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Reinventing the Patent Office

U.S. strength built on protecting intellectual property

By Hank Nothhaft | Friday, July 31, 2009

The U.S. Patent and Trademark Office is broken. It is underfunded, overburdened and a victim of some neglect. The Senate Judiciary Committee on Wednesday held its confirmation hearing on David J. Kappos, President Obama's pick to be head of the U.S. Patent and Trademark Office.

Mr. Kappos is an excellent selection to head the office, but we at Tessera -- and other Silicon Valley technology companies -- want to make sure the committee is fully aware of the considerable challenges confronting Mr. Kappos.

The Patent Office and the protections it affords are essential to innovation. And nowhere is innovation more a part of a nation's DNA than in the United States.

We hope the committee will agree that fixing the USPTO is a far greater priority in reforming our patent system than continuing to battle over legislation that divides our nation's community of innovators. In this challenging economic time, the nation needs a Patent Office that spurs innovation, not impedes it.

Most Americans don't realize that throughout our nation's history, the Patent Office has been the principal engine driving our unparalleled economic success. Our nation's Founding Fathers deliberately created the world's first patent system, designed specifically to stimulate the creative genius of the common man rather than merely reward privileged elites with the favor of a government monopoly.

The results of this democratic vision of a Patent Office serving small and medium-sized businesses and the inventors employed by them were dramatic. Only 13 years after the first patent law was enacted by Congress in 1790, the United States already had surpassed Britain in the number of new inventions patented -- though Britain was the acknowledged leader of the Industrial Revolution. And by the 1860s, the number of new inventions patented in the United States was an astonishing 7 times the number in Britain.

The Patent Office continued to stimulate inventors to create the kinds of new industries and jobs that powered our unrivaled economic growth throughout the 19th and 20th centuries.

But that success story is jeopardized by a Patent Office in crisis. There is a backlog of nearly three-quarters of a million patents. It takes an average of nearly three years from the day a patent is filed until a ruling is issued.

Something is amiss when innovators -- already facing long odds in their quest for inventions -- face such high hurdles at the Patent Office.

Congress can help Mr. Kappos in reshaping the office. Among our recommendations:

- c Improve funding by preventing any diversion of fees.
- c Adopt more of a market-driven model by changing how fees are assessed.
- c Improve USPTO's technology infrastructure.
- c Continue evaluating submission guidelines to improve the quality of patent applications.
- c Set up regional offices so patent examiners can work directly with innovators to improve patent quality.

c Finally, do a better job of attracting and retaining a high-quality work force. Offer financial incentives for government service.

We, like most people involved in technology, enthusiastically support Mr. Kappos to head the Patent Office.

And we urge the Congress to do everything in its power to help him set clear goals for the USPTO and provide the support to achieve them.

Our forefathers gave us a patent engine that drove our nation to unmatched heights of discovery and prosperity. It is up to us to retune that engine to once again perform as magnificently as before in these challenging and exciting times.

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