Patents  
Opposition Brief by Chase Gittisarn



The Patent System has come under a lot of fire this resolution. People have been talking about unfair price hikes, people dying because they don’t have access to a drug, or farmers committing suicide due to the fact that they can’t get ahold of a patented seed.

You can win against most of these arguments with a very simple premise, “Look at how the world functions.” As you may tell by the wording, this brief will take a very pragmatic stance against the Affirmative attacks of the patent. Your job is not to state that patents are the one and only solution to all of the world’s problems. And you can even admit that patents do cause harm; almost everything in this world does. Rather, at the end of the day, your job is to point out that the Affirmative is right. The world is a terrible place where greedy, evil, self-serving narcissists reside. And because of that, patents are the only way to navigate some good through all of the evil we see.

Patents aren’t the ideal solution, but they are the solution that works in the real world.

Patents

# Incentives Innovation

Zorina Khan of Bowdoin College and Kenneth Sokoloff at UCLA: <http://www.ipwatchdog.com/2014/04/15/do-patents-truly-promote-innovation/id=48768/> (brackets in original)

Zorina Khan of Bowdoin College and the late Kenneth Sokoloff at UCLA found that among the “great inventors” of the 19th century, “their patterns of patenting were procyclical [and] responded to expected profit opportunities.” And as Khan noted elsewhere, “Ordinary people [are] stimulated by higher perceived returns or demand-side incentives to make long-term commitments to inventive activity.”

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Additionally from Khan and Sokoloff: <http://www.nber.org/papers/h0042.pdf?new_window=1>

“The U.S. patent system had a powerful impact on the patterns of inventive activity. Its provision of broad access to property rights on new inventions, coupled with the requirement of public disclosure, was extremely effective at stimulating the growth of a market for technology and promoting technological change”

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Marshall Phelps, Forbes Contributor: <https://www.forbes.com/sites/marshallphelps/2015/09/16/do-patents-really-promote-innovation-a-response-to-the-economist/#78a7e02f1921>

“Over the last 50 years, economists have found that patents continue to foster *ex ante* innovation — meaning, they induce people to invent because of the prospect of profiting from those inventions. The work of economists such as Arrow (1962), Griliches (1963), Schmookler (1966), Kitch (1977), Reinganum (1981), Klemperer (1990), Romer (1990), Giulbert and Shapiro (1990), Grossman and Helpman (1991), Scotchmer (1999), and Gallini (2002) on this issue is mostly available for free online at the Social Science Research Network.”

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Patents are a necessary part of any functioning society because it gives inventors the incentive and necessary economic push to further innovate and create new ideas. Now I’m not going to argue that this is an ideal system. We would all love it if everyone was an altruistic philanthropist that created technology to hand out to those who need it. But unfortunately, history shows that is not how the world functions. The world is full of “greedy and evil” people who need an economic incentive in order to institute new ideas. Again, the patent is not the ideal system, but it is the system that works and functions in the real world.

Patents incentive people to innovate, to create new ideas. That’s why America had a huge lead on Europe when they adopted a good patent system first. As Sir William Thompson, a British inventor and scientist observed, “if Europe does not amend its patent laws, America will speedily become the nursery of useful inventions for the world.”

# It’s Not a One Time Deal

(Some AFF’s might argue that while in general patents are beneficial, “we’re only talking about a specific example, and the patent for that specific example should be repealed.”)

This idea goes hand in hand with innovation. While again, it isn’t ideal to have to wait years for a patent to expire before others can produce the innovation for a cheaper price, we have to remember that actions have consequences.

We can complain about how we want the drug now and that it’s evil and “unfair” to have to wait for the patent to expire, but we need to understand the long-term impacts of our actions. Let’s say a patent for a drug was released right now. Of course it would save some people’s lives, so it would have some short term success. However, this is a net loss, a huge loss, in the long run. By setting a precedent that we can take away patent protection at any time and for whatever reason, inventors will no longer have that incentive to innovate. It’s like if Geico said that you can save 15% or more on car insurance, but they can unconditionally choose whether or not they’ll cover you if you get into an accident. If that was the case, no one would buy their insurance. And in a similar way, economically incentivized innovators would no longer have a stimulus to create if they could trust that Justin Bieber could come out with a good song more than they could trust that the patent system will protect them.

# Knowledge Sharing

Francois Leveque and Yann Meniere, French Economists: <http://www.microeconomix.fr/sites/default/files/import2/FL-YM-PatentsInnovationJanuary07.pdf>

“An OECD survey of 105 firms located in Europe, the U.S. and Japan confirm the role of patents as a source of strategic information. Among respondents, 88% report that the information disclosed in other firms’ patents are useful for designing and implementing their own R&D strategy. Moreover 44% believe that the usefulness of information disclosed in patents increased over the last decade, while only 5% think the opposite.”

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Elias E. Reis, 19th Century Inventor: <http://www.nber.org/chapters/c10229.pdf>

“When he read in the Official Gazette of the United States Patent Office in 1886 about a patent issued to Elihu Thomson for a method of electrical welding, there ‘immediately opened up to my mind a field of new applications to which I saw I could apply my system of producing heat in large quantities.’”

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Marshall Phelps. Forbes.com, Sept 16 2015. “Do Patents Really Promote Innovation? A Response To The Economist.” <https://www.forbes.com/sites/marshallphelps/2015/09/16/do-patents-really-promote-innovation-a-response-to-the-economist/3/#290206172432>

As for Edison himself, a 2013 study found that rather than blocking further invention, his seminal 1880 incandescent lamp patent (No. 223,898) actually “stimulated downstream development work” that resulted in “new technologies of commercial significance [including] the Tesla coil, hermetically sealed connectors, chemical vapor deposition process, tungsten lamp filaments and phosphorescent lighting that led to today’s fluorescent lamps.”

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The information that patents provide not only help the creator who invented it, but also innovators down the line who can build upon those ideas. Not only do patents encourage entrepreneurs to make a creation of their own, but the free flow of information also allows others to read and in turn, inspires them to further create, invent and innovate. To see why patents encourage knowledge sharing let’s look at a thought experiment.

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UCLA’s Kenneth Sokoloff and Yale’s Naomi Lamoreaux: <http://www.nber.org/papers/h0098.pdf?new_window=1> (brackets added)

“The very act of establishing exclusive property rights in invention not only protected patentees but also promoted the diffusion of information about technology. To see why, imagine a world in which there was no patent system to guarantee inventors property rights to their discoveries. In such a world, inventors would have every incentive to be secretive and guard jealously their discoveries from competitors [because those discoveries] could, of course, be copied with impunity. By contrast, in a world where property rights in invention were protected, the situation would be very different. Inventors would now feel free to promote their discoveries as widely as possible so as to maximize returns either from commercializing their ideas themselves or from [licensing] rights to the idea to others. The protections offered by the patent system would thus be an important stimulus to the exchange of technological information in and of themselves. Moreover, it is likely that the cross-fertilization that resulted from these information flows would be a potent stimulus to technological change.”

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Only through the strong protection of patents can we have the free flow of knowledge on a level like this.

# Cost

As the saying goes, money doesn’t grow on trees, and neither do new ideas. They take time and money to conceive, create and perfect. Sometimes inventions take years to put into the world and cost in the upwards of hundreds of millions of dollars. For example:

Tufts, Center for the Study of Drug Development : <http://csdd.tufts.edu/news/complete_story/pr_tufts_csdd_2014_cost_study>

“Developing a new prescription medicine that gains marketing approval, a process often lasting longer than a decade, is estimated to cost $2,558 million”