

Proposed patent reform hurts innovation

Dan Leckrone

San Francisco Chronicle - Thursday, April 16, 2009

Imagine if someone wanted to give a reception honoring all those California inventors who had been awarded a patent, formed a company, secured venture financing and created jobs - first in California and then in the rest of the world. No ballroom in the state is large enough to accommodate all those eligible to attend.

California is the epicenter of American innovation. In 2008 alone, the U.S. Patent Office awarded 91,000 patents to U.S. residents or about 1 for every 3,300 residents. Of those, 22,000 patents were awarded to California residents at the rate of about 1 for every 1,600 residents, or twice the national average.

About a third of all these patents, both in the United States and California, went to universities, independent research institutes, independent inventors and companies with fewer than 500 employees - small businesses, which are the source of most of the new jobs in America. To them, a patent is their prime asset and their best, if not only, defense against predatory corporate giants. Simply put, they need strong patents to even exist.

Five years ago, a group of 15 corporate giants, which ironically had built their success on patents but now rely primarily on their market power and acquisitions for growth, wanted to weaken the U.S. Patent System and the protection it offered the new generation of innovators. These companies are trying to retain their position by pulling the economic ladder up behind themselves, and by forcing guaranteed access - on the cheap - to technology developed by others.

These 15 corporations, working together in Washington, D.C., as the Coalition for Patent Fairness, are aggressively trying to persuade Congress and President Obama to make several radical changes in U.S. patent law. These changes would:

- Create a new judicial process inside the Patent Office where patents can be challenged in a time-consuming process that would eat up a third or more of a patent's 20-year life.
- Stack the deck in infringement trials by limiting the venue where a patent owner can sue to the infringer's hometown or where the infringer has significant employment.
- Impose on the federal courts mandatory rules that will dramatically reduce the price that convicted infringers must pay for their misappropriation and use of technology developed and owned by others - they have given up on this last demand, at least temporarily.

The U.S. Patent System is the foundation of the cycle of investment, innovation and job creation that built the California and American economies. So it is not surprising that both of California's U.S. senators are closely involved in the deliberations on this vital legislation.

The current form of the bill, SB515, still contains features that would undermine the patent system. The proposed post-grant provision, for example, would create several new avenues for challenging a good patent's validity and endlessly blocking its enforcement. Moreover, the bill does not fix the central problem of the existing re-examination system: serial attacks that consume a patent owner's time and money by creating new and redundant

proceedings. Those that request re-exam should meet a higher threshold and consolidate their concerns into one proceeding. This provision will harm independent inventors, universities and small companies whose valid patents would be attacked for strategic and commercial reasons as now happens in Europe.

Sen. Dianne Feinstein, who is a member of the Senate Judiciary Committee where the bill is being considered, has led congressional efforts to reconcile differences in the inventor community. During the March 10 Judiciary Committee hearings , Feinstein told the other senators that California's inventors are diverse and that no single element, including Big Tech, should be allowed to dominate. On April 2, she successfully led the compromise that eliminated - at least temporarily - the demand to reduce the price tag for misappropriating technology.

She is on the right track. The last thing America and California need is for Congress to stifle innovation and new job creation by legislatively weakening U.S. patents.

Dan Leckrone is chairman and CEO of the TPL Group, a Cupertino firm that commercializes intellectual property.

This article appeared on page **A - 15** of the San Francisco Chronicle