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Patent backlog hinders nation's job creation

When innovative ideas sit in a pile, start-ups never get started

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By [John Schmid](#) of the Journal Sentinel

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So where are the jobs?

The recession annihilated 8.5 million U.S. jobs, but the recovery is excruciatingly behind schedule. Are they being outsourced? Are employers too jittery? Are banks not lending?

In recent days in Washington, a new theory has begun to circulate: Many of the missing jobs - hundreds of thousands or possibly millions - are buried under the backlog of 1.2 million unprocessed patent applications that have accumulated over the past 10 years at the U.S. Patent and Trademark Office.

Not even the Patent Office can say how many start-ups and entrepreneurs are waiting for a U.S. patent to validate their ideas, lure investors and ward off infringers - assuming, that is, that their technologies don't grow obsolete in the years that applications languish inside the agency.

"Trapped in that backlog is the potential of creating hundreds of thousands if not millions of new jobs," said Brian Pomper, director of the Innovation Alliance, a Washington, D.C., trade group representing technology entrepreneurs and intellectual property activists. The Alliance issued the statement Tuesday after a Senate committee introduced legislation to reform laws that govern patent rights. "Releasing that potential should be our top priority in U.S. patent policy," Pomper said.

Those comments were echoed several days earlier at a major conference on the economics of innovation at the Newseum on Pennsylvania Ave.

"No patent means no funding and no business," said [Henry Nothhaft](#), chief executive of Tessera Technologies Inc., a Silicon Valley electronics miniaturization company. Hundreds of thousands of jobs "go un-created each year, all for lack of a patent."

By Nothaft's experience - he calls himself a high-tech serial entrepreneur whose six start-ups collectively created more than 6,000 jobs - a single U.S. patent can create three to 10 jobs. His previous company, Danger Inc., a developer of smart-phone technologies with 100 patents either issued or pending, had a ratio of four jobs per patent. He sold Danger to Microsoft Corp. in 2008.

"Everywhere you go, start-ups are unable to get patents on their inventions approved in anything like a timely manner," Nothaft said. "Thousands of innovative new products and potentially lifesaving new medical treatments go uncommercialized and unavailable to the public each year."

David Kappos, whom President Barack Obama installed 18 months ago as Patent Office director, used the [keynote speech](#) at the Jan. 21 Newseum conference to lament the logjam he inherited. "The next laser, the next energy breakthrough, the next cure for a debilitating disease, are all buried in the files of the USPTO. And that is simply unacceptable to me," Kappos said

"Countless inventions that can spark new businesses are right here, sitting in our backlog," he said.

When George Washington created the Patent Office and Thomas Jefferson became the first patent examiner, the founders believed that the ownership of ideas could spur innovation and create jobs. The issuance of single patents launched IBM, General Electric and Johnson Controls, not to mention much of Silicon Valley as well as Madison's biotech economy.

Not much discussion

These days, however, it's rare that Washington officials even debate patent-driven innovation. For two decades, politicians in both parties have all but ignored the agency, which is meant to promote and protect the nation's newest and most crucial ideas.

Beginning in the 1990s, Congress began draining funds from the agency, which is structured to be self-supporting by charging fees without any cost to taxpayers. Last year, the Patent Office collected \$53 million in fees that it was not allowed to keep. The agency, which is tiny by the standards of the federal government, operates with a deficit of more than \$1 million each business day.

So just as patent applications have become more complex because of the advance of technology, and as global competition exploded, the Patent Office found itself underfunded and understaffed.

A Journal Sentinel investigation illustrated how the agency's delays and dysfunction impede U.S. competitiveness and stifle innovation. The agency took 3.8 years on average for each patent it issued last year, up from 3.7 years in 2009 and 3.5 in 2008, according to an analysis of Patent Office data. That's well over twice the agency's traditional benchmark of 18 months to deal with a patent request. Many took years longer.

"Foregone innovation" is how Roger Martin, chief patent strategist at Qualcomm Inc., a California wireless telecommunications group, describes the damage inflicted by the agency. Speaking at the

Newseum, Martin said: "These unacceptable delays translate into lost jobs, lost economic opportunity and potentially the loss of our global competitiveness."

Since it was founded more than 220 years ago, the agency has granted more than 8 million patents. By comparison, 1.2 million applications remain in limbo, a figure that has barely changed over the past three years.

The agency, however, tallies its backlog under a different measure. It counts the applications that have not even had a preliminary review by an examiner, which in most cases only amounts to the first step in a multiyear process. By that measure, more than 700,000 applications have never been picked up for the first time, meaning that no one even knows what technologies are lying in the pile.

Trying hard

Kappos has been attacking the agency's problems forcefully, albeit it with only a shoestring budget.

He's credited with a raft of internal reforms that create new efficiencies and transparency. Productivity at the agency last year set new records. At the Newseum, Kappos argued that the agency affects every sector of the American economy - "from nanotechnology to pharmaceuticals, from computers to biotech, and from fiber optics to green technology."

At a time when the Obama administration is under pressure to stimulate innovation without adding to the debt, many speakers at the Newseum event noted that the Patent Office doesn't cost taxpayers a penny. "As our country seeks to regain the 8 million odd jobs lost during the recent recession, I would contend the USPTO is a great place to start," Kappos said.

Since Kappos arrived at the agency from a top intellectual property post at IBM Corp., criticisms are directed almost exclusively at Congress, not the leadership of the agency.

At a U.S. House subcommittee hearing Tuesday to discuss the draft legislation of patent law reform, the president of the Intellectual Property Owners Association, told congressmen that the agency's inability to keep its fees "has taken a considerable toll."

Pendency durations "will remain at unacceptably high levels for years to come" unless Congress restores funding, testified the official, [Doug Norman](#).

"Mr. Kappos by all accounts has brought a high level of creativity and energy to the efforts to improve the PTO," Norman said.

"Uncertainty about funding constrained our ability to hire or allow examiners to work overtime," [Kappos testified](#) at the same House hearing last week. Kappos said he's been forced to delay upgrades of the agency's antiquated computer network, which is so outdated that it "costs the agency valuable time and money."

What's the damage?

No one can say with precision how many jobs never materialized or how many dreams died in the Patent Office. By its nature, it's an impossible calculation because no one can say how many jobs a start-up can create if the firm never gets off the ground. It's one reason why the issue receives so little attention.

Modeling the numbers, and drawing on other research, Nothaft estimates that more than 2 million new jobs are buried in the backlog. Citing a study last year by Britain's patent authorities, Kappos noted in his Jan. 21 keynote that "the backlog could ultimately cost the U.S. economy [billions of dollars](#) annually in foregone innovation."

But all agree that the foregone jobs are the sort that are crucial to global competitiveness. "Innovation is our competitive advantage," William Merritt, chief executive of InterDigital Inc., a wireless technology company, told the Newseum conference. "It's not manufacturing costs. It's not labor costs. It's innovation and our ability to protect those innovations and turn those innovations into products."

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