

No truce expected in global patent wars

September 11 2011, by Chris Lefkow

Patent reform legislation passed by the US Congress may represent the most sweeping changes to the law in decades but the bill is not expected to end the courtroom wrangling between technology giants.

"My feeling is that it won't change the dynamics much of the ongoing patent wars," said Roger Kay of Endpoint Technologies Associates. "The problem is with patents in general, in that there's way too much patenting and people patent any old thing including how to toast bread."

Ed Black, president and chief executive of the Computer & Communications Industry Association (CCIA), said the bill, the America Invents Act, "doesn't effectively address the real serious problems of our patent system.

"The bill tinkers in various ways -- some things are good, some things are bad -- but it's not a gamechanger," Black said, agreeing with Kay that the main problem is "too many patents issued that are simply not high-quality patents."

Black noted that the US Patent and Trademark Office (USPTO) announced recently that it has issued its eight millionth patent.

"Most people think of patents as being like Edison and the light bulb," he said. "Tell me we've had eight million game-changing ideas."

The Senate passed the America Invents Act on Thursday by an 89-9 vote. It cleared the House of Representatives earlier this year by a

similarly lopsided 304-117 margin.

Democratic Senator Patrick Leahy, a key author of the legislation, said the bill will "ensure that inventors large and small maintain the competitive edge that has put America at the pinnacle of global innovation."

The legislation notably shifts the granting of US patents from a "first to invent" system, which left considerable leeway for interpretation, to a "first to file" basis and seeks to reduce a backlog of 750,000 applications.

Another goal is to curb costly litigation but technology industry analysts tend not to see that happening anytime soon.

Patent lawsuits are a frequent occurrence among smartphone and tablet computer makers in particular and the world's best known brands are ensnared in a complex web of legal claims spanning the globe.

Just a day after the passage of the bill, Apple managed to get a German court to ban South Korea's Samsung from selling its Galaxy Tab 10.1 tablet computer in Germany, ruling it had copied the iPad.

Apple recently settled a patent dispute with Finland's Nokia by entering into a licensing agreement and is embroiled in a series of suits and counter-suits with Taiwan's HTC, which accuses the California company of violating HTC-held patents in its Macintosh computers, iPods, iPhones, iPads and other products.

Google, meanwhile, is being sued by US business software giant Oracle over technology used in its Android mobile operating system and said earlier this year that Android is the target of a "hostile, organized campaign" by Apple, Microsoft and Oracle being waged with "bogus

patents."

Last month, Google purchased US handset maker Motorola Mobility -- and its portfolio of 17,000 patents -- for \$12.5 billion in a move chief executive Larry Page said was partly intended to "better protect Android from anti-competitive threats from Microsoft, Apple and other companies."

Independent technology analyst Carmi Levy said the patent reform bill is the "best step the US government has taken toward cleaning up the USPTO backlog (and) eliminating frivolous, competition-killing lawsuits and litigation."

"But it's only the first," Levy said. "It would be naive of us to assume that the effects of decades of woefully obsolete patent law will suddenly vanish as US businesses seamlessly transition into the new regime."

"Expect these existing cases to continue to play out unchanged while the lawyers continue to happily collect their fees," he said.

Black said the proliferation of software patents has led to an "unnecessary arms race."

"But it's an arms race that you almost have to participate in," he said. "It's also an arms race that inherently disadvantages new entrants, small dynamic companies."

"The most innovative new entrants wind up immediately facing a barrage of legal intimidation, lawsuits, threats," the CCIA president said.

Endpoint Technologies Associates' Kay said consideration should be given to doing away with software patents altogether.

"People [patent](#) any old thing and they repatent things that are already patented," he said. "Really we should be going 180 degrees in the other direction and saying 'How about no patents for software?'"

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