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Book Review of Patent Reform in the 112th Congress: Innovation Issues

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applications, and increased funding is needed to deal with the backlog. Over the past few Congresses patent reform legislation has been introduced. On September 16, 2011, President Obama signed into law a major reform of the patent system, the Leahy Smith America Invents Act (Public Law 112 29).

The report, authored by CRS science and technology policy specialist Wendy H. Schacht and Georgetown law professor and visiting scholar John R. Thomas, gives a quick review of patent requirements and thoroughly enumerates the changes proposed by the Senate (S. 23) and House (H.R. 1249) patent reform bills. H.R. 1249 was the bill that was ultimately enacted, but both the Senate and House influenced the final legislation. Before the reform law was enacted, U.S. patent law assigned priority for discoveries to the first inventor—that is, an inventor's patent claim could be displaced if another inventor later showed that he had developed the invention first. Determinations of patent priority were made in complex administrative proceedings called interference proceedings. Supporters of this shift from the current first to invent to a first inventor to file system argue that it would encourage inventors to file their patent claims as quickly as possible and would reduce the need for interference proceedings to determine who invented the claimed invention first. The first inventor to file system is widely adopted in other nations, so the reform law brings the U.S. system in line with most countries' patent systems. Opponents of the first inventor to file system are concerned that large corporations are better equipped to file first, thereby unfairly reducing the chances small businesses and individuals can get patents. The law also makes a number of changes to the USPTO's procedures for reexamining granted patents and grants it more financial freedom by increasing the availability of revenue from application fees.

The proposed amendments in both patent reform bills are fully explained in prose that is much less dry than one would expect from such an exposition. Researchers wishing to understand the intricacies of the current patent laws and proposed changes will find this report to be a more accessible explanation than most congressional committee reports. The last section of the report briefly discusses the main issues in patent reform, such as patent quality, litigation costs, international harmonization, and patent speculation. The report is densely footnoted—200 footnotes in 38 pages—with citations to relevant sources for further research. As of this writing, the report has been issued three times with updates as patent reform legislation has progressed through Congress. It has not yet been updated to reflect the enactment of H.R. 1249, but a later version may very well be issued in the future.

This report will be valuable for any researcher interested in patent law. The CRS has issued a number of other reports relating to patent reform, including *Patent Reform in the 111th Congress: Innovation Issues* (R40481, January 20, 2011), *Patent Reform: Issues in the Biomedical and Software Industries*, (RL33367, January 12, 2011), and *Patent Reform: Judicial Developments in Areas of Legislative Interest* (R41090, March 2, 2010).

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Patent Reform in the 112th Congress: Innovation Issues. Wendy H. Schacht and John R. Thomas. Washington, D.C.: Congressional Research Service, June 30, 2011. 38 pp. R41638

Housed within the Library of Congress, the Congressional Research Service (CRS) provides legal and policy analysis for members of the House and Senate. CRS is well regarded for its authoritative, thorough, and nonpartisan reports. This report ably upholds that tradition as an excellent primer on recent patent reform efforts in the United States. It is essential reading for any researcher interested in the U.S. patent system.

The Constitution specifically authorizes Congress to grant patents to inventors. The scope of inventions for which patents are granted has dramatically expanded since the adoption of the Constitution, including business methods, software, and genetic inventions. Citing a number of concerns, some believe that the patent system is in need of reform. Relatively recent types of patentable materials are controversial because they encompass inventions that are merely mental processes or products of nature. Innovation is stifled by companies, derisively called patent trolls, which purchase patents solely for the purpose of suing other companies for patent infringement. The U.S. Patent and Trademark Office (USPTO) has failed to keep up with the growing number of patent