

## Proposed Alteration of U.S. Patent System Discussed at Roundtable

by Joe Johnson, Economist, and Kate Reichert, Assistant Chief Counsel

On May 20, the Office of Advocacy hosted a roundtable on patent reform and its impact on innovative, high-tech small businesses that use the patent system. The topic was pending congressional legislation (H.R. 1260/S. 515) which would radically alter the U.S. patent system. The bill would move the United States to a “first-inventor-to-file” system from the current “first-to-invent” system, harmonizing the U.S. system with the rest of the world.

While the U.S. Patent and Trademark Office (PTO) lacks substantive rulemaking authority, Advocacy invited the agency to participate in the roundtable in order to address small business questions and concerns on the highly technical field of patent law. In addition,

Advocacy invited small businesses and other interested parties who represent various patent system users and practitioners, including small technology companies, patent attorneys who work with small firms, and venture capital firms that invest in small technology-driven businesses. These diverse stakeholders were able to present their issues with the proposed reform and offer alternatives that would protect small businesses.

Ron Katznelson, representing Bi-Level Technologies, a California-based technology business, argued that the change to the first-inventor-to-file system would put small businesses at a competitive disadvantage because the focus in the patent system would shift the

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On May 25, President Barack Obama addressed attendees of SBA's National Small Business Week in the Rose Garden of the White House. With him are SBA Administrator Karen Mills and Maine's state small business persons of the year, Tom Sturtevant and Trapper Clark of ALCOM, Inc., of Winslow, Maine.

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## Editor's Note

Due to a production error, the April-May issue of *The Small Business Advocate* had to be mailed twice. We apologize for any duplicate or late mailings.

### Advocacy Responds to Proposed Constrictor Snake Ban

by Jamie Belcore Saloom, Assistant Chief Counsel

The U.S. Fish and Wildlife Service (FWS) published a proposed rule on March 12 that would list nine species of constrictor snakes as injurious wildlife under the Lacey Act. The nine species proposed for listing are four species of pythons, four species of anacondas, and the boa constrictor. Importation and interstate transport of these nine species would be prohibited under the rule, unless authorized by permit for scientific, medical, educational, or zoological purposes.

On April 21, Advocacy hosted a roundtable attended by members of the small business communities potentially affected by the proposed rule. Participants included FWS staff, constrictor snake breeders, reptile supply manufacturers, specialized reptile shipping companies, zoological organizations, academics, and trade associations. All participants agreed that the proposed rule, if finalized, would have

devastating consequences on their businesses and educational institutions.

At the roundtable, individuals that breed and sell exotic varieties of pythons and boa constrictors expressed their concerns that the rule would shut down their businesses and jeopardize their livelihoods. They contend that restricting interstate transport of these snakes will greatly reduce the value of their current stock and make continued investment in them unsustainable.

Roundtable participants also explained that the proposed rule would harm not only businesses that breed and sell live snakes, but also specialized reptile shipping companies, reptile supply manufacturers, and businesses that provide feed stock for snakes, as well as herpetological veterinarians, zoological organizations, and educational programs. Although interstate

transport of listed snakes would be allowed by permit for scientific, medical, educational, or zoological purposes, roundtable participants expressed concerns that obtaining these permits in most cases will not be feasible due to time constraints and limited agency resources.

On May 10, Advocacy filed public comments with FWS and recommended that the agency continue to reach out to small businesses to discuss alternatives. Advocacy's comments may be found at [www.sba.gov/advo/laws/comments](http://www.sba.gov/advo/laws/comments). Please contact Jamie Belcore Saloom at (202) 205-6533 if you would like more information.



Advocacy staff participated in a recent conference on small business sponsored by the U.S. Chamber of Commerce. Here, Thad Inge, assistant chief counsel for congressional affairs, and Patrick Morris, public liaison and media manager, meet with Besim Jashari, an official of the Republic of Kosovo's Ministry of Trade.

