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Editorial

Patently Ridiculous

Something has gone very wrong with the United States patent system.

Americans think of the granting of patents as a benevolent process that lets inventors enjoy the fruits of their hard work and innovations. But times have changed. The definition of what is patentable has slowly evolved to include business practices and broad ideas. The fact that the Smucker's company went to court over patents on peanut butter and jelly sandwiches might have provoked chuckles. But it became a symbol of a system gone awry.

Technological advances raise new questions with each passing year. Should genes be patentable? What about life forms? The high-tech and pharmaceutical industries find themselves at odds on reform because patents affect their businesses so differently. The understaffed Patent and Trademark Office needs to draw the line between a real innovation and an obvious concept that should be freely available as a building block for future generations of creative thinkers.

Meanwhile, profiteers, including lawyers and hedge funds, have turned the very purpose of patent rights — to encourage people to invent and produce — on its head, using them to tax, blackmail and even shut down productive companies unless they pay high enough ransoms. These so-called patent trolls have emerged as the villains in this intellectual property debate.

The possibility of this sort of abuse is inherent in the concept of patents, which in this country allow no one to produce or sell a patented product for up to 20 years without a license from the patent holder. Our nation's founders considered intellectual property important enough to include in the Constitution, but did not establish the system for the sake of the inventor. It exists for the sake of society, or, as it says in the Constitution, "to promote the progress of science and the useful arts."

Now the pendulum has swung so far in the direction of the patent holder that many experts say we are not only restricting competition, but discouraging research and innovation as well. More patents are slipping through that are not new, like the peanut butter and jelly sandwich, or that should be obvious, like the migration of a simple business practice onto the Internet or a mobile device.

The problem lies not just with the short-staffed patent office, but also with the courts. The ease with which patent holders can get an injunction to shut down a thriving business means that many companies are quietly paying rather than fighting.

The recent threat that BlackBerry service might be shut down by an injunction caught everyone's attention. The patent office found that the three disputed patents should not have been granted in the case of the BlackBerry, a popular wireless communications device. Yet Research in Motion, the company that makes it, settled for a staggering $612.5 million to avoid an injunction.

The Supreme Court now appears ready to weigh in and — we hope — restore some sanity to the system. Yesterday the court heard arguments on whether the patent for a blood test for a vitamin deficiency was so broadly construed that it included a natural process of the human body and the idea of how to interpret it. Such a patent could prevent other inventors from developing new and better tests. The court will also hear arguments next week in a case attacking eBay, the global marketplace.

The court will not be able to solve the problem by itself, no matter how wise its ultimate rulings. The patent

office, which handles three times as many applications as it did in 1985, has to be upgraded to meet the 21st century. There is legislation in the House to address that issue, and it needs to be taken up. By giving other people or companies the right to submit documentation before patents are granted and to challenge decisions, patents' quality could be improved and the courthouse avoided.

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