

The New York Times

November 28, 2009

A Fresh Look at Patents and Innovation

Hank Nothhaft

Re "[Inventing a Better Patent System](#)" (Op-Ed, Nov. 17):

Robert C. Pozen stresses the importance of reforming our nation's patent system. He writes that "Congress shouldn't make the best the enemy of the good." We could not agree more.

Innovation and intellectual property-dependent industries drive our economy. This makes all the more troubling the recent Newsweek survey finding that only 41 percent of Americans believe that the United States is staying ahead of China on innovation, and only 32 percent of Americans believe that we are staying ahead of Japan.

We need to create the legal landscape that allows our innovators to flourish in the new economy, and we need to do it now.

Mr. Pozen is correct that Congress should not let the controversial issue of how damages are calculated bog down needed reforms. When the Senate Judiciary Committee approved the Patent Reform Act in April, Senators Dianne Feinstein, Arlen Specter and others helped broker a deal on damages that paved the way for success that will benefit all inventors and innovators.

Mr. Pozen specifically recommends changes to current law "that would improve the processing of patents, reduce lawsuits and speed up the arrival of innovations on the market." Working together in a bipartisan fashion, we are finalizing language that will accomplish those objectives.

The time is now. We will make this happen, and America will invent its way back to prosperity.

Patrick Leahy

Jeff Sessions

Washington, Nov. 19, 2009

The writers are the chairman and ranking member, respectively, of the Senate Judiciary Committee.

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To the Editor:

I would like to suggest a simple change in the rules that would eliminate thousands of worthless applications and patents that clog the current system.

Applicants should be required to submit proof that the claimed invention has been built and successfully tested. For many inventions this proof could be a video file. For others, the sworn certification of an acknowledged independent expert would be more appropriate.

In my own field of aerodynamics there are hundreds of patents for aircraft that were never built, and could never fly if they were.

Alan Adler

Los Altos, Calif., Nov. 17, 2009

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To the Editor:

As the chief executive of a small publicly held technology innovator in Silicon Valley, I must take issue with Robert C. Pozen. His proposed amendments to patent statutes would do the opposite of what he suggests: they would stifle innovation. The measures favor big companies with fistfuls of cash and armies of lawyers — not smaller firms like ours that are responsible for most of this country's breakthrough innovations and accompanying job growth.

Several of Mr. Pozen's supposed fixes — a post-grant review process and a shift to "first to file" — would burden small entrepreneurial innovators with costly challenges to their already issued patents. Giant companies that now enjoy huge market advantages don't need additional help from Congress, especially when that help tilts the playing field against the small firms that are the Intels, Ciscos, Microsofts and Apples of tomorrow.

Let's be careful: a strong patent system spurs innovation, and innovation creates jobs.

Henry R. Nothhaft

San Jose, Calif., Nov. 17, 2009

The writer is the author of a forthcoming book, "Great Again! An Entrepreneurial Plan for Restoring America's Innovation Leadership."

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To the Editor:

Robert C. Pozen's recommendations for changing the patent system would be as destructive to American innovation as bank deregulation was to American finance. Since the Patent and Trademark Office now takes an average of 32 months to process a patent, for example, the mandatory publication of applications 18 months after filing would put an inventor's most intimate secrets on the Internet almost a year and a half before they had the protection of an American patent — a pirate's delight.

Mr. Pozen's proposal for a new post-grant opposition system is akin to the one in Europe, where about 6 percent of issued patents are challenged annually. Japan abandoned this approach in 2004 because it was stimulating too many lawsuits. It would create more, rather than less, litigation here.

Pat Choate

Washington, Va., Nov. 17, 2009

The writer, an economist who was Ross Perot's running mate in 1996, is director of the Manufacturing Policy Project and author of "Hot Property: The Stealing of Ideas in an Age of Globalization."

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To the Editor:

For three years, from 1947 to 1949, I was one of those "patent examiners, many of whom are young or lack practical experience." Actually, we were only assistant examiners under the patent examiner who was responsible for judging applications in a particular field.

For the examination of signaling devices handled by our department, the assistant examiner's sufficient qualification was the appropriate engineering degree. But all our work was essentially a draft for the chief, who had much practical patent experience.

That is not to say that he, or any of us, could truly judge in a day or two an application for a communication system created over a period of years by a team of engineers and scientists, and described in an application of over a hundred pages of text and diagrams. In those cases, as Robert C. Pozen suggests, expert commentary could be helpful. But we must insure that it is free of expert bias.

Leo Hellerman

Rhinebeck, N.Y., Nov. 17, 2009