#### The Small Business Advocate

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## Phase-In Steps of EPA's Final Greenhouse Gas Tailoring Rule

	PSD	Title V
<b>Step 1</b> <b>Phase-in of Large Sources</b> January 2–June 30, 2011	Permitting based on emissions of non-GHG pollutants and with GHG emissions or emissions increases above 75,000 tons per year (tpy) CO <sub>2</sub> e.	Sources with Title V permits for non-GHG pollutants will address GHG as part of Title V permitting.
<b>Step 2</b> <b>Phase-in of Large Sources</b> July 1, 2011–June 30, 2013	Sources above 100,000 tpy (new) and 75,000 tpy (major modifications) of CO <sub>2</sub> e (and not already subject to PSD based on non-GHG emissions).	Sources that exceed 100,000 tpy GHG threshold will be required to obtain a Title V permit if they do not already have one.
<b>Step 3</b> <b>Phase-in of Large Sources*</b> July 1, 2013–April 30, 2016	An enforceable commitment to assess experience from Steps 1 and 2; commit to propose, consider comments, and promulgate potential Step 3. Level will not go below 50,000 tpy CO <sub>2</sub> e (new) and 50,000 tpy CO <sub>2</sub> e (major modifications).	An enforceable commitment to assess experience from Steps 1 and 2; commit to propose, consider comments, and promulgate potential Step 3. Level will not go below 50,000 tpy CO <sub>2</sub> e.
<b>Final Phase*</b>	EPA will take rulemaking action in 2016 or before to address small sources in light of the five-year study.	EPA will take rulemaking action in 2016 or before to address small sources in light of the five-year study.

\*Effective only after regulatory process. PSD = Prevention of Significant Deterioration program; tpy = tons per year; CO<sub>2</sub>e = carbon dioxide equivalent. Source: EPA, [www.epa.gov/nsr/actions.html](http://www.epa.gov/nsr/actions.html).

## EPA Defers Greenhouse Gas Requirements for Many Small Businesses

by Keith Holman, Assistant Chief Counsel

On May 13, the U.S. Environmental Protection Agency (EPA) issued the final greenhouse gas “Tailoring Rule.” The rule defers Clean Air Act greenhouse gas (GHG) requirements for many small businesses for up to six years.

The May 13 rule sets thresholds for GHG emissions that define when businesses must obtain a permit to modify or construct under the New Source Review/Prevention of Significant Deterioration (PSD) program, and a permit to operate

under the Title V operating permit program. The rule defers the requirements of these permitting programs to limit which facilities will immediately have to get PSD and Title V permits. Smaller facilities are deferred for up to six years from these requirements; EPA will consider whether to permanently exempt some facilities, and whether there are ways to streamline the permitting process. The rule sets applicability thresholds based on the amount of CO<sub>2</sub> or its equivalent

(CO<sub>2</sub>e) potentially emitted by a facility.

In general, existing small businesses with potential CO<sub>2</sub>e emissions of less than 75,000 tons per year will not be subject to PSD and Title V permitting requirements until at least July 1, 2013. Additionally, by the end of April 2015, EPA will complete a study on remaining GHG permitting burdens if smaller sources are required to comply. The table on this page shows the phase-in steps of the final Tailoring Rule.

## Advocacy Hosts Roundtable on Proposed Air Quality Rules for Boilers

On May 19, Advocacy hosted a roundtable to discuss four related Environmental Protection Agency (EPA) Clean Air Act rulemakings designed to control hazardous air pollutants from industrial and commercial boilers and incinerators.

The proposed rules are:

- A rule for “major source” boilers (boilers that emit 10 tons per year or more of any single hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants);

- A rule for smaller “area source” boilers (less than 10 tpy of a single hazardous air pollutant or less than 25 tpy of any combination of hazardous air pollutants);

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## Patent System Roundtable

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timing of patent filings earlier in the invention process while increasing the required number of filings. He also argued that the need for earlier and more public disclosure would further disadvantage small businesses by potentially infringing upon a popular current model of raising capital, which uses limited disclosure to raise funds during the invention process but prior to patent filing.

Attorney Mike Messinger echoed many of Katznelson's concerns in his presentation, stating that small firms simply want quality patents and are willing to pay for them through higher fees if needed. Mike Rainey from Intellectual Ventures, a firm that funds small business inventors, licenses and develops patents, and engages in independent research and development, proposed a novel alternative to the

## The Crux of Patent Reform

H.R. 1260/S. 515 would move the U.S. patent system to a "first-inventor-to-file" system from the current "first-to-invent" system. In a "first-inventor-to-file" system, when more than one application claiming the same invention is filed, the priority of a right to a patent is based on the earlier-filed application. Under the current system, priority is established through a proceeding to determine which applicant actually invented the claimed invention first.

current patent reform ideas. Rainey recommended moving the system to first-inventor-to-file while retaining the current "grace period" structure, the element of the patent system that governs disclosure requirements. Many small business representatives in attendance agreed that this compromise solution would lessen the potential negative impact on small businesses.

