commercial process even if a subsequent inventor later patents the idea. For many manufacturing processes the patent system presents a Catch-22. If the manufacturer patents the process, he effectively discloses it to the world. But patents for processes that are used in closed factories are difficult to police. It is all but impossible to know if someone in a factory in China, for example, is infringing such a patent. As a result, unscrupulous foreign and domestic inventors will simply use the invention in secret without paying licensing fees. Patenting such manufacturing processes effectively amounts to giving away the invention to foreign manufacturers.

On the other hand, if the U.S. manufacturer does not patent the process, a subsequent party may obtain a patent on it and the U.S. manufacturer will be forced to stop using a process that he was the first to invent and which he has been using for years.

The prior commercial use defense provides relief to U.S. manufacturers from this Catch-22, allowing them to continue to use a manufacturing process without having to give it away to competitors or running the risk that it will be patented out from under them. To establish a right to this defense, however, the America Invents Act requires the manufacturer to use the process in the United States. As a result, the AIA creates a powerful incentive for manufacturers to build their factories and plants in the United States. Currently, most foreign countries recognize some prior user rights that encourage manufacturers to build facilities in those countries. This bill corrects this imbalance and creates a strong incentive for businesses to create manufacturing jobs in this country.

Second, something called supplemental examination. A provision of this bill that will particularly benefit small and startup investors is section 12, which authorizes supplemental examination of patents. It is one of the reasons the bill has such strong support in the small business community. Currently, even minor and inadvertent errors in the patent application process can lead to expensive and very unpredictable and very inequitable conduct litigation. It is often the case that startup companies or university researchers cannot afford to hire the very best patent lawyers. Their patents are prosecuted by an in-house attorney who does a good enough job but who is unfamiliar with all of the sharp corners and pitfalls of the inequitable conduct doctrine, such as the need to present cumulative studies and prior art. Later, when more legally sophisticated investors evaluate the patent for potential investment or purchase, these minor flaws in prosecution can deter the investor from purchasing or funding the development of the invention. An investor would not risk spending hundreds of millions of dollars to develop a product if a potential inequitable conduct attack may wipe out the whole investment.

Parties on both sides of these exchanges report that investors routinely walk away from inventions because of their inability under current law to resolve uncertainties whether a flaw in prosecution was, in fact, inequitable conduct. These decisions not to invest in a new invention represent important new cures never tested and brought to market and other important inventions that are never developed.

The America Invents Act provides a solution to this problem by authorizing supplemental examination of patents. This new proceeding will allow inventors or patent purchasers to return to the Patent Office with additional material and have the Patent Office reevaluate the patent in light of that material. If the patent is invalid in light of the new material, the Patent Office will cancel the claims. But if the office finds that the patent is valid, the parties will have a patent that they can be legally certain will be upheld and enforced. The authorization of supplemental examination will result in path-breaking inventions being developed and brought to market that otherwise would have lingered on the shelf because of legal uncertainty over the patent. It will ensure that small and startup companies with important and valid patents will not be denied investment capital because of legal technicalities.

Let me talk about what I think is undoubtedly the most important among