

Future of Patents



Patents:

Internet, databases and impact on obviousness & novelty Patent's impact on standardization

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Patent reform in the United States is an issue to which many American citizens are ignorant, and in fact is extremely important to the future growth of our economy and country, and if it is not protected it could have serious consequences on our progression as a nation. Over the past few years in Congress, it has been widely debated and before we can explain the issues, some recent history will need to be explained. One groundbreaking case stands alone in the sea that is patent litigation, [eBay Inc. v. MercExchange, L.L.C.](#) MercExchange had patented the "BuyitNow" feature that eBay uses on its website and accounts for thirty percent of its profits. When eBay picked up this feature and began using it, MercExchange filed suit that led to the Supreme Court. After reaching the Supreme Court, they had held the district court erred in issuing a permanent injunction against eBay because they failed to apply this four point reasoning:

- (1) that it has suffered an irreparable injury;
- (2) that remedies available at law are inadequate to compensate for that injury;
- (3) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
- (4) that the public interest would not be disserved by a permanent injunction.

The biggest point considered is the last one. It currently is public policy that when dealing with patent litigation, that the patent considered is in its present state, not at the time of creation, or at any other time. Because it took years for MercExchange to finally reach the Supreme Court, eBay was already a giant in the internet world and losing the "BuyitNow" feature would cause irreparable harm to eBay, which millions of people use worldwide. This is happening all over, because so many people use certain services from large companies, (especially websites and other internet services) it becomes nearly impossible for courts to be able to give justice to patent holders because these large multinationals hold so much power. Due to this, the court could not grant an injunction to MercExchange.

The reason that *eBay v. MercExchange* is so important to the state of present patent policy is that it overwhelmingly favors larger companies who infringe on the patents of the less powerful innovators and smaller firms. It has nearly gotten rid of preliminary injunctions and even if the patentee can somehow prove injunction through the four factors, damages hardly compensate, and courts rarely treble damages. The current state of patents in the United States is to favor large companies infringing on patents that are important to their services, while the innovator is nearly helpless. While this may be acceptable public policy presently, the generation we are living in requires innovation now more than ever, and if the eBay holding mentality sticks around for too long, the incentive for innovation in America may be lost, which could lead to further economic collapse, more outsourcing, less jobs and other consequences. However, legislators are working hard in Congress to create a bill on patent reform that will benefit people in every corner of this issue.

In spite of the issues with infringement and damages, there are also serious issues internally at the [United States Patent Trademark Office](#). Each year there are more applicants waiting for examination while even more patent applications remain in queue.

**TABLE 3: PATENT APPLICATIONS PENDING PRIOR TO ALLOWANCE ¹
(FY 1988 - FY 2008)**

Year	Awaiting Action by Examiner	Total Applications Pending ²
1988	75,678	215,280
1989	92,377	222,755
1990	104,179	244,964
1991	104,086	254,507
1992	112,201	269,596
1993	99,904	244,646
1994	107,824	261,249
1995	124,275	298,522
1996	139,943	303,720
1997	112,430	275,295
1998	224,446	379,484
1999	243,207	414,837
2000	308,056	485,129
2001	355,779	542,007
2002	433,691	636,530
2003	471,382	674,691
2004	528,685	756,604
2005	611,114	885,002
2006	701,147	1,003,884
2007	760,924	1,112,517
2008	771,529	1,208,076

Source: <http://www.ipwatchdog.com/2009/03/09/change-in-patent-office-philosophy-can-lead-recovery/id=2146/>

Currently it takes nearly three years for an inventor to get his application processed, in this technological world, three years is an eternity. In that amount of time, any inventor could go out of business, have their invention be completely outdated by the time it is patented and during that time they can make no money off their product, this stifles innovation. However, not all the blame can be put on the USPTO as they have had to do more with less money, and they should not be expecting extra funding from the government any time in the near future.

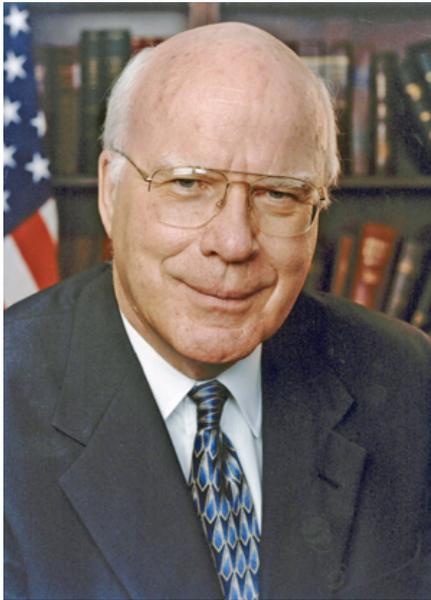
This is one of the largest issues concerning the future of patents, and it is also one of the most difficult to solve. Reform needs to happen to allow an expedient patent review process to keep up with our rapidly changing economic environment. However, with increased haste, we cannot sacrifice quality, there needs to be a balance between how long it takes to review patent applications and also to make sure that only quality patents are accepted.

The issue of patent reform will not go along party lines. It is a heated issue with supporters and opponents on both sides; democrat and republican. A few of the big names in patent reform working in the capital right now are: Senator Orrin Hatch (R-UT, right) and Senator Patrick Leahy (D-VT, left).

Images taken from: <http://duanegraham.files.wordpress.com/2009/10/orrin-hatch.jpg> and <http://nclrights.files.wordpress.com/2009/10/patrickleahy.jpg>

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Both of these men have been at the forefront of patent reform in the United States for years; however while the vote came to pass in the Senate Judiciary Committee in 2009, Hatch voted against the bill. Senator Hatch explained that if he were to vote for this patent reform bill, it must include **inequitable conduct reform**. He explained he was willing to compromise on damages, but inequitable conduct had to be reformed. To this day patent reform has yet to pass in the United States Congress and this remains a large issue for legislators. In short, inequitable conduct is a **defense against patent infringement**. Usually the alleged infringer will claim inequitable conduct; meaning they have failed to disclose to the Patent Trademark Office, relevant information pertaining to the prior art of their patent. Senator Hatch is not the only one of that opinion, and he believes that without this type of provision in the bill, patent reform will not get the votes it needs in the Senate.



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There are many issues that threaten the sanctity of the patent system in the United States, ar



fit exponentially while real innovators that we desperately need and want to protect are being suffocated. As of now, large corporations and internet giants are dominating in the court rooms, robbing our innovators of their patents and money while they continue to rake in profits. In addition, extremely long wait times, over thirty-six months, for the patent application process to work, is unacceptable. Reform must happen in this area to expedite the process so that innovators can realistically compete in our rapid economic world. Whether it is through patent applicants giving better information to the PTO or increasing the budget for the PTO to handle the amount of patent applications in a reasonable amount of time. This issue is extremely important to let ideas flow and to keep incentive for inventors up. Finally, our country's leaders in Washington, such as Senator Hatch and Leahy, need to take a stand on patent reform. A reform bill has been back and forth between the House, Senate and numerous committees for years and the final compromises must be made with diligence and expertise so that one of our country's most shining qualities can be restored to its former glory. Now is not the time for America's ingenuity to be put on the back-burner. It is not the time for the brightest minds of our future to be stopped short by poor patent policy. America and the world need innovation now more than ever and it must be our job to restore integrity to our patent system before the situation becomes more urgent than it already is.

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