

Patent reform goes into the final rounds

Battle over how U.S. grants patents could affect individual inventors most.

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Ladies and gentlemen, I draw your attention to the center ring for our feature match up.

In this corner wearing red trunks are information technology and software giants, multinational corporations, media conglomerates and the financial service industry.

And in the far corner in the blue trunks are the pharmaceutical companies, biotech firms, venture capitalists and individual inventors.

Welcome to the 2007 fight over U.S. patent reform. The stakes are high: Intellectual property in this country is worth \$5 trillion, about 40 percent our annual gross domestic product.

Both sides claim the future of U.S. innovation and global competitiveness are at stake.

Without much fuss and publicity the House of Representatives passed its version in July. A companion measure also passed the Senate Judiciary Committee in July, but since then opponents – including the U.S. Patent and Trademark Office – have stopped passage.

Erica Chabot in the office of Sen. Patrick Leahy, author of the bill, said recently that Leahy hopes it will be the second or third issue the Senate takes up in January.



O.C. INVENTOR: George Margolin, 78, of Newport Beach displays a folding keyboard that was based on his original patent.

LEONARD ORTIZ, THE ORANGE COUNTY REGISTER

U.S. patent facts

- Patent applications in 2006: **452,633** (57,608 by Californians)
- Patent applications in 1966: **93,482**
- Patents granted in 2006: **196,404** (22,888 to Californians)
- Patents granted in 1966: **71,886**
- Percentage of patents granted to U.S. inventors in 2006: **52**
- Percentage of patents granted to foreigners in 1966: **80**
- Source: U.S. Patent and Trademark Office

The proposed changes include:

- Switch from granting a patent to the first person to invent something to the first person to file for the patent.
- Limit damages to victims of willful infringement.
- Require publication of the application after 18 months regardless of whether a patent is ever issued.
- Require an applicant to submit a search and patentability analysis, increasing the cost.
- Authorize the Patent and Trademark office to limit continuation filings that add claims to an application.
- Allow challenges to the validity of a patent to be filed after the patent is granted.

These provisions respond to criticisms of the current patent system, according to Leahy. **(OVER)**

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"This bill is totally destructive to America, I'm not kidding. Congress is endangering the seed corn of the U.S. economy," says Newport Beach's most famous inventor, George Margolin, who at 78 increasingly resembles Albert Einstein.

Margolin holds 26 patents, having invented the front projection system used to create the backgrounds in 2001, a Space Odyssey; the first folding keyboard; the first portable microfiche reader; a safety syringe and more.

As the man spearheading opposition to the 2007 round of patent reforms for the Professional Inventors Alliance, Margolin is given to writing letters to Congressmen using lots of bold, underlining and capital letters and to drawing cartoons that depict the pending patent bills as aerial bombs aimed directly at U.S. technology.

Margolin stakes his position as the champion of the individual inventors and companies which account for 40 percent of U.S. patents, according to the U.S. Small Business Administration.

"Now we have Goliath yelling 'stop David from keeping me from killing him,'" is the way Margolin frames this fight.

The Coalition for Patent Fairness, backed by such companies as **Intel, Dell, Hewlett Packard, Oracle** and **Apple**, says that patent litigation is costing these companies millions of dollars.

But economist Pat Choate said that patent lawsuits as a percentage of all patents granted has remained about 1.5 percent for 15 years. There are more suits only because so many more patents are being issued.

For decades, multinational corporations have pushed for a "first-to-file" system used in the rest of the world. But the "first-to-invent" system is why all the great inventions have been American, Margolin said.

It is also questionable whether "first-to-file" is constitutional, said Newport Beach patent attorney John Connors. Article 1, Section 8 protects the rights of inventors, not filers.

Supporters say that the same system worldwide simplifies patents in the global economy. That argument is more important to multinational companies than the majority of individual U.S. inventors who never seek foreign patents.

Mandatory publication of patent applications is also an international issue that hurts small inventors, Margolin said. The patent office takes an average 32 months to approve or deny an application "so if you have to publish after 18 months, that's a whole year that foreign pirates have to steal it."

The publication requirement has existed since 1999, but U.S. inventors can opt out of publishing their application if they don't seek foreign patents for their ideas, Connors said. Current legislation would end that option.

Venture capitalists have voiced their opposition to current proposals because of the challenge to patents already granted and limit on damages.

"When a venture capitalist considers investment in a small company that holds one or more patents, the value of those patents is a determining factor in the decision," said Mark Heesen, president of the National Venture Capital Association. "If a startup is going to be burdened with endless challenges to the validity of its patents or if the startup doesn't have access to reasonable damages if a larger corporation infringes on that patent, it can hurt that company's chances of being funded."

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