IP policy as a part of technology policy: discussion

Monte Verita Conference
Bronwyn H. Hall
Papers

- Van Pottelsberghe: patent fees; scope-year index
- Harhoff: review of IP policy in Europe
- Gambardella: markets for technology and IP

All focus mainly on patents; little on interaction with other tech policies (ex DH)
Emphasis is appropriate, given the problems identified
Problems identified by Harhoff

- Head of examiners union (June 2007):
  “the Office's backlog is driving managers to make decisions that are leading to lower quality patents being granted….higher productivity demands, increasingly complex patent applications and an ever-expanding body of relevant patent and non-patent literature mean that meaningful protection of intellectual property throughout the world may become history“
Two topics for discussion

- Comment on trivial patents
- Fees
  - Demand
  - The two papers by vP – are they congruent?
  - A proposal
- Gambardella – market for IP
- USPTO reform
  - Current state
  - Interferences
Fees

- **Harhoff** – EPC member states receive half of the EPO fees
  - Is the EPO in the inelastic portion of the demand curve?
    - Informal evidence; their opinion
    - Formal evidence – van Pottelsberghe paper
  - So raising fees would raise revenue – they ought to go for it
- **Van Pottelsberghe** – disconnect between the two papers
  1. Fees impact demand for patents
  2. Use willingness to pay for scope and term as a value proxy, which assumes it depends only on expected profits and not on fees!
A proposal

- Pakes’ work on patents as options – information on value is revealed in first few years
- Cornelli and Schankerman show that increasing renewal fees on patents can raise welfare by making term endogenous to value created
- Why not raise application fees a little and renewal fees a lot?
  - Gets patents into public domain faster; ensures prior art creation
  - Allows firms to have the option to renew if invention turns out to be valuable
  - Discourages portfolio building and some troll activity
- USPTO price discriminates in favor of small entities – can do this here too (see Gambardella)
Markets for technology

Another benefit?

- Financing innovation costly because of lack of an easily tradable asset with salvage value
- Markets for technology increases the potential salvage value of a failed technology firm
USPTO reforms (1)

- Interferences – Mossinghoff in JPTOS 2006
  - 1983-2004: 4.5M apps; 2.5M grants; 3,253 interferences (filing-invent disconnect)
  - If there is a conflict in outcome, define
    - Advantaged by First to Invent: Junior Party Wins Interference (file later, but get patent)
    - Disadvantaged by First to Invent: Senior Party Loses Interference (file earlier, but don’t get patent)

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<thead>
<tr>
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<th>Advantaged</th>
<th>Disadvantaged</th>
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Compromise reform bill introduced this April, may go to floor in August

- Senate wants more discussion on
  - mandatory apportionment of damages (real stumbling block)
  - post-grant opposition
  - broad rulemaking authority for the USPTO.
  - more attention on improving patent quality
  - problem of speculative litigation - stopping unnecessary and costly litigation

- informal discussions have lead to consensus on
  - change to first-to-file,
  - a second window to challenge patents post-grant
  - venue provisions