

PRINCIPLES FOR PATENT REFORM

The fundamental purpose of patents is to promote innovation, not patents. Patents are one tool in an ecology of knowledge, innovation, and commercialization that varies across technology and market environments. The patent system should be designed to optimize innovation, commercialization of technology, and dissemination of knowledge in all fields that it covers.

Patent law and policy should be sensitive to the different social and economic contexts in which it operates. The relative contribution of patented inventions to finished products and services varies greatly. Patent policy should recognize that competition is a primary motivator of innovation in free markets and that there are means other than patents for securing returns from innovation. Patent incentives should be balanced against other values, including public health, freedom of expression, security, and voluntarism. Investments in developing and implementing open standards should not be jeopardized by patents.

Threshold requirements for patenting should be sufficiently high that inadvertent infringement rarely occurs. Standards of inventiveness (nonobviousness) should reflect rising expectations of competence resulting from globalization of knowledge and innovation, increased competition, multidisciplinary teams, and technological advance. The likelihood of independent invention anywhere in the world should be reflected in a high threshold of patentability to minimize chances of inadvertent infringement. The length of any *ex parte* process after filing contributes to risks and costs of inadvertent infringement.

Public disclosure is an essential function of the patent bargain. Disclosure is not merely a legal formality; it must be measured by the quality, usability, timeliness, cost, availability, and actual use of patent information. Effective disclosure requires that patents be read for their technical content as distinct from business intelligence or legal implications and that there is no risk of being penalized for reviewing patents. Patent information must be diffused in a timely and efficient manner in order to avoid inadvertent infringement.

Invalidation of questionable patents should be encouraged. Questionable patents are a burden and threat to innovators and users of technology. The invalidation or clarification of questionable patents is a public good that should be encouraged through appropriate incentives. Patents should not carry an extraordinary presumption of validity absent an objective judicial or administrative determination that such a standard is justified.

The patent system should be limited to fields and applications where benefits outweigh the costs. Patent policy must take into account the costs of asserting, avoiding, and adjudicating patents. Patents should be available only when and where researching patents

to avoid infringement can be justified as cost-effective. Patents should not be asserted against consumers and other end users who have no practical ability to research and evaluate patents that may affect them.

Patents should not endanger investments in other forms of knowledge creation and use. Patent policy and practice should respect the creation, management, and exchange of knowledge developed under incentives other than exclusionary rights. Patent rights should be limited to the scope of the new knowledge disclosed. They should not inhibit use of patented technology that is limited to understanding and building on the technology. The patent incentive should not be enhanced by opportunities for surprise, hold-up, and extortion.

National and international patent policy should be advanced by informed democratic policymaking. The development of patent policy should be open, transparent, and broadly representative. It should guard against capture by professional, institutional, and economic self-interest. Policy development should not be constrained by treaty provisions negotiated under outdated assumptions, incomplete knowledge, or the undue influence of particular stakeholders.

Governments should monitor and evaluate the impact of the patent system on an ongoing basis. Patent agencies should develop open metrics for different aspects of patent quality and patent practice. Standards for inventiveness and the scope of the patent right should be reviewed by recognized experts to ensure that patents in their field are not overbroad, trivial, questionable, excessive, or otherwise inhibiting innovation.