

proceed to the immediate consideration of S. Res. 540 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 540) honoring the entrepreneurial spirit of small business in the United States during "National Small Business Week," beginning May 23, 2010.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 540) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 540

Whereas the approximately 29,600,000 small businesses in the United States are the driving force behind the economy of the Nation, creating more than 64 percent of all net new jobs and generating more than 50 percent of the non-farm gross domestic product of the Nation;

Whereas small businesses will play an integral role in rebuilding the economy of the Nation;

Whereas small businesses are the Nation's innovators, producing 13 times more patents per employee as large firms, and advancing technology and productivity;

Whereas only 1 percent of all small businesses export and produce 31 percent of exported goods;

Whereas Congress established the Small Business Administration in 1953 to aid, counsel, assist, and protect the interests of small businesses in order to preserve free and competitive enterprise, to ensure that a fair proportion of the total purchases, contracts, and subcontracts for property and services for the Federal Government are placed with small businesses, to make certain that a fair proportion of the total sales of Federal Government property are made to such small businesses, and to maintain and strengthen the overall economy of the Nation;

Whereas every year since 1963 the President of the United States has proclaimed a National Small Business Week to recognize the contributions of small businesses to the economic well-being of the United States;

Whereas in 2010, "National Small Business Week" will honor the estimated 29,600,000 small businesses in the United States;

Whereas the Small Business Administration has helped small businesses with access to critical lending opportunities, protected small businesses from excessive Federal regulatory enforcement, played a key role in ensuring full and open competition for government contracts, and improved the economic environment in which small business concerns compete;

Whereas for more than 50 years, the Small Business Administration has helped millions of entrepreneurs achieve the American dream of owning a small business and has played a key role in fostering economic growth; and

Whereas the President has designated the week beginning May 23, 2010, as "National Small Business Week": Now, therefore, be it Resolved, That the Senate—

(1) honors the entrepreneurial spirit of small businesses in the United States during "National Small Business Week", beginning May 23, 2010;

(2) applauds the efforts and achievements of the owners of small businesses and their employees, whose hard work and commitment to excellence have made them a key part of the economic vitality of the Nation;

(3) recognizes the work of the Small Business Administration and its resource partners in providing assistance to entrepreneurs and small businesses; and

(4) recognizes the importance of ensuring that—

(A) the applicable procurement goals for small businesses, including the goals for small businesses owned and controlled by service-disabled veterans, small businesses owned and controlled by women, HUBZone small businesses, and socially and economically disadvantaged small businesses, are reached by all Federal agencies;

(B) guaranteed loans and microloans for start-up and growing small businesses, are made available to all qualified small businesses;

(C) the management assistance programs delivered by resource partners on behalf of the Small Business Administration, such as Small Business Development Centers, Women's Business Centers, Veterans Business Outreach Centers, and the Service Corps of Retired Executives, are provided with the Federal resources necessary to provide small businesses the technical assistance and counseling that they desperately need;

(D) small business disaster assistance through the Small Business Administration is provided in a timely and efficient manner;

(E) Federal tax policy spurs small business growth, creates jobs, and increases competitiveness;

(F) the Federal Government reduces the regulatory compliance burden on small businesses;

(G) advanced technology policy facilitates access to affordable broadband Internet service to foster rural small business growth; and

(H) systems of intellectual property protection continues to foster small business innovation.

ORDERS FOR THURSDAY, MAY 27, 2010

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess until 9:30 a.m. on Thursday, May 27; that following the prayer and pledge, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 4899, as provided for under the previous order; further, I ask that the filing deadline for second degree amendments be 11 a.m. tomorrow.

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

PROGRAM

Mr. DURBIN. Mr. President, tonight we were able to reach an agreement that would provide for a series of up to seven rollcall votes beginning at approximately 10 a.m. tomorrow morning.

ORDER FOR RECESS

Mr. DURBIN. Mr. President, if there is no further business coming before the Senate, I ask unanimous consent that it recess under the previous order, following the remarks of Senator KERRY.

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

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PATENT TERM RESTORATION

Mr. KERRY. Mr. President, I wish to send an amendment to the desk for the purpose of filing at a later time, if it is appropriate. Can they simply hold it at the desk?

The PRESIDING OFFICER. The amendment can be received at the desk.

Mr. KERRY. Mr. President, the amendment I have sent to the desk is an amendment that is very important. It is important to us in Massachusetts, but it is also important to a certain number of companies in this country that may find themselves in a similar situation.

I wish to express my strong support on the Senate floor tonight for the inclusion of this amendment in the upcoming House tax extenders bill. The purpose of this amendment is to fix a complete anomaly in the patent law that is vital to our State. Let me explain.

The House provision that is being contemplated will allow for a patent application to be filed up to 30 days late, with a penalty to be paid by the filer to the Patent and Trademark Office. This provision has been drafted so that it can be included in the tax extenders bill. Let me explain why this is important and what it does.

The Medicines Company, which is a New Jersey startup company, licensed Angiomax. That is the name of the product. It is a synthetic blood thinner. That company invested \$200 million in R&D, and it gained FDA approval for this product.