Advocacy will continue to monitor the patent reform legislation and convey the concerns small business patentees have with

proposed changes. In addition, Advocacy will continue to promote an open dialogue on this issue between the PTO and the small business representatives, so that the concerns of this important segment of the high-tech community are addressed and these small businesses can continue to stimulate innovation and job creation.

For more information on Advocacy's patent reform roundtable please contact Assistant Chief Counsel Kate Reichert at (202) 205-6972.



The Office of Advocacy conducted a roundtable for small business representatives and officials of the Patent and Trademark Office to discuss pending legislation that would revise the U.S. patent system.

## EBSA Creates an e-Signature Option for Benefit Plan Filings

by Dillon Taylor, Assistant Chief Counsel

The Office of Advocacy recently submitted a comment letter commending the Employee Benefits Security Administration (EBSA), an agency of the U.S. Department of Labor. EBSA recently announced a new e-signature option on electronically filed Forms 5500 and 5500-SF, employee benefit plan annual reports. This option directly addressed concerns raised by the small business community.

EBSA designed the new e-signature option to simplify the electronic filing process for small businesses that use employee plan service providers to complete and file their annual reports.

Prior to this change, service providers that managed the filing process for plans were not permitted to sign and submit the electronic Form 5500 or 5500-SF on behalf of plan sponsors. In March, Advocacy coordinated a meeting between small business stakeholders and EBSA staff to explore the issue. The small business stakeholders expressed concern that EBSA's e-filing policy created additional burdens for small employers that sponsor plans because the employers could not use their plan administrators to file the annual reports on their benefit plans. The small business stakeholders attending the meeting indicated that the extra

burden could lead many employers to cease voluntarily sponsoring employee benefit plans.

EBSA addressed the concerns of small business stakeholders by announcing its new e-signature option. Under the new option, service providers can now obtain their own signing credentials and submit the electronic Form 5500 or 5500-SF on behalf of the employers that sponsor the plans.

Advocacy's comment letter, dated May 20, 2010, is available at [www.sba.gov/advo/laws/comments](http://www.sba.gov/advo/laws/comments). EBSA's May 13 announcement is located here: [www.dol.gov/ebsa/newsroom/2010/10-680-NAT.html](http://www.dol.gov/ebsa/newsroom/2010/10-680-NAT.html).

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## Veterans Research

### Advocacy Testifies Before House Veterans Affairs Committee

by Joe Sobota, Assistant Chief Counsel

Economic research has been one of Advocacy's core missions since its inception, and a 1999 law directs the office to develop information about firms owned by veterans and by service-disabled veterans and their role in our economy. This has proved difficult because neither veteran nor disability status is identified in most routine business transactions (for example, bank loans). However, Advocacy continues a long-term research effort to develop information on veterans in business and related matters.

On April 29, Assistant Chief Counsel Joe Sobota testified before the House Veterans Affairs Committee's Subcommittee on Economic Opportunity on the characteristics of veteran business owners. The latest U.S. Census Bureau data (2002) indicate that 14.5 percent of all business owners were veterans, and 7 percent of this group were service-disabled. Census also found

that 12.2 percent of all firms were veteran-owned. If these percentages remained the same in 2009, this means that there were about 3.6 million veteran-owned firms last year, of which perhaps 250,000 were owned by service-disabled veterans.

Veteran-owned firms mirror the greater business community in most respects, including their distribution by size, both in terms of revenue and number of employees; their distribution by industry type; the percentage that were home-based; their level of franchise ownership; the sources of capital used for business start-up, acquisition and expansion; the types of workers they used; and the types of their major customers. Veteran business owners were, however, much older than other owners and overwhelmingly male. These characteristics reflect the demographics

of the underlying population of all veterans.

Advocacy commissioned a special tabulation of unpublished Census data to provide information on the location of veteran business owners by state. The top 10 states for veteran business owners were California, Texas, Florida, New York, Pennsylvania, Illinois, Ohio, North Carolina, Georgia, and Michigan. Virginia and Washington State also appeared in the top 10 states for service-disabled owners.

Advocacy currently has two research projects on veteran-related issues in progress, one examining factors affecting entrepreneurship among veterans and another looking at tax and regulatory problems facing veteran entrepreneurs. Advocacy's April 29 is available at [www.sba.gov/advo/laws/testimon.html](http://www.sba.gov/advo/laws/testimon.html); visit [www.sba.gov/advo/research/veterans.html](http://www.sba.gov/advo/research/veterans.html) for veterans research.

## Zoltan Acs Joins Advocacy's Staff as Chief Economist

In May, Dr. Zoltan Acs joined the Office of Advocacy as chief economist. Acs is a professor and researcher whose career has focused on the link between innovation and entrepreneurship in industries, cities, and worldwide.

Acs helped create the foundation for small business economics. Over 20 years ago, he and David Audretsch were the founders of the academic journal, *Small Business Economics*. A decade later, Acs and Catherine Armington developed Census data that tracked job creation and business start-ups.

Acs is director of George Mason University's Center for Entrepreneurship and Public Policy. He helped establish the Entrepreneurship, Growth and Public Policy Group at the Max Planck Institute for Economics in Jena, Germany, and was affiliated with it for six years. He is also a visiting professor at Imperial College Business School in London.

Acs has a longstanding relationship with the SBA and the Office



of Advocacy. He served as chief economic advisor in Advocacy's Office of Economic Research from 1996 to 1998, has known all of the chief counsels, and has performed important research under contract. Most recently, he was the coauthor of the Advocacy report, *High-Impact Firms: Gazelles Revisited*

(2008), with William Parsons and Spencer Tracy.

As chief economist, Acs will focus on small business dynamics and entrepreneurship, and he will be convening a symposium on job creation and high-impact firms to be held in October.

### Proposed Boiler Rules

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- A rule for commercial and industrial solid waste incinerators (CISWI) rule; and
- EPA's revised definition of materials that are classified as "solid wastes" and which must be burned in CISWI units, rather than in commercial/industrial boilers. (CISWI units must comply with emission control requirements that are more stringent and costly than the requirements for boilers.)

These four interrelated rules and supporting technical information can be found at [www.epa.gov/airquality/combustion/actions.html](http://www.epa.gov/airquality/combustion/actions.html). Together, the proposed rules would apply to nearly 200,000 boilers and incinerators in the

United States, most of which are owned by small businesses.

Roundtable participants discussed the scope, complexity, and cost of the proposed rules. Under the rulemakings, large boilers that burn oil, coal, or biomass would have to install new emission control equipment, perform regular boiler tune-ups, and conduct a one-time "energy audit." Some smaller units would also have to install new control equipment; all of the smaller units would have to conduct the regular tune-ups and the energy audit. Several roundtable participants stated their concern that the rules impose emission limits that are not technically achievable for many facilities.

The roundtable also focused on EPA's effort to reduce the bur-

dens of the rule on small business. Anticipating the cost and broad coverage of the boiler rules, EPA conducted a Small Business Advocacy Review Panel in 2009. The panel recommended that EPA adopt work practice standards rather than emission limits wherever possible, focus on work practices that improve combustion efficiency of boilers, and enact less stringent requirements for boilers with limited operations, such as standby boilers. While EPA included some of the recommendations in the proposal, others were not followed.

EPA will take public comment on these proposed rules for 45 days, starting from the date of their publication in the *Federal Register* (not available at press time).

—Keith Holman

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## Research Notes

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### New Research Advises Regions To Cooperate on Economic Development Strategies

by Patrick Morris, Public Liaison and Media Manager

Economic development agencies are constantly on the lookout for ways to promote growth in their regions. They have numerous tools at their disposal: tax incentives, economic counseling, marketing, promotion. They use these tools to promote or improve their location's desirability for business and investment. But there's another tool they may have overlooked: cooperation.

A new study published by the Office of Advocacy finds that entrepreneurs create growth across state and county lines. The study, titled *New Business Clustering in U.S. Counties, 1990-2006* by Larry Plummer, sheds light on business

activity related to levels of education, economic growth patterns, and geography. The report uses the U.S. Census Bureau's Statistics of U.S. Businesses, which was funded in part by Advocacy.

The study finds that entrepreneurial activity tends to concentrate geographically and flow across county lines. Put another way, local economic development agencies shouldn't think of neighboring communities as the competition but rather as teammates, and they should align their growth strategies to complement each other.

High-profile counties like Los Angeles, Cook (Chicago), and New

York had the highest total levels of entrepreneurial activity. But firm births aren't just a big city thing. Nearly every county had at least one firm birth from 1990 to 2006. And counties in our nation's interior and Northwest—in states like Colorado, Utah, and Washington—tended to have the highest firm birth rates and levels of entrepreneurial activity per capita.

As this report shows, a regional approach to economic growth could provide benefits for all. A copy of the report can be found on Advocacy's website, [www.sba.gov/advo/research/rs360tot.pdf](http://www.sba.gov/advo/research/rs360tot.pdf).

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### Study Asks What Factors Boost the Number of Entrepreneurs in a Region

by Rebecca Krafft, Editor

Regional variations in entrepreneurship have important implications for regional development, since entrepreneurs play a crucial role in bringing new ideas to the market which can benefit all firms in a community. Previous research has confirmed that regions with high levels of entrepreneurial activity have faster employment growth than regions with lower levels.

A new study published by the Office of Advocacy in June examines this question; the study finds that higher education levels are associated with faster growth of entrepreneurs. The study, *Determinants of Growth in Entrepreneurship Across U.S. Labor Markets: 1970-2006*, was written by Tami Gurley-Calvez, George Hammond, and Eric Thompson. It explores the factors determining entrepreneurship growth within labor market areas (LMAs) in terms of both the number

of entrepreneurs and their share of total LMA employment over three and a half decades, 1970 to 2006.

Higher education levels are found to contribute to the overall desirability of an LMA, resulting in parallel growth in the number of entrepreneurs and wage-and-salary workers. Higher human capital levels do not necessarily contribute to growth in the proportion of entrepreneurs in an LMA's overall workforce; instead the research suggests that human capital tends to contribute to the overall desirability of a region, visible in the growth in both proprietorships (the study's proxy for entrepreneurs) and wage-and-salary workers.

Factors that contribute to growth in entrepreneurs and the entrepreneurial share within regions are natural amenities (such as rugged terrain and proximity to water), wealth, and lower initial unemployment.

In addition, the study notes that significant shifts in the share of entrepreneurs in LMAs across regions took place during the study period, bringing the average share of entrepreneurs for metropolitan regions in 2006 (18.4 percent) much closer to that of nonmetropolitan regions (21.8 percent). In 1970, these shares were 10.6 percent and 16.0 percent, respectively.

For this study the authors measure entrepreneurship using proprietorship data from the U.S. Bureau of Economic Analysis (BEA) and self-employment data from the U.S. Census Bureau Public Use Micro Sample (PUMS). Other researchers have used these data sets as a reasonable proxy for entrepreneurship. The complete paper is online at [www.sba.gov/advo/research/rs363tot.pdf](http://www.sba.gov/advo/research/rs363tot.pdf).

## Small Businesses Should Take Advantage of Social Media

by Reese Higgins, Office of Advocacy Intern

Small business owners were assured “it’s not too late” to dive into social media by a panel of experts at a forum on the topic on Tuesday, May 25. Held in the Mandarin Oriental Hotel, “Social Media and Small Business: Join the Conversation” worked as a question-and-answer session for attendees of the SBA’s National Small Business Week in Washington, D.C.

Moderator Brian Moran, president of Veracle Media, began the discussion by noting that social media are growing at an incredible rate, and small businesses should be able to capitalize on what essentially equates to free Internet advertising and networking. Moran also stressed the importance of “engagement.” Elaborating, he and the panelists said small businesses should use social media platforms

to develop genuine interaction with consumers and other businesses.

Luther Lowe, business outreach manager at Yelp, spoke on the panel about how small businesses could easily reach out to their customers to form positive relationships through social networking websites.

Panelist Angus Thomson, general manager of the Grow Your Own Business Division at Intuit, urged small business not to use social media “wholesale” but to “mix it in.”

Another panelist—Javier Palomarez, president and CEO of the U.S. Hispanic Chamber of Commerce—agreed, acknowledging the need to have social media not as an end-all be-all but as another integral part of “the larger media mix.”

“Treat social media not as a hundred-yard dash but...as a four-

year course,” Moran said, comparing the learning curve of social media applications to earning a college degree.

Panelists all voiced the opinion that small business owners who had yet to start utilizing social media still had ample time to make use of what panel member Rieva Lesonsky, president of Grow Biz Media, described as a “fairly new phenomenon.” Debra Ruh, CEO of TecAccess, assured attendees that social media continue to grow, and most businesses would be able to find a way to market themselves to their specific demographic target group.

Each panelist did agree that some type of formal social media policy should be implemented at businesses in order to protect a company’s image.

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