

Patent Détente

In high-tech industries, many, perhaps the majority, of patents are acquired for defensive purposes. The patent "arms race" creates an enormous demand for patents that are unlikely to ever be enforced, flooding the patent office and making low-quality patent examination tolerable and even "rational." Yet calls for reform of the patent system have largely overlooked this "demand-side" aspect of the patent equation, focusing instead on increasing the quality of the patent supply. This paper seeks to address this oversight in four parts. First, it will provide a short history of the arms race in high-tech industries. Second, it will document the arms race phenomena and its costs and benefits to society, through case studies and empirical analyses. Third, it will compare and contrast the US arms race in high-tech with the lack of an equivalent arms race in the pharma/biotech industry and in Europe. Finally, it will ask, when taking into the arms race dynamic, how should reform of the patent system be prioritized?