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REASONS WHY LEGISLATION IS NEEDED
TO AMEND THE PATENT CODE TO PROVIDE A REMEDY IN FEDERAL COURTS
AGAINST OFFSHORE MANUFACTURING USING PROCESSES COVERED BY
U.S. PATENTS

- o The legislation is needed to protect U.S. companies from unfair competition by foreign manufacturers who are taking a free ride on U.S. R&D expenditures.
- o The legislation will help preserve jobs for American workers. If the rights of U.S. patent owners are protected, they are more likely to invest in manufacturing facilities located in the U.S.
- o Effective protection for owners of U.S. process patents is important to foster a climate which will encourage U.S. companies to invest in additional R&D in the future.
- o The legislation will help reduce the trade deficit. Patented processes can be highly valuable. Allied Corporation's amorphous metal alloys technology, the subject of a recent U.S. International Trade Commission case, was found by the ITC to have a U.S. market value substantially in excess of a billion dollars a year. Eleven Japanese and European companies were named as infringers in that case. A patent owned by Corning Glass Works covering a manufacturing process for optical fiber waveguides is a basic patent in a multibillion dollar telecommunications industry.
- o The legislation is critically important to the emerging biotechnology industry in America. In the biotechnology field often the only protection available is a process patent.
- o Proceedings at the ITC under section 337 of the Tariff Act are not an adequate remedy for process patent owners:
 - (1) the patent owner cannot obtain damages from the ITC, but only exclusion orders preventing importation;
 - (2) ITC proceedings are more expensive and uncertain for patent owners than patent infringement litigation in federal district courts, because of the need in ITC proceedings to prove injury to an efficiently and economically operated domestic industry;
 - (3) temporary relief is almost impossible to obtain from the ITC;
 - (4) attorney fees are unavailable from the ITC; and
 - (5) relief can be denied by the ITC or overruled by the President for "policy reasons".

o The lack of protection for processes amounts to a loophole in U.S. patent law. It is much easier for a competitor to circumvent a patent when it covers a process than when it covers a product. A product patent is infringed whenever the product is made, sold or used in a U.S., but a process patent is infringed only if the manufacturing is done in the U.S.

o The legislation would put the U.S. patent law essentially on a par with the patent laws of most of our trading partners, including Japan, West Germany, France and the U.K.