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H.R. 4307

ments can evaluate those standards in light of the declination criteria.

In section 2(11): limits the authority of a tribal organization that is itself not a tribe to technically retrocede a program back to the government to instances where the authority has been delegated to the tribal organization.

In section 2(12): eliminates the limitation on return of property to the federal government relating to use of the property in the contracted program.

In section 2(13): deletes virtually all of the divisibility section, and replacing it with a new explicit protection for non-contracting tribes; limits redesign authority to non-construction contracts; makes redesign a matter for a tribal organization to propose to the Secretary; prohibits any redesign that would be contrary to statute; clarifies the types of property interests necessary to support a tribal lease; clarifies that certain sections of Title I do not apply to construction contracts, including the model contract and the reassumption section; and clarifies that auditing costs that are to be covered in construction contracts are those that relate to the management of the contract, and not those relating to other aspects of the tribal organization's operations.

In section 2(14): adds language to assure against any inadvertent double payment of contract support costs which duplicate the Secretarial amount already included in the contract.

In section 2(15): changes the reporting deadlines from March 15 to May 15, to provide adequate time to include reports relating to calendar year contracts within the supplemental appropriations cycle.

In section 2(17): changes the word "allocate" to "add".

In section 2(19): clarifies the matching provision; clarifies the depreciation provision; deletes the mandate to OMB to issue a new circular, leaving such matters up to OMB's discretion; entirely rewrites the "funding suspension" provision to grant the agencies this authority within certain guidelines; rewrites the "savings" provision so that savings equally benefit both contracted and non-contracted parts of the Secretary's programs; and clarifies the limitation applicable to a tribal organization's rebudgeting authority.

In section 3 of the bill (containing the model contract): deletes the paragraph relating to tribal forums; requires that the contract set forth the program standards applicable to the contracted programs; amends and narrows the "limitation of cost" clause; enlarges the Secretary's monitoring rights; changes certain recordkeeping requirements; conforms the funding reduction provisions of the contract with section 105(c)(2) of the Act; clarifies that the funding amount specified in the annual funding agreement is tied to the funding amount required to be paid under section 106(a) of the Act; clarifies the Secretary's responsibil-

ities; and edits the annual funding agreement paragraphs as requested.

In section 4 of the bill (relating to reassumption): adds a new reassumption ground tied to endangerment of trust resources; provides for partial reassumption; and changes the "clear and convincing" standard to the "clearly demonstrate" standard.

In section 5 of the bill (relating to regulatory implementation): adds several additional topic areas with respect to which Congress delegates its legislative rulemaking authority to the departments; adds an explicit regulatory repeal authority; amends the tribal participant and meeting requirements related to negotiated rulemaking; and substantially rewrites the waiver and exception provisions.

Mr. President, S. 2036, as amended, is legislation that is strongly supported by the tribes. I urge my colleagues to pass this legislation.

THE PROCESS PATENT PROTECTION ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4307, a bill relating to biotechnology patents.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: A bill (H.R. 4307) an act to amend title 35 of the United States Code with respect to applications for process patents, and for certain other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2636

(Purpose: To amend title 35 United States Code, with respect to applications for process patents)

Mr. FORD. Mr. President, in behalf of Senator DECONCINI and Senator HATCH, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Kentucky [Mr. FORD], for Mr. DECONCINI, (for himself, Mr. HATCH, and Mr. KENNEDY) proposes an amendment numbered 2636.

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—PROCESS PATENT APPLICATIONS

SECTION 101. EXAMINATION OF PROCESS PATENT APPLICATIONS FOR OBVIOUSNESS.

Section 103 of title 35, United States Code, is amended—

- (1) by designating the first paragraph as subsection (a);
- (2) by designating the second paragraph as subsection (c); and
- (3) by inserting after the first paragraph the

“(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a

“biotechnological process” using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

“(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

“(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

“(2) A patent issued on a process under paragraph (1)—

“(A) shall also contain the claims to the composition of matter used in or made by that process, or

“(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.”

For purposes of subsection (b), the term “biotechnological process” means a process of genetically altering or otherwise inducing a cell or a living organism to express an exogenous nucleotide sequence or to express specific physiological characteristics. Such processes include genetic alteration of a cell to express an exogenous nucleotide sequence, cell fusion procedures yielding a cell line that expresses a specific protein, including a monoclonal antibody, and genetic alteration of a multicellular organism to induce said organism to express an exogenous nucleotide sequence or to express predefined physiological characteristics.

SEC. 102. PRESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States Code, is amended by inserting after the second sentence of the first paragraph the following: “Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).”

SEC. 103. EFFECTIVE DATE.

