The Patent Reform Act of 2007 — The Good and the Bad

On April 18, 2007 Congress introduced into legislation The Patent Reform Act of 2007, a bill aimed at helping the filing process and to ease the financial burden to companies that infringe on existing patents.

The reform includes three significant changes since the S. 3818, introduced last year. First, it now includes a "first-to-file" system. The United States is the only nation that grants patents to the first inventor, as opposed to the first to file a patent application for a claimed invention. Second, the S.3818 had created a new, post-grant review in order to provide an accurate and effective way for considering challenges to the validity of patents. This bill proposes changes to redefine whether or not something is patentable, and addresses concerns about misuse of the procedure. And third, Congress was aware that an effective patent system needs fair and equitable remedies. In some cases, litigation has not reliably produced damages awards in infringement cases that correspond to the value of the infringed patent. The reform now includes the limitation of damages to only the economic value of the improvement.

Clearly, there is no question that the patent system is the foundation of innovation and needs to be revised in order to meet the requirements of today’s global economy. America’s resourcefulness and ability to create and innovate over and over again has been the driving force behind our economy. Patents encourage technological advancement by providing incentives to invent and invest, take risks and at the same time protect intellectual property (IP).

Like all other legislation, this bill is not a one size fits all and many doubt that it will be approved in its present form, but it is a start. One of the key objections voiced during the hearing centered around the bill’s creation of this new post-grant opposition procedure to challenge a patent and its restriction on patent infringement awards. The post-grant opposition system would permit challenges to be brought against a patent’s validity within the first twelve months after the patent was issued (referred to as a "first window"), or anytime thereafter (the "second window") throughout the life of a patent. This dilutes the value of patents, reduces the incentive to create and most likely would be very costly to everyone involved through increased litagation.

Although I think there are several valid components to this bill, it’s the "second window" that I have a problem with. I would encourage the Congress to carefully evaluate the impact each patent reform would have on the current patent system before making any changes. As the old saying goes, "If it isn’t broken, don’t fix it." The ultimate goal should be to make changes where it will do the most good for all those involved.