

# A 'Robin Hood' Declares War on Lucrative U.S. Patents

A 30-year-old former corporate lawyer says that the U.S. patent system leaves the public with the short end of the stick

“Did Pfizer get punked by a nonprofit?” That’s what patent lawyer and blogger Stephen Albainy-Jenei asked in June after the U.S. Patent and Trademark Office (PTO) ruled that a Pfizer patent for Lipitor, the \$12-billion-a-year cholesterol drug, might be invalid.

The decision was the latest in a string of successful initial rulings for Dan Ravicher, a 30-year-old attorney and crusader against those patents that he says are bad for the public welfare. He’s also used PTO procedures to shoot holes in patents held by Microsoft and Columbia University. Part vigilante, part gadfly, Ravicher has quickly earned a reputation for being part of a new breed of patent attorneys, and one worth watching.

“The system has been created in a way that makes it difficult to see how it impacts people,” Ravicher says. He believes patent busting could result in cheaper and better consumer products by removing barriers to innovation by the public, which he feels is left out of the equation. He hopes his efforts will inspire others to challenge the system by drawing attention to bad patents.

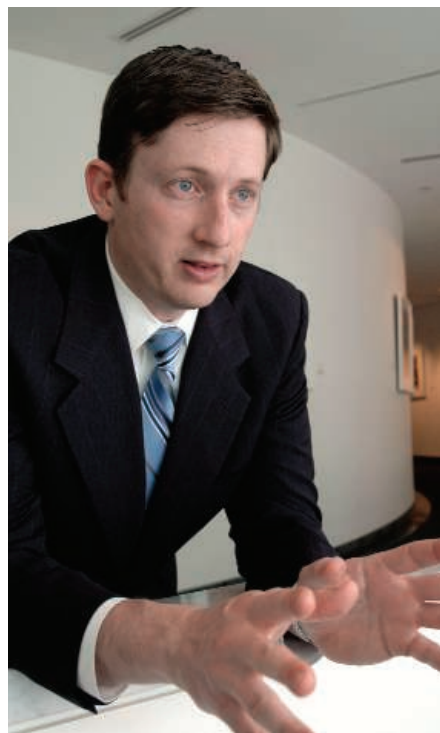
Ravicher works through the Public Patent Foundation (PubPat), a nonprofit organization he created 2 years ago. Its actions have already received the attention of intellectual-property insiders. Hal Wegner of Milwaukee, Wisconsin-based Foley and Lardner calls him a “Robin Hood” for the patent world’s have-nots. “What he’s doing is important,” says healthcare analyst Les Funtleyder of Miller Tabak, a New York brokerage firm. “Nobody’s really kept an eye on what pharma’s doing from a patent perspective.”

His corporate opponents won’t comment on their plucky new adversary. But critics say the current patent system serves the U.S. economy well by rewarding innovation. They also warn that Ravicher’s efforts could backfire by making it harder for makers of low-cost generic drugs to get their products to market.

Ravicher didn’t start out planning to be a burr in the side of corporate America. After graduating from the University of South Florida with a degree in materials science and then the University of Virginia School of Law, Ravicher became a New York patent attorney whose clients included the drug giant Johnson & Johnson. But as he watched small IT companies wage expensive battles against what seemed to him bad patents, he became

convinced that the current system “more often than not treated the less-represented unfairly.” By living frugally off his six-figure income and winning a small foundation grant, he managed to put together \$90,000 to start the foundation. He’s still on a tight budget: Only by persuading his landlord to reduce the rent were he and his girlfriend able to hang on to their Manhattan apartment.

As the foundation’s executive director and only full-time employee, Ravicher supervises a handful of volunteer scientists, occasional grad students, and legal interns as they search for potential flaws in big-name patents. He targets them because he believes they “are causing the most harm.” For example, he says, Pfizer’s patent on Lipitor, in force until 2017,



precludes other companies from developing “a safer, less side-effect-causing Lipitor.” Spurious software patents, he adds, reduce competition and drive up prices.

Ravicher’s tool of choice is PTO’s reexamination request system. He claims three recent successes—“three for three [attempts],” crow’s PubPat director Eben Moglen of Columbia Law School—support his argu-

ment that PTO issues extremely lucrative patents based on ideas already in the public domain. His Columbia challenge involved a 2002 patent for the gene-inserting process called cotransformation used in making drugs. The university’s fourth such patent, the technology has netted the school hundreds of millions of dollars.

Ravicher argued that all subsequent claims were identical to the school’s 1980 patent. In that patent, he wrote, Columbia had described a process for “generating ... DNA molecules” that was identical to a claim in the 2002 request for a way of “producing the proteinaceous material.” Both would result in replicated DNA and translated proteins, he notes. (Facing lawsuits, Columbia later agreed not to assert the patent.)

In 2003, Microsoft sought to license a file-storage system called FAT, crucial to the operation of Windows. Months later, Ravicher filed a reexamination request on

**“The more technology becomes a part of life, the more likely the patent system’s failings are going to affect daily life.”**

—Dan Ravicher

the company’s 1996 patent, pointing to two prior software patents that he said rendered the patent obvious. Neither one had been mentioned in paperwork by the examiner who granted Microsoft’s patent. (The company says its patents’ file system goes beyond its predecessors; after PTO issued its initial approval, attorneys hailed Ravicher’s move in the trade press.)

Last year, Pfizer used its 1999 patent (one of five involving Lipitor) to sue a series of Web sites selling a generic version, atorvastatin, made in Canada. Ravicher argued that the 1999 patent—for the crystalline form of the drug—was obvious in light of two previous Pfizer patents. PTO agreed, arguing that both were in fact crystalline atorvastatin, challenging Pfizer to show otherwise. Last week, Pfizer told PTO the previous forms of the molecule were amorphous, not crystalline, despite having used the word “recrystallized” to describe the process.

The stakes are high: If successful with final rulings, Ravicher’s moves could cost Microsoft millions in licensing revenue and bolster a campaign against Columbia’s blockbuster patents. Investors expect generics to defeat the Lipitor patent before its 2017 expiration, says pharmaceutical analyst Jon LeCroy of Natexis Bleichroeder in New York. But Ravicher wants to speed up their progress.