

# Patents and Innovation – Patent Portfolio Views and Beyond

## Abstract

Patents (and other forms of IP) are currently being hailed as the raw material of a new economy. A more complete set of property rights and trade in intangibles, it is said, will help to boost productivity and innovation. This presentation takes a sceptical view of this belief. I trace recent trends in the patent system and demonstrate that patent owners are increasingly building complex patent portfolios. The basis of such patents is often not the effort of the inventor, but the effort of the person drafting the patent filings. In the light of these developments (which I refer to as “patent constructionism”), some recently proposed changes in the patent system – the London Protocol and the introduction of the European Patent Litigation Agreement – do not look quite as attractive as they may have before. Moreover, as alternative incentive regimes – e.g., in open source communities – become available, the balance between formal IP and informal or implicit incentives needs to be redrawn – to the advantage of the latter. Patents are likely to remain meaningful instruments for supporting innovation in industries with relatively large upfront sunk costs for R&D and long product life cycles. It is less clear that they deserve a major position in industries in which innovation cycles are fast, in which incremental user contributions are important and can be “stacked” (combined) into larger innovations, and in which initial R&D outlays are relatively small in comparison to post-invention investments.

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