Patent reform

The sputtering invention machine

America’s patent system has problems: a new law would fix only a few

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FOR all America’s anxieties about its decline as a superpower, its deficits and its weak economy, it can still be proud of its strength as an innovator. Americans make four times as many patent applications per head as Europeans. Patents spur innovation and lay the foundations for future growth, by assuring inventors that they will reap the rewards of their effort and by publicising their discoveries.

But worries have grown that excessive patenting may now be having the opposite effect: businesses and other researchers may be discouraged from innovating in areas that depend heavily on prior discoveries, for fear of being sued for patent infringement. Besides making it too easy to bring patent lawsuits, it is argued, America hands out patents too readily: an often-quoted example is the one granted to Amazon for its “one-click” online shopping button. Last year the Supreme Court restricted the scope of such business-process patents, but not by enough to satisfy critics.

Big technology companies complain of “patent trolls”—companies that buy up obscure patents and then bombard alleged infringers with lawsuits. (The “trolls” argue that companies may be too easy and potentially lucrative to bring lawsuits for patent infringement. Others wanted it to be made easier to challenge patents. Josh Lerner, an economist at Harvard Business School, faults the bill for not giving third parties a means to object to a patent before it is granted. It does create a process for opposing a patent three years after it grants, but in Europe, some say it will still be too burdensome for the challenger. Those hoping for a broader crackdown on business-process patents will also be disappointed.

Europe is seeking to improve its patent system, too. On March 9th finance ministers from 25 of the 27 European Union countries agreed to the creation of a single European patent which would not need separate validation at national level—which has been a glaring gap in the single European market. (Spain and Italy for years did their best to block it because patents would have to be translated only into English, German and French). The plan must now be approved by the European Parliament. Bruno van Pottelsberghe, an intellectual-property expert at Solvay Brussels School of Economics and Management, says this will slash the cost of a European patent to just a few times the cost in the US, and that this will have several advantages. So, he complains that not all national patent offices will issue patents independently, which may undermine the value of those of the European Patent Office.

A unitary patent will not make Europe a hotbed of innovation. But it will help. And despite the flaws in the new law, the attention to patent reform on both sides of the Atlantic is good news for business.

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