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CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 100TH CONGRESS

SENATE

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H.R.4972	Oct 14, 1988 146	S16154

ACTION: AMENDMENT NO. 3689 SUBMITTED BY MR. LEAHY, ET AL.

PATENT AND TRADEMARK OFFICE AUTHORIZATION

LEAHY (AND OTHERS) AMENDMENT NO 3689

Mr BYRD (for Mr LEAHY, for himself, Mr HATCH, Mr THURMOND, Mr DECONCINI, and Mr KENNEDY) proposed an amendment to the bill (H R 4972) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes, as follows

At an appropriate place, insert the following

TITLE I—INTELLECTUAL PROPERTY

SEC 101 This title may be cited as the "Intellectual Property Antitrust Protection Act of 1988"

PROHIBITION OF MARKET POWER PRESUMPTION

SEC 102 In any action in which the conduct of an owner licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by such a right, such right shall not be presumed to define market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power

SEC 103 For purposes of this title—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U S C 12(a)), and

(2) the term "intellectual property right' means a right title, or interest—

(A) in subject matter patented under title 35 of the United States Code, or

(B) in a work, including a mask work, protected under title 17 of the United States Code

TITLE II—PATENT MISUSE DOCTRINE REFORM

SEC 201 Section 217 of title 35, United States Code, is amended—

(1) by redesignating subsection (c) as paragraph (1) of subsection (c),

(2) by redesignating subsection (d) as paragraph (2) of such subsection (c), and

(3) by inserting after subsection (c) the following new subsection.

"(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his or her licensing practices or actions or inactions relating to his or her patent, unless such practices or actions or inactions, in view of the circumstances in which such practices or actions or inactions are employed, violate the antitrust laws '