

thousands here on the House floor, and yet passing this bill will be very important for the economy of our Nation and for the advance of science, and it is something we can do together proudly and serve our country quite well. I am happy to be involved in this effort.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H.R. 2391, the Cooperative Research and Technology Enhancement (CREATE) Act introduced on June 9, 2003. We held a markup hearing for this legislation in January of this year, and I offered my support at that time. To spur innovation and accelerate new technologies, this bill encourages cooperative research efforts that involve the private sector, universities, non-profit institutions and public entities. In a recent decision (*Oddzon Products, Inc., v. Just Toys, Inc., et al.*, 122 F.3d 1396, 43 U.S.P.Q.2d 1641 (Fed. Cir. 1997), or *Oddzon*), the Federal Circuit Court of Appeals narrowed the scope of a 1984 law that promoted collaborative research. I support H.R. 2391 because it will only result in the overall improvement of the quality of research that is done by collaborating members of the academic community in the areas of science, art and information resourcing.

In *Oddzon*, the Federal Circuit found that in the case of an inventive collaboration involving researchers from multiple organization, the novelty (§102) and non-obvious (§103) requirements of the Patent Act could be read to cover prior art so as to invalidate a patent. The court wrote:

The statutory language provides a clear statement that subject matter that qualifies as prior art under subsection (f) or (g) cannot be combined with other prior art to render a claimed invention obvious and hence inpatentable when the relevant prior art is commonly owned with the claimed invention at the time the invention was made. While the statute does not expressly state . . . that §102(f) creates a type of prior art for purposes of §103, nonetheless that conclusion is inescapable; the language that states that §102(f) subject matter is not prior art under limited circumstances clearly implies that it is prior art otherwise.

In making this ruling, the court states “[t]here is no clearly apparent purpose in Congress’s inclusion of §102(f) in the amendment other than an attempt to ameliorate the problems of patenting the results of team research.” Finally, the court added “while there is a basis for an opposite conclusion, principally based on the fact that §102(f) does not refer to public activity, as do the other provisions that clearly define prior art, nonetheless we cannot escape the import of the 1984 amendment.” The holding creates a significant problem due to the way that most public-private sector research and development projects are structured. Since the early 1980s, universities, States and the Federal Government have become much more adept at generating licensing revenue from intellectual property developed by their faculty, staff and students. Many States and the Federal Government now operate under laws and practices under which they cannot or will not assign their rights to inventions to a private-sector collaborative partner. Typically, the university, State or Federal Government retains sole ownership of the invention, while the invention is licensed for commercial exploitation to their research partner.

The *Oddzon* decision has created a situation where an otherwise patentable invention may be rendered nonpatentable on the basis of information routinely exchanged between research partners. Thus, parties who enter into a clearly defined and structured research relationship, but who do not or cannot elect to define a common ownership interest in or a common assignment of the inventions they jointly develop, can create obstacles to obtaining patent protection by simply exchanging information among them. There is no requirement that the information be publicly disclosed or commonly known; all that is required is that the collaborators exchange the information.

The CREATE Act’s purposes are to promote communication among team researchers from multiple organizations, to discourage those who would use the discovery process to harass co-inventors who voluntarily collaborated on research, to increase public knowledge and to accelerate the commercial availability of new inventions. Overall, this bill will serve to create a more technology-friendly environment and encourage continued collaboration and innovation.

Mr. Speaker, I support this bill and hope that my colleagues will do the same.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 2391, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: “A bill to amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.”

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 339.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION ACT

The SPEAKER pro tempore (Mr. SMITH of Texas). Pursuant to House Resolution 552 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 339.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole

House on the State of the Union for the consideration of the bill (H.R. 339) to prevent frivolous lawsuits against the manufacturers, distributors, or sellers of food or non-alcoholic beverage products that comply with applicable statutory and regulatory requirements, with Mr. CULBERSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the food industry is our Nation’s largest private sector employer, providing jobs to some 12 million Americans. Today, that industry is threatened by an array of legal claims alleging that it should be liable to pay damages for the overconsumption of its legal products by others. H.R. 339, the Personal Responsibility in Food Consumption Act, is designed to foreclose frivolous obesity-related lawsuits against the food industry.

From June 20 to the 22nd of last year, personal injury lawyers from across the country gathered at a conference designed to “encourage and support litigation against the food industry.” Attendees were required to sign an affidavit in which they agreed to keep the information they learned confidential and to refrain from consulting with or working for the food industry before December 31, 2006, apparently setting a deadline for bringing that vital industry to its knees in a nationally coordinated legal attack.

The hatred of some lawyers for the food industry is stark. Ralph Nader, for example, has compared food companies to terrorists, saying that the double cheeseburger is “a weapon of mass destruction.”

H.R. 339 prohibits obesity or weight-gain-related claims against the food industry, with reasonable exceptions, including those in which a State or Federal law was broken and as a result the person gained weight, and those in which a company violates an expressed contract or warranty. Also, because this bill only applies to claims based on “weight gain” or “obesity,” lawsuits could go forward under the bill, if, for example, someone gets sick from a tainted hamburger.

The bill also contains essential provisions governing the conduct of legal proceedings. H.R. 339 includes the very same discovery provisions designed to prevent fishing expeditions that are already a part of our Federal securities laws. It also contains provisions that appropriately require that a complaint set out the fact as to why the case should be allowed to proceed.

Some trial lawyers are mounting an attack on personal responsibility