

Stimulate the Economy? Fix the Patent Office  
By Henry “Hank” Nothhaft

Washington is pumping billions of dollars into private industry to stimulate the economy. But Congress and the Obama administration could look right in their backyard for a sure-fire way to prime the economic pump:

Fix the U.S. Patent and Trademark Office.

The patent office is broken. It is underfunded, overburdened and faces huge hurdles in hiring and retention.

Admittedly, the USPTO is not one of government’s most glamorous offices. Its work is difficult, sometimes dense and always time-consuming. But evaluating patent and trademark applications is among the most important work done by our government for the continued health of our free-market economy.

Patents and trademarks are the cornerstones of America’s intellectual property. We are the Saudi Arabia of intellectual property, producing more of it than any other country.

The United States is the world’s largest exporter of intellectual property, with an IP trade surplus that is nearly eight times our nearest competitor. Intellectual property accounts for a third of the value of U.S. corporations, with patents accounting for a third of that. Last year alone, nearly 500,000 patent applications were filed with the USPTO.

By awarding and denying patents, the patent office is an essential cog in generating wealth and jobs.

Yet, for a variety of reasons, the patent office has become more of a brake on innovation than an accelerator.

Strangely, as Congress debates another version of patent reform legislation – its third consecutive effort to pass legislation that actually weakens the patent system – very little of that discussion is focused on the patent office.

Improving the USPTO would be the simplest, most effective, and most measurable step toward strengthening our patent system and addressing many of the concerns raised by “patent reform” advocates.

Our patent system essentially needs to improve in two key areas:

- The overall quality of patents.
- The speed with which patents are examined.

How do we do it?

Here are some suggestions:

- Better funding.

The patent office has a budget of approximately \$1.9 billion, all of it obtained through fees from applicants. But the office needs more, particularly to improve its IT infrastructure and to hire more examiners. Also, Congress in the past has diverted money from the USPTO, putting the office into a deeper hole. Congress needs to end fee diversion and fully fund the patent office as part of stimulating the U.S. economy.

- A market-driven model.

It currently takes an average of 32 months from the filing of a patent to issuance or abandonment. Delays are expected to lengthen each year. Something is wrong when it takes an average of nearly three years to get a ruling on a patent. The USPTO needs to adopt a new fee structure – one that takes into account the increasing complexity of many patent applications, particularly those involving technology. Higher fees also could be charged for ruling more quickly on patents.

- Better technology.

The office has antiquated technology, which is embarrassing given its mission. New IT equipment and software has will lead to greater speed in examinations and eventually can result in more efficient operations. This will require an investment, but it’s an investment that will pay off.

- Improved patent applications.

Patent applications run the gamut, from trivial and sparse to dense and complicated. The USPTO can weed out both frivolous and purposefully

obtuse patents by revising information requirement rules and being more proactive in conducting interviews with applicants as part of the process.

- Attracting and retaining a high-quality workforce.

Today, nearly all patent examiners work at or near the USPTO's offices in Alexandria, Va. That severely limits the office's ability to attract talent. The USPTO needs to broaden its footprint to attract a more geographically dispersed and diverse workforce – for instance, by establishing virtual regional offices. The USPTO also needs to seek out older workers who may have retired from their respective fields, but retain more technology knowledge than recent college graduates. Also, the USPTO should work more closely with universities to train students to become patent examiners, and be empowered to forgive educational loans carried by its examiners in exchange for five years or more of service. These proposals will help the USPTO attract a wider range of talent and improve its retention rates of skilled examiners, at relatively low cost.

Choosing to fix the patent office is not a partisan issue. Nor is it a particularly difficult issue. It's good for the national economy and national security. No matter how the debate over patent reform is resolved, Congress should make certain that the USPTO gets the support it needs.

The jury is still out on whether pouring hundreds of billions of dollars into the nation's financial institutions will restore our economy. But it is abundantly clear that fixing the patent office now will help create even more of our nation's most valuable economic resource: innovation.