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## Part of patent reform bill worries inventor



Section 18 would review business-method patents after they have been granted. | JOHN SHINKLE/POLITICO

By [BROOKS BOLIEK](#) | 4/1/11 5:34 AM EDT

A business patent program buried in the America Invents Act is pitting some inventors against the bill that's supposed to protect them.

At question is a provision — Section 18 — that aims to review business-method patents after they have been granted. It would apply not only to new business patents, but also to older patents.

That has independent inventor Claudio Ballard worried. The Italian immigrant holds 52 patents, including one for a transaction system that allows banks to process digital versions of checks and other financial instruments. Ballard fears the big banks will try to use the provision to undermine the patent he holds for his transaction system.

"They couldn't beat us in the courts, and they couldn't beat us in the PTO," he told POLITICO during a break in Wednesday's hearing on the bill before the House Judiciary Committee's intellectual property subcommittee. "So they ran to Congress to try and get what they couldn't get elsewhere. This isn't the way it's supposed to work in America."

Section 18 of both the Senate and House bills establishes a four-year program to test a new review for business-method patents once they have been granted. If it becomes law, Ballard believes it would open up another post-grant review process for his invention, despite having already been through the Patent and Trademark Office twice and surviving numerous court challenges.

"That basically would kill us," said Ballard, who's been visiting lawmakers this week to make his case. "To go through what we've gone through, and then to have to do it all over again — it's just wrong."

DTC, the company founded by Ballard, hired John Feehery of Quinn Gillespie to do public relations, and Thorsen French and Capitol counsel to lobby on the provision.

The debate over business-method patents revolves around whether a business model or one of its features is a “process” and thus patentable. Business-method patents have gotten a bad name as inventors have attempted to turn just about any method into a process that deserves a patent, but they have also been used patent Amazon’s One-Click shopping cart. It has been the subject of a U.S. Supreme Court case and now is before Congress.

Financial industry officials say Ballard’s fears are misplaced. Section 18 isn’t aimed at any one person, company or invention, they argue.

“This is not aimed at one or even two patents,” said Peter Freeman, vice president of insurance and trade at the Financial Services Roundtable. “It’s targeted at the types of patents where the best prior art hasn’t been examined by the PTO.”

Review is not automatic under the section, but can only come if the PTO thinks the challenge will succeed, Freeman said.

“The PTO has to agree that there’s a likelihood of invalidity,” Freeman explained.

The Roundtable, the Independent Community Bankers of America, American Bankers Association, American Insurance Association and the Securities Industry and Financial Markets Association all support the provision.

“We are pleased that the House legislation includes an important section addressing poor-quality business-method patents that are plaguing the financial services industry,” the groups wrote in a letter to committee leaders on Wednesday. “With inclusion of this vital language, the undersigned trades support the America Invents Act, as introduced in the House.”

While Ballard contends that the section is a loophole for the big financial institutions, Freeman argues that exempting patents that are already issued would be an even bigger one.

“What he’s talking about — carving out certain patents — that would be an anomaly,” he said. “We don’t see any public policy justification for that.”

It’s unclear whether Ballard will get any traction, but Reps. Tom Marino (R-Pa.) and Ted Deutch (D-Fla.) both expressed some concern about the provision during Wednesday’s hearing.

Marino wondered why it would be “fair that a patent that has been upheld by jury trial and by re-exam should be subject to this program.”

Marino said he supports Judiciary Committee Chairman Lamar Smith’s effort to reform the system, but said in a statement to POLITICO that he wants to “make sure that we do not unnecessarily subject individual inventors, like Claudio, to onerous and duplicative proceedings.”

“I just want to ensure that our focus remains on weeding out the bad apples while allowing brilliant American minds to continue to make America the most innovative country in the world,” he added.

Deutch echoed those concerns.

"I've got real concerns about the scope of this," Deutch said. "It could invalidate patents that have already been found valid."

Rep. Donald Manzullo (R-Ill.) has broad concerns with the new post-grant review process, said his spokesman Rich Carter, adding that Manzullo does not support any provision that allows previously validated patents to face retroactive challenges.

Despite the latest fight Ballard is having with the big financial institutions, he told POLITICO he's not a Big Business hater.

"I have nothing against corporate America, but I am the little guy," he said. "We're just one of the few that never gave up."

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