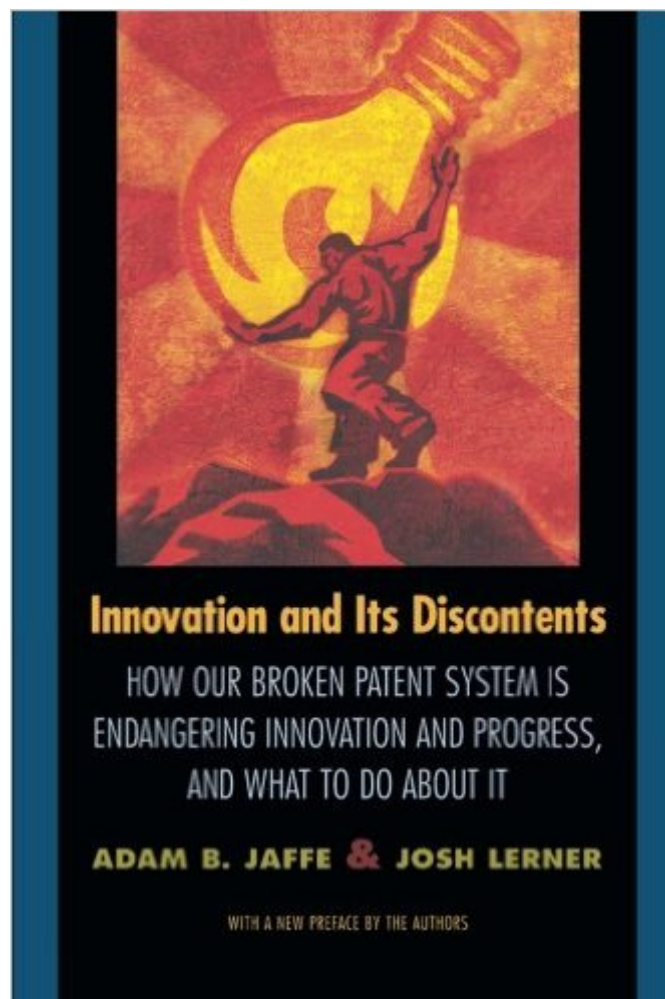


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# Innovation And Its Discontents: How Our Broken Patent System Is Endangering Innovation And Progress, And What To Do About It



## Synopsis

The United States patent system has become sand rather than lubricant in the wheels of American progress. Such is the premise behind this provocative and timely book by two of the nation's leading experts on patents and economic innovation. *Innovation and Its Discontents* tells the story of how recent changes in patenting--an institutional process that was created to nurture innovation--have wreaked havoc on innovators, businesses, and economic productivity. Jaffe and Lerner, who have spent the past two decades studying the patent system, show how legal changes initiated in the 1980s converted the system from a stimulator of innovation to a creator of litigation and uncertainty that threatens the innovation process itself. In one telling vignette, Jaffe and Lerner cite a patent litigation campaign brought by a semi-conductor chip designer that claims control of an entire category of computer memory chips. The firm's claims are based on a modest 15-year old invention, whose scope and influence were broadened by secretly manipulating an industry-wide cooperative standard-setting body. Such cases are largely the result of two changes in the patent climate, Jaffe and Lerner contend. First, new laws have made it easier for businesses and inventors to secure patents on products of all kinds, and second, the laws have tilted the table to favor patent holders, no matter how tenuous their claims. After analyzing the economic incentives created by the current policies, Jaffe and Lerner suggest a three-pronged solution for restoring the patent system: create incentives to motivate parties who have information about the novelty of a patent; provide multiple levels of patent review; and replace juries with judges and special masters to preside over certain aspects of infringement cases. Well-argued and engagingly written, *Innovation and Its Discontents* offers a fresh approach for enhancing both the nation's creativity and its economic growth.

## Book Information

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## Customer Reviews

This book presents a clear, concise and convincing argument that subtle changes in U.S. laws starting in 1982 have broken a patent system that was working reasonably well until then. It will be more effective at convincing the average person than most other attempts have been, both because of its style and because it shows that the changes which broke the system shouldn't have been expected to help anyone other than patent lawyers. Their analysis will be useful in helping to avoid the takeover of other agencies by special interests. Their description of how the system should be fixed is less impressive. Their summary of proposed changes strangely fails to include undoing the change in appeals court jurisdiction which they suggest was a primary cause of the problems. Their argument in favor of patenting software, business practices, etc. is more radical than they seem to realize, as it appears to imply that patents should also be extended to mathematical theorems, yet they act as if the burden of proof should be on their critics. Their confidence that a traditional patent system is better than no patents is unconvincing (but they do a good job of explaining why it is hard to know what the best system is). They support their position by a few examples such as Xerox, whose copier wouldn't have been invented as it was without patent protection. But it's much harder than they imply to determine that a copier wouldn't have been invented some other way a few years later.

Since the authors are economists I was hoping for an economic analysis of our current patent system like Schiff in his "Industrialization without National Patents" does for the international patent system of the 1800s. Instead it is a work of persuasion meant to sell the author's policy suggestions. This means that the authors spend a lot of time talking about silly granted patents even though the authors later admit such patents are pretty unavoidable. No patent office has the resources to avoid granting some bad patents. The author's policy suggestions include a revised reexamination system where patent owners would have to post \$50,000 bond to defend a reexamination. I am no phyllis schlaflly, but such a system would really favor big companies. The authors are right that the creation of the CAFC in 1982 has resulted in a strengthening of patents. A lot of this is just a result of a new post-1982 uniformity in the case law. Some signs of the waning of patents are showing. The CAFC, and now the supreme court, are ruling more for defendants in patent lawsuits. Additionally, in the patent office, the allowance rate of patents has declined from a

peak of 71% in 2000 to 54% in 2006.

Length: 9:59 Mins

Adam Van deWalle's review was made as part of a critical review assignment for the Spring 2013 Economics of Technology seminar at the University of Nebraska at Omaha, taught by Art Diamond. (The course syllabus stated that part of the critical review assignment consisted of the making of a video recording of the review, and the posting of the review to .)

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