The amendments made by section 101 shall apply to any application for patent filed on or after the date of the enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) as application for the reissue of a patent.

AMENDMENT NO. 2637

(Purpose: To confer jurisdiction on the United States Court of Federal Claims relating to certain claims arising out of the furnishing of software and services)

Mr. FORD. Mr. President, on behalf of Senator HATCH, I send an amendment to the desk, and ask unanimous consent to proceed to its immediate consideration, that the amendment be agreed to, that substitute amendment as amended, be agreed to, that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, and that any statements appear in the RECORD at the appropriate place as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2637) was agreed to, as follows:

On page . insert between lines and the following:

**SEC. JURISDICTION OF UNITED STATES COURT OF FEDERAL CLAIMS RELATING TO CERTAIN SOFTWARE AND SERVICE CLAIMS.**

(a) **JURISDICTION.**—Jurisdiction is conferred upon the United States Court of Federal Claims to hear, determine, and render conclusions that are sufficient to inform the Congress of the amount, if any, legally or equitably due upon the claims of Inslaw, Inc., a Delaware Corporation (hereinafter referred to as "Inslaw") and William A. Hamilton and Nancy Burke Hamilton, individually against the United States which claims arise out of the furnishing of computer software and services to the United States Department of Justice. The hearings and proceedings conducted, determinations and conclusions made, and report submitted to the Congress under this subsection shall be conducted in accordance with the provisions of section 2509 of title 28, United States Code.

(b) **WAIVER OF SOVEREIGN IMMUNITY AND DEFENSE.**—For purposes of the report submitted under subsection (a), any available defense relating to statute of limitations, any form of estoppel, laches, res judicata, failure to exhaust all remedies, and any available defense of sovereign immunity of the United States, the Department of Justice, or any other United States Government agency is specifically waived as to the respective claims of Inslaw, William A. Hamilton, and Nancy Burke Hamilton.

**THE PROCESS PATENT PROTECTION ACT OF 1994**

Mr. DECONCINI. Mr. President, I urge my colleagues to join with me and Senators HATCH and KENNEDY in passing H.R. 4307, the Process Patent Protection Act of 1994. This bill will remedy a situation which has endangered the competitiveness of America's burgeoning biotech industry.

To date, patent law has failed to provide the biotechnology industry with adequate protection for the processes they utilize. Because of the failure of our laws, foreign competitors have an unfair advantage. Furthermore, biotech firms cannot obtain much needed investment to continue their research in vital areas ranging from pharmaceuticals, to agriculture and environmental cleanup. For 5 years Congress has worked to resolve the inequity in the law, and H.R. 4307 is the result of these efforts.

On September 20, 1994 the House passed H.R. 4307, a bill similar to S. 298, the Biotechnology Patent Protection Act of 1993, which passed the Senate on July 15, 1993. S. 238 amended the patent code, in particular title 35, to provide protection for the biotechnology industry which was having difficulty obtaining process patents due to conflicting court decisions. The Senate bill was industry specific and concerned only biotechnology claims.

H.R. 4307 took a different approach to the problem in that it was generic, or industry neutral. Although the electronics and computer industry initially raised concerns over this approach, H.R. 4307 was narrowed, prior to passage, to address their concerns. However, the bill remained generic in nature.

The amendment in the nature of a substitute proposed by Senators DECONCINI, HATCH and KENNEDY, takes an approach which is more general

than S. 298 but more narrow than H.R. 4307 as it passed the House. In order to address concerns raised by the chemical industry that H.R. 4307 would create the possibility of overreaching process claims which could extend the scope of patent protection far downstream or upstream of the actual process which the bill seeks to protect, language has been added to narrow the bill to cover only biotechnological processes. In order to clarify and avoid any misunderstanding as to the parameters to which the protections of this amendment would be applicable, a definition of biotechnological process has also been added to the House language.

By limiting the applicability of this law to these type of processes, only those industries which engage in biotechnological endeavors will be affected. This alternative proposal to H.R. 4307 has been accepted as a viable solution to the concerns of the chemical industry. By adding the clarifying language to the House bill, the amendment in the nature of a substitute accomplishes the proponent's original goal in a manner acceptable to all concerned industries and the Patent and Trademark Office. Furthermore, it enjoys bipartisan support in Congress.

I urge my colleagues to support the Patent Protection Act, and provide the American biotech industry the much needed protection which will allow them to maintain their position as world leaders in this vital field. The benefits of maintaining this position will be enjoyed by Americans for generations to come.

