

Should Patents Go Global?

From the Editor

By [Robert Buder](#) on May 1, 2003

As just about every nation has recognized, protecting the intellectual-property rights of inventors is essential to promoting innovation and ensuring economic growth. But the world is divided over which elements should determine whether an invention warrants a patent and who has legitimate rights to that patent. And on this issue-surprise-the United States finds itself alone.

The U.S. system awards a patent to the first person who invents a given thing, as proved by such evidence as witnessed lab notebooks. In nearly every other country, though, a patent goes to the first person who shows up at a patent office to file a claim. But there are many other divisive issues as well-including the very idea of what may be patented.

The globalization of business markets has heightened the need to secure patents for each invention in many nations. Filing and maintaining these multiple claims is expensive even for large companies; for independent inventors, the costs can be downright oppressive. Now, though, momentum is building for a global patent system in which the United States would give up its first-to-invent system and adopt the more common first-to-file approach in return for certain other concessions. In "[Patents Go Global](#)", contributing writer Evan I. Schwartz, author of *The Last Lone Inventor*, explains these trade-offs and the roadblocks that stand in the way of such patent "harmonization." His article sets the stage for our annual Patent Scorecard, which tracks the intellectual-property portfolios of 150 companies around the world.

Schwartz's piece cites inventors, corporate officials, and policymakers. But I thought it would be informative-and fun-to take a more opinionated look at two central questions: What's most wrong with the U.S. patent system? And, Would you give up the U.S. first-to-invent process for the efficiencies of a global patent system?

Schwartz and I posed these questions to leading inventors and patent experts. Excerpts from their answers:

Robert Langer, MIT chemical and biomedical engineering professor; winner of the 1998 Lemelson-MIT Prize, which recognizes America's outstanding contemporary inventors:

What's wrong? "It would be good if the U.S. process were faster."

Go global? "First-to-invent is correct because it recognizes who really did it first."

Seth Shulman, *Technology Review* columnist and author of *Owning the Future*:

What's wrong? "We've steadily moved up the ladder of abstraction to a point where it represents a perversion of the patent system. The system works great for protecting an inventor's right to a new type of mousetrap. What's increasingly happening today, though, is that the U.S. Patent Office is letting crafty applicants essentially patent the idea of trapping mice."

Go global? "The first-to-invent system is hands-down the best way to go. But I would grudgingly give up the U.S. system: it is deeply flawed in practice; the gain in simplicity and efficiency from a global system could be significant; and the first-to-file approach takes the onus off the government to make determinations about the evolution of technological innovation and in a sense moves it to the marketplace."

Carl R. Crawford, inventor; technical vice president, Analogic, an electronics maker in Peabody, MA; holder or coholder of 132 patents worldwide:

What's wrong? "Short of perpetual-motion machines, it is possible to get a patent on almost anything. This effectively pushes the question of inventiveness onto the courts, where the sole inventor has a disadvantage."

Go global? "First-to-invent causes inventors to file more garbage' patents. If political and national bias could be removed from the global patent process, then a global patent office would be acceptable."

Bernard S. Meyerson, IBM fellow and chief technologist, IBM Technology Group:

What's wrong? "The greatest challenge faced by the U.S. patent system is the apparent lack of adequate funding and staffing required to perform thorough investigations."

Go global? "The U.S. should adopt a first-to-file system-but only as part of a full-harmonization effort with other countries."

Nathan Myhrvold, former Microsoft chief technology officer; cofounder, Intellectual Ventures in Bellevue, WA:

What's wrong? "In most parts of computer science, the rate at which patents are filed is up by a factor of 10 since 1990. Biotech is up even more. The patent office has a real problem trying to cope with that."

Go global? "It's like driving on the right or the left side of the road. Either one [first-to-file or first-to-invent] works just fine: if you try to mix the two, you get a problem. And so the issue is not which one is better; it's that making the change is going to be wrenching."

The devil, of course, will be in the details. But wrenching though the change may be, it is what needs to happen. The U.S. might even find that going along with the rest of the world will bring unexpected benefits.



Robert Buder Guest Contributor

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