

QUESTIONS FROM SENATOR BROWNBACK

1) There has been legislation proposed in Congress over the past few years to change the patent laws, and it has become very contentious. The proponents are a group of high tech and financial services companies, and on the other side there is a larger group of companies from a variety of industries - manufacturing, green tech, nanotech, biotech, pharmaceuticals, venture capitals. My question to you is this: I know you come from a state with a number of large high tech companies. Do you agree that we should not be changing our patent laws in a way that chooses one group of companies over another? If you are confirmed, do you feel you can consider this issue impartially and help guide the debate to a place where we're not choosing high tech over manufacturing, for example?

ANSWER: If confirmed, I would work with Congress on patent reform legislation that would enhance innovation by fairly balancing the interests of innovators across all industries and technologies. I agree that patent law reform should not favor one industry or any particular area of technology over another.

2) Many high-tech companies that oppose S. 515, the Patent Reform Act of 2009, rely on their ability to protect their patented innovations by receiving damage awards from proven patent infringers. The proposed legislation changes the way damages are calculated, making infringement far less costly. In your role overseeing the USPTO, would this concern you? Are you concerned that this well-meaning patent legislation will actually hamper U.S. innovation?

ANSWER: Innovation is critical to creating jobs and bringing us out of the current economic downturn. Any statutory proposal must be weighed in terms of its effect on job creation and promotion of innovation. If confirmed, I will review all patent reform proposals from that perspective.

3) The high-tech sector is divided between those who primarily invent and those who primarily package and market others' inventions. It is understandable that, just as any business wants to cut its costs, some high-tech companies who pay for others' patents would want to reduce the costs for the patents they purchase or license from other high-tech companies. The damages provisions of the Leahy patent bill, S. 515, would have the effect of devaluing patents. Are you concerned that degrading patent holders' rights might be a tempting short-term response that could have serious long-term consequences for our economy?

ANSWER: If confirmed, I would not support any statutory reform that devalues patent holder's rights.

4) In your questionnaire you indicate that you hold stock in Microsoft, a member of the Coalition for Patent Fairness, a group that has been lobbying in favor of the Leahy patent bill. Given your personal interest in this company, how can you guarantee that you will approach the patent reform debate objectively?

ANSWER: If confirmed I am confident that I can and will continue to exercise my best objective judgment in all policy matters and I commit to consult with Ethics officials to ensure that my involvement in this area is entirely consistent with Ethics rules.

5) If you are confirmed you will inherit a serious problem at the Patent and Trademark Office that was created by what's known as "fee diversion." It occurs when the Administration or Congress redirects the patent and trademark application fees paid by inventors, research universities and innovation companies to other spending. Currently the backlog of patent applications is nearly 800,000 applications and it takes at least 31 months to issue the patent. For the economy that means that startup companies are waiting over 2 years to take their products to market. It means that new jobs and new inventions are trapped in that backlog when they could be helping our economy recover.

In the 110th Congress, I supported an amendment in the Judiciary Committee that would permanently end fee diversion by creating a separate account that would receive all the patent and trademark applicant fees and allow only the PTO to have access to those user fees-essentially a lockbox for patent and trademark user fees. Since PTO is not funded with taxpayer dollars but with user fees, do you support the permanent ending of fee diversion?

ANSWER: The USPTO's mission is critical to American innovation and invention. If confirmed, I will maintain the threshold principal that all user fees paid for services should remain with the USPTO as it has for the last four years. If confirmed, I will work to continue that the user fees stay with the Office to be spent on managing and improving USPTO operations.

6) I recently joined Senators Coburn, Feingold, Kyl, Wyden, Grassley, and Bond in sending a letter to Judiciary Committee Chairman Leahy asking that the Committee not rush patent reform legislation and work with those voicing concerns about the bill. The Judiciary Committee held a hearing on patent reform on March 10, 2009, and the bill will appear on the Committee's markup agenda on March 19, 2009. I am very concerned that this bill is intentionally being rushed when there is no Commerce Secretary nor is there an Under Secretary of Commerce for Intellectual Property (PTO Director). Do you agree that this sweeping legislation that will greatly impact the economy should not be considered until the Administration has its Commerce Secretary and PTO Director confirmed?

ANSWER: The administration will be better able to participate fully in this critical legislative process when political leadership is nominated, confirmed and in place at USPTO. If confirmed, I will be actively involved in representing the Administration's views with stakeholders and Members of Congress on this landmark legislation.