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Tech companies, investors clash over patent law

By Anne Broache

A rift has arisen among larger technology companies and smaller venture capital firms over whether dramatic changes to U.S. patent law are necessary.

The differences in opinion played out during a Thursday hearing here in the U.S. House of Representatives Small Business Committee, which doesn't have the power to write patent laws but aimed to explore the small-business implications of Congress' [ongoing push for sweeping changes in the area](#).

Large technology players such as [Oracle](#), [Microsoft](#) and eBay have lamented what some call a "broken" U.S. patent system prone to the rise of so-called "trolls" who sit on broad or obvious patents to extort exorbitant settlements from deep-pocketed companies like theirs. But the legal changes those companies advocate have garnered mixed reviews from some smaller start-ups, particularly venture capital firms.

"We think in fact our patent system is the gold standard in the world," said Brian Lord, general counsel for New Hampshire-based AmberWave Systems, which researches, develops, patents and licenses advanced semiconductor materials technology. The firm, which has 23 employees, recently reached a licensing deal with Intel related to AmberWave patents for [strained silicon](#) used in chips.

One point of contention has been a recurring proposal that the Patent Office set up a "post-grant opposition" process, by which outsiders could challenge issued patents without going to court. The idea behind the procedure is to put into place a lower-cost alternative to litigation, but smaller firms argue that such a process would inject too much uncertainty into the validity of their patents, potentially causing them to lose investors.

Favoring 'deep-pocketed Goliaths'

Many changes promoted by large high-tech companies could "add costs, delay and uncertainty that favor deep-pocketed Goliaths," said John Neis, managing director of Venture Investors, a small venture capital firm in Madison, Wisc. He also spoke on behalf of the National Venture Capital Association, which represents more than 480 venture capital firms nationwide.

Mitchell Gross, president and CEO of Mobius Management Systems, which provides records management software, disagreed. He said the state of the patent system has left small businesses like his "afraid to innovate."

"The system is so tilted to the patentee's advantage...that defendants are forced to settle, regardless of the merits of their defense or the weakness of the patent," he told the politicians.

It's unclear how those competing concerns, which [stalled votes on patent proposals](#) in previous years, will be reconciled by the committees charged with rewriting patent laws.

Rep. Rick Boucher (D-Va.) said he and Rep. Howard Berman, the chairman of a House intellectual-property panel, plan to introduce a new version of their proposed patent law rewrite during the next two to three weeks. It would be their third attempt at such a measure in the last five years.

"It is [Howard Berman's top priority](#), it is mine, and we have bipartisan support on the committee for the measure," he said in a telephone interview Thursday, adding that he expected the bill to proceed quickly to hearings and to pass the House by early summer.

House members are currently finalizing bill language with Sen. Patrick Leahy, the chairman of the Senate Judiciary Committee, and hope to introduce identical bills simultaneously, Boucher said. A Leahy spokeswoman said she hoped [her boss' new bill](#), co-sponsored by Sen. Orrin Hatch (R-Utah), would be ready by April.

Appearing before the Small Business Committee on Thursday, [U.S. Commissioner for Patents John Doll](#) said he believed the American system bests all others, but he voiced openness to legal changes. Doll stopped short of endorsing any particular patent law changes, although his boss, Jon Dudas, has [backed a number of recommendations](#) in the past. Doll said the U.S. Patent and Trademark Office would "fully support and implement whatever program Congress thinks is appropriate."