Patently out of date

The system that protects ideas, innovations and inventions is in desperate need of an overhaul.

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THE U.S. ECONOMY has thrived on technological innovation. Yet the federal government's conduit for invention — the U.S. Patent and Trademark Office — has not grown with the rapidly changing times.

Overwhelmed by applications, the office has granted too many weak or bogus patents. Investors have obtained patents not to develop products but to slap a duty on those who do. Attempts by Congress to reform the system have been derailed, leaving change to come piecemeal through the courts. Fortunately, the Supreme Court has issued a series of sensible rulings, most recently on Monday, that raise the bar for winning a patent and increase the incentive to challenge bad ones.

Rather than letting the courts rewrite the patent system one element at a time, Congress should overhaul it. Identical bills were introduced in both houses of Congress last month, aiming to block undeserving applications, reverse bad decisions and limit the claims exerted on minor technologies. Though there is widespread support for some of the bill's improvements, opposition is coming from drug manufacturers, universities and other research-reliant entities that want to maximize payoffs on the fruits of their labors.

At issue are provisions that would enable challenges to patents years after they are granted and would scale back penalties for infringers. Opponents say this would drive away investors, particularly in such high-risk, high-reward fields as pharmaceuticals and biotechnology, in which patents can be awarded years before products are tested and approved. The business model for these firms is so different from fast-moving consumer-electronics companies that it makes sense to confine the protections against abusive patent claims to the manufacturers that need them most.

The bill doesn't address some of the patent system's key weaknesses, including application backlogs and insufficient barriers to patents for obvious inventions. Nor does it address the gradual creep of patent protection into the realm of ideas, as seen in many software and business models. But it would be a good start in pushing the system toward better patents and less abuse.
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