

TEC 154 2014S, Class 27: Intellectual Property (1)

Overview

- Preliminaries.
 - Admin.
 - Questions.

Preliminaries

Admin

- Note takers: SA and PG.
- No reading for Monday - Our goal is to apply our lenses to the new area of genetic engineering.
- Wednesday's reading: Forthcoming
- Friday's reading: Read "The Prize is right" and "Big Prize" in the ebook.

Questions

Introduction

- Professor Graham reminds you that he teaches a cool economics of innovation course next spring. (Sam says his students liked the class a lot.)

Patents

- We have "Touchscreen device, method, and graphical user interface for determining commands by applying heuristics."
- Patent office has a responsibility to understand if something is new.
- Amazingly, they don't/didn't use complex technology.
 - Started with paper.
 - Moved to electronic, but had crappy search system.
 - Google volunteered to set up search system.
 - So now USPTO employees use Google to look at patents.
- When you invent something new, you need to write a description of the technology.
- Description and claims
- Claims identify what is really new about the invention.
- Claims show us the legally protected function or design.
- Technical language.
- Need to provide diagrams and instructions so that people can recreate the technology.

- Two goals: To protect an inventor's work and to allow people to produce something similar.
- Note: The carrels in burling are patented. 1986 patent Multi-station carrel unit
 - US 4763581 A.
- How do you get a patent? uspto.gov has a nice flow chart.
- Idea: I've invented something new. If I start selling it, other people can't sell it without my permission.
- Three kinds of patent: Design patent, plant patent, utility patent.
- Utility patents are what we normally think of: Things.
 - But also processes, such as business processes and computer programs.
- Patent vs. copyright
 - Patent protects inventions - things that do things
 - Copyright protects culture - artwork, songs and more; Works of human creativity. Protects a particular expression. Two people can each make a painting of the same thing, and each get copyright.
 - Patent law: If two people invent the same device, only one gets patent protection, even if they are developed independently.
- Software is interesting.
 - The code is an expression of ideas; It's much like a book. It gets copyright protection.
 - Not until recently has software gotten patent protection; claim that it's also an invention of sorts.
- Patent law is mostly done by patent attorneys, since there's very specific language.
- Technical examiners look at patent
 - Is it new? Has it existed before or not? Look at prior art; previously granted literature. Is it new knowledge?
 - Is it non-obvious? Is it new, but obvious? It's harder to determine than you might think. If it's obvious to someone who is skilled in the technical area. (Critics of the patent system have focused on the obviousness.)
 - Is it useful?
 - Used to be required.
- Sometimes response with concerns that need to be address.
- Once it passes the screening process, you can limit the use of it or license it or (It's more a right to exclude than a right to use.)
- Patents also have a post-grant review process in which people can challenge the patent. Can also challenge patents to the courts.
- The "America Invents" act added more opportunities to challenge before litigation.
- You can sue for infringement even if you didn't invent first, as long as you filed first.
- Limited term: It only lasts twenty years. Requires maintenance fee at 3.5, 7.5, and 11.5 years.
- Note: The median value of a patent is zero.
- Note: The patent process has led to a lot of litigation, which has created incentives to change the beginning of process.
- Huge growth. About 100K applications from 1953 to 1980s.
- Now 600K applications per year.
- Increase in applications increases fee revenue but doesn't necessarily increase budget.
 - USPTO now gets to use its fees and increase its number of examiners.
- The approval process has dropped from 3 years to 2.5 years.

- That's nuts and bolts. Let's come back to the more interesting things.

What is innovation? (Or innovation and technology?)

- A novel idea
 - Could be broad
 - Could be narrow/specific. I have new idea how to make this particular device work more quickly.
- Advancing the state of the art.
- Specific purpose/need
 - Answer a question
 - Solution to a problem
- Competition
 - A cause of competition - Enough time and innovation
 - An effect of competition - In order to survive in some industries, you need to innovate, to find a way to set yourself apart

Is innovation good?

- Efficiency - Use fewer resources and achieve the same outcome
- Perhaps live better.

Can innovation be bad?

- When it leads to too much competition? Or too much innovation.
- Negative externalities (e.g., bad uses of resources)
- Sam notes that we should think about this from the perspective of Wendell Berry and perhaps even Sharp.
- Do we need it?

Encouraging innovation

- Economists believe that innovation is the driver for improvement of the standard of living. Without innovation, you are flatline.
- So how do you get more?
- Government can pay people to come up with ideas.
 - But you need to get the ideas brought to fruition.
 - What's the ROI?
- New ideas are typically expensive.
 - It takes time to come up with a new idea. That time could be spent elsewhere (opportunity cost) - research cost.
 - It takes time and money to turn the thing into something useful (development cost).
 - Yay! R&D. R&D is expensive.
- People generally will only incur the cost of R&D if they expect to recoup those costs.
- The R&D process is risky.
- Ideas are non-rival and non-excludable. So inventors are unlikely to recoup their costs unless we

provide protection/incentive.

- Government accepts that invention improves society.
- We give you monopoly power over that invention so that you can recoup your costs.
- Is our current system a good bargain? Is it necessary? What are the consequences?

Consequences

- Patent system creates a legal right that can be challenged in the courts. Litigation is costly. Why is that important?
 - Large corporations have large resources, they can use those to "bully" smaller corporations.
 - That might even discourage you from innovating.
 - What do large corporations do? Sometimes sue each other.
- A few years ago Brad met with director of R&D at [unnamed corporation, because this is on the Web]
 - The primary reason we patent is so that our competitor doesn't use the technology.
 - Strategic; defensive
 - There's an argument that it's a major drag on innovation.
- Also war chest building
 - Build a large set of patents so that you can counter-sue.
 - Those often end up in settlements/agreements.

The Growth Curve

- How should we interpret it?
- One possibility: We're getting a lot of redundant patents?
- (Estimate that more than 80% of patents are eventually granted.)
- Perhaps more small, increment improvements.
- Note: After twenty years the product goes into the public domain.
- Drug companies have been particularly creative in finding ways to extend the twenty years.

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