



Contributors

Gernot Pehnert: Don't ruin the U.S. patent system

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GERNOT PEHNELT

JENA, Germany

FOR YEARS, Germany has been a leading exporter, buoyed by sales of high-end technology. People across the globe have benefited from Germany's life-saving drugs and state-of-the-art machinery, not to mention its unrivaled luxury automobiles.

However, a recent effort by the United States to reform its patent system threatens to undermine German innovation and deprive Americans and the world of its benefits.

The U.S. patent system has been an integral part of German technological development. American patents have helped spur German dominance in such areas as industrial machinery, chemicals, pharmaceuticals and advanced medical devices.

They have also helped preserve the nearly one in four German jobs dependent on exports. From 2000 through 2005, more than 64,000 German inventions received patents from the U.S. Patent Office — roughly the same number of patents that Germany issued to its own citizens.

The appeal of the American patent system is not limited to Germans. Last year, the U.S. Patent Office granted more than 94,000 patents to foreign inventors. Activity in the U.S. Patent Office was 50 percent higher than that of all the European Union patent offices combined.

Inventors are not flocking to the U.S. Patent Office because they want to see the sights and sounds of Washington, D.C. They come to America because the European patent

system is far inferior to America's. Europe's extended post-grant review procedures and artificially low caps on damages for stolen patents undermine the value of European intellectual property.

Other flaws in the European system include ineffective and slow prosecution of counterfeit and copyright-infringement cases. Meanwhile, the American system is regarded as the strongest protector of patent rights in the world.

America has reaped great benefits from foreign inventors taking advantage of the U.S. patent system. Thanks to the development and innovation spurred by American patents issued to Germans, for example, the two countries have developed a remarkably close trade relationship, which has reinforced their traditionally close political ties.

Germany consistently ranks as one of America's top trade partners and America's top trade partner in Europe. Hundreds of billions of dollars worth of such high-value goods as pharmaceuticals and biotechnology flow between the two countries. Moreover, as of 2000, 50 percent of German foreign direct investment went to the United States' and America was the top investor in Germany, with billions of dollars flowing into each country.

As a direct result of German-American trade, millions of jobs have been created on both sides of the Atlantic. Patent protections will play an even more important role in German-American trade as it becomes increasingly dominated by such research-based industries as pharmaceuticals, chemicals and high-tech machinery.

The process of innovation is so costly in these sectors that they cannot survive without strong protection of intellectual property rights.

In the pharmaceutical industry, for example, it takes on average about 10 years and \$800 million to develop just one drug. Moreover, many attempts lead into dead ends and the vast majority of compounds will never reach the consumers. And of the few drugs that make it to the market, more than 50 percent will never turn a profit.

To continue the research necessary to develop new drugs, which have been credited with 40 percent of the increase in life expectancy over the past 20 years, drug companies must recoup all their losses on just a handful of drugs.

When patent regimes let generics flood the market, this becomes impossible. Unfortunately, in spite of the potential consequences to research-based industries, especially the pharmaceutical industry, Congress is preparing to replace many of the best aspects of the U.S. patent system with the worst aspects of the European patent system in the Patent Reform Act of 2007. This bill has already been passed by the

House and is under consideration in the Senate.

Adopting the Patent Reform Act of 2007 could be a tremendous blow to the United States, Germany and — in the long run — many consumers worldwide.

“Virtually all of the inventions which ultimately hastened economic development and lifted living standards — especially new technologies and manufacturing processes — were developed in societies with strong intellectual-property protections,” according to a 2005 report titled “The Economic Value of Intellectual Property,” by Kevin Hassett and Robert Shapiro.

U.S. patent reform will only weaken international protection of intellectual property. The bill would reduce incentives to perform research and development, threaten jobs at home and abroad, and damage transatlantic trade relationships, which have brought wealth and vital goods to the United States and Europe. Congress should think twice before “fixing” a patent system that is the envy of the world.

Gernot Pehnelt is a lecturer in economics and a research associate at the Friedrich Schiller University, in Jena, Germany.