

From: Andrei Popovici
Sent: Friday, March 10, 2006 12:35 PM
To: AB98 Comments
Cc: CARROL.BARNES@SBA.GOV
Subject: comments on patent continuation changes

Sir/Madam,

I strongly oppose the proposed changes to patent continuation practice.

The proposed changes to patent continuation practice will have a disproportionate impact on small businesses and start-ups, including Silicon Valley high-tech start-ups.

The proposed rule changes will severely limit applicants' flexibility to

adjust the scope of claim coverage after filing, and will reduce the value of patents particularly in younger, faster-moving fields. The proposed rule changes will also increase the upfront costs of patent prosecution. Both effects will particularly harm start-ups.

As you know, patent law provides strong incentives to file early. Venture capitalists also strongly encourage start-ups to file early by assigning higher valuations to companies with pending patent applications. As a result, many start-ups file patent applications on their core technologies before they are venture-funded and before their products are fully developed. This practice is good for our patent system and our technology industry because it leads to early dissemination of knowledge and faster technological advancement.

Filing early in the product development cycle has two important drawbacks for a patent applicant: first, there is increased uncertainty about the technology and about the aspects that will be important commercially; and second, start-ups are cash-starved when young.

Before

venture funding, patent applications costs are often borne by founders personally. Current continuation practice allows early-filing start-ups to receive valuable claim coverage while controlling their upfront costs.

The new rules would greatly reduce the value of early filing.

Companies

will have to decide whether to file applications early and face increased risks that their claims will be trivially easy to design around, or defer filing until later in the product development cycle, when commercial uncertainty and funding constraints are reduced.

The new rules would lead to fewer and later filings, significantly increased costs per filing, slower dissemination of technological knowledge, and slower development of technology.

While the new rules would harm all patentees, large companies will be able to cope better because of their larger resources and because they often operate in more mature fields. Start-ups would be hurt more.

The views expressed are my personal views and not those of any of my clients.

Sincerely,

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