

## **Important Senate Vote on Patent Reform**

When the U.S. Senate returns from its five week summer recess on Tuesday, September 6, the second order of business will be an important procedural vote on patent reform legislation. The Senate will resume legislative business at 5 pm on September 6, and following a vote on the nomination of former ABA Secretary Bernice Bouie Donald to be Judge, U.S. Court of Appeals for the 6th Circuit, the Senate will vote on a motion by Majority Leader Reid to limit debate on a motion to begin consideration of H.R. 1249, the House-passed Leahy-Smith America Invents Act.

The cloture motion will be voted on without debate, and adoption of the cloture motion will preclude an endless filibuster to block the Senate from taking up the bill. Sixty Senators must vote in favor of the cloture motion for it to be approved. Adoption of cloture does not end debate on whether to proceed to the bill itself, but only serves to require that the debate take place before the Senate considers any other business, and to limit that debate to no more than 30 hours. It appears likely that the requisite 60 votes will be available to invoke cloture, and unlikely that the full 30 hours will be used debating whether to move on to consideration of the bill itself.

The Senate leadership has determined that it will attempt to move the House-passed bill through the Senate without further amendment, rather than to amend it with provisions in the Senate-passed bill, S. 23, which are not found in H.R. 1249. Most important of these differences are much stronger provisions in the Senate bill to prevent user fee diversion. The Senate leadership prefers to pass the House bill "as is" and send it directly to President Obama for signing into law, rather than run the risk of amending it and sending it back to the House for additional votes.

It is likely that amendments to H.R. 1249 will be offered when the Senate takes up the bill, and adoption of the cloture motion on Tuesday will not serve to restrict such amendments or limit time of debate on them. If a filibuster on the bill itself is threatened, a new cloture motion to limit debate on the bill or on specific amendments could be filed, and would be subject to the same rules for debating and voting as those applicable to the above-described cloture motion on whether to take up the bill.

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