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IP Advocate Founder Joins Guest Editorial Team For *Medical Innovation & Business* Special Edition, Examining Impact of Patent Reform on Innovation Pipeline

Tapping Expertise and Leadership Position, Dr. Renee Kaswan Serves as Co-Chair of Special Issue – Attracts Top Contributors

ATLANTA (June 23, 2010) – Is proposed patent reform a tonic – or is it toxic – for emerging biomedical companies?

That's the question on the table, as a special edition of the prestigious journal *Medical Innovation & Business (MIB)* takes up the impact of the Patent Reform Act of 2010 on small companies, start-ups, independent inventors, university-based researchers and companies with long regulatory-approval tracks. Dr. Renee Kaswan, founder of IP Advocate (www.ipadvocate.org) and former University of Georgia Veterinary Ophthalmology professor, serves as Co-Chair of the special edition.

The special issue is available for free to anyone, including non-subscribers. Download the issue here: http://journals.lww.com/medinnovbusiness.

As the editors and the expert authors point out, the bill – now working its way through Congress – largely ignores the interests of these innovative companies.

"Unfortunately, the current patent reform bill mainly reflects the interests of the large companies that have extensively lobbied the bill," said Dr. Kaswan. "We are concerned that if the changes in the bill are enacted, rights of the faculty researcher and the independent inventor will be weakened. The proposed legislation will impair the ability of universities to license their patented technology, and will become a deterrent to capital investment in university spin-offs, thereby precluding translation of university innovations into useful products."

Along with Dr. Kaswan, guest editors include David Boundy, an attorney who has assisted many small companies and startups in using their patents to secure funding and survive their startup phases, and has represented investors in dozens of financing deals; and Ron Katznelson, Ph.D., founder and President of Bi-Level Technologies, with more than 25 years of experience in intellectual property rights protection as an inventor (with 23 U.S. patents), technology developer and entrepreneur.

"We believe that the Patent Reform Act, in its current form, undercuts the entire idea-to-product pipeline by weakening the investment value of patents," said Mark C. Rogers, M.D., editor, *Medical Innovation & Business*. "Ultimately, patent reform would hurt smaller and more innovative companies. If Congress gets patent reform wrong, products characterized by high development and low production costs – common in medical innovation – will die in the lab."

"The largest companies have spent tens of millions of dollars lobbying this bill, and Congress has done a respectable job of balancing their needs. But small companies have not been given a hearing, and important features of current law that are crucial to them are being withdrawn simply because of lack of inquiry," said Boundy. "The bill will sharply curtail the ability of new and smaller companies to get off the ground."

To add the small business and independent inventor perspectives to this critical debate, IP Advocate and MIB brought together experts in intellectual property law, medical innovation and startup funding. The experts include two chief judges from the Court of Appeals for the Federal Circuit, the court with dominant influence on U.S. patent law. Former Chief Judge Paul R. Michel, who retired at the end of May, and Chief Judge Randall R. Rader, who assumed the position of Chief Judge in June, were interviewed for their perspectives on the patent system.

Gary Lauder, a Venture Capitalist ("VC") and a Managing Partner of Lauder Partners LLC, takes up the all-important issue of VC investment, expressing concerns that by increasing costs and uncertainties at the beginning of the patent application process and increasing risk that a patent will be taken away at the end, the Patent

Reform Act removes companies' ability to rely on their patents to secure funding, which disincentivizes investment in American innovation.

John Neis, Managing Director of Venture Investors LLC, follows up with a more detailed analysis of the bill's proposed post-grant review provision, and its impact on venture capital investment in early stage innovation. Dr. Kevin Noonan – a partner at McDonnell Boehnen Hulbert & Berghoff – questions whether existing post-grant review has been beneficial, and whether the new post-grant review provision only makes things worse for small companies.

Charles Miller and Daniel Archibald, attorneys at the law firm of Dickstein Shapiro, address a particularly troubling amendment that eliminates patentees' rights to seek judicial correction of errors in certain decisions by the U.S. Patent & Trademark Office (USPTO).

Dr. Katznelson writes that reforms of the USPTO should be the main focus of any patent reform bill. Boundy, along with Matthew Marquardt, a lawyer with 15 years' experience with U.S. and Canadian patent law, write about how the Patent Reform Act's evisceration of the "grace period" – which currently enables inventors to test their inventions and seek financing – detrimentally and adversely affects inventors, small companies and universities. Nicholas P. Godici, a former U.S. Patent Commissioner and current Executive Advisor at Birch, Stewart, Kolasch & Birch, LLP, addresses the critical problem of adequately funding the USPTO.

University Research in the Crosshairs?

Current U.S. law gives an inventor a reliable one-year grace period against prior art before a patent's filing date. In contrast, the proposed changes weaken the pre-filing grace period so as to make it commercially useless. University patent departments will have to file many more applications, at far greater cost, on earlier and less-developed embodiments of the invention, for less certain outcomes, than under today's law.

The bill provides any adversary, such as an alienated student, a disaffected colleague, or a market incumbent that wants to squelch a new technology, a simple and

anonymous method to assassinate patent rights. Almost any disclosing communication – including an anonymous blog comment – posted before a patent's filing date, will compromise the patent's validity and destroy the value of capital invested in the IP.

"Faculty researchers are particularly dependent upon the grace period because they can't maintain confidentiality like employees can in a corporate setting," said Dr. Kaswan. "The university lab is a different culture, one where sharing information is the norm. Current law respects this openness and partnering, while the patent reform bill does not. We urge academic researchers and inventors to learn about these issues and contact their representatives to make their opinions known."

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About IP Advocate
IP Advocate (www.IPAdvocate.org) is a non-profit organization that educates and empowers faculty researchers on patent rights and the process of commercialization – helping inventors protect their rights during the complex process of moving their inventions from the lab to the public marketplace. IP Advocate is a robust resource of information and best practices related to the commercialization of intellectual property. IP Advocate was founded by Dr. Renee Kaswan, inventor of Restasis® and a former research professor at the University of Georgia; and is led by executive director Rhaz Zeisler, an internationally recognized interactive media brand strategist, and former Walt Disney producer and IBM creative executive. IP Advocate is a 501(c)(3) organization, based in Atlanta.

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