

EXHIBIT 2007

Software patent reform just died in the House, thanks to IBM and Microsoft

By Timothy B. Lee, Updated: November 20, 2013 at 10:17 am

On Wednesday, the House Judiciary Committee is scheduled to consider legislation aimed at reining in abusive patent litigation. But one of the bill's most important provisions, designed to make it easier to nix low-quality software patents, will be left on the cutting room floor. That provision was the victim of an aggressive lobbying campaign by patent-rich software companies such as IBM and Microsoft.

The legislation is sponsored by Rep. Bob Goodlatte (R-Va.), chairman of the House Judiciary Committee. He [unveiled a new version of his bill](#) last month, touting it as a cure for the problem of patent trolls. One provision would have expanded what's known as the "covered business method" (CBM) program, which provides an expedited process for the Patent Office to get rid of low-quality software patents. That change would aid in the fight against patent trolls because low-quality software patents are trolls' weapon of choice.

But the change could affect the bottom lines of companies with large software patent portfolios. And few firms have larger software patent portfolios than Microsoft and IBM. These companies, which also happen to have two of the software industry's largest lobbying budgets, have been leading voices against the expansion of the CBM program.

The CBM program provides a quick and cost-effective way for a defendant to challenge the validity of a plaintiff's patent. Under the program, litigation over the patent is put on hold while the Patent Office considers a patent's validity. That's important because the high cost of patent litigation is a big source of leverage for patent trolls.

The original CBM program, which was created by the 2011 America Invents Act, was limited to a relatively narrow class of financial patents. The Goodlatte bill would have codified a recent decision opening the program up to more types of patents. And advocates hoped that change would be a steppingstone to eventually subjecting all software patents to greater scrutiny.

But large software companies had other ideas. A September letter signed by IBM, Microsoft and several dozen other firms [made the case](#) against expanding the program. The proposal, they wrote, "could harm U.S. innovators by unnecessarily undermining the rights of patent holders. Subjecting data processing patents to the CBM program would create uncertainty and risk that discourage investment in any number of fields where we should be trying to spur continued innovation."

Of course, advocates of the program disagree. They point out that software patents are [disproportionately responsible](#) for the recent rise of patent litigation. The fact that technology startups almost inevitably [face patent threats](#) is itself a significant disincentive for innovation. So it's far from clear that subjecting software patents to greater scrutiny would be bad for innovation.

Last week, IBM escalated its campaign against expanding the CBM program. An IBM spokesman told Politico, "While we support what Mr. Goodlatte's trying to do on trolls, if the CBM is included, we'd be forced to oppose the bill."

Sources close to the negotiations say the campaign against the CBM provisions of the Goodlatte bill has succeeded. The House Judiciary Committee is scheduled to hold a markup of the legislation Wednesday, and Goodlatte will introduce a "manager's amendment" to remove the CBM language from his own bill. IBM hailed that change in a Monday letter to Goodlatte.

The revised legislation would still take significant steps to curb abusive litigation tactics favored by trolls. But troll tactics are merely a symptom of the patent system's dysfunction. The more fundamental issue is the large number of low-quality patents, and the Goodlatte bill no longer has a provision to deal with that problem.

But the fight against bad software patents isn't over. After Goodlatte's about-face, the House of Representatives is unlikely to pass legislation expanding the CBM program. But CBM expansion has a powerful supporter in the Senate. Sen. Chuck Schumer (D-N.Y.), who was the driving force behind the original CBM program in 2011, remains determined to expand the CBM program in the Senate's patent reform legislation. Sen. Patrick Leahy (D-Vt.), the chairman of the Senate Judiciary Committee, has signaled his willingness to work with Schumer on the proposal.

"Creating a low-cost alternative to litigation in order to address the poor-quality patents that are currently plaguing startups and small businesses is a cornerstone of effective reform," Schumer said in a statement Tuesday night. "I am continuing to have productive conversations with my colleagues and stakeholders in the Senate, and fully expect the critical issue of patent quality to be addressed in the Senate legislation."

Schumer will have powerful allies. The White House endorsed CBM expansion in June. A broad coalition of brick-and-mortar industries, including casinos, supermarkets, chain restaurants, airlines, the printing industry, real estate agents, hotels and retailers, [endorsed the concept](#) in a letter last month.

Still, companies with large software patent portfolios have a lot to lose if their patents are subjected to serious scrutiny. So, Schumer won't get his way without a fight.

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