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Opinion: Patent Reform Still Needs Work to Protect Valley Inventors

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Commerce Secretary Gary Locke and the Obama administration are making much-needed headway in improving the U.S. Patent and Trademark Office. But there's no need to endorse so-called patent reform legislation currently before Congress. ("Patent reform legislation needed to keep U.S. edge," Opinion, Oct. 8)

To its credit, the administration's recommendations on patent reform include some long-overdue proposals that many of us have been advocating for some time. But there is still work to be done for this legislation to actually protect and foster our community of inventors. Our fear is that, combined with other recent trends out of our nation's capital, the legislation will assist big companies while stifling the innovators who have driven our nation's global success for the past two centuries.

Innovation is the engine of our growth and the key to our nation's economic revival. Small startups, not large firms, are the main source of breakthrough innovation, new job growth and the development of new industries that create higher living standards for all Americans.

FedEx, Intel, Microsoft, Apple, Amazon, Yahoo, Genentech, eBay and Google — each of these great companies (and many more) was once a small startup. They went on to create industries that today employ millions of people and contribute nearly 20 percent of America's annual gross domestic product.

Each of these companies also was midwived by venture capital. But with venture capital investment in startup companies running at its lowest level in more than a decade — down 77 percent from the 1990s — who will fund tomorrow's entrepreneurial innovators?

Venture financing for innovative startups has been choked off in large measure because these companies are no longer able to complete initial public offerings to fund their continued innovation and growth.

Imagine the additional challenge that startups will face if protections for their patents are weakened through so-called reforms. Strong patents and the ability to protect them from infringement are essential to attracting investment capital.

The administration's support of allowing for even more reviews after a patent has been issued will inject tremendous uncertainty into the process and thereby discourage investment in innovation. The proposal to issue patents based on who was first to file an application — rather than who was first to invent the innovation — would also put small and medium-sized inventors at a serious disadvantage against large firms with the massive budgets to file patents early and often. And those are the same behemoths who will then endlessly challenge the already-issued patents of competitors.

This would not be the first time Congress has overreacted in a way that harms entrepreneurs.

Innovation in America is also being eroded by the Sarbanes-Oxley Act, passed in 2002 after the Enron fraud.

Although there were good motives behind this law, it inadvertently imposed a huge \$3 million to \$4 million per year compliance burden on small entrepreneurial firms. The net result of Sarbanes-Oxley is that it has hamstrung small entrepreneurial firms without actually preventing irresponsible behavior by large firms. The big banks responsible for the economic leadership meltdown, after all, were all Sarbanes-Oxley-compliant.

Unless the Obama administration eases the regulatory burdens on small firms and puts the patent system to work on behalf of entrepreneurial innovators again, America will never revitalize its innovation

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