

February 3, 2011

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate

Dear Chairman Leahy and Ranking Member Grassley:

We are writing to you with regard to the Senate Judiciary Committee mark-up of S.23, The Patent Reform Act of 2011. Modernization of the U.S. patent system is critical to the U.S. economy, and we commend you for your commitment to accomplishing this goal. At this time, however, we must oppose S.23, as it does nothing to address poor-quality business-method patents that are plaguing our industry.

These patents represent one of the most problematic aspects of the current system for granting, reviewing and litigating patents. The problems with low-quality business method patents are well documented and beyond dispute. On an escalating basis, financial firms are the target of meritless patent lawsuits brought by non-practicing entities. Such entities exploit flaws in the current system by shopping friendly venues where they extort money from legitimate businesses by asserting low-quality business method patents.

To address this problem, we have supported efforts to establish an oppositional proceeding at the United States Patent and Trademark Office (PTO), where business-method patents can be re-examined, using the best prior art, as an alternative to costly litigation.

Unfortunately, as written, S.23 does nothing to rein in non-practicing entities or to address business-method patents.

Senators Schumer and Kyl have filed an amendment that would establish a temporary proceeding for the PTO to use the best prior art to invalidate poor-quality patents. This approach would ease the burden on the courts and reduce costly and unnecessary litigation. We strongly support the Schumer-Kyl Amendment. Until this amendment is adopted, we must actively oppose S.23.

Thank you for your leadership on reforming the current, antiquated patent system. It is our hope that we can work with you to improve this legislation to address a fundamental, and increasingly costly, problem of business-method patents.

Sincerely,

The Clearing House Association L.L.C.  
The Financial Services Roundtable  
Independent Community Bankers of America  
Securities Industry and Financial Markets Association