

## Are the New Patent Reform Rules Fair?

The America Invents Act, signed into law by President Obama last week, changed the patent rights system from “first-to-invent” to “first-to-file.” Supporters say the new law streamlines the process. Opponents say it hurts the little guy and the American economy. **Edited by Kira Zalan**

PAUL J. RICHARDS—AFP / GETTY IMAGES



**By Rep. Darrell Issa**  
Republican from  
California

**YES** With invention, progress, and time comes the need for change. In observing changes taking place in a truly global economy, moving to a “first-to-file” system is clearly the better option for inventors and our economy.

Before I began my career in Congress ten years ago, I built a consumer electronics business. The basis of my business, however, wasn’t electronics—it was ingenuity and creativity that led to patents. I have 37 U.S. patents registered under my name. Nonetheless, I was a forceful advocate of the newly enacted first-to-file patent system.

The new system enhances and modernizes protections for inventors, as required under Article I, Section 8, Clause 8 of the Constitution. First-to-file incentivizes an inventor to file a patent for their new creation, rather than keeping their creation a secret. If two people apply for separate patents for the same idea, but only one can demonstrate he actually did the work that led to the invention, it doesn’t matter who files first. The new standard is, in reality, the “first-inventor-to-file.” It is, in essence, a tiebreaker for the rare but not unheard of cases when multiple inventors—individuals who can each show independent work—have essentially the same flash of genius that leads to an invention. [READ MORE »](#)



**By Rep. Dana Rohrabacher**  
Republican from  
California

**NO** By changing our patent rules, the dozen multinational electronics companies that have led this campaign over the past 20 years have finally succeeded in making innovators and inventors more vulnerable to theft, both foreign and domestic.

We have always had a stronger patent protection system than other nations. “First to invent” has always been the foundation of the American patent system, as the Supreme Court pointed out earlier this year in *Stanford v. Roche*: “[s]ince 1790, the patent law has operated on the premise that rights in an invention belong to the inventor.”

Our founding fathers so believed in the inventive genius of free people, they enumerated its protection in Article I, Section 8 of the Constitution: “To promote the progress of Science and useful arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Our Constitution clearly recognizes the ownership rights of the inventor to the fruits of their labor, rather than giving the federal government the authority to grant patents to the first to jump through their bureaucratic hoops.

The big corporations are looking out for themselves, not for the interests of our country. The [READ MORE »](#)

**YES**

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But a better tiebreaker for rare situations isn't the impetus for this reform. One of the most important improvements the new system offers is the prevention of abuses, most specifically, frivolous lawsuits from individuals who develop minor technologies anticipating that someday they'll have a use in larger products. In such circumstances, these individuals, known in many circles as patent trolls, don't patent ideas and don't publish them—they simply wait for someone else to put money and effort into researching a similar technology. Once it's clear the work of others will yield a profit, this supposed "inventor" files for a patent to create the basis for a lawsuit. Some of the larger patent trolls have made hundreds of millions of dollars through this process.

Patent trolls and frivolous lawsuits aren't what the patent system is intended to protect. The first-to-file system awards and protects inventors who take their work to the patent office and attempt to use or sell inventions in ways that grow our economy. It also establishes a process that gives greater clarity and validity to patents issued. It's not intended to protect those who sit on their work and try to

game the legal system with trial lawyers, though this has increasingly been the case under the old first-to-invent system.

As someone who grew up in a working class neighborhood outside Cleveland, dropped out of high school to join the Army, and wouldn't have had the business success I did without patents, I respect and have humble gratitude for the previous system that helped me. I am confident, however, that the new first-to-file system does more to protect inventors so they can focus on creating technologies that better lives instead of worrying about stumbling into legal traps. Inventors are people who change the world—the Wright brothers, Thomas Edison, and George Washington Carver, just to name a few—faced many unique challenges but not every challenge they would face today. This new switch to first-to-file, and other reforms included in the America Invents Act, will open doors of opportunity for future great inventors by creating better rules and increased investment to support the business of innovation in the 21st century. ●

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### What Do You Think?

Do you think the new patent rules are fair? Will they help inventors and the American economy? E-mail your thoughts to [letters@usnews.com](mailto:letters@usnews.com).

**NO**

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real inventor will be bypassed by corporate giants who can afford the exorbitant legal costs required to take on as many patent challenges as necessary to win at the expense of the little guy. This change may harmonize our law, but it will undercut a most precious asset—American innovation.

Our traditional system is strong and clear. Potential infringers knew they could not breach patent protections because they would ultimately lose. Filing false patent claims were a waste of time and resources. The America Invents Act will reverse these common-sense protections.

According to a study by McGill University, the Canadian switch to "first to file" in 1989 "failed to stimulate Canadian R&D efforts" as was promised by the proponents of the change, and had an "adverse effect on domestic-oriented industries" and skewed patent ownerships "towards large corporations, away from independent inventors and small businesses." Brace yourself as we import these failures to America.

Foreign competitors are circling like vultures, salivating at the thought that we have chosen to destroy ourselves through weakening the very system that gave us the unprecedented prosperity to become the largest economy the world has ever seen. An article in the *Economic Times of India* stated that the provisions in this bill will "give a new, inexpensive option for Indian drug makers to attack the patents that give monopoly rights to top-selling [multinational corporations] brands in the largest pharmaceutical market."

Furthermore, *China Intellectual Property News* conducted a thorough analysis of these provisions and determined that in every case the inventor's rights were compromised, giving potential patent infringers an unfair advantage. The report concluded by raising the question: why are the Americans asking China to do more to strengthen intellectual property rights when they are going in exactly the opposite direction in their legislation at home?

Our fiercest international economic competitors are celebrating the new patent reform rules as we weaken our intellectual property rights, undermine our ability to create new jobs, and ignore our Constitution. ●

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