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Next month marks the one year anniversary of the shift in the U.S. intellectual property landscape, and Triangle business owners and the organizations they work with said the changes are squeezing new and small enterprises.

On March 16, 2013, the first inventor-to-file provision of the Leahy-Smith America Invents Act went into effect. The changes are the most significant to the system since 1952, as they harmonized the U.S. patent system with the rest of the world. The most significant change centered on awarding patents to the first person to file an application versus the previous system, which put priority on the person who could show he or she invented a concept first.

"Small-business owners and inventors are really feeling the need to file earlier in the process," said Kimberly Mayer, statewide director of technology development and commercialization for the N.C. Small Business & Technology Development Center. "They really want to make sure that they are protecting their rights."

However, small companies often need capital or an investment to fund what can turn into a very expensive application process.

The changes have turned getting a patent "into a money game instead of an invention game," said Robbie Troxler, director of advanced technologies for Troxler Electronic Laboratories, a Research Triangle Park company with about 100 employees that develops and manufactures quality control and measurement equipment for the highway and construction industry.

Under the old system, Troxler had a 12-month grace period that followed a public

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“I am a little guy that can't just throw money at something,” he said.

Troxler said the patent application process ranges from \$6,000 to \$10,000, including attorney and other fees.

Defendable claims

The SBTDC, which doesn't offer legal advice, works with clients to help them identify resources to start building a solid, defendable patent claim, Mayer said.

Mayer recommends that inventors on a tight budget familiarize themselves with patent terms and the process as much as possible before hiring an attorney. She also advised inventors to do a preliminary patent search on the U.S. Patent and Trademark Office's website or on Google Patent, which searches more than 7 million U.S. patents.

“They can at least get an idea of what the landscape looks like, and whether there is a product that sounds similar that they can call it to the attention of the patent attorney,” Mayer said.

Inventors should also understand the importance of intellectual property in their given industry, Mayer said. In industries such as software, a patent may not be as significant compared to situations in which investors are needed to move the process forward.

The America Invents Act requires the U.S. Patent and Trademark Office to work with law associations to establish pro bono programs that assist small businesses and complete studies to evaluate how the changes affected small businesses.

The N.C. Bar Association plans to launch in March a Patent Pro Bono Project, which will serve entrepreneurs in the Carolinas, eastern Tennessee and southern Virginia,

according to Mary Horowitz, the state bar association's director of public service and

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months down the road that their submitted information didn't have enough substance to merit a defensible claim, Flynn and others said.

"A provisional doesn't have to be polished, but it needs to have substance," Flynn said.

Flynn likens compiling a provisional application to packing up a station wagon before a camping trip. The equipment may be packed any which way, but it has to all be there.

"Otherwise when you get to the campsite, you don't have fuel for the camp stove or stakes for the tent," he said.

Inventors also need to include the best mode to make and use the invention, plus suboptimal and other modes to preclude others from having a nearly identical product.

"You really need to try to make it as broad as possible," when putting together a patent application, he said. But don't go too far and suggest you know how to do things that you don't, as the application could be used against you in the future.

"It's a difficult game," Flynn said.

Sharing the product

Inventors should be careful about sharing their product before they file an application, and they should file an expanded application after improvements are made.

Meanwhile, inventors who filed provisional patent applications just before March 16, 2013, need to get ready to move forward, said Justin Nifong, a Raleigh patent attorney at NK Patent Law.

Nifong's firm is working to put together 22 patent applications, which take between

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