

High tech needs patent reform

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It isn't often that you see heavyweights in the tech world duking it out in a high-stakes match, with Congress as the referee. It's happening today over proposed reforms in patent law, which pits the software and information technology giants against their counterparts in biotech. The issues are as fascinating as they are thorny -- and while each side paints the choices as black and white, there's enough gray here to cover a fleet of battleships.

Fortunately, congressional leaders are looking at compromise measures that address problems obvious to both sides, like the huge backlog in [patent](#) applications, and attempt to bridge differences on the others.

Patent laws shouldn't pick winners and losers. Current law is not fair to IT, so something has to change. The trick is fixing that for the Intels of the world without causing great harm to the Roches.

[Silicon Valley](#) companies such as Google, Hewlett-Packard and Apple hold thousands of patents; a device such as an iPhone or BlackBerry can involve hundreds. Each new product draws lawsuits claiming infringement on other patents. Some are legitimate, but many are orchestrated by patent trolls whose whole business is attacking tech products. This kind of litigation is up as much as 75 percent for some high-tech companies, costing them millions to defend and seriously stifling innovation. Congress needs to reform patent law to discourage the nuisance lawsuits.

But the interests of biotech firms are different. They can take more than

a decade developing just one or two patents on which their entire businesses may rest. Reforms crafted to help IT could threaten biotech's huge investments.

This is why patent reform legislation died a year ago. But an agreement reached by a Senate committee Thursday offers hope for a compromise. Along with reforms to help IT, the proposal calls for judges to play an expanded gatekeeper role to help identify appropriate damages for patent infringement cases. The idea is to discourage harassment suits but allow legitimate claims to advance.

This would hinge on judges' ability to render fair decisions on complex cases, a big gamble. Expect a fierce debate in Congress. But some see it as a breakthrough.

"I think this amendment ... gives all parties 90 percent of what they want, not 50 percent," said Sen. Dianne Feinstein, D-Calif.

One reform everyone agrees on is the need to expedite patent applications. The U.S. Patent and Trademark Office has just over 5,000 underpaid and overworked examiners to review more than 400,000 new applications each year. It would take them two years just to catch up on the current backlog if no new applications arrived. This, too, is stifling innovation. The office needs the money for more staff.

Historically, the nation has taken a neutral approach to patent law on the theory that it allows all parties to flourish. But the current law is too easily abused to the detriment of high-tech. That has to change. We hope Feinstein is right about the latest compromise.

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