**THE PROCESS PATENT PROTECTION ACT OF 1994**

Mr. KENNEDY. Mr. President, I urge all of my colleagues to join in passing H.R. 4307, the Process Patent Protection Act of 1994. This bill makes essential changes to patent law which will help stimulate biomedical innovation and foster the international competitiveness of the American biotech industry. I am a principal cosponsor of the Biotechnology Patent Protection Act which passed the Senate earlier this session and which proposed legislative reforms similar to those in H.R. 4307.

The United States is the world's leader in the research, development and manufacture of biotechnology products, and Massachusetts is home to many prominent biotechnology companies. More than 100 million people are treated annually with medicines derived from biotechnology and more than 100 new products are being developed to treat Alzheimer's disease, AIDS, cancer, cystic fibrosis and many other illnesses. Our country is unsurpassed in translating state of the art science into economic growth and improved human health.

The Process Patent Protection Act of 1994 would resolve an issue that has been debated by Congress for over 5 years. The legislation is needed because of the failure of patent law to keep pace with technological innovations in the field of biotechnology. Specifically, current law fails to protect

the ability of biotech firms to patent the processes by which they produce new inventions.

This legislation will extend patent protection to cover the process for preparing and using a biotechnology product. This kind of protection is routinely granted in Western Europe and Japan, and is already available under current law for inventions in areas other than biotechnology. However, by failing to protect process patents for American biotechnology, our current patent law grants foreign competitors unnecessary and unfair advantages.

Common sense tells us to reward innovation and punish imitators, but our patent laws have the opposite effect for biotechnology manufacturers. In a research-intensive industry such as biotechnology, the need to protect innovation is particularly urgent.

Without adequate patent protection, biotech firms cannot attract the investment needed to pursue promising new therapies. Companies must have assurances that rival firms cannot pirate their original research. The current patent law also leads to inconsistent decisions, and time-consuming patent litigation that drains companies' research resources.

This bill provides a needed remedy for these inadequacies. By granting adequate protection to biotechnology products, it ensures that the nation will benefit from cutting-edge therapies, and that the biotechnology industry will remain innovative and competitive. The bill has broad bipartisan support, and the Bush and Clinton Administrations have supported similar reforms.

I strongly urge passage of the Patent Protection Act of 1994, so that our patent laws will continue to serve as a stimulus to innovation, not a barrier.

The substitute amendment (No. 2636), as amended, was agreed to.

The bill (H.R. 4307), as amended, was deemed read the third time and passed.

**VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1994**

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 1927) to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1927) entitled "An Act to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.**

(a) *SHORT TITLE.*—This Act may be cited as the "Veterans' Benefits Act of 1994".

38)



(12) in section 8(g)(2), by striking "depository institution" each time it appears and inserting "bank".

(13) in section 8(o), by striking "board of directors" each time it appears and inserting "Board of Directors";

(14) in section 8(r)(2), by striking "therof" and inserting "thereof";

(15) in section 10, by redesignating subsection (e) as subsection (d);

(16) in section 11(a)(2), by striking the designation "(b)" and inserting the designation "(B)";

(17) in section 11(c)(6)(B), by striking "Owner's" and inserting "Owners";

(18) in section 11(d)(2)(B)(iii), by striking "is" and inserting "are";

(19) in section 11(d)(8)(B)(ii), by inserting "provide" after "disallowed";

(20) in section 11(d)(16)(B)(iv), by striking "dispositions" and inserting "disposition";

(21) in section 11(e)(12)(B), by striking "directors or officers" and inserting "directors' or officers'";

(22) in section 11(i)(3)(A), by striking "or" the last time it appears and inserting "of";

(23) in section 11(q)(1), by striking "decided" in the second sentence and inserting "held";

(24) in section 13(f)(6)(A), by striking "has in default" and inserting "is in default";

(25) in section 13(i), by redesignating paragraphs (11) and (13) as paragraphs (10) and (11), respectively;

(26) in section 18(k)(4)(C)(ii), by striking "Board" and inserting "Corporation";

(27) in section 30(e)(1)(A), by striking "vendors" and inserting "vendors";

(28) in section 31(b)(1), by striking "Board of Directors" and inserting "board of directors"; and

(29) in section 34(a)(1)(A)(iii), by striking "and" and inserting "or".

(b) TITLE 28 AMENDMENT.—Section 1657 of title 28, United States Code is amended by inserting "section 11, 12, or 13 of the Federal Deposit Insurance Act or" after "the consideration of any action brought under".●

By Mr. KOHL:

S. 652. A bill to protect the privacy of telephone users by amending section 3121 of title 18, United States Code; to the Committee on Commerce, Science, and Transportation.

