Statement of John Conyers, Jr.
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I speak today in opposition to H.R. 1249. I understand that reforming the patent system is long overdue, but cannot support the legislation before us for several reasons.

I'd like to point out at the outset that according to the Congressional Budget Office, the Managers amendment would be violate the new cut-go rules. This is because the base bill is estimated to have a discretionary cost of $446 million over the next five years ($1.1 billion over the next ten years) and, the manager's amendment, by undoing the anti-fee diversion language, eliminates a procedure that would have decreased the budget deficit by $ 717 million over five years. The net result is that the managers amendment will leave us with a bill that increases discretionary costs by almost one-half billion dollars over five years. This is a violation of the cut go rules that were just adopted by the new Republican majority on the first day of the Congress.

Beyond this concern, in my view the most important reform Congress could enact would be to prohibit patent "fee diversion" to help eliminate the Patent and Trademark Office's (PTO) 700,000 plus application backlog. Unfortunately, as a result of last night's manager's amendment, this provision has been removed from the bill, replaced by what I view as a codification of the status quo that has permitted nearly 1 billion in fees to be diverted from the PTO over the last ten years. If we are serious about patent reform, we need to end fee diversion once and for all, and the manager's amendment simply does not do that.

Second, the bill would provide large banks a special, new bailout at the expense of small inventors and the American taxpayer, and even worse, would do so on a retroactive basis. Several constitutional law experts, including Richard Epstein and Jonathan Massey, have observed that this provision "is special interest legislation, pure and simple" and have concluded that the provision

would constitute an unconstitutional taking of property, thus forcing the Federal Government to pay just compensation to the patent holders.

Third, the legislation undermines the false patent marking statute by retroactively changing the law applicable to pending enforcement actions. The false marking statute prohibits manufacturers from falsely claiming that a product is or remains patent-protected beyond a 20-year term. Public Citizen has explained that this provision "would completely remove the incentive to stop intentional false labeling of products as patented."

Fourth, H.R. 1249 would allow patent owners to provide corrected or new information to the PTO that was not presented or not accurately presented during the application process. Presently, patents are unenforceable and invalid if they are fraudulently obtained. This is the equivalent to a "get out of jail free" card for firms that have not been truthful in seeking patent protection. This is why the Generic Pharmaceutical Association has observed that the bill "could reward patent holders

that knowingly falsify information in their original patent application with the USPTO or intentionally omit material information."

Finally, the legislation would, for the first time in more than 220 years, convert the U.S from a "first-to-invent" patent system into a European-style "first-to-file" patent system, under which the PTO would award a patent to the first person who can win a race to the patent office. Although I have been supportive of such a change in the past, I am increasingly concerned that the move to first-to-file favors multinational corporations who are better staffed and funded to file applications, and that the "first-to-file system" would force U.S. inventors to prematurely disclose their inventions, thus providing Chinese firms and other foreign entities opportunities to unlawfully exploit U.S. inventions overseas where intellectual property enforcement is lax.

It is for all of these reasons that the legislation is opposed by such a broad spectrum of groups, including the American Bar Association, the Patent

Office Professional Organization, the Innovation Alliance, Public Citizen and others.

Given the myriad concerns, we should have a full and complete debate on the amendments. I would urge the rules committee to make in order the various amendments I have authored or cosponsored, including amendments that would restore the anti-fee diversion language to the bill; restore language in the bill providing that we will only go to a first to file system when our other major trading partners have adopted a one year grace period similar to the bill; a provision from the committee passed bill clarifying the definition of "business day" to Hatch-Waxman filings; and a provision eliminating the business methods section which targets specific patents on an unfair retroactive basis.

As it presently stands the legislation benefits large multinationals at the expense of independent inventors and innovation. This will harm jobs and harm our nation.