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The momentary insider: observations from the legislature

A brief cameo appearance on the legislative stage yields mixed reviews, but also some observations and insights

Fortune recently presented me with a unique opportunity to participate in what had always seemed to me a somewhat inscrutable process. Viewing at a distance, it was a process I had neither fully understood nor, frankly, fully appreciated until I saw it up close. I am referring to the US legislative process in general and the debate around patent reform in particular.

The invitation to provide congressional testimony (my first) provided a rare window into the legislative process. The seat of any national government has an august, imposing quality and sense of history that is veritably palpable. Washington DC is no exception. And, although certainly steeped in formality and tradition, testifying before Congress proved not so imposing an undertaking as I had imagined. In fact, enjoyed it immensely. So, for what it's worth, I thought I would share the experience of an ever-so-momentary Washington insider.

A friend of mine, with considerably more legislative experience, once likened legislation to the process of making sausage. Although the finished product is quite palatable, the dining experience is perhaps best served by a blissful ignorance of the actual ingredients and their preparation. The metaphor proved more appropriate than I anticipated, in some expected and some surprising ways.

Broadly, my testimony concerned innovation and pending legislation to amend current patent law in the US (patent reform), as well as the operations of the US Patent and Trademark Office (USPTO). All of these subjects are near and dear to my heart, certainly, but I was surprised at the breadth and intensity of participation from the members of Congress present, and from others after the hearing. There was even an audience – albeit small – queuing up before the doors opened to the committee room. Who would have guessed that testimony on patent reform and the USPTO would be such a hot ticket? Not me.

As you may know, the debate around pending patent reform legislation in the US Congress has been complex and contentious – although that is arguably an understatement. The controversial nature of the proposals is perhaps the source of the high level of both engagement and intensity around the subject.

At one point in during the hearing, the Chair posed a hypothetical to me. If given the choice between no patent reform at all (ie, maintaining the current *status quo*) or decoupling the funding/fee-diversion elements of the debate and having them pass alone, which would you choose? This single question illuminated both the diversity of opinions and complexity of the reform process. In that moment, I was of two opinions myself. I chose to hedge and express them both (seems it took only one day in Washington for me to learn how to be political).

Given my proximity to the USPTO, I was keenly aware of the need for additional (and reliable) funding to make what I believe to be essential repairs and improvements. So, the tactical answer seemed to be de-couple: take what you can get now and circle back later for the rest. Yet it also seemed that de-coupling had the potential to remove the pressure to get comprehensive patent reform in place. Having done something this Congress, there would be a very real temptation to simply put a tick in the win column and move on to other things. Given the long and tortured path of patent reform over the past decade, it was not clear that Congress could muster sufficient resolve (or support) to restart the process in earnest next year. The fatigue factor might well doom further legislation. So, the strategic answer might well be to persevere with reform bill intact to bolster the chances of broader reform. Does de-coupling funding signal defeat or herald an interim victory? Of course, not being part of the legislative process myself, I can at best only speculate at the correct answer. Only time will tell. And, in truth, much of what is correct hinges on your perspective.

True to the sausage metaphor, this little vignette only hints at the range of diverse and discrete opinions necessarily folded

into the broader patent reform debate. Moreover, many positions on these issues (mine included) inspire responses ranging from vehement disagreement to equally vehement support. So, the need for a solution to comprehend and somehow reconcile these incredibly diverse perspectives renders reaching any outcome at all an uncertain proposition.

Despite the daunting prospects for patent reform, on the whole, I'd say that I emerged from my brief flirtation with the legislative process with a better understanding of what it entails, but also a faint sense of dismay. On the positive side, I have a newfound appreciation of and for the process itself, as well as the participants and the incredible persistence required to secure any reasonable result at all. The debate has always been vigorous, sometimes contentious, but generally well intentioned. I remain impressed by the reasoned and constructively advanced positions on the issues – whether or not I agree with them. The only troubling opinion is no opinion at all. It seems some people – by virtue of fatigue or loss of faith in the system – have tuned out, or written off the process and its participants. Alternatively, they are so dogmatically tuned into their own particular perspective that they lose sight of the larger benefits of the whole. Speaking for myself, I know at times I'm guilty of both... which, I suppose, also makes me guilty of being human.

With that recognition, I've decided to use this experience as an inspiration. The need for reasoned, positive participation to drive the process forward is all the more clear. And, with my momentary insider status officially behind me, I'm resolved to being a more fully engaged and constructive participant in the process. Here's hoping you'll join me!

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