



WASHINGTON, D.C.— For the second year in a row, Congressman Lamar Smith (TX-21) has been named one of *Managing Intellectual Property* magazine's "50 Most Influential People in IP."

This award recognizes individuals from business, politics, and academia who have played a substantial role in shaping current debates within intellectual property. Recipients come from many different countries and are selected by IP experts worldwide.

The text of the July/August 2006 article detailing the Congressman's work can be found below.

## **Introduction: The most influential people of 2006**

**MIP presents its fourth annual list of the most influential people in IP. Join us as we meet the 2006 top 50**

Influence takes many forms. From the academics and theorists whose ideas filter down to shape our views, to the legislators, administrators and judges who set and uphold the rules, to the IP creators, owners and users who seek to sway opinions and protect their interests, the *MIP* team had to choose from a wide pool.

This year we have grouped the top 50 into five distinct groups: the rulemakers, the campaigners, the strategists, the enforcers and the innovators. These divisions demonstrate that people and organizations with radically different views on IP often influence the system in a very similar way. Our campaigners group, for example, includes both Eli Lilly's Bob Armitage and the AIPLA's Mike Kirk, supporters of patent rights, and Ellen t'Hoen and James Love, representatives from non-governmental organizations concerned with access to medicine. This highlights the disparate nature and interests of those seeking to change the existing IP regime to benefit users and consumers.

Reform is a key theme among those included in this year's list. Some are involved in legislative changes in the US; others in discussions over opening up the patent system in Europe; and a few have proposed more radical, international, reforms to the IP system as it affects developing countries and access to drugs, for example.

Our group of innovators is also diverse. It includes the ubiquitous patent troll and Nathan Myhrvold of Intellectual Ventures, representing a new trend towards assertive IP litigation, alongside Microsoft's Marshall Phelps and GE's Todd Dickinson, who are more likely to find themselves on the receiving end of aggressive, and sometimes frivolous, patent claims. But what all of them have in common is that they are shaking up the way businesses approach their IP rights and defend their assets. The same is true for some of the other people included in the innovators category, who represent brand owners and the fight against counterfeiting.

Although we believe the list represents the most important trends in IP theory and practice, it is not a survey and it is not scientifically compiled. No one has paid to be included; no lobbying has taken place. The order of appearance in the list does not reflect any ranking.

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## THE RULEMAKER

### IP's man in Washington

**Proposals to simplify, improve and harmonize the US patent system have provoked controversy and split US industry. Congressman Lamar Smith has the task of reconciling competing interests to provide a patent law for the 21st century**



**Congressman Lamar Smith**

There is a lot of dissatisfaction with the US patent system. Complaints range from the quality of patents granted to the costs of litigation and the perceived imbalance between patent owners' rights and freedom to innovate. Problems with the existing system were highlighted in reports published by the US antitrust watchdog, the FTC, and the National Academies in 2004 – and these in turn prompted legislative efforts in Congress.

At the heart of these efforts is Congressman Lamar Smith, who chairs the 22-member House subcommittee on courts, the internet and intellectual property. He told *MIP* he considers it an honour to chair the subcommittee, which he says is "the most sought-after assignment, the number-one choice" for members of the larger judiciary committee. Smith is a Republican Representative from Texas, a state which has its fair share of high-tech industry and where property rights are widely respected, and the subcommittee provides him with a chance to place his personal stamp on one of the biggest policy issues in the US.

A congressman since 1987, Smith also sits on the judiciary committee's immigration subcommittee, and serves on the House science committee (and its space and research subcommittees) as well as the committee on homeland security and the committee on standards of official conduct. He has been widely recognized for his work: the Information Technology Industry Council named him Legislator of the Year in 2005 and the *National Journal* identified him as one of the 100 most influential people in Washington DC.

In response to calls for reform of the US patent system, Smith last year proposed a bill known as HR 2795, which was followed shortly by an amended version, and these form the basis of the changes being considered to the system of patent protection in the US. Smith says it is clear why reform is needed: "The first goal is to improve patent quality – that benefits everybody – patent filers and public. The second aim is to eliminate abuses of the system where individuals file frivolous lawsuits on patents and the third is to make US patent law more harmonized with practice worldwide."

But despite broad agreement on the need for basic reforms – such as the switch to a first-to-file system and the adoption of a post-grant opposition – progress has been slow. This is partly because a number of the original proposals split US industry down the middle.

While most patent owners agree that reform is needed, some have very different priorities to others. Those in the IT industry have pushed hardest for reforms to deal with the threat of over-litigious patent trolls – but some of the proposed remedies threaten to undermine principles that are important to other industries. For example, the Biotechnology Industry Organization strongly opposed provisions in the original bill that would restrict injunctions and do away with the best mode requirement; these were removed from the amended version. Smith acknowledges the challenge posed by conflicting interests: "There are diverse interests of interested parties and different business models for different types of companies. We're trying to balance all the interests of various parties and come up with legislation that will do no harm to any particular section." To address some of these questions, Smith's subcommittee has held seven hearings, with two more due in the coming months, covering issues including patent quality enhancement in the information-based economy, patent harmonization and patent trolls.



Smith agrees that patent trolls are the biggest immediate concern for many companies: "Unfortunately there are too many instances of individuals who have weak patent claims and file lawsuits against companies to get them to settle out-of-court for many thousands of dollars. The cost of defending can easily be half a million dollars. There is a temptation to go pay the \$50,000 or \$100,000 and eliminate the necessity of going to court." While some patent owners are genuine inventors with good motives, he says, "other individuals have very suspect patents and simply file lawsuits".

The Supreme Court's intervention in the *eBay* case in May went some way towards reining in the trolls, by tightening up the rules on when injunctions should be granted. Smith believes that has addressed one of the issues that had been holding up reform: "The recent Supreme Court case in *eBay* was very helpful. It sent out a message that injunctions are not always automatic but decided on a case-by-case basis."

While the main focus of Smith's work is domestic, he also has to confront international issues, especially to do with IP enforcement. "I'd like to see IP rights enforced in countries making an industry out of copyright infringement and piracy – China and Russia for example," he says. "We are trying to leverage trade agreements with those countries and enforce IP rights. We'll try to promote that in any future trade agreements." But he believes the incentive to promote and protect IP will come with increased development in such countries: "Until those countries have self-interest in protecting IP rights, it will be difficult to get them to enforce rights from other countries."

But for the foreseeable future it is patent reform that will be the main priority for the Yale-educated Republican congressman, who previously practised law and managed a family ranch in Texas. "I'm optimistic we'll get it done next year," says Smith. "The biggest challenges for IP owners are being able to protect their IP rights and the need to make sure they are enforced, as well as educating the public on the need to protect them."

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