

FACT SHEET

August 28, 2015

**Patent Reform**

A patent is an exclusive legal right to own and market an invention or improvement for a limited period of time, in exchange for public disclosure of the invention. The U.S. Constitution grants Congress authority to award patents; specific patent laws are contained in Title 35 of the United States Code, which establishes the U.S. Patent and Trademark Office (USPTO) and sets forth the process and standards for obtaining a U.S. patent. Throughout the history of the country, patent law has been periodically amended as the needs of innovative industries in the U.S. have changed. Today patents affect not only the manufacturing and chemical industries, but agriculture, biotechnology, finance, consumer electronics, and software. Critics of the current U.S. patent system have argued that there are too many patents covering too many different subjects; that many patents are of questionable validity; and that patents are too often abused by aggressive litigants. Proponents of the current system argue that strong patent rights are essential to sustained innovation and that weakening patent rights in the U.S. will harm the industries that rely heavily on patent system.

Overview**These issues arise in discussions of patent reform:**

- How to measure the costs and benefits of the patent system to companies, consumers, and the economy as a whole.
- How the patent system and proposed changes affects small firms, individual inventors, universities, and scientific researchers.
- Whether patent reform should target systemic improvement, or focus on those areas where the most patents are likely to be litigated.
- Whether granting patents in the areas of finance, software, and biotechnology has been helpful or harmful to innovation, and whether the patentability of some types of inventions should be limited.
- Whether clearer guidelines that accommodate the advances in technology since the laws were written might improve the patent system by making it easier to identify if something qualifies as patentable.
- If it would improve the system to change to the rules for litigating patent disputes, such as evidentiary rules or the presumption of validity.
- Whether remedies for patent infringement, including the rules for awarding injunctions and damages, are appropriately calibrated.
- Whether changes in funding, management, or technology at the USPTO would improve patent throughput or quality.
- How proposed reforms would affect sectors where patents are seen to be helpful, like pharmaceuticals, as compared to those where patents are seen as detrimental, like software.
- If granting too many patents results in “thickets” that stifle real-world innovation.
- Whether firms that own patents without actually producing patented products, sometimes tagged “patent trolls,” should be treated differently in court or by Congress.

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- Whether the creation of the Federal Circuit Court of Appeals in the 1980s resulted in a pro-patent bias in court decisions or reduced the quality of decisions; and, if so, how to address this.
- The extent to which patent law in the United States should be harmonized with patent laws of other countries.

Patent Reform Sources

These sources are a good place to start in understanding patent reform issues:

[R. Polk Wagner's](#) paper "[Patent Portfolios](#)" examines why large firms hold so many low-value patents. Professor Emerson Tiller and coauthor John R. Allison look at the link between prior art and patent quality in their study, "[The Business Method Patent Myth](#)." "[What to do About Bad Patents](#)" by [Mark Lemley](#), [Doug Lichtman](#), and Bhaven N. Sampat support procedural changes to the patent system and other reforms. Lemley and Lichtman also support more aggressive review by courts in "[Rethinking Patent Law's Presumption of Validity](#)." [Jonathan Levin's](#) article "[Benefits and Costs of an Opposition Process](#)" warns that opposition would have some drawbacks, but might be beneficial. [F. Scott Kieff](#) warns of problems of uncertainty associated with post-grant oppositions in "[Economic Perils of U.S. Patent Reform: Flexibility's Achilles Heel](#)" and other works. Along with coauthor [Henry Smith](#), Kieff suggests reforms that would support certainty in "[How Not to Invent a Patent Crisis](#)."

Please note that all links on this fact sheet are accessible from the online version at www.techpolicy.com/patentreform.aspx.

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