

Conflict Resolution, Public Goods and Patent Thickets

April 2013

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BACKGROUND

- Over the last three decades, the demand for patents has been steadily growing at patent offices around the world.
- Strong demand for patent rights combined with errors in patent offices' examination and grant procedures result in increasing numbers of 'weak' and overlapping patent rights.
- As a result, companies are increasingly confronted with serious challenges when trying to develop and commercialise technology in the presence of patent thickets.
- Litigation and post-grant validity challenges have been considered as a way of eliminating erroneously granted patent rights.

METHODOLOGY

- The authors look at whether individual patents are opposed post-grant. The aim is to identify which factors increase or decrease the incidence of opposition, so as to establish whether post-grant opposition serves applicants patenting different kinds of technology equally well.
- The analysis draws on a dataset, which includes all patent applications filed with the European Patent Office between 1980 and 2010, with a focus on the characteristics of the patent, the applicant and the technology area.

KEY FINDINGS

- The authors find that opposition decreases in fields in which many firms would benefit from the revocation of a patent, which creates a public goods problem.
- In fields with a large number of mutually blocking patents, the incidence of opposition is sharply reduced, particularly among large firms and firms that are caught up directly in patent thickets.

POLICY ISSUES

- Findings are of high relevance to the users of patent systems and for those concerned with the governance of these systems.
- Findings indicate that post-grant patent review may not constitute an effective correction device for erroneous patent grants in technologies affected by either patent thickets or highly dispersed patent ownership.
- The analysis suggests that it will have to be smaller applicants who contribute to ensuring that weak patents are kept off the register or removed from it when first asserted. Collectively, their interests in patent opposition working are much stronger than those of larger firms at the heart of thickets, whose cooperative actions through cross-licensing do not remove weak patents from the patent register.

CCP Policy Briefing

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CCP Policy Briefing

THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper 13-4 and more information about CCP and its research is available from our website: www.competitionpolicy.ac.uk

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