As featured in **Seattle Business**

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Inventive Advantage

Many question patent protection, but it does enable job creation.

Patents — and the entire United States patent system — have been criticized harshly of late. One popular criticism is that assertion of patents is tantamount to extorting from the target company money, time, and resources that the company would otherwise use to develop new products and to create more jobs.

From such criticism, some have concluded that patents are an economic burden on society and that the government should limit the types of inventions that patents can cover, or that it should eliminate patents altogether. However, