

# Power to the People

Daniel Ravicher started the Public Patent Foundation to fight abuse of the patent system and to root out bad patents. His targets include Pfizer and Monsanto.

**By Susan Hansen**

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cor a guy who gave up a high-paying corporate law job to try to improve the patent system, Daniel Ravicher doesn't always get a lot of thanks.

He has gotten nasty voicemail and spiteful e-mail. His name has inspired snarky comments on patent law blogs. And he has been called everything from a "granola cruncher" to a villain and worse.

Not that Ravicher, 31, lets any of that stop him. As founder and executive director of the Manhattan-based Public Patent Foundation (PubPat), he has made it his mission to check what he believes is widespread abuse of the patenting system, and to root out patents that he thinks never should have been issued. His targets have included a Pfizer Inc. Lipitor patent, Monsanto Company seed patents, along with a key digital photo-sharing patent held by Forgent Networks, Inc. When he hits his mark, as he did last spring when he got the Patent and Trademark Office to reject key claims of Forgent's photo-sharing patents, it's not hard to understand why some patent holders might take offense. Or why Forgent shareholders, who saw the company's stock price plunge 40 percent the day

the PTO agreed to re examine the patents, might even feel compelled to fire off a few hostile e-mails.

Ravicher launched the not-for-profit PubPat four years ago, giving up a \$150,000-a-year-plus associate's slot at New York's Patterson, Belknap, Tyler & Webb to take on the job of patent watchdog. "The public is being harmed," says Ravicher, who argues that unwarranted patents create unfair monopolies and drive up the costs of new drugs and products for everyone. "Someone needs to be a voice to represent their interests," he says. Ravicher's main means of attack is the PTO's reexamination process. In the past three years, PubPat has filed more than a dozen requests asking the PTO to revoke patents on the grounds that those inventions were obvious, or that the examiners who originally awarded patent rights weren't aware of critical prior art.

A sampling of the results so far: Besides scaling back Forgent's photo-sharing patent, the PTO also invalidated Columbia University's patent on a widely used bioengineering process (called cotransformation) that is used to manufacture proteins for biotech drugs. (Columbia and Forgent are both contesting the PTO decisions.) In another reexamination initiated by PubPat, the patent office restricted key claims in a patent covering Lipitor, Pfizer's blockbuster anticholesterol remedy—a decision that helps clear the way for generic drug-

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Daniel Ravicher, founder of the Public Patent Foundation, takes aim at bad patents



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makers to begin selling a crystalline form of Lipitor once a core Pfizer patent on the drug expires in 2010.

**A**s for the other patent reviews Ravicher requested, the PTO is currently deciding whether to grant reexaminations in three cases. In seven others, the patent office has launched reexam proceedings, including two high-stakes reviews begun last fall: the first involving three embryonic stem cell patents held by the University of Wisconsin's Alumni Research Foundation (WARF), the other covering four Monsanto patents on genetically modified seeds. In granting the requests, the PTO said that evidence submitted by PubPat had raised "substantial questions" about the validity of the WARF and Monsanto patents. In late February, the PTO gave PubPat a victory by rejecting all claims of one of the Monsanto seed patents, and Ravicher is expecting rulings on the other three patents this spring.

PubPat fans such as Harvard Business School professor and PTO critic Josh Lerner contend that the group is providing a valuable public service. "There's no one else out there doing this in an ongoing, sustained way," says Lerner, who believes that U.S. patenting standards are far too lax and who has criticized the PTO for, among other things, awarding a patent for a new breed of peanut butter and jelly sandwich.

Private businesses, of course, routinely do their part to try to knock out undeserved patents held by their competitors, via PTO reexams or in the federal courts. But there are still plenty of faulty patents that don't get tested because those being harmed by them don't have the resources or know-how to challenge them—or may not want to risk becoming a target of an infringement suit. In those sorts of cases, PubPat can play a valuable role, says Robert Merges, director of Boalt Hall School of Law's Berkeley Center for Law and Technology. "They're filling an important niche," says Merges. "There are bad patents that need challenging. If [PubPat] can develop an expertise in that, the more power to them."

Officials at IP policy and patent holder groups, such as the American Intellectual Property Law Association, based in Arlington, Virginia, and the Intellectual Property Organization (IPO) in Washington, D.C., agree there are bad-apple patents out there. They're not exactly rallying behind Ravicher, however. In fact, on the subject of PubPat's reexam efforts (and its sharp criticisms of the current state of the U.S. patent system), they're tight-lipped at best. "IPO is aware of [PubPat]. We have watched their patent challenges with interest,"

says Herbert Wamsley, the group's executive director, who declined to offer any further comments.

Of course, it's not that surprising that patent holders and the lawyers who represent them might be a little wary of—if not downright threatened by—Ravicher. "Anybody's going to be wary of one small self-appointed group that wants to make itself responsible for policing patents," says Foley Hoag partner Donald Ware, who has represented Genzyme Corporation and Biogen Idec, Inc., among other biotech patent holders. Like virtually everybody else, Ware agrees that there are weak patents that need challenging. But he contends that a tiny outfit with limited resources like PubPat may not necessarily be the

best one to take on the job—and could actually make it more difficult for other potential challengers if a reexamination effort fails and the PTO winds up reaffirming a faulty patent. "A small group isn't always in a position to present a strong case," says Ware.

Ravicher downplays those concerns, saying

that he picks only on patents that he has solid evidence to challenge. "All the cases we've brought, I've felt very strongly about," he says.

**A**s a University of South Florida undergrad, Ravicher majored in material sciences, and during law school at the University of Virginia he edited a journal on law and technology and took classes in patent law. After getting his J.D. in 2000, he gave big-firm practice a shot, doing stints in the patent law groups of Brobeck, Phleger & Harrison and Patterson, Belknap.

But representing big-name drug companies and other corporate clients wasn't a comfortable fit for Ravicher, who had volunteered for a legal aid group during law school and had a longtime interest in public service. He had originally hoped to work for a public policy group or foundation that was already working on patent issues. But he soon discovered that no such group existed. After talking to experts in the field, including Lawrence Lessig, the Stanford Law School professor and open source advocate, Ravicher realized that if he wanted to combine patent law and public interest work, there was only one real option. "It turned out I'd have to create my own place," he recalls.

In 2002, while still at Patterson, Belknap, Ravicher began scouting out potential PubPat backers. By early 2003, he had secured start-up funds—a \$60,000 two-year grant from the Echoing Green Foundation, which provides seed money for social entrepreneurs. Since then PubPat has gotten additional

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backing from George Soros's Open Society Institute, as well as a new two-year \$300,000 grant from the Rockefeller Foundation last fall.

Ravicher's salary (\$74,000 a year) takes up a good portion of PubPat's current \$125,000 annual budget, with the remainder covering office and travel expenses, as well as reexamination fees. Indeed, Ravicher says that one big benefit of using the reexam process to challenge patents is that it's cheap — filing fees for a PTO reexam request are just \$3,000. He's also been able to save on labor costs by enlisting students in a patent law class he teaches at the Benjamin N. Cardozo School of Law. PubPat recently took on its first hire, a recent law school grad who works part-time, and Ravicher says he's hoping to raise money so he can add additional staff.

For further backup, Ravicher looks to a board of advisers that includes Brian Kahin, a former Clinton White House analyst on intellectual property issues; open-source agitator and Columbia University law professor Eben Moglen; Duke University's Arti Rai, an expert in life sciences-related patent law; and Cecil Quillen, a former general counsel at Eastman Kodak. Quillen says he signed on because he was impressed with PubPat's mission. "This is a voice that otherwise wouldn't be heard," says Quillen, who contends that the organized patent bar is too conflicted to push for stricter patentability standards or real patent policy reform.

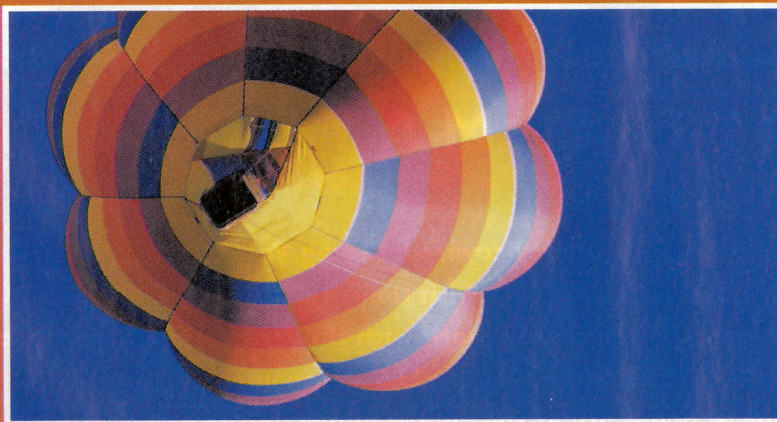
**P**ubPat has gone after a couple of patent trolls, including Forgent Digital Networks, which had sued more than two dozen companies for infringing its photo-sharing patents. But Ravicher has no particular issue with trolls: They aren't doing anything the patent system doesn't allow them to do, he says.

In picking targets, PubPat aims for patents that affect a lot of people by, say, pushing up prescription drug prices (as he contends Pfizer's Lipitor patents do) or restricting the use of a critical technology. Ravicher also tries to look for patents that aren't likely to be challenged by anyone else. In the case of WARF's human stem cell patents, he says, many academics and researchers had complained about WARF's lock on the patents and its steep licensing fees—but those scientists couldn't afford thousands of dollars in legal fees to challenge those patents. "People were upset about them," says Ravicher. "But nobody was doing anything about it."

According to Ravicher, PubPat's push for a review of the stem cell patents has already led to a dramatic shift in WARF's licensing practices. In January officials at the Madison-based WARF announced that they will stop demanding licensing and access fees from scientists involved in noncommercial embryonic stem cell research—a move that Ravicher contends wouldn't have happened had PubPat not turned up the heat.

WARF spokesman Andrew Cohn says its "just poppycock"

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to claim that PubPat had anything to do with the new policy. "We did this because we're committed to moving the science forward," says Cohn, who predicts that PubPat's challenge of WARF's patents will come to naught. "We think it's political and a public relations effort," adds Cohn.

As with the WARF patents, PubPat's challenges to Monsanto's patents for genetically modified seeds are based on prior art that, according to Ravicher, proves that that Monsanto's inventions were not actually new. Monsanto could not be reached for comment before press time for a reaction to the PTO's rejection of one of its four seed patents. But late last year, speaking about the reexaminations, Monsanto spokesperson Chris Horner said Monsanto believed that all its patents were valid. "Obviously, we're going to defend the patents we've got out there," Horner said.

Ravicher says that Monsanto has been aggressively using those patents to sue or harass dozens of farmers. "They want to

be the Microsoft of agriculture," Ravicher says. But Monsanto contends that it only takes legal action as a last resort. "We have filed just two dozen or so lawsuits against farmers out of several hundred thousand customers," says Horner.

Ravicher says that he doesn't necessarily blame the PTO for issuing patents that he thinks are unwarranted. Patent examiners are under heavy pressure to meet stiff quotas and help the PTO keep cranking out roughly 170,000 new patents a year, he notes. So Ravicher has been using his PubPat platform to push Congress for broader patent reform, challenging a system that he says gives patent filers virtually unlimited chances to contest rejected claims, and to wear patent examiners down. He's also been using new technology to spur greater citizen action.

One recent PubPat project: a free downloadable audio program that teaches ordinary folks how to find prior art to challenge unwarranted patents. It's patent power to the people, PubPat-style. ■

**Ravicher is using his PubPat platform to push Congress for broader patent reform, challenging a system that now gives patent filers virtually unlimited chances to contest rejected claims.**

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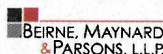
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