

## Patent rule changes blocked; status of protections uncertain

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New federal patent rules that had been expected to become law in November and would have an adverse impact for Michigan entrepreneurs was blocked by a preliminary injunction based on a Virginia lawsuit.

The possibility still exists that a removal of that injunction would decrease the protections realized by existing and future patent holders. That could provide a setback for area startups and other new businesses, local patent lawyers say.



Bieneman

The new rules were expected to make patents more difficult and costly to obtain and would force all companies to re-examine their patent portfolios to determine how they might be affected by the new rules, said Steven Hansen, a partner with Rader, Fishman & Grauer PLLC, an intellectual property law firm in Bloomfield Hills.

New technology companies, entrepreneurs and startups are at greatest risk, Hansen says. The rules will directly affect new patent applications, as well as many pending applications.

"The new patent rules (as proposed before the injunction) will clearly make it more difficult for Michigan small businesses and inventors," said Rader Fishman & Grauer partner Charles Bieneman. "This is a concern as our region is relying on newer technologies to ignite our economy."



Hansen

The proposed new patent rules could change how new patent applications are examined by the U.S. Patent and Trademark Office and also may limit the ability of applicants to fully protect their inventions.

The number of patent lawsuits filed in the U.S. has more than tripled since the early 1980s. At the same time, the number of patents granted rose in similar proportion, according to a 2006 study conducted by James Bessen and Michael Meurer at Boston University.

The proposed legislation that was to take effect Nov. 1 would have:

- Limited the number of claims a patent holder could make.
- Limited the number of related possible patent applications. This would have directly affected continuation applications, potentially limiting the opportunities and raising the costs for getting a patent.
- Changed the process for allowing patent changes and additional arguments by limiting the requests for additional examination.

The bottom line is that these changes would make it difficult for companies to be awarded broadly protected claims for their inventions, Bieneman said. Companies could also be limited in the amount of damages they could make against a company or individual that violated its patent.

This could have significant affect on Oakland County and Southeast Michigan businesses, Bieneman said.

"Our economy in general has been very dependent on patent protection, given the automotive and other high-tech companies headquartered here," Bieneman said. "The impact could be significant on small (research and development) companies and on certain industries like automotive and pharmaceutical."

Hansen and Bieneman recommend that companies make a number of modifications in new and pending patent applications and also rethink their patent-enforcement strategies. While those companies that have pending patent applications have no immediate course of action, those patents yet to be filed could be directly affected by any future changes designed to limit patent protection, Hansen said.

"It would behoove a company to identify the inventions that want to get on file now so that immediate action could be taken," Hansen said. "Presently we know the landscape of patent law and the current ground rules, but once that changes it could cause (additional challenges) for companies with proprietary inventions or technologies."

It is not known when the temporary injunction will be lifted or what the resolution of the Virginia case will be. The temporary injunction was requested by a plaintiff team that included pharmaceutical company SmithKline Beechum and was granted by a Virginia Circuit Court on Nov. 5.

It is likely, though, that an attempt at a resolution will be made by the first quarter of next year, Hansen said.

*Mike Scott is a freelance writer.*