

Letters

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Body

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In Don't Believe the Hype [February], John Benassi and Noel Gillespie argue that our patent laws continue to foster innovation. But the benefits that flow from the patent system are only half the story. The system also comes with costs. We must compare the costs to the benefits to know whether the system is worth having at all. Some, for example, have proposed replacing the patent system with a federal commission that gives taxpayer-funded rewards to inventors deemed worthy. This would no doubt foster innovation, but would the marginal innovation stimulated be worth the cost?

Measures could also be taken to strengthen patent rights. The patent term could be extended to 100 years, for example. The promise of eight decades of additional monopoly profits would arguably stimulate more innovation by pharmaceutical companies. Patent infringement could be made a criminal offense, punishable by jail or even death; or treble damages could be awarded more frequently. The doctrine of equivalents and the scope of means for equivalents could be legislatively expanded. Each of these changes, viewed in a vacuum, make patents more valuable and thus establishes additional incentives to invest in R&D. Why not adopt all these innovation-encouraging measures, and more?

If the patent system is to be a net benefit to society, the gains it provides (the extra wealth and innovations the system stimulates) should be greater than its costs. And there are clearly costs. Indeed, some of the purported benefits cited by Benassi and Gillespie may be costs. They note, for example, that venture capitalists insist on a strong patent portfolio. But this is, in part, because such portfolios are necessary to defend against other companies' portfolios. If there were no patent system, one would not need to defensively spend money building up a mountain of patents to use in counterclaims or cross-licensing negotiations.

Companies pay patent attorneys' salaries, patent filing and maintenance fees, and significant litigation costs, as well as higher insurance premiums due to the risk of being involved in patent infringement litigation. Patents can be obtained only for practical applications of ideas, but not for more abstract or theoretical ideas. This skews resources away from theoretical R&D and toward practical gizmos and applications, which surely has some cost as well.

It is incumbent on those who claim the patent system bestows benefits on society to be forthright in acknowledging the costs. This is, unfortunately, something that patent advocates rarely do.

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