In 2001, the Angiomax's patent term restoration application was unintentionally filed after the close of business on the day of the filing deadline. It was filed electronically. Because it was filed electronically on the day of the deadline beyond the close of business in the office, in terms of daytime presence, it was deemed to be filed 1 day late. It was ruled as being filed 1 day late by the Patent and Trademark Office subsequently.

I remember when I was in law school, people taught me often that sometimes

the law can have a rigidity that has no common sense and no application to day-to-day life. We had a more pejorative term for what we called the law under those circumstances.

The fact is, as a result, the Medicines Company lost almost 5 years of earned patent protection with a value of roughly \$1 billion.

As former Surgeon General Dr. Louis Sullivan said:

The fate of this corrective provision could be a matter of life and death for tens of thousands of patients. The reality is that stark. As drug innovators develop pioneering medicines, the benefits available to patients are increasing. These medical innovators' ability to conduct lifesaving research should not be thwarted by a confusing filing deadline.

That was the Surgeon General of the United States speaking.

The provision I submitted in an amendment will simply allow for a patent application to be filed up to 30 days late, not just for this company but for any company in a similar situation, with a penalty to be paid by them to the Patent and Trademark Office.

Is this something out of the ordinary? No, it is not. Existing patent law provides grace periods in up to 30 similar situations. But it provides no grace period for a late patent term restoration application, just one aberration within the framework of patent filings. This provision is consistent with the Hatch-Waxman patent restoration filing process and over 30 other provisions of patent law which provide for deadline adjustments in order to avoid precisely the kind of drastic and disproportionate result we see in this situation. The provision provides a modest 3-day grace period if the filing delay is unintentional. It also requires successful applicants to pay the U.S. Treasury a late filing fee to offset any cost to the Federal Government.

Twice during the 110th Congress, the House passed legislation unanimously to correct this anomaly. The Senate Judiciary Committee reported a similar provision offered by Senator Kennedy on a bipartisan vote of 14 to 2. Unfortunately, these provisions were not enacted into law during the 110th Congress. During this Congress, despite the efforts of Senate Judiciary Chairman

LEAHY, the Senate has not found the moment to consider this critically needed patent reform legislation.

The Congressional Budget Office projects that the provision will produce approximately \$30 million in new revenues to our government over the next 10 years. Two recent independent economic studies confirm that the provision will save up to \$1.3 billion in costs for the private hospital system over the course of the next 10 years.

Nearly 50 of the Nation's leading doctors have written to Congress urging the enactment of this provision because it will allow lifesaving medical research in the treatment and prevention of heart disease and stroke—the first and third leading causes of death and disability in the United States—to move forward. Without this critical legislation, many thousands of patients will be consigned to continued medical treatment with antiquated drugs rather than safer, modern synthetic innovations.

Unless the provision is enacted promptly, up to 3,500 jobs in 6 States may be lost, including up to 2,500 in the State of Massachusetts. These jobs include irreplaceable high-skilled jobs developed by small business medical innovators. At this moment in our economy, the last thing we want to do is strip ourselves of revenues, strip ourselves of income, strip ourselves of jobs, and leave our patients in a less cared for and potentially lifesaving environment than they would be with this. Mr. President, we can't afford to allow that to happen, and I don't think Congress should allow a bureaucratic misinterpretation of the law to hurt our Nation's public health and to cause severe job losses. The provision's enactment will prevent these job losses, and it will create new highly skilled jobs.

The amendment provides a 3-day grace period for the filing of Hatch-Waxman patent term restoration applications. This provision of a grace period, as I said, is consistent with more than 30 other provisions of patent law.

The bill corrects a harmful and confusing procedural anomaly that has caused 78 percent of medical innovators—78 percent—to miscalcu-

late the deadline to regain the patent life they earned during the costly and rigorous FDA review process.

So I reiterate: The current filing period is so confusing that only 22 out of 100 medical innovators have been able to calculate the law's 60-day filing period accurately. The current filing period is a trap for the unaware, and penalties are vastly out of proportion to the impact of having accidentally missed by a few hours, when you actually file correctly on the same day, the application that is due.

Mr. President, I hope this amendment will be in the tax extenders bill, and I intend to fight to see that it is. I think it is an appropriate public policy decision in the best interests of our country and of the American citizens.

I yield the floor.

RECESS UNTIL 9:30 A.M.  
TOMORROW

The PRESIDING OFFICER. The Senate will stand in recess until Thursday, May 27, at 9:30 a.m.

Thereupon, the Senate, at 7:36 p.m., recessed until Thursday, May 27, 2010, at 9:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate:

##### DEPARTMENT OF STATE

MATTHEW J. BRYZA, OF ILLINOIS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF AZERBAIJAN.

MARK CHARLES STORELLA, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ZAMBIA.

##### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

##### To be lieutenant general

LT. GEN. FRANCIS H. KEARNEY III

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

##### To be brigadier general

COL. WALTER T. LORD