

Tech industry split on patent reform bill

by [Shannon Bond](#)

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Proposed changes to U.S. patent law are dividing Chicago's technology community.

Supporters of the Patent Reform Act of 2007, awaiting action by the U.S. Senate, say the bill will fix problems in the patent system by limiting the damages that can be awarded for infringement and improving the quality of patents granted by the U.S. Patent and Trademark Office.

"The current patent system is antiquated," said Fred Hoch, president of the Chicago-based Illinois Information Technology Association. The reform bill is "a movement in the right direction," he added.

But others worry that the changes will reduce the protections afforded by patent rights and hurt small companies and independent inventors.

Michael Mazza, a patent attorney in Glen Ellyn, said many of the legislation's provisions favor large corporations at the expense of individuals. The reforms are "making it easier for large companies to do litigation and enforce patents," he said, but they don't protect independent inventors.

One version of the bill, sponsored by Sens. Patrick Leahy of Vermont and Orrin Hatch of Utah and Reps. Howard Berman of California and Lamar Smith of Texas, was passed by the House of Representatives in September. The Senate Judiciary Committee has approved a similar version, but it has not yet reached the Senate floor.

The push to reform comes mainly from large technology corporations such as Microsoft Corp, Hewlett Packard Co. and Intel Corp. that are concerned about the high numbers of patent infringement lawsuits and patents granted each year, said Matthew Becker, an attorney with Banner & Witcoff Ltd., a Chicago-based intellectual property firm.

"Over the last decade, the number of patent lawsuits and litigation has increased at a pretty consistent rate," Becker said. The number of patent suits filed in the U.S. increased 54 percent from 1996 to 2006 and has more than doubled since 1991, according to the University of Houston Law Center's Institute for Intellectual Property and Information Law.

Becker said there has also been "a dramatic increase in the number of patent applications filed each year." The increase in the patent office's workload has prompted concern about the quality of patents that are granted, he said. The patent office has granted 173,305 patents so far in 2007, compared with 124,147 in 1997.

Proponents of the bill want "to make sure that patents aren't being granted for things that,

at least in the majority of the industry's observation, aren't patentable," said Bart Carlson, chief executive of Napersoft Inc., a Naperville-based provider of communications management software. "We don't want frivolous patents out there," he added, that are "so general that anyone walking down the street would be violating" them.

Easily granted patents and large potential damage awards have encouraged a cottage industry in patent lawsuits.

"There's a lot of litigation by what are known as patent trolls or patent speculators," Becker said. These companies' sole assets are patents, sometimes of dubious quality, he said, and their business strategy is to file lawsuits against large, wealthy companies, hoping for big settlements or damage awards.

The most controversial components of the Patent Reform Act aim to address these issues.

Under current patent law, judges award damages, or royalties, calculated as a percentage of the total value of a product. The proposed legislation would limit the damages a plaintiff could seek by basing the royalty on the value of the improvement to the product, not its total value.

Supporters say the current system encourages patent holders to seek damages that exceed the actual value of their inventions, which puts undue pressure on defendants to settle.

"The holder of a patent for a windshield wiper should not be awarded damages equal to the value of an entire car," the Washington, D.C.-based Coalition for Patent Fairness said in a statement.

Reformers also hope the change will reduce litigation by patent speculators, Becker said. "The riskreward to them isn't as good if their potential pot of gold at the end of the rainbow isn't as good."

But Mazza said the change is unnecessary because current law already requires courts to calculate royalties as a percentage of total value. The proposed change could result in the value of the patent being lost in the larger value of the whole product.

"The way it's written is going to have a very nefarious, bad result, which is you're not going to give the invention its due," Mazza said.

The bill also creates a new way to challenge patents after they have been granted.

While under current law, patents can only be challenged in court, the new legislation would allow challengers to request a review by a panel of judges within the U.S. Patent and Trademark Office. They would also be able to challenge a patent multiple times.

The goal of this change, Becker said, is to "get higher-quality patents issued by the patent office and also put a damper on patents issued." Some large corporations think this will

reduce the number of lawsuits filed against them, he said.

Other firms, notably pharmaceutical companies, are concerned that this change could weaken the protection of their patent rights and allow challengers to continually contest their patents.

“They invest hundreds of millions if not billions in new drugs, which are all patents,” Becker said. “The companies have made an investment and they want to have certainty that they have patent rights.”

Some smaller companies share these concerns.

“Even if you get a patent, it still leaves the door open to invalidation, so the grant of a patent doesn’t have the strength it has right now. It would be more vulnerable to challenges in the future,” said Jin-Won Jung, manager of intellectual property for Evanston-based QuesTek Innovations LLC. “The legal costs associated with that would be a burden to us.”

QuesTek designs high-performance steels and alloys for aerospace, racing, cutlery and sporting goods manufacturers. Its patent protections are crucial, Jung said, because the company’s income comes from licensing its patented designs rather than producing and selling the designs.

Opponents and supporters do agree that some kind of change is needed, even if they can’t agree on the current proposal. The last major overhaul of the patent system was in 1952, Becker said, and since then, “the world has become more dependent on computers and technology and the internet age.”

“These are really important issues,” Mazza said. “I think some of it is good and some of it is terribly misguided.”

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