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Henry R. Nothhaft

Patent 'reform' will stymie innovation

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The Journal Sentinel continues to do excellent work this year in outlining problems with the nation's patent system and how it is stifling economic growth. ("It's David vs. Goliath in patent fights," Nov. 29.)

Unfortunately, some key members of Congress still don't get it.

Even though the economy has stabilized in recent months, no real recovery can take place without the creation of new jobs.

We strongly believe that, while the patent office certainly needs more resources and other reforms, the proposed "patent reform" legislation now under consideration by Congress will hamstring job growth before it even gets started.

As economists have demonstrated - most notably Robert Solow, who won the Nobel Prize in Economics for his work on the sources of economic growth - innovation and technological progress are responsible for as much as 80% of all the growth in the U.S. economy, including job growth.

Indeed, innovation is the No. 1 driver of increases in living standards for all Americans.

Where does innovation - the kind of breakthrough innovation that creates whole new industries and millions of new jobs - come from? It comes primarily from smaller, entrepreneurial businesses, as the Journal-Sentinel has shown in its excellent special report "Patents Pending."

According to the U.S. Census Bureau, small entrepreneurial firms created nearly eight of every 10 new jobs in America from 1990 to 2003.

Even more importantly, all of the major disruptive innovations that powered the U.S. economy to unrivaled prosperity in the last 40 years - semiconductors, personal computers, telecommunications, software, and the user-friendly Internet, for example - were created by startup businesses that went on to become public companies.

Entrepreneurial small businesses cannot possibly develop these job-creating new innovations without a strong and stable patent system that rewards their hard work and investment and that protects their discoveries from being stolen by larger and more powerful incumbent firms. Only with patent protection will young companies take the necessary risks to create groundbreaking new products and services that lead to job growth.

That's why I am so concerned about the proposed patent reform legislation. Several of its provisions - including the implementation of a post-grant review process and a proposed shift from "first to invent" to a "first to file" application priority - would burden small entrepreneurial innovators with costly challenges to their already-issued patents. Another provision - apportionment-based damages - would not only stymie job growth but actually could produce a loss in jobs. Indeed, a study released earlier this year found that such a reform would jeopardize 51,000 to 298,000 manufacturing jobs, and cut research and development investment by billions.

This measure gives a decided advantage to huge tech companies seeking to defend their incumbent power in the market. Companies that already enjoy huge market advantages don't need additional help from Congress, especially when that "help" tilts the playing field against the Intels, Ciscos, Microsofts and Apples of tomorrow.

I know from long experience the truth of that statement. In my 35 years as an entrepreneur during which I led six start-up technology companies to market leadership, I have seen first-hand the role that a strong patent system plays in developing new industries and new jobs.

Our company is Tessera, is a Silicon Valley firm whose technology is embedded in more than 10 billion units a year. We are a company of inventors.

We absolutely believe that reforms are needed at the U.S. Patent and Trademark Office. Patents need to be adjudicated more quickly. But we don't need to weaken the laws surrounding patent protection to fix the system.

A strong patent system that protects small and medium-sized businesses isn't just good for those companies. It's good for the national economy, and for society as a whole. That's how jobs are created and living standards are raised for all.

Henry R. Nothhaft is president and chief executive officer of Tessera in San Jose, Calif. He is author of the forthcoming book from Harvard Business Press, "Great Again! An Entrepreneurial Plan for Restoring America's Innovation Leadership."



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