



Obama's One Sentence on Patent Reform –
By Sharon Adams

After Passing the [Most Sweeping Patent Law Reform in Decades](#), President Obama's [State Of the Union speech](#) briefly mentioned patent law.



[“And let’s pass a patent reform bill that allows our businesses to stay focused on innovation, not costly and needless litigation.”](#)

This single sentence appeared to be dropped into the middle of his speech, and was somewhat confusing given that in 2011 a new “patent reform” bill was passed by Congress, and signed into law by Obama. This relatively new legislation is also known as the “America Invents Act” or AIA. [According to Obama](#), this legislation was designed to “encourage the entrepreneurial spirit wherever we find it” and that this legislation “cuts away the red tape that slows down our inventors and entrepreneurs.”

One of the main features of that bill was to change the US from a first-to-invent to a first-to-file country, bringing the US in line with the practice commonly used elsewhere in the industrialized world.

First-to-invent -- the old policy of the US -- meant that the actual date of invention was relevant to determining who had inventorship rights to an invention. Inventorship necessarily happens prior to the date of filing -- but how much prior can lead to long and expensive lawsuits because the date of inventorship may not be easy thing to prove. “Invention” is a nebulous concept, involving conception of an idea and reducing it to practice. Inventors typically work over a period of time, with various prototypes or experimental models, which may make the exact date of invention difficult to determine. Or, there may be insufficient record to prove a date of invention.



It is a strange, yet somewhat common, occurrence that inventions may be simultaneously developed. For example, there were [2 patents claiming a telephone filed on the same day](#); one by Alexander Graham Bell and the other by Elisha Gray.

Thus, the question of who owned the invention revolved around who was the first to invent, because the first-to-file rule was the law of the land.

The issue of who invented the telephone was the subject of over 600 lawsuits. One of those involved a decision by the US Supreme Court awarded the patent (and thus the invention) to Alexander Graham Bell. The Supreme Court found that Bell was the first to invent. Therefore, Bell was the owner of the telephone invention.

The court stated:

“It appears from the proof in these causes that **Alexander Graham Bell was the first discoverer of the art** or process of transferring to, or impressing upon, a continuous current of electricity in a closed circuit, by gradually changing its intensity, the vibrations of air produced by the human voice in articulate speech in a way to cause the speech to be carried to and received by a listener at a distance on the line of the current, and this discovery was patentable under the patent laws of the United States.”

[The Telephone Cases - 126 U.S. 1 \(1888\)](#) (emphasis added).

Interestingly, Bell would also be the inventor under the new AIA rules that the first-to-file owns the patent. Bell filed his patent application a few hours prior to Elisha Grey. If the first-to-file rule had been in place, it is likely that there would have been less than 600 lawsuits over this invention.

Going back to Obama’s speech, the US has just passed patent reform bill, helping innovation. Why, then, did Obama mention a new patent reform bill? Perhaps Obama’s comment was related to the [huge judgment against Google](#), decided that same day.