TELEPHONE PRIVACY ACT

Mr. KOHL. Mr. President, a new technology is sweeping the country and changing the way that we use the telephone. It is known as Caller ID, and it lets someone see the number of the person who is calling before picking up the receiver. Caller ID is already being offered in New Jersey, Maryland, Virginia, and the District of Columbia, and it will soon be in place in a number of other jurisdictions, including California. In these areas, customers can buy the service by purchasing a device for between \$50 and \$100, and paying their phone companies a few dollars each month. Indeed, this technology is developing so rapidly that some telephone companies soon expect to offer services that display not only the number from which a call is placed, but also the name of the calling party.

In my mind, Caller ID is a welcome development. It can help us screen our calls and ultimately enhance our privacy. In fact, when Caller ID arrives in

Milwaukee, I plan to be one of the first to subscribe to it.

But in what form should it spread? Should there be forced Caller ID, in which a phone company requires our phone numbers to be displayed every time we make a call—even if we have an unlisted number? Or should there be voluntary Caller ID, in which consumers continue to decide when it's appropriate to give out their numbers? Since a call recipient can easily obtain the caller's address with his or her phone number, mandatory disclosure means revealing where you live—whether or not you want the other person to know.

Forced Caller ID violates our fundamental right to privacy because there are a variety of situations where callers need and deserve to keep their phone numbers to themselves. Don't we have the right to call a crisis hotline, or a Senator's office, or even the IRS to ask for help without saying who we are? And why should the phone company compel us to identify ourselves when we call a business for information? That business could use Caller ID to make unsolicited sales pitches to the consumer, even though he or she had called anonymously. If the hotline or the business wants my number, fine. I can decide whether to give it out. But that decision may be too important, too personal or even too embarrassing for a phone company to make. Put another way, such disclosure doesn't even seem logical: after all, if a stranger came up to you on the street and asked you for your home phone number, would you give it to him? Of course not.

There are even times when forced Caller ID is dangerous. Prosecutors often call witnesses at night from home. Surely they should not be compelled to reveal where they live. Undercover officers sometimes call drug dealers from precincts to arrange buys. If a target recognizes where the call came from, it could scuttle the bust—or, worse, result in the death of an agent. Battered women often take refuge with friends but call home to check on things. They should not be compelled to tell their abusing husbands where they're staying. Troubled persons may call crisis hotlines to avoid doing harm to themselves or others. We ought not undermine the effectiveness of these hotlines because callers are afraid of revealing who they are. We know of other dangerous situations, but the point is this: phone companies can't determine when it's safe to reveal our numbers and addresses. There are just too many circumstances and too many variables that the phone companies cannot foresee.

The answer is to allow consumers to retain their freedom of choice. Let them dial a few digits on the phone when they want to make private calls. With this per-call blocking option, people can display their numbers when calling friends and family—and

they can keep their numbers confidential when they need to do so. The recipients of calls will always see the word "private" flash on the Caller ID box. Then, they can choose to ignore the calls, screen them with a tape machine, or simply answer the phone.

A growing number of telephone companies have recognized the importance protecting the caller's right to privacy. But in order to ensure that all telephone customers retain this crucial freedom of choice, I am today introducing the Telephone Privacy Act of 1991. MIKE SYNAR and DON EDWARDS are introducing a companion bill in the House later this afternoon.

My measure is simple, effective and straightforward. It would require phone companies that offer Caller ID to give callers the option of blocking the display of their telephone numbers or any other individually identifying information without charge. However, calls to 9-1-1 services would not be blocked, so that police and medical emergency units could continue to pinpoint the location of those in need. In this way, the bill would balance the privacy interests of both callers and recipients.

This proposal makes sense for several important reasons. First, we now have the ability to stop harassing phone callers without in any way undermining the privacy of law-abiding citizens. Under the new technologies that will be available with Caller ID, obscene phone call victims can use Call Trace, Call Return, and Call Block to hunt down or foil their assailants. For example, Call Trace lets the victim of a harassing phone call automatically send the number of the harasser to the authorities after hanging up—merely by dialing a three-digit code. And Call Block—which is different than blocking—allows the victim to punch a few buttons and forever stop any more calls from getting through from the number that last called.

Though a few telephone companies are trying to promote Caller ID as the most effective way to reduce obscene phone calls, this approach is ultimately deceptive. Simply put, these new technologies work even if a caller withholds his number—in other words, even if the caller uses blocking. So it turns out that we have the ability to protect victims and privacy at the same time.

Second, before we go any further with Caller ID, we've got to make sure that it's legal. Last summer, a Pennsylvania court of appeals ruled that Caller ID violates that State's constitution and its wiretap statute—which is almost identical to the Federal version. The case is currently before the Pennsylvania Supreme Court. Moreover, some experts have argued that Caller ID may be an illegal "trap and trace device" under the Electronic Communications Privacy Act [ECPA]. My proposal would resolve the ambi-