
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“
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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
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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!
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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)
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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
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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)

	Advantaged	Disadvantaged
Non-profit	50	30
Small business	97	92
Independent inventor	139	167
All small entities	286	289

USPTO reforms (2)

- 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
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