

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