



Patents and Prejudice

It is a truth universally acknowledged that a person in possession of a good invention, must be in want of a patent, but with the emergence of significant abuses of the system, public perception has suffered. Manny Schecter explains

Barney Dixon reports

What is the widespread confusion over intellectual property rights? Who is spreading this message?

The confusion is with respect to whether IP rights promote or inhibit innovation. IP rights are intended to promote innovation by acting as an incentive.

Patents are used to disseminate information about how to make and use inventions. Some refer to the exclusive nature of IP rights as a monopoly that limits the freedom of competitors and inhibit innovation, but, IP rights are limited in scope and time and are intended as a short-term trade-off to promote greater public well-being over the long-term.

So long as proper balance is maintained in the trade-off IP rights will serve their intended purpose.

The victims of patent abuse initially spread the message and when the public learns about the abuses, some get the impression that IP rights are inherently suspect when in fact we just need to address the abuses.

The public loses sight of how intellectual property prevents competitors from unjustly taking others' innovations.

Earlier this year at the London IP Summit, you talked about the negative image of patents in areas such as software, what can the industry do to change this image?

The industry needs to highlight the importance and value of patents. Patents are a mechanism for preventing others from getting a free ride on inventions that come from investment in research and development. This is particularly important to small inventors and small companies because they may otherwise have little leverage against much larger competitors that copy their inventions.

So, we need to do a better job of ensuring the public understands that patents are a mechanism for ensuring fair play. Unfortunately, we've seen some abuses of the patent system, including attempted enforcement of meritless patents.

I'm sympathetic to and support the elimination of those abuses, but we need to ensure that the rhetoric we use in advocating to resolve the problems of the patent system do not overshadow the overall benefit of the patent system in the minds of the public. The patent system promotes innovation, which is helpful to our economy.

How can abuses within the patent system be solved?

The patent system is complex, so the optimal state of balance is not always clear. We go through periods whereby adjustments to the system lead to it being too strong or too weak. When abuses become apparent we need to make further adjustments.

Adjustments should be narrowly tailored toward the abuses so as to optimise the promotion of innovation and minimise the abuses. The patent community has a responsibility to highlight the abuses so that our government make the necessary adjustments.

How much does public perception play into finding and actioning solutions?

Public perception plays an important role. As with most other issues, our government acts in response to concerns heard from the public. It is important that all perspectives be understood so that the concerns be accurately identified and solutions be closely tailored to them.

Is congressional patent reform a potential avenue, considering how muddled case law has become?

Absolutely. Federal courts may have an easier time acting because the justices are not subject to elections. However, courts are limited in that they can only address cases brought before them.

It is Congress' role, not the courts, to set policy. That said, Congress generally won't act unless there is sufficient consensus, which may take time to achieve.

As we heard at IPAS 2017, restrictions in the US patent system have led to foreign jurisdictions becoming more sought after by inventors. What are these jurisdictions doing well and how can the US continue to compete?

Foreign jurisdictions are strengthening their patent systems. China has done so as it has transitioned from a developing to a developed economy with greater dependence on innovation.

For example, China has formed specialised IP courts, demonstrating a strong focus on developing consistent rules around the development and enforcement of IP.

Europe is very close to enacting a unitary patent system that would apply to nearly all of Europe rather on a country-by-country basis, thereby making their patents more attractive. The most recent adjustments in the US weakened our patent system.

To compete, we need further adjustments to strengthen our patent system, but not to make our patent system so strong as to reinvigorate the abuses that the most recent adjustments attempted to mitigate. **IPPro**

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Manny Schecter, chief patent counsel, IBM