U.S. Patent System: What Does the Research Show?

Patents in Theory and Practice: Implications for Reform?
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Reforms such as H.R. 3309 “THE INNOVATION ACT” as currently proposed
✓ Favor infringers over inventors
✓ Favor big incumbent firms over startups
✓ Fee shifting – loser pays (English rule) will harm inventors and startups
✓ Disclosure of ownership and other rules biased against patent owners

Need to avoid a rush to judgment.

Tipping the scales of justice
Reforms such as H.R. 3309 “THE INNOVATION ACT” as currently proposed

Two points
• There is a rush to judgment based on false data and flawed economic models – an exaggerated “crisis”
• Will weaken the US patent system overall
Litigation costs:
- **Pretext for weakening IP**
- **False data** – ($29 billion) counts licensing as legal costs, miscounts lawsuits
- **Penny wise and pound foolish** – costs are tiny compared to value of intellectual capital in the U.S. economy:

  $8.1 trillion to $9.2 trillion

Patent Trolls (PAEs, NPEs, PMEs)

- Another pretext for weakening IP
- More false data and flawed economic models
  
  GAO and other studies show no excess law suits
- Can be handled by more targeted measures by courts and USPTO
- Biased propaganda
  
  – look familiar?

Weakening the US patent system harms economic prospects for the middle class – because it will

- stifle innovation
- reduce patenting
- slow economic growth
- increase unemployment
- damage entrepreneurship and small business
- harm consumers
- favor large incumbent firms over inventors and innovators
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- **Weakening patents would harm US economic growth**
  Extensive historical research shows the great success of the U.S. patent system for over 200 years!

- **Weakening patents would harm jobs**
  Employment in the most IP-intensive industries in 2010: 40.0 million jobs, or 27.7 percent of all jobs in the economy.

Weakening patents would harm the US in international trade

- The US International Trade Commission (USITC) relies on patents – defense against imports of goods that infringe on US technology – including goods from China
- US has the highest knowledge-and technology-intensive (KTI) industries share of GDP of any large economy.


- US – a major exporter of IP – as pointed out by Senator Orrin Hatch, Chairman of the Senate Finance Committee – 2015
Weakening patents would harm entrepreneurship

- Patents are very important to entrepreneurs for financing, deterring infringement, and competitive advantage

I find the innovative entrepreneur
• Builds personal income
• Establishes new firms
• Creates new industries
• Transforms existing industries
• Increases employment
• Drives innovation
• Stimulates capital investment by: banks, venture capital, financial markets
• Generates economic growth

Transforms the economy – key to economic development
Need to avoid a rush to judgment based on false data and flawed economic models

Issues already addressed by America Invents Act, recent Supreme Court decisions, changes to Federal Rules of Civil Procedure (limiting discovery), actions of FTC and state attorneys general

Public policy makers need to slow down before damaging U.S. patent system
Notes


Fee shifting effects highly complex and risky
