

AP

Congress Moves to Rewrite Patent Laws

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Congress Moving to Rewrite Laws to Cut Down on Poor-Quality or Needless Patents

WASHINGTON (AP) -- Crustless peanut-butter-and-jelly sandwiches, a way to move sideways on a swing, a technique for exercising cats using a laser pointer -- these are among the inventions patented in the United States over the years. Now Congress is trying to cut down on poor-quality or downright ridiculous patents, and at the same time adapt the patent system to a high-tech era in which computers and other electronic devices may contain thousands of patentable parts.

Rather than the patent system being the incentive for "so much of our innovation, it has become a constraint on innovation," said Rep. Howard Berman, D-Calif., author of a sweeping patent reform bill that passed the House Judiciary Committee on July 18.

The Senate Judiciary Committee passed similar legislation the following day. The full House could take up the issue before leaving for summer recess Friday, though it's more likely to be considered in the fall.

Disputes between the high-tech industry, drug companies and other interest groups have stalled patent reform attempts in the past, and legislation introduced during the last session of Congress never made it out of committee.

Patents give holders ownership rights to their inventions for 20 years. That can mean hundreds of millions of dollars to companies, research universities and individual inventors.

Although not everyone believes the patent system needs to be changed, critics cite various problems.

There's a backlog of 750,000 patent applications at the U.S. Patent and Trademark Office, which is recovering from years of underfunding and hopes to nearly double the number of patent examiners on staff, currently about 5,300.

Patent applications have shot up in recent decades with the boom in the high-tech industry, and they have gotten more complex. There's been a corresponding increase in patent infringement lawsuits, which the tech industry blames on so-called "patent trolls" who get patents for products they never plan to make, just so they can sue for infringement if a company does turn out something similar.

That was the issue in a May Supreme Court ruling in favor of eBay Inc. in a lawsuit by a small Virginia patent-holding company, MercExchange. The ruling established that judges have

flexibility in deciding whether to issue court orders barring continued use of a technology after juries find a patent violation.

Tech companies still complain that under current law, damages in patent infringement lawsuits can be wildly excessive because they can be based on the value of an entire product, not just whatever small component of that product is in dispute.

Often cited is a \$1.53 billion jury verdict earlier this year in favor of Alcatel-Lucent SA in a dispute against Microsoft Corp. over two patents for MP3 encoding and decoding tools.

"The current patent litigation system is unbalanced in a way that it forces our companies to spend more time in the courtroom and less time innovating," said Josh Ackil, vice president of government relations for the Information Technology Industry Council.

The most controversial provision in the bills before Congress would make it easier for courts to focus damage calculations more narrowly, probably resulting in smaller damage awards. The measure is applauded by high-tech companies but strenuously opposed by universities, small inventors and pharmaceutical and manufacturing companies, which typically produce products with fewer patents and rely in part on the prospect of heavy damages to protect their intellectual property.

"If this stuff passes as it is it will lower the value of patents by two to three orders of magnitude," said Ronald J. Riley, president of the Professional Inventors Alliance. He predicted small-time inventors would be forced out of the field because it would no longer be worth their while to sue to protect their inventions.

Because of the controversy, prospects for the legislation advancing are uncertain, especially in the Senate, where opposition from just a few lawmakers can kill a bill.

However, negotiations are ongoing, and there's wider support for other provisions in the bills, which would represent the first major changes to patent law since 1999. These include:

--Awarding a patent to the first person to file for it, rather than the first to invent it. This would put the U.S. in line with international standards and eliminate some time-consuming disputes between inventors.

--Allowing third parties greater ability to challenge patents once they've been issued. This is meant to produce stronger patents and allow patent challenges to be dealt with by patent officials rather than in court, though some say the Senate language in particular could allow patents to be endlessly contested.

--In a change sought by the patent office, requiring inventors to provide more information in their applications about how their inventions differ from existing products or ideas.