

Research Priorities

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The Patent Office, the courts, and Congress all have a role in formulating patent policy, yet very little empirical analysis is available to them on the actual performance of the patent system. Only with well-grounded empirical analysis can policymakers soundly judge when reform is needed or how well past changes are working. A key priority therefore is to develop aggregate and sector analysis to answer questions such as:

- Where is the patent system providing positive or negative incentives to innovate, overall and by industry and firm size?
- How do these incentives compare to those provided by other nations? To what extent can differences in patent value between nations be attributed to different patent policies?
- What is the effect of patent litigation on R&D in different industries and for different size firms?
- What portion of issued patents are predicted to be found invalid if challenged in court, overall and by technology and owner type?
- How predictable is the interpretation of patent claims overall and by technology?

These questions can be answered at a point in time or over a series of points. The latter might be useful, for example, in exploring the effect of Supreme Court decisions in *KSR* or *Alice* on patent validity rates.

Fortunately, both the data and econometric techniques to deal with some of the difficulties in analysis have seen significant advance in recent years. In each of these areas, cutting edge papers have established the feasibility of analysis, dealing with many problems such as sample selection bias. Already, partial analyses addressed to some of these questions have proved influential in policy considerations, for example, regarding patent trolling.

I believe, therefore, that the time is right to make this sort of aggregate analysis a top research priority.