

<http://www.nashuatelegraph.com/apps/pbcs.dll/article?AID=/20080120/BUSINESS/325573925/-1/ARTSANDLIVING>

January 20, 2008

AmberWave Finds Peace Fighting Tech Giants Over Patent Laws

By David Brooks

SALEM – Do an online search for information about AmberWave, and you'll quickly find that to most of the country, this small Salem firm isn't known for its intriguing business model or cutting-edge research and development.

It's known for the patent wars.

AmberWave is one of the founders of the Innovation Alliance, a lobbying group mostly made up of small tech companies (although Qualcomm is also a founder) that wants to stop the passage of a federal overhaul of the patent system.

This puts them up against tech giants such as Microsoft, which supports the federal Patent Reform Bill that the Innovation Alliance opposes

The bill has been approved by the U.S. House and is coming up for a U.S. Senate vote.

The debate is complicated, which isn't surprising, since patents do a complex dance between the rights of the innovative individual and the needs of the commercial collective. And both sides in this debate say they want to fix a system that is overwhelmed and spending too much time on court fights.

AmberWave is a research-and-development firm that takes university research in materials design and tries to develop it into commercial form that can be sold to producers. Because it doesn't do production, patents are its life blood. Without them, it has nothing to sell, which is why it indulged in a long court battle starting in 2005 against Intel over a technology known as strained silicon.

"You can see why we've been so active in the patent reform efforts: This mechanism for being able to capture technology and use the patent system to transfer it from early stage to commercialism is vital," said Bryan Lord, AmberWave's vice president for finance and licensing.

The Patent Reform Bill grew out of a court fight over patents that almost silenced the nation's Blackberry wireless communication system in 2005. The bill was originally designed to stop "patent trolls," people or firms that buy patents not so they can develop products, but so they can sue other companies that do develop them.

But AmberWave argues the bill approaches the issue the wrong way, doing more harm than good. The company says that what is really needed is more money to hire more patent examiners and to train them better, not to change the law – although many disagree.

Three main issues are involved:

The bill would limit the amount of damages that can be collected from a successful patent-infringement lawsuit.

This is designed to make trolling less valuable. AmberWave says it downplays the value of truly innovative patents, which make up only a small part of the final product in terms of dollars but contribute a huge amount in terms of innovation.

If this provision had been in effect when AmberWave won its suit against Intel, its settlement would undoubtedly have been a lot smaller.

The bill would allow companies to sue on a given case more than once, using different grounds for the patent challenge.

This is designed to prevent cases from being lost on a technicality or a missed filing, but Lord argued it would create endless litigation, destroying the value of patents by undermining their ability to be used.

The bill would change America's "first to invent" method, in which patents are awarded to a person who convinces regulators they first thought of an idea, to "first to file," in which the person who gets their claim accepted by the patent office wins. Most of the world uses "first to file."

Backers of this change say it would prevent endless lawsuits arising from after-the-fact inventors, while critics such as AmberWave says it takes too much power from individual inventors and small companies by giving too much advantage to giant companies with big teams of patent attorneys.

"This really stacks the deck against the small businesses that are going to be tomorrow's innovators and today's job creators," Lord said.