

# Beware patent reform

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Monday, November 5, 2007

High-tech Goliaths who routinely flaunt the law by abusing their market power are consistently rebuked for regarding themselves as being "above the law" - and justifiably so. The Patent Reform Act now up for vote in the U.S. Senate is but the latest blatant example of how Goliaths are wielding their power to smother innovation. Indeed, the Goliaths seek a major overhaul of our patent system that would pave the way for them to roll over competitors by misappropriating their intellectual property

The Goliaths are using their economic power to induce persons and organizations with political clout to force changes to the laws of the land so that Goliaths no longer need to operate "beyond the law" - but within it, out of reach and free from sanction.

Thoughtful examination reveals that this proposed legislation would change the calculations of damages imposed on patent infringers in a way that would drastically limit the amounts they must pay patent owners; create a new post-grant, quasi-judicial review process that would provide infringers new opportunities to challenge patents that have already been issued; and change the rules on venue - where a patent holder can sue an infringer - in a way that would favor infringers over patent owners.

More evidence of the monopolistic power wielded by the Goliaths was unmasked and checked recently, thanks to the European Union's top anti-trust regulator. In a series of recent charges leveled by the EU anti-trust body, first against Intel in July 2007 and then against Microsoft two months later, both global giants were cited for monopolistic practices aimed at stifling competition. The cited abuses were not new as both Intel and Microsoft were sanctioned earlier for similar practices by the governments of Korea and Japan, and have faced, and continue to face U.S. government scrutiny and sanctions.

Now, these high-tech Goliaths have slipped the Patent Reform Act of 2007 through committees in both the House and the Senate. This bill, if enacted, will be the coup de grace for the U.S. Patent System as well as for the inventors and innovation it protects. The self-styled Coalition for Patent Fairness ( [www.patentfairness.org](http://www.patentfairness.org)) continues to be well funded by high-tech Goliaths

seeking to force passage of this act. Financial information for Apple, Cisco, Dell, HP, Intel, Micron and Oracle, reveal that these Goliaths are not as burdened with patent litigation costs/awards as the coalition claims. In fact, the seven Goliaths paid out 1/9th of 1 percent (0.11 percent) of their revenues in patent awards during the 11 years between 1996 and 2006, according to Pat Choate, an economist and author on manufacturing policy.

In a recent policy paper, Choate reported that the coalition founders collectively invested more than \$131 billion on R&D for at period. He noted that disclosed patent settlements equaled 1.5 percent of their total R&D investment, which suggests that patent litigation has had no significant impact on their research and development activities. When one considers the fact that the ratio of lawsuits to patents issued has remained less than 1.5 percent for many years, it is clear that the case being made for the Patent Reform Act now before the Senate is false. In the 11-year period of 1996-2006, the seven coalition founders disclosed a total of \$1.9 billion in patent settlement payments, an average of \$173 million per year. During that same time, these seven corporations had collective revenues of more than \$1.7 trillion.

It is ironic that these companies now seek to weaken the very patent system that enabled them to achieve their growth and stature by protecting their intellectual property from infringement. Clearly, innovation from smaller companies represents real competition to the Goliaths, and our patent system has proved effective in leveling the playing field. Our legendary patent system has been instrumental in making America the cradle of innovation. Indeed, it has spawned the world's most effective start-up culture with Silicon Valley as its poster child. It has also fueled the development of the world's most effective venture-capital infrastructure, which in turn has driven economic and job growth.

Protecting U.S. innovation directly translates to preventing the exportation of U.S. jobs. The American patent system does not need the major changes that the Goliaths are seeking to impose. Rather than this so called reform, we need to help the U.S. Patent Office continuously improve the quality of the examination so that only worthy patents are issued. Any legislation regarding our patent system should rehabilitate, not debilitate.

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*This article appeared on page B-7 of the San Francisco Chronicle*