

Inventive ideas

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Reforming America's patent system

"THE value of an idea lies in the using of it," Thomas Edison is said to have remarked. The same is true of ideas on how to reform America's patent system. The Federal Trade Commission (FTC) has issued a series of recommendations to improve the quality of patents by, among other things, providing better procedures by which people can challenge the validity of patents and stiffening the legal test the courts should use to determine whether the ideas contained in patents truly qualify as new, as they are required to.

There are growing concerns that the current process of examining, awarding and challenging patents—essentially, government-granted temporary monopolies—impedes progress as much as it protects inventors. Part of the problem is that the nature of intellectual property has changed, but the processes used by America's Patent Office are unable to keep pace.

The number of applications grew roughly 6% a year in the 1990s, inundating the examiners (though growth stalled when the economy did in 2000). Last year, 355,000 applications were filed, and 190,000 patents awarded. There is a backlog of half-a-million applications, with decision times of up to five years for technology-related patents. It is not unusual for a biotech firm to submit an application on a CD-ROM that entails thousands of pages of documents. And the problem has global repercussions; almost half of all patents issued in America go to foreign firms.

As a result of the quantity and complexity, the quality of patents is dubious. According to M-CAM, an intellectual-property consultancy in Charlottesville, Virginia, as many as 30% may share one or more claims with other patents, which throws into question their legitimacy, and so their value.

Although many experts think this estimate too high, they agree that the number of overlapping or duplicate patents is a serious problem. Making matters worse, once a patent is awarded it is extremely difficult to revoke, which is what the FTC's main proposals are trying to overcome.

Another remedy is—unsurprisingly—to increase the Patent Office's funding. But this is contentious. Congress has diverted some of the revenue the office collects from fees, totalling over \$660m, to other federal programmes. The Patent Office's problems have reached such a point that pending legislation to increase fees by between 15% to 25%, and provide the entire sum directly to the office, is widely supported by large patent-holders.

Moreover, the abundance of patents with ambiguous worth has escalated into another area: tax fraud. The number of patents donated to universities and other charitable organisations is growing substantially, but in some cases their real worth is far less than is claimed in tax deductions. America's tax inspectors are now on the case. The Senate is also considering legislation to close this form of tax avoidance. Unless halted, the problem is estimated to mean a loss of \$4 billion in tax receipts over the next ten years.

The FTC'S recommendations may place too much emphasis on overturning bad patents already awarded, and so shift too much of the burden to the courts, rather than do more to prevent poor awards in the first place, which is the Patent Office's job. Still, the FTC's reforms may make firms think twice before filing still more bad patents.