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Do not feed the patent troll [1]

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Samsung?s move to have iPhone 4S sales banned [3] in Australia and Japan is just the latest battle in the patent war between Apple and Samsung. It follows the EU's banning [4] of the sale of Samsung?s Galaxy Tab (on hold for now). The war highlights the sorry state of the world?s patent laws.

The typical argument for patents is that they encourage innovation. By protecting a person?s potential invention from being copied, they increase the reward for coming up with an invention. But the other side of this coin is that they *discourage* innovation too, by increasing the cost of improving on or incorporating other innovations into your own work. If you want to stand on the shoulders of giants, you?ll have to cough up.

The Apple/Samsung patent war is an example of patents at their worst. There?s a big deadweight loss associated with lawsuits and restrictions on commerce. And most of the challenges are completely spurious ? should Apple really ?own [5]? the pattern of a four-column grid of apps on a tablet home screen, or the concept of a rectangular tablet computer? Apple and Samsung have created enormous value to a huge number of people, but in this case they're acting against consumer choice. Like blaming gravity for plane crashes or greed for financial crises, it's silly to blame the firms themselves. Fundamentally, it's the patent system that's at fault.

Patents are anathema to private property rights. A pattern or idea is non-rivalrous and non-excludable ? unlike property, there is no opportunity cost to someone's use of an idea or pattern. An individual idea is not scarce unless we make it so through patent laws. And, unlike copyright, patents apply to people who have individually come up with an innovation without copying from someone else (therefore potentially breaking an agreement with the originator of that idea). It's hard to think of a liberal conception of property rights that imposes restrictions on how people may use their property in a way that doesn't touch anybody else's property and breaks no prior agreements.

Yet many say that the utilitarian argument for patents ? that they encourage innovation ? outweighs this consideration of p roperty rights. There are other examples that people give in defence of patents ? that they are necessary for the development of pharmaceuticals, for example. This may be the case (though I?m sceptical that other approaches wouldn?t be just as good or better). But whether patents, on balance,

encourage more innovation than they discourage is an open question. The Apple-Samsung war should be one significant data point in the argument against the case for patents.

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