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The Biggest Job Creator You Never Heard Of: The Patent Office

12:37 PM Thursday May 6, 2010

by Henry R. Nothhaft and David Klaine | [Comments \(4\)](#)

As the U.S. President and Congress desperately search for ways to regain the **8.4 million jobs lost during the current recession**, the greatest opportunity of all to spur job growth in our stalled economy may ironically lie right under their noses: in the Patent Office.

For all its obscurity within the bowels of the federal bureaucracy, the **U.S. Patent and Trademark Office (USPTO)** may be the single greatest facilitator of private sector job creation and economic growth in America. It is this agency, after all, that issues the patents that small businesses — especially technology startups — need to attract venture capital investment, develop new products and services, and serve their historic role as the primary source of almost all new net job growth in America. **According to one recent study**, 76 percent of startup executives say that patents are essential to their funding efforts.

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dollars in USPTO fees over the years and inadequate funding levels have left the patent office with an unprecedented backlog of 1.2 million patent applications waiting to be examined. The result, says David Kappos, the new USPTO director, has been catastrophic.

"Hundreds of thousands of groundbreaking innovations are sitting on the shelf literally waiting to be examined," he [told an audience at a biotechnology industry conference this week](#). "[This results in] jobs not being created, life-saving drugs not going to the marketplace, companies not being funded, businesses not being formed."

How many jobs are not being created because of the patent backlog?

"Millions," said Kappos. Millions of jobs!

[A recent study](#) put the costs of the "forgone innovation" resulting from patent delays in the many billions of dollars annually.

To learn how such patent office dysfunction affects some of America's most promising young companies in the real world, we spoke to Vern Norviel during the research for our forthcoming book. The former general counsel at biotech stars Affymetrix and Perlegen Sciences, Norviel today leads the patents and innovation counseling practice at the Silicon Valley law firm Wilson Sonsini Goodrich and Rosati and has an insider's eye view of the real-world effects of patent delays on some of the most exciting innovation efforts in the life sciences today.

"Over the last few years, all my life sciences companies have either been slowed down or stopped by problems with the patent office," says Norviel. "And I mean all of them. That's because in this field it's absolutely necessary to have a bulletproof patent. It can cost a billion dollars to bring a new drug to market, and no one is going to invest that kind of money unless they know they've got exclusive rights to it and can get a return on their investment."

Norviel describes one company in particular that he's working with, Innate Immune:

"They have a new treatment for lupus that is clearly patentable," says Norviel. But the company has had to wait seven years so far, and no patent in sight. "They had venture investors ready to give them \$30 million to move the drug to clinical trials. But without a patent, they backed out. So now the company survives on little bits of friend and family money."

Innate Immune's CEO, Dr. Andrew Perlman, adds that the company also had a corporate partnership in the works with a large drug manufacturer, but as he puts it, "their attorneys were alarmed that we did not have the patent, so the deal fell through."

No patent meant no business, no help for suffering patients, and no jobs created.

And Innate Immune is hardly alone. Our research has documented dozens of other companies, in life sciences as well as other burgeoning high-tech fields, whose business and job creation efforts have been stalled or bankrupted by patent office dysfunction.

In contrast, we know that patents create jobs — sometimes many thousands of them. Just consider the job-creating effects of Steve Wozniak's 1979 patent for a microcomputer, for example, or Larry Page's 1998 patent for Google's search engine. Then there's Jack Kilby's 1959 patent on the semiconductor integrated circuit, which gave birth to a semiconductor industry that directly employs 185,000 people just in the U.S. today, as well as contributing to jobs throughout the larger \$1.1 trillion global electronics industry.

After devoting \$30 billion to hiring credits and other job creation schemes, Congress should consider

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spending a fraction of that amount to increase the efficiency of the patent office — a move which could well generate the biggest bang of all for our job-creating buck.

Henry R. Nothhaft is CEO of technology miniaturization firm Tessera, Inc. He and co-author David Kline's tentatively-titled Great Again! An Entrepreneurial Plan for Revitalizing America's Innovation Leadership will be published next year by Harvard Business Press.

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May 6, 2010 at 2:22 PM

A patent of mine issued on March 24th of 2008, and the application was filed on March 1st of 2000. To understand how significant an 8 year delay is, one must think about this from the perspective of their individual lives or from the perspective of a corporation's life. Think about what was important in your life 8 years ago and how relevant that may be to you today. Or think about GM eight years ago and GM today. In my case the company that I formed to pursue this technology after the initial angel financing failed to attract the financing to build a full scale plant. Had this patent issued in late 2001 it would have been another arrow in our quiver, and we may have been able to get funding, instead by the time the patent finally issued not only was the funding not available, but to my earlier point, at 63 years of age, I was no longer inspired to invest my time and energy to do anything with it. There is no issue of greater importance to America than fixing this problem. Innovation and freedom to innovate is what has distinguished us from all of the rest of the countries of the world. But innovation without protection for the innovator destroys the incentive that drives the innovation engine.

— **ROGER HOFFMAN**

May 6, 2010 at 3:31 PM

I have spent most of my career developing fast methods for computing physical effects. One of my methods is improves the speed by 1,000 times and is being used in many commercial computer programs that sell for nearly \$100,000. I applied for a patent on it in 2000, and the patent is scheduled to be issued in June 2010. In the mean time, I have had to give up that line of work and rented out my house because I couldn't afford a small mortgage. Now I am working in a different field.

If I had invested my patent fees and effort elsewhere, I could have retired years ago. This is a shame because I have further improvements that I am keeping secret.

— FRANCIS CANNING

May 6, 2010 at 3:48 PM

As the authors indicate, the backlog and quality issues at the US Patent and Trademark Office are a huge brake on the US system of innovation, development and commercialization.

China has historically been notorious for its lack of respect for intellectual property but the Chinese have come around to our way of thinking and are rapidly revising and improving their patent system. If we don't get the US patent system back on track, Chinese patents may overtake US patents as the gold standard of intellectual property rights.

— MARCELLA WATKINS

May 6, 2010 at 4:03 PM

Yes, the US government has a large attic, with millions of potential Rembrandts awaiting the light of day. Nice piece, and great timing.

— JOHN WERESH

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