

Executive Summary

Statement of Richard C. Levin, President of Yale University on behalf of the National Research Council

The project undertaken by the National Research Council, which I co-chaired with Mark Myers, a retired Vice-President of the Xerox Corporation, was the most comprehensive review of the patent system in decades.

The National Research Council concluded that on the whole the patent system is working well and does not need fundamental revision. Yet we did note some causes for concern. The sheer volume of patent applications, and especially those involving new areas of technology, overwhelms the patent examination corps in ways that affect the quality and timeliness of decisions. In addition, it has become more expensive to acquire patents, to obtain licenses to patented technologies, and especially to enforce and challenge patents through litigation.

I would like to emphasize three main themes of our recommendations:

First, Congress and the PTO should take steps to ensure the quality of patents issued. The single most important step would be the establishment of a simple administrative procedure for opposing a patent after it has been granted. The process should be timely and efficient, so that the uncertainty can be resolved quickly.

Patent quality can also be improved by the assiduous application of the nonobviousness standard by the Patent and Trademark Office. The PTO should develop new approaches to gathering information about the state of the art in emerging areas of technology, relying on outside experts when patent examiners lack expertise. The PTO should continue to issue guidelines, similar to its guidance on genomics and business methods, promptly as new technologies emerge.

The Committee also recommended that Congress provide more resources for the PTO to hire needed examiners, improve its information systems, and fund a post-grant opposition procedure.

A second theme is harmonization of the United States patent system with the European and Japanese patent systems. Differences among the world's major patent regimes entail wasteful duplication of effort by both inventors and governments. The United States should adopt a first-inventor-to-file system.

Finally, the Committee recommended that Congress mitigate other subjective elements of law that contribute to the extraordinary expense of patent litigation. For example, Congress should modify the standards governing inequitable conduct and willful infringement.

A PATENT SYSTEM FOR THE 21ST CENTURY

Statement of

Richard C. Levin, Ph.D.
President
Yale University

Co-Chair

Committee on Intellectual Property Rights in the Knowledge-Based Economy
Board on Science, Technology, and Economic Policy
Policy and Global Affairs Division
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The National Academies

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