

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### PATENT REFORM

Mr. GRASSLEY. Mr. President, I wanted to address the issue of patent reform—a bill the Senate has already passed by an overwhelming margin. It is my understanding the House of Representatives is expecting to pass a patent reform bill the House wants, and in the process the House wants the Senate to agree very soon thereafter and do it without a formal conference.

I want my colleagues to understand why I hope the House-passed bill will contain a provision that was not in our Senate bill but passed unanimously out of the House Judiciary Committee.

The House committee report recognized that the “need to modernize patent laws has found expression in the courts” but that “the courts are constrained in their decisions by the text of statutes at issue.” That is from the House committee report.

The House Judiciary Committee amendment that passed unanimously resulted from a recent Federal court case that had as its genesis the difficulty that the FDA—the Food and Drug Administration—and the patent office face when deciding how to calculate Hatch-Waxman deadlines. The Hatch-Waxman law was a compromise between drug patent holders and the generic manufacturers. Under the Waxman-Hatch law, once a patent holder obtains market approval, the patent holder has 60 days to request the patent office to restore the patent term—time lost because of the FDA’s long deliberating process eating up valuable patent rights.

The citation for the case I am talking about is 731 F. Supp 2nd 470. The court case found:

the FDA treats submissions to the FDA received after its normal business hours differently than it treats communications from the agency after normal hours . . . when notice of FDA approval is sent after normal business hours, the combination of the patent trade office’s calendar day interpretation and its new counting method effectively deprives applicants of a portion of the 60-day filing period that Congress expressly granted them . . . an applicant could lose a substantial portion, if not all, of its time for filing a patent trademark extension application as a result of mistakes beyond its control . . . an interpretation that imposes such drastic consequences when the government errs could not be what Congress intended.

That is the end of the judge’s statement on why he ruled as he did in this particular case. Congress did not intend those drastic consequences that happen as a result of a difference between whether you are making an application to or an application from an agency. In other words, there should

not be any difference. Congress did not intend the consequences that come from such a different application of the law. So the court clarified the law so when FDA sends a notice of approval after normal business hours, the 60-day period requesting patent restoration begins the next business day. The House Judiciary Committee takes the court decision where common sense dictates: to protect all patent holders against losing patent extensions as a result of confused counting calculations.

I want to quote Ranking Member CONYERS of the House Judiciary Committee who sponsored the amendment and committee Chairmen SMITH who supported Mr. CONYERS. Ranking Member JOHN CONYERS stated during markup the amendment is needed to “remove what amounts to a trap and would clarify the term ‘business day’ . . . and so, our attempt here is to make the congressional effort at patent reform more clear, more efficient.”

Chairman LAMAR SMITH also advocated passage of this amendment during markup in the House Judiciary Committee. I will quote him.

I will recognize myself in support of the amendment. Now, the gentleman’s amendment—

Meaning the Conyers amendment—

clarifies the counting rules that are imposed on patent holders who must submit documents to the agency within statutory time limits. It has been established that the PTO has inconsistently applied these rules, which is not fair to various patent holders. The gentleman’s amendment tracks the recent court case decided in favor of a patent holder that originally applied for an extension 10 years ago. My understanding is that there are not scoring problems with this provision and I support it.

That is what Chairman LAMAR SMITH of the House Judiciary Committee said.

This is a commonsense amendment. It improves our patent system fairness through certainty and clarity, and I hope the House will leave that in their bill when it sends it over here to the Senate.

My interest in this amendment is because I opposed it 2 or 3 years ago when it was first brought up. Because of the court decision, I am convinced the different application of the 60-day rule is very unfair. As ranking member of the Senate Judiciary Committee, I want the House Judiciary Committee to know that several Republican and Democratic Senators have asked me to support the Conyers language as well.

I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### THE ECONOMY

Mr. BOOZMAN. Mr. President, the latest unemployment numbers indicate that nearly 106,000 Arkansans are unemployed. This 7.7 percent unemployment rate is higher than when the so-called stimulus passed that President Obama and Majority Leader REID promised would produce jobs for hard-working Americans. Although this rate is below the national average, the numbers show that out-of-work Arkansans continue to struggle to find gainful employment.

What is more alarming is that the President and the majority here in the Senate are resisting real change and insisting on more of the same borrow, spend, and tax policies that have given us record unemployment and a sluggish economy.

In November, Americans gave a clear sign that job creation needs to be a priority. Unfortunately, the Senate majority and President Obama have failed to prove that this is at the top of the agenda. Time and time again, the Senate and our President add to the uncertainty that is stifling job creation. Commonsense legislation that would create the conditions for job growth is not brought to the floor. It is not because the Senate has more pressing issues. There is no excuse as to why the Chamber avoids voting on legislative and policy items that will provide real relief for the unemployed, such as the stalled free-trade agreements.

As news reports have pointed out over the past several weeks, the business in this body is progressing at a historically slow pace. As the Washington Post reported last week, “Quorum calls have taken up about a third of its time since January, according to the C-SPAN statistics.”

Americans are tired of the games. They need jobs, and it is our duty to help.

Linda from Mountain Home, AR, recently wrote to me asking the same thing millions of Americans want to know: “Where are the jobs?” She continued her e-mail asking what legislation Republicans introduced that will stimulate the economy and create jobs. I want to thank Linda for her letter and let her know my colleagues and I are on the side of the American worker, and that is evident by the legislation we have offered. These practical free market ideas will put Americans back to work, and, like the millions of Americans who are looking for jobs, we are anxious to vote on them and approve these measures.

In February, we introduced the REINS Act, of which I am a proud cosponsor. Too often, Federal agencies overstep their boundaries and enact expensive mandates that strangle investment and job creation without congressional approval. This commonsense legislation provides a check and balance between Congress and the executive branch and allows business to focus on growth instead of how to comply with burdensome regulations.