

Patent Hold Up: Do Patent Holders Holdup Innovation?

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ABSTRACT

President Obama and Congress have recommended major patent reforms based on the belief that the patent system allows patent holders to holdup the commercialization of complex technologies. Although reform proponents point to the rise in patent cases and the increased role of “trolls” in those cases, there is no evidence these developments have hurt what actually matters: the products that we buy and the prices that we pay.

In this paper, we find that the rate of innovation—as reflected in prices—has rarely, if ever, been faster than it is in exactly those industries that reform advocates point to as embodying the patent holdup problem. If patent holdup is slowing innovation, it is slowing it down to perhaps the fastest rate in human history. Our analyses also shed a skeptical light on the direction of major reform proposals that envisage a greater role for regulatory-type bodies and a commensurately smaller role for the courts. A considerable body of research suggests the prevalence of regulatory capture, which could undermine the good intentions of such proposals.