



May/June 2006

Patent Pileup Worsens

Want a patent? Get in line.

By Seth Shulman

The backlog at the U.S. Patent and Trademark Office keeps breaking records. And if you want to know the pain that it causes, just ask venture capitalist Greg Blonder. Blonder, a partner at Menlo Park, CA-based Morgenthaler Ventures who specializes in software and nanotechnology, says two promising companies he has worked with were nearly sunk by the sluggishness of the patent office. "Not only couldn't we find investors because we couldn't establish our clear rights to the technology," Blonder says, "we ended up having to spend more than a million dollars to litigate in patent cases that could have been avoided."

Last year, in Senate testimony, Jon Dudas, under secretary of commerce for intellectual property, bemoaned a patent backlog of "historic proportions." Since then, things have only gotten worse. The problem is due in part to the growing length and complexity of patent applications. Today, with some 600,000 patents in the queue, applicants in high-tech areas like software will wait nearly four years before knowing whether their patents have been granted. Given the pace of technological change, it is little wonder that even attorneys are starting to lament what Michael K. Kirk, director of the American Intellectual Property Law Association, calls "a cloud of uncertainty over the marketplace."

Federal officials are pledging to hire as many as 1,000 new patent examiners this year, but given the scale of the bottleneck, expert analysts say it could take close to a decade to fix the problem. The worst part, says Blonder, "is that the problem is getting so bad it threatens to discourage entrepreneurs. At the end of the day, that's the last thing you want to do."