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"Patent Bill Would Hamper Physician-Inventors, Expert Says"

By Leigh Page

A bill that passed the Senate and is now being debated in the House would hamper the ability of physicians and other small operations in obtaining patents for medical devices, according to Paul Ryan, CEO of Acacia Research, a Newport Beach, Calif., company that partners with inventors in the patenting process.

Mr. Ryan says the bill would fundamentally change the patent process for all inventions in favor of large companies that have the resources to get through a more complicated patent process. "The current system protects the little guy," he says. "It has favored the individual inventor. The proposed changes favor the big med tech and pharma companies."

Situation in Congress. The Senate overwhelmingly passed the America Invents Act in March by a vote of 95-5. "There was limited testimony and very little debate in the Senate," Mr. Ryan says. The Senate was looking to the House to examine the bill more closely. "The battle was always going to be in the House," Mr. Ryan says. The bill may fail, which was the fate of a similar patent bill last year, but he thinks the new version has a 50-50 chance of passage. But even though the bill represents a complete change the patent process, it has received very little media coverage. "Not many people are paying attention to it and this is very nuanced stuff," he says.

Some good news in the bill. The bill would alleviate the current 3.5-year backlog of patent applications by stopping Congress from diverting income from patent fees to other. Lack of funds means the Patent Office does not have the manpower to handle backlogged applications, now at 700,000. However, House Republican leaders recently called for changes in the new bill that would allow some of fee income to be diverted away from the Patent Office, according to the *Wall Street Journal*. Mr. Ryan opposes any diversion of funds. "The intelligent solution would be for Congress to agree to stop diverting the funds and leave the world's greatest patent system alone," he says.

Elimination of grace period for applicants. Meanwhile, the new bill would scrap the one-year grace period for an inventor to file an application. Currently, an inventor has one year from the day of conception to file. Without a grace period, Mr. Ryan says anyone who knows an inventor's plans could file ahead of him and get full rights. "Inventors would have no protection if they did not file and someone else filed ahead of them," he says. He adds that this open-ended approach, similar to Europe's current system, could double the number of patent applications and cause an even greater backlog.

Imposition of post-grant review. Under the bill, anyone who wanted to challenge a patent could file for post-grant review, which is not currently allowed. Mr. Ryan says a big company could tie up a patent in post-grant review for years and even bankrupt the small company with legal bills. "The post-grant review process would also create a huge diversion of patent-examiner time," he says. This would cause more delays in getting new inventions onto the market, he says. In Europe, which already has post-grant review, a San Francisco company's European patent was held up for more than 10 years, he says.

Specific impact on physician-inventors. Without a grace period, physician-inventors would be forced to file "a half-baked application" before they even had a clear idea of what it ought to be, Mr. Ryan says. If inventors choose not to file right away, they would have to be careful about what they said publicly about the invention, because anyone could file the application and gain control of the invention.

"This is a problem for the whole scientific inquiry process, where you share your idea in journals and forums and welcome others to criticize it," Mr. Ryan says. For this reason, "universities are going to have a very tough time." Lack of a grace period would also make financing more difficult. "With no grace period, the inventor-surgeon also couldn't go to venture capitalists for money," he says.

Learn more about [Acacia Research](#).

Read the *Wall Street Journal* report on [progress of the patents bill](#).

Here is a link to the [America Invents Act](#) (pdf).