

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

Patents in Theory and Practice: Implications for Reform?

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

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

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

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



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

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



Study: Kevin A. Hassett and Robert J. Shapiro, What Ideas Are Worth: The Value of Intellectual Capital and Intangible Assets in the American Economy, (2014), Sonecon, Washington, D.C., http://www.sonecon.com/docs/studies/Value_of_Intellectual_Capital_in_American_Economy.pdf, Accessed January 2015.

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Patent Trolls (PAEs, NPEs, PME)s

- **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?

attacks businesses using a arsenal of lawyers and vague software patents.



It has an immunity to patent lawsuits because it makes no products.



PATENT TROLL
Nonpracticing Entity
(It doesn't actually make anything)



The troll's primary weapon is the threat of massive legal fees.

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

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.

Study: Economics and Statistics Administration (ESA) and the U.S. Patent and Trademark Office (USPTO), Intellectual Property and the U.S. Economy: Industries in Focus, 2012, Washington, D.C.



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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.

Study: National Science Foundation, Science and Technology Indicators, 2014, Washington, D.C., p. 6-5.

- **US – a major exporter of IP** – as pointed out by Senator Orrin Hatch, Chairman of the Senate Finance Committee – 2015

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Weakening patents would harm entrepreneurship

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

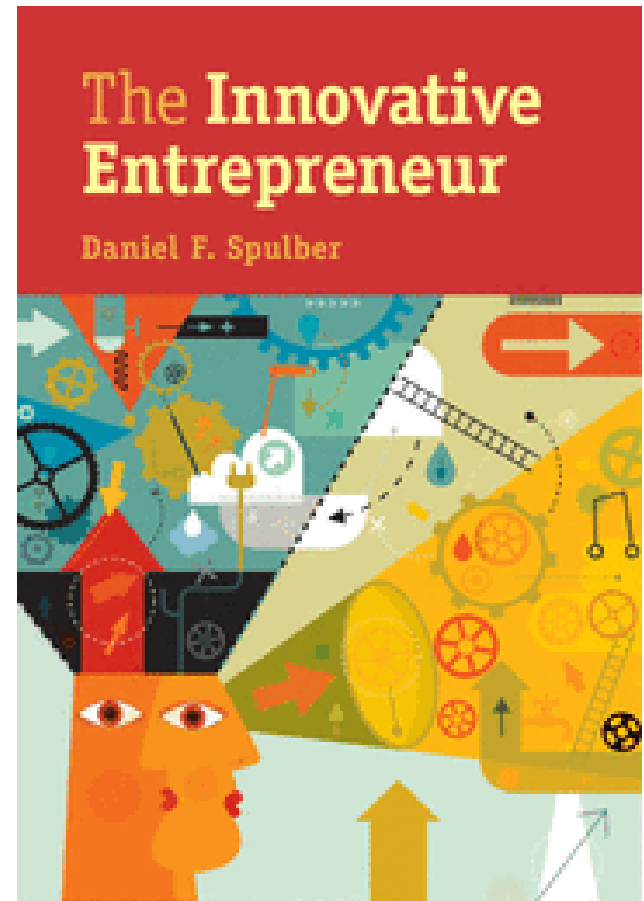
Study: Stuart J.H. Graham, Robert P. Merges, Pam Samuelson, and Ted Sichelman, “High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey,” 24 *BERKELEY TECH. L.J.* 1255 (2009).

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

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**



**Daniel F. Spulber, 2014,
Cambridge University Press**

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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

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

Notes

Daniel F. Spulber, 2015, How Patents Provide the Foundation of the Market for Inventions, *Journal of Competition Law & Economics*, 11, *forthcoming*.

Fee shifting effects highly complex and risky

<http://newtalk.org/2008/08/would-loser-pays-eliminate-fri.php>

Fee shifting when there are budget constraints: “might make courts a playing field for only the wealthy.” Michael R. Baye, Dan Kovenock and Casper G. de Vries, 2005, Comparative Analysis of Litigation Systems: An Auction-Theoretic Approach, *The Economic Journal*, 115 (July), 583–601.

H.R. 3309 “THE INNOVATION ACT” <http://legalnewsline.com/news/254779-goodlatte-patent-reform-bill-re-introduced-in-u-s-house>