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Tech vendors disagree on patent reform

Representatives from Texas Instruments and AmberWave Systems say proposed legislation goes too far in overhauling the patent system.

By Grant Gross

Legislation that would overhaul the U.S. patent system would hurt innovation and decrease the value of patents, representatives of two tech companies said Wednesday.

Though the legislation is supported by many large IT vendors, two bills now being considered by the U.S. Congress, both called the Patent Reform Act, go too far in watering down the patent system, said representatives of [Texas Instruments Inc.](#) (TI) and AmberWave Systems Corp., a New Hampshire semiconductor manufacturer. While both companies support large chunks of the bills, one in the House of Representatives and one in the Senate, provisions that would change the way courts apportion damages in patent lawsuits and allow new ways to challenge existing patents would hurt their businesses, said Christopher Gallagher, a lawyer representing AmberWave.

"For more than 200 years, the [U.S. patent] system has worked well," Gallagher said during a debate sponsored by the Congressional Internet Caucus.

The patent reform debate is often portrayed as high-tech vs. large pharmaceutical companies, but TI and AmberWave are among the tech companies asking Congress to scale back its efforts to change the patent system. Representatives of [Cisco Systems Inc.](#) and the Business Software Alliance (BSA), a trade group representing [Microsoft Corp.](#), Dell Inc., and [IBM Corp.](#), called for Congress to pass the patent reform bills.

Cisco spends US\$45 million a year defending itself against patent lawsuits, said Matt Tanielian, director of government relations for the company. The company currently is defending against a dozen patent lawsuits, "most of them by companies that have never built or sold anything," he said.

Patent reform is the company's top priority in Congress this year, Tanielian said. "There's a lot of bad patents out there," he said. "When you get sued, you ought to get a fair shake."

Among the most controversial issues: The bills would change the way courts apportion damages when a company is found to infringe a patent. Currently, courts generally consider the value of the entire product when a small piece of the product infringes a patent, but Cisco and other supporters of the bills want Congress to base damages only on the value of the infringing piece.

The current system encourages lawsuits by patent holders hoping to win a legal "lottery," said Emery Simon, a lawyer for the BSA. The awards are unfair because the small piece patent holders often add to a larger product "is less than what they're trying to claim," he said.

But Amy Burke, TI's director of government relations, said the apportionment changes would take away from the value of patents. "This language would trivialize damages and actually encourage infringement," she said.

Another major issue in the bills is a new way of challenging patents after they're issued, called post-grant review. The bills would allow companies sued for patent infringement to file challenges with the U.S. Patent and Trademark Office (USPTO)

The post-grant review would create a continuing question about whether a patent was valid, making it difficult for small companies like AmberWave to get funding, Gallagher said. "If we can't get venture capital, we can't function," he said.

Instead of a new way to challenge patents after they're granted, Congress should focus on giving the USPTO more money, he said. "The way to ensure patent quality is to get it right the first time," he said.

BSA's Simon said worries about a new post-grant review watering down the value of patents are overblown, because there are several ways to challenge patents now. But the USPTO's current patent-challenging mechanisms don't work well, and the most common way of challenging a patent, in a lawsuit, can cost millions of dollars, he said.

"We think administrative challenges are good things," he said. "It saves time, it saves money."