

# The Problems with Patents: Controlling Knowledge to Extract Wealth

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*A patent is a way of protecting inventions, and is sometimes called intellectual property. It means that an inventor is the only person allowed to make, use or sell his invention. If others want to use that invention, they have to make payments to the inventor called royalties. For example, Microsoft makes \$5-\$15 on each Android smartphone because of patents on file structures used within those phones.(1)*

Patents are supposed to have two main purposes:

- 1) To encourage information to spread. In order for the patent to be granted, the inventor has to provide enough information so that everyone can see how the invention works.
- 2) To provide a reward for inventors, thus encouraging people to innovate.

In theory, everyone benefits, but there are many downsides to patents. In practice, corporations exploit the system in order to obtain big profits by controlling information and technology. In earlier posts we discussed some of the ways in which the economy is rigged to make rich people richer. One of those was monopoly profits, where a company is dominant within its industry, and can therefore charge higher prices. Patents are the ultimate example of monopoly, because no-one else is allowed to compete.

## Transferring Wealth from Poor Countries to Rich

There has been a lot of pressure from advanced nations to strengthen patent laws in all poor countries to bring them into line with the US and European systems. Rich countries control most of the world’s patents, so they receive almost all of the royalties.(2) They are particularly dominant in software, pharmaceuticals, chemicals and bio-technology. Poorer countries cannot afford to pay, so strong patent law denies them access to new technologies, thus slowing development and reinforcing poverty.(3)

When countries join the World Trade Organisation (WTO), they have to agree to WTO patent rules.(4) These rules are written by lawyers from the entertainment, software and pharmaceutical industries. If countries do not have strong patent laws, the US will penalise

them. Both Brazil and Thailand were forced to strengthen their patent laws because the US threatened to impose trade sanctions.(5) It is estimated that developing countries pay \$45 billion per year to rich countries because of intellectual property laws.(6)

Until a few years ago it was possible to patent almost anything in the US, such as medical procedures, and even the genetic codes for life itself.(7) After some legal cases, the rules were changed so that it is now more difficult to patent things in the US. However, it is still possible to patent seeds. Corporations try to patent something in the US, then use the WTO to claim that the patent is valid everywhere. They have been trying to patent seeds and medicines that have been used by indigenous populations for generations. This is known as biopiracy. The spice, turmeric, has been used as a medicine in India for many years, yet there was a US patent for it. This patent was eventually ruled invalid.(8) Whilst the ruling was important, the patent should not have been granted in the first place.

Until recently, many countries had laws that did not allow the patenting of food, plants, seeds and life-forms.(9) This is no longer the case. Four huge corporations control most of world's seeds, and three-quarters of the world's food comes from just 12 plants. The companies are abusing the patent system to try to control the world's food supply (animals as well as crops). For example, they do not allow farmers to save seeds from one year to the next, forcing farmers to pay royalties each year. This is clearly a transfer of wealth from poor to rich. Additionally, many campaign groups have pointed out that this is dangerous, because there is much less variation in the crops that are grown, and lack of biodiversity makes us vulnerable to large-scale crop failure.(10)

The importance of changing current patent law in order to help poor countries cannot be stressed enough. As one commentator noted

“The foundation of economic development is more productive knowledge.”(11)

For the last few hundred years, copying technology has been a very important means of development. Historically, advanced nations have ignored patent law whenever it suited them in order to help themselves develop by replicating inventions from other countries. More recently it has been important in helping China develop. At the moment, global inequality is increasing. If we allow this system of patenting to continue in its current form, the developing world will find it increasingly difficult to catch up.(12) Copyright (which is related to patents) on software and textbooks is already harmful for developing countries. This type of inequality is not an inherent part of human society. We create and maintain it using artificial rules designed to benefit powerful people and companies in rich countries.

Astute readers will have realised that patents are not consistent with ideas about markets and competition between companies. Patents are about power and control - making excess profits because a company has no competition.(13) Companies want patents when it suits them, and they claim to want free trade when it suits them. Both force poor countries to do things in ways that benefit rich countries and their corporations.

### **Stifling Innovation**

One of the key ways in which our understanding of science advances is for the same experiment to be carried out many times to make sure that results are correct. Universities are being told that they cannot carry out certain research without paying royalties. This is expensive, so research is stifled.(14)

This has been noted by biomedical researchers. The patenting of genes creates problems for doctors carrying out medical tests. Doctors in England had developed a test to see if someone has the cystic fibrosis gene. A company in Canada claimed that they owned the gene and would expect to be paid every time the test was carried out.(15) This way of thinking makes it harder for countries to provide cheap healthcare for everyone.

The only way to challenge a patent is to go through complex legal proceedings, so 'patent trolls' buy patents to extort money.(16) In 2011 the total expenditure on legal fees relating to patents was \$29 billion. The legal system is so expensive that it is easier to pay than to contest, leading to many frivolous lawsuits. Ordinary people and small companies cannot afford the costs, so it has become a playground for the rich.(17) These costs are ultimately paid for by consumers.

No-one knows how many inventions there might be that are never invented because of the patent system. Even mainstream insiders have started to talk about how corrupt the system has become. In 2011, Google's chief legal officer, David Drummond, said that:

“patents...are being used as a weapon to stop innovation”.

Rich countries have debated the importance of controlling technology for centuries. Patents on early steam engines blocked inventors from making their own designs, some of which were superior. As far back as 1785 Britain introduced laws to stop advanced machinery being exported. In a study of dye and chemicals companies in the 19<sup>th</sup> century, the absence of patents in Germany was identified as a key reason why Germany was more successful than the UK.(18) At the end of the 19<sup>th</sup> century, Switzerland and the Netherlands actually eliminated patent and copyright protection because of their downsides.(19)

### **Should We Eliminate All Patents?**

The argument put forward in support of patents is that the rewards are necessary to motivate innovation. However, the evidence suggests that most innovations would take place without patents. There is rarely a discussion in the mainstream media asking the question “would we be better off with fewer or weaker patents, or without patents altogether?” It is taken for granted that we must have the current system. (The discussions in technology magazines are better.) However, research in 2004 showed that society as a whole might be better off with no patents,(20) as the downsides of the system may well be greater than the benefits. We would certainly be better off without most patents.

In earlier posts we discussed the role of society in creating wealth. We all inherit an immense amount of knowledge from the past. The role of any individual or company in developing new ideas is small.(21) We should therefore decrease the rewards that go to inventors. Currently patents last for 20 years. This is an extremely long time to grant a monopoly, which forces everyone else to pay to use new technology. Longer patents mean that society pays more for new inventions whilst big corporations make bigger profits. Whatever the pros and cons of patents in general, long patents are a bad idea. Even Amazon founder, Jeff Bezos, has suggested that software patents should be no more than 3-5 years.(22)

If we do have a patent system, then it has to be a good one that provides benefits to society that outweigh the downsides. Anything that gives more power to big companies should be

seen as inherently bad. Alternative systems have been proposed to reward inventors without giving so much power or wealth to corporations. These would allow everyone to replicate inventions for free.

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## Notes

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