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## Patent Backlog Frustrates Inventors

New Products Could Jumpstart an Economic Recovery but U.S. Patent Office Hampered by Inability to Adjust Fees

By Phil Hirschhorn and Rebecca Jarvis

Entrepreneur Aldo DiBelardino started developing lightweight "Spekx" eyewear four years ago in an office above his garage in Virginia Beach, Va. He gave CBS News an exclusive sneak peek at his invention before they went on sale.

"They provide you goggle-like protection, but they provide you the style and convenience of sunglasses," DeBelardino says.

DiBelardino is preparing to start [selling them this summer](#). But the trouble is, he does not have a patent to protect his invention. He applied for one in April.

"Until I get a patent, I have a very limited ability to defend myself in the marketplace against copy activity," he explained.

DiBelardino knows that from personal experience. His first commercial venture -- the X-It Ladder -- a compact fire escape ladder for the home was copied by Kidde, the biggest fire extinguisher maker in the United States. After DeBelardino refused to sell the company his idea, it produced a knockoff that ate into his market share. In 2002, DiBelardino sued Kidde for patent infringement and won a \$17 million settlement, the bulk of which went to attorneys fees, and had to give up the exclusive rights to [his invention](#).

Since the federal patent agency was created in 1790, the U.S Patent and Trademark Office has issued 7,752,677 patents. And following many of those patents are jobs, especially when the venture capital kicks in.

"Every innovation comes through this agency on the way to creating a business, whether it's the light bulb, whether it's the laser, whether it's the iPod," USPTO Director David Kappos tells CBS News.

In the technology field alone, consider the employment ripple effect of Larry Page's 1998 patent for Google's search engine, Steve Wozniak's 1979 patent for a microcomputer and Jack Kilby's 1959 patent on the semiconductor integrated circuit.

However, the current wait for a patent is, on average, three years, or 36 months.

The "in box" at the U.S. Patent and Trademark Office is stuffed with 700,000 applications awaiting review. Ultimately, only 4 out of ten applications, or 42 percent, are approved.

"The backlog is indeed our biggest problem," Kappos concedes. "It represents innovations trapped in this agency that otherwise could be creating jobs."

Kappos, who was appointed to his post a year ago after working 26 years at IBM, aims to cut the wait time to 20 months and the backlog in half over the next five years. But to achieve those goals, Kappos says, he needs more money to hire 1,200 additional patent examiners and upgrade the agency's computer systems.

"We currently have systems that are not as capable as they need to be -- they're certainly not state of the art. As a result, our examiners are handicapped," Kappos says.

Like a handful of government agencies, such as the Food and Drug Administration, the Federal Housing Administration, the Securities and Exchange Commission, USPTO is self-financed. It charges \$1,000 to file for a patent, but little guys like DeBelardino get a 50 percent discount, paying only \$500. Patents, of course, and the licensing fees they generate, can be worth millions or even billions of dollars.

"We vastly undercharge for most of the services we perform," Kappos says.

Many established companies, which consider patent fees a bargain, and are frustrated by the backlog, are willing to pay more.

"Several thousand dollars actually, as far as patent cost to us, is relatively immaterial," Hank Nothhaft, CEO of Tessera Technologies, tells CBS News.

[Tessera](#), a 20-year-old Silicon Valley company that miniaturizes components for smart phones and cameras, has 850 U.S. patents and another 350 pending.

Nothfatt estimates the value of each patent to his firm more than \$1 million a year. It derives \$220 million in annual revenue from licensing about 150 patents to semiconductor industry.

"Medium-sized and profitable companies like ourselves -- we'd be willing to pay a significantly higher fee in order to fund the patent office correctly," Nothfatt says.

Congress sets the fees charged by the patent office. The legislative branch also does not permit the patent office keep all \$2 billion in its annual revenue, by diverting \$200 million dollars a year for other federal budget items.

"We very much want that money," Kappos says. "It would be enough to begin the

turnaround of the agency immediately."

Legislation that would end fee diversion and empower USPTO to adjust its own fees, as well as other reforms, is working its way through Congress. A bill sponsored by Senator Patrick Leahy of Vermont has passed his Judiciary Committee but has not come to the Senate floor for debate.

The agency has secured an additional \$129 million appropriation from Census money that wasn't used this year. Both the Census and USPTO are in the Commerce Department. Unless Congress acts to end fee diversion, USPTO will face a revenue shortfall next year.

To lessen the backlog, the patent office is experimenting with a "fast track" review process for inventions with an environmental streak. One of the first beneficiaries was [Skyline Solar](#), a solar panel builder in Silicon Valley, which saw a stalled patent application approved in May.

"We are the gate. We are right now the block," Kappos says. "We need to be the accelerant to Americans dreaming their dreams, getting protection for them, putting them in the marketplace, and succeeding or failing based on their merits."

But DiBelardino believes the cost of waiting for patent approval for his new "Spekx" eyewear is too high. So he will take a chance by launching a website to sell his new product by direct mail.

"I'm taking a big risk, but the reality is I have no other choice," DeBelardino says. "The way the marketplace works, I can't be sitting on the sidelines as well, because by the time the patent would possibly issue, my opportunity window could close."

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