

## Recession's latest victim: U.S. innovation

**Patent filings fell in 2009 for the first time in 13 years, worrying Silicon Valley that it is losing its place as the leader in global innovation.**

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NEW YORK (CNNMoney.com) -- U.S. innovation slowed this year for the first time in 13 years as the recession cut into budgets, and costs to protect inventions rose.

The number of patent filings in the United States fell 2.3% in 2009 to 485,500 from 496,886 last year, according to a preliminary estimate by the U.S. Patent and Trademark Office. That makes 2009 the first year since 1996 in which businesses and inventors filed fewer patents year over year.

"That's unfortunate because [patent filings] are a reflection of innovation," said David Kappos, director of the Patent Office. "Innovation creates so many jobs and so much opportunity for our country. It is absolutely key to our long-term success in the global economy."

At the same time, U.S. patents issued to inventors and businesses in foreign nations jumped 6.3% for the year. That's a worry for Silicon Valley, which has been a global leader for decades.

Most blame the recession for the drop in U.S. filings. As a result, many companies are opting to hold off on bringing new ideas to market until the economy improves substantially.

"Our patent filings were down 25% this year, and it was a direct macroeconomic issue," said Joe FitzGerald, deputy general counsel for tech security firm Symantec. "The overall company reduced spending, and patent filings are a very controllable expense. We might have filed four patents, but we filed three and made sure they were strategically significant."

### Cost constraints

The application, processing and legal fees average about \$15,000 per patent, but the cost to defend those patents in court after they've been granted typically runs between \$3 million to \$6 million, according to Bijal Vakil, partner in White & Case's intellectual property team in Palo Alto, Calif.

"Once you have a patent, you also have to go out and defend your own turf," said Henry Nothhaft, chief executive of Tessera, a San Jose, Calif.-based company that licenses its electronic miniaturization technologies to consumer electronics companies. "That has become more expensive lately due to the complexity of technology and globalization of economy, and it has caused some products not to come to market."

It could also become disruptive to American businesses down the road as filings from abroad pick up.

"We are in a dire economic situation, so its not unreasonable for businesses to have to cut their budgets," said Vakil. "But this trend could spell financial ruin for some U.S. companies. We've lost our competitive edge, and other companies from other countries stand to benefit."

If that trend continues, it could also spell trouble for the American worker, especially given the weak U.S. labor situation. The Obama administration has contended that the economic rebound will rely on innovative U.S. companies to hire workers to develop new technologies and ideas like clean energy and smart transit systems.

"Our top priority is to see jobs get created, and we need patents to get through the patent office to help create those jobs," Kappos said.

The system is broken

Pushing patents through the system is easier said than done: The decline in filings this year has brought to light a number of problems with the antiquated American patent system.

The Patent Office does not receive any taxpayer money. It is completely funded by fees levied on patent filing, processing and awarding. The Patent Office also hasn't changed its fee structure in decades, so it continues to charge a flat rate (roughly \$1,000) for patent applications, regardless of the idea's complexity or the amount of work that needs to go into processing the patent.

As filings have dropped off, so too has the Patent Office's revenue, which sank by \$200 million in 2009. As a result, the Patent Office has initiated a hiring freeze, stopped all overtime, cancelled a necessary IT upgrade and has lost between 40 and 50 patent examiners every month this year, said Kappos.

That means longer wait times for patent approvals and a growing backlog of filings. Currently, there are 740,000 patents pending, with an average wait time for approval of 40 months. The Patent Office isn't even able to look at applications for three years because of the backlog. That's an eternity for tech inventions, which tend to cycle through product generations in a year or so.

Ultimately, it creates a vicious cycle, since a large lag time only further discourages patent filers.

"People are looking at the system as it is now, and they're saying that waiting 40 months for a patent may not be worth it," said David DiMartino, spokesman for the Coalition for Patent Fairness, a group representing major Silicon Valley companies' desires for patent reform.

Another discouraging trend has been the rise in patent disputes. By June, there were already 15% more "post-grant" patent reviews filed by competitors to the filing company than there were in all of 2008.

Those cases are expensive to defend, and are sometimes used by large companies to delay smaller companies' technologies from coming to market or to prevent them from being released at all, according to Brian Pomper, executive director of the Innovation Alliance, a coalition of mostly small high tech companies in support of strong intellectual property rights.

As a result, the Patent Office, lawyers and companies alike are clamoring for patent reform. Bills in the House and Senate, which are on schedule to be passed in the spring, would give the Patent Office the authority to adjust its patent fee structure and give juries direction on setting awards for patent disputes, among other reforms.

Some advocates argue that the bills are far from perfect, particularly because they could make it easier for big companies to repeatedly bring smaller innovators to court. But for the most part, businesses and government officials are eager for Congress to act.

"The American innovative spirit is stronger than ever. If we're able to get patent reform through, we absolutely can take processing times way down and get innovations through to the marketplace," said Kappos, who estimates that legislation will help reduce the average wait time to as little as one year. ■

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