More and better jobs: the patent factor

Contributed by Rep. Marcy Kaptur (D-Ohio)
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"It's the economy, stupid. Again."

The presidential campaigning reminds us once more that as Ohio goes, so goes the nation, and the Buckeye State's economy illustrates the challenges facing economic innovation and job creation across our country. Although many factors affect economic development - taxes, infrastructure, energy costs - innovation is fundamental to job creation.

A landmark study by the Federal Reserve Bank of Cleveland in 2006 found that while patent-fueled production drove Ohio's economy for most of the 20th century, the economic decline of recent years was attributable largely to the sputtering pace of innovation. As the Toledo Blade noted in a special economic report, cited by Tim Russert at the presidential debate in Cleveland, the "glaring problem" in the Ohio economy is that the state "needs more and better ideas. The (real) issue is about ideas and products that never appeared."

Congress, of course, should help stimulate innovation that will attract more private investment, create new production and ultimately result in more and better jobs. Instead, it appears headed in the wrong direction, threatening to weaken the patent laws that encourage the creation of new ideas.

The misnamed Patent Reform Act (S. 1145 and H.R.1908) would triple an inventor's cost to get a patent, increase the red tape around patent awards and force the courts and the Patent Office to take more time to establish a patent's validity. This legislation would also reduce the damages patent infringers must pay and effectively reduce a patent's life. This effort is truly anti-innovation.

It should come as no surprise that a handful of transnational corporations crafted this proposed radical change of U.S. law. Their motivation is obvious: They have repeatedly infringed patents owned by others, been caught, sued, lost in court and forced to pay damages. The seven corporations behind this bill collectively paid $2 billion in patent infringement damages between 1996 and 2006.

Rather than bring their business practices into compliance with U.S. law, they have hired an army of lobbyists to change the law to fit their practices. The legislation they want enacted is written from the perspective of defendants in patent infringement litigation, not the overarching interest of innovation and job creation. As a result, this bill caters to only one sector of the economy at the expense of the rest of us.

The case these advocates are making to Congress is based on falsehoods.

They claim that Congress has not changed U.S. patent laws in a major way for more than 50 years. Not true. Since 1952, Congress has enacted 42 patent laws, including the American Inventors Protection Act in 1999; ratified the World Trade Organization (WTO) patent treaty of 1994; and created the U.S. Court of Appeals for the federal circuit in 1982. In that same period, the U.S. Supreme Court has issued 29 major patent rulings and the Patent Office has made 45 significant changes in patent regulations. As this suggests, U.S. patent law and practices are quite dynamic.

Their second false claim is that our nation is experiencing a patent litigation crisis. Yet the ratio of patent lawsuits to patents granted has been about 1.5 percent for 20 years. Moreover, patent lawsuits that go to trial each year are only about 100 in number. By any measure, 100 patent trials per year in the whole of the United States is not a litigation crisis. And because there is no crisis, there is no need for the bill's major proposal, which is to limit the damages that patent infringers must pay. Significantly, no major study of patent reform in the past five years has advocated this bill's way of lowering damages for patent infringement.

A third untrue claim is that the Patent Office is granting a patent to virtually all applicants. In fact, it rejected more than half of all patent applications in 2007.

The U.S. patent system should serve as the model for the rest of the world. Instead, these corporations want to change basic U.S. patent practices so they are like those of Europe, Japan, and China - a process innocuously called "harmonization." But, as many inventors ask me, why would the U.S. change the world's finest patent system so it would be sclerotic like Europe's, unfair like Japan's, and conducive to pirates, counterfeiters and cheaters like China's?

Congress, rather than handcuffing our next president's ability to stimulate innovation, as this bill would do, should focus on how to foster job creation through reasonable and intelligent patent reforms.

Congress should return to the Patent Office the hundreds of millions of dollars of patent fees that it has diverted to the U.S. treasury over the past decade, and mandate that these monies be used to hire and train more examiners.

Simultaneously Congress could set a national goal for the Patent Office that within five years the average processing time of patent applications will be reduced to less than 12 months, and then provide whatever additional resources this might require.

Another possible reform would be for Congress to extend the term of those patents practiced within the United States.

Anyone from anywhere would be eligible. The WTO patent rules set a 20-year term as a floor, but impose no ceiling. This action would change the economics of innovation and investment in favor of America.

The unfair patent bill now before Congress should be rejected. Congress should seek out "pro-development" patent reforms that will enhance innovation, stimulate investment and result in more and better American jobs. It is, after all, about the economy.

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