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Silicon Valley: Patent reform passed by Senate

Carolyn Lochhead, Chronicle Washington Bureau
Wednesday, March 9, 2011

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(03-09) 04:00 PDT Washington --- The Senate overwhelmingly approved a sweeping overhaul of the U.S. patent system on Tuesday, over the objections of much of Silicon Valley and warnings from California Sens. Dianne Feinstein and Barbara Boxer that the legislation could harm small

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inventors.

The America Invents Act, six years in the making, passed the Senate on a 95-5 vote as both parties joined the Obama administration in arguing that an antiquated and litigation-riddled patent system is hobbling innovation. Feinstein voted for the bill, despite losing a vote on a critical amendment, while Boxer opposed the entire bill.

In Silicon Valley, the nation's nucleus of invention, small inventors and huge tech icons have lined up against the legislation, each for different reasons.

A key element of the bill, which Feinstein and Boxer tried to kill, would award a patent to the first person to file a patent application, a change from the current practice of awarding a patent to the first person to invent a product.

Feinstein had supported a first-to-file system but she said she became convinced that was a mistake after listening to small inventors and venture capitalists in California. Her amendment lost 87-13.

'Something new'

One company that got Feinstein's ear is Tessera, a San Jose firm that patented a way to shrink the packaging around semiconductor chips.

General counsel Barney Cassidy said the big tech companies of Silicon Valley - Apple, Google, Intel and Cisco - dominate their markets and are "fabulously successful. They're what everyone wants to be, but they typically don't breed disruptive technologies. Those disruptive technologies are being created by the future Googles, Apples and Intels - two inventors in a garage trying something new."

Cassidy argued that the time-tested system of awarding patents to the first person to invent a product has worked well since Benjamin Franklin and other founding fathers wrote exclusive rights for "authors and inventors" into the Constitution.

Apple, Adobe, Cisco, Dell, Google, Intel and other tech giants who banded together in the Coalition for Patent Fairness took no position in the first-to-file debate, but they said the overall bill does not do enough to reduce litigation.

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They say their engineers waste time in court defending frivolous patent-infringement lawsuits by "patent trolls," businesses that exist solely to sue for alleged patent infringement.

The tech giants contend that the number of these suits has soared in recent years. In the most notable case, patent holding company NTP Inc. won a \$613 million settlement in 2006 against BlackBerry maker Research In Motion.

Foreign laws

Commerce Secretary Gary Locke said moving to a first-to-file policy would bring the United States into agreement with most patent laws in the rest of the world, and provide a simple, clear date to establish a patent, rather than a costly process of proving that one was the first to invent something.

It takes an average of three years to secure a patent, and the U.S. patent office has a backlog of more than 700,000 applications. A record 209,000 patents were issued last year. President Obama considers patent reform part of his "win the future" agenda that is designed to position the United States as a leader in the world economy.

Obama said he was pleased by Senate passage of the legislation, calling it the "most significant patent reform in over half a century."

The National Academy of Sciences also recommended a first-to-file system to help inventors compete in a global market. UC Berkeley law Professor Robert Merges said concerns among small inventors are wildly overblown. They would be able to file placeholder applications and have a year to hone their inventions, he said.

Pamela Samuelson, director of UC Berkeley's Center for Law and Technology, said in an e-mail that the United States and the Philippines are the only nations that have first-to-invent systems.

"The international norm is that the first inventor to file gets a patent," Samuelson said. "The economic arguments in favor of the first-to-file system are strong and the 'little guy' inventor story that this rule favors big firms is really a myth."

Feinstein said such a change would lead to a "rush to file" at the patent office, further overwhelming a beleaguered agency with preliminary ideas and giving an edge to large companies with a stable of lawyers.

Rep. Zoe Lofgren, D-San Jose, is deeply involved in negotiations over the House version of patent reform. She generally supports a first-to-file system, as long as companies that were using an idea could continue to use it despite any subsequent patent.

Feinstein said she voted for the bill because it helps improve the patent system, adding that she would reserve the right to oppose it should a bill pass the House and come back to the Senate without changes she wants.

Tea Party support?

Alex Poltorak, founder and chief executive of the General Patent Corp., which helps small inventors enforce patents, predicted that the House, now with a number of Tea Party conservatives, will "be much more attuned to the voices of small guys out there who are going to tell them how incredibly detrimental this is to U.S. innovation."

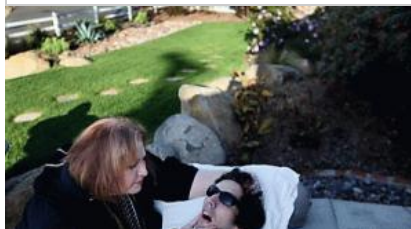
The Senate agreed to changes that everyone in Silicon Valley wants, permitting three new satellite offices outside the Patent and Trademark Office headquarters in Alexandria, Va.

Tech companies hope that one of them is in Silicon Valley, saying engineers should have

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access to patent examiners. Last year the Obama administration chose to establish the first satellite office in Detroit, calling the depressed city an "innovation center." It is also in the district of House Judiciary Committee ranking Democrat John Conyers.

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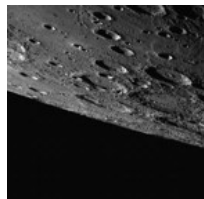
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