

Misnamed Patent Reform Act would stifle innovation

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While U.S. patent law has been effective in protecting the intellectual property of inventors, which has fueled productivity growth and the U.S. economy for more than two centuries, the so-called "Patent Reform Act" introduced in Congress this year proposes major changes to the law governing how patents are obtained and enforced. Ironically, these changes are being promoted by the most powerful and prosperous high-tech corporations - the "Patent Goliaths" - which came to power based on the patent system as it now stands.

In mounting their full-scale invasion of the territory protected by patent laws, the Goliaths continue to amass political support which, if not effectively challenged, will lead to an unwarranted degradation of the legendary patent system established by the U.S. Constitution. Even the lethargic Department of Commerce has vigorously opposed most of the sweeping changes proposed by this act, as the Department of Commerce explained in its recent 11-page letter to House Judiciary Subcommittee Chairman Howard Berman, a lead sponsor of this misguided legislative effort.

But why are the most powerful and prosperous corporations in the history of commerce now driving major changes to undermine the very patent system that was the foundation of their development and prosperity? The reason is clear. The issuance of a patent has long been recognized as the grant of an exclusive right to the inventor for the use of the patented technology - a tiny legal monopoly. The Goliaths, however, are now able to wield some of the most profound monopolistic power in the world and can get anything they want without the exclusive rights granted by our patent system. And the Goliaths don't want an individual inventor, who successfully navigates the patent system, to be granted the right to prevent the Goliaths from copying and using the inventor's technology. The Goliaths must be free to take what they want. And the Goliaths have even managed to convince the Supreme Court that Goliaths should not be constrained by an injunction when misappropriating the patent rights of an individual inventor.

Over the past two years, the Goliaths have had stunning success in influencing the Supreme Court, as well as both the Senate and the House, to disembowel the patent system. Emboldened by their success in the Supreme Court with the eBay case, which effectively denied individual inventors the right to get an injunction to prevent the misappropriation of their patent rights, the Goliaths have provided virtually unlimited support to anyone willing to parrot their anti-patent positions.

If enacted, the "Patent Reform Act" will dramatically weaken the patent system, sound the death knell to the current venture capital system, and trigger a dramatic decline in the ability of the United States to compete around the world. Indeed, this legislation will strip the United States of its richest source of innovation, namely the individual inventor. It will also further embolden the

Goliaths whose next attack will be on the anti-trust laws, the only limitation on their exercise of their monopoly powers.

Having successfully influenced legislators on both sides of the aisle in both chambers to vote to weaken our patent system, the Goliaths now cynically describe the act as "bipartisan" and "bicameral," and the only way this juggernaut can be checked is by every entrepreneurial company encouraging its people and its investors to tell their legislators to register their shock and dismay at what is being proposed.

Our patent system is fair and continues to work well. It may need some fine tuning to improve patent quality, for example, but it does not need the major changes that the Goliaths are seeking to impose. The Goliaths should not be allowed to manipulate the patent system to entrench their dominance over entrepreneurial companies and individual inventors.

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