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## Q&A

# Tech industry fuels patent activity amid challenging environment

Q&A talks with Michael Cantor, co-managing partner of Hartford-based Cantor Colburn LLP, one of the largest intellectual property law firms in the country.

**Q:** Cantor Colburn is the largest intellectual property law firm in Connecticut and one of the nation's fastest-growing IP firms in the nation. What part of the country are you seeing most patent activity right now? How does Connecticut stack up to the rest of the nation?

A: Patents are not only developed in isolated regions, in fact there is patent activity throughout the country. Wherever there are centers of technology, manufacturing, innovation, R&D, pharmaceuticals, research centers like the National Institutes of Health, and so on, you will find patent activity.

So for example, here in Connecticut there is tremendous patent activity spurred on by large research companies such as United Technologies, Electric Boat, The Jackson Laboratory, and Lockheed Martin (Sikorsky). Similarly in the greater Detroit area the automobile industry, with companies like General Motors, drives patent activity, while in New Jersey there are many patents being developed because of the pharmaceutical industry, and of course in Silicon Valley there is the concentration of companies involved in technological innovation.

Cambridge, Austin, Atlanta are among many cities with busy R&D sectors. Our own firm has patent activity from clients spread

throughout the United States, such as the oil and gas industry in Houston and the entertainment industry in Los Angeles.

**Q:** What types of patents are most in demand right now?

A: If you look at the hundreds of thousands of patents that get issued each year, you'll find they're in virtually all aspects of technology and industry. That being said, all things electronics and software-driven are in demand, like telecommunications, automation equipment, internet-based inventions and apps.

In addition, the pharmaceutical industry continues to be a large source of patents. And finally, there are a growing number of design patents as opposed to utility. Companies today are using the design patent laws to cover virtually every new device and product in the marketplace.

**Q:** What's the most significant legal issue patent filers face today?

A: Because of recent U.S. Supreme Court cases, it is getting harder for patent applicants to be granted patents. Legal hurdles that have been put in place by the Supreme Court have made it very difficult to obtain a patent, especially in the software and biotech/diagnostic fields. This is a real problem for startups because it makes it harder for them to raise

capital. The other big issue facing applicants is the advent of the Inter Partes Review, or IPR, which has made it easier and cheaper for competitors to invalidate patents.

**Q:** When should companies file for a patent?

A: Companies should file for a patent as early as possible in the development process for several reasons, not the least of which is that the United States has moved to a first-to-file system as opposed to a first-to-invent system. Of equal importance is the fact that the earlier an application is filed, the better the chances are of obtaining broad protection as opposed to narrow protection. The broader the patent is, the more valuable it is, because this keeps competitors from copying the invention, and of course this is viewed more favorably by investors.

**Q:** What are you recommending to clients in terms of protecting their patents?

A: Counterfeiting and patent infringement are ongoing activities in foreign countries. We recommend extending patent protection by filing applications in critical foreign countries. This is why there has been exponential growth in patent filings in China in recent years. It is important to be extremely vigilant in keeping track of competitors' product introductions so that if there is counterfeiting or infringement, an appropriate response can be pursued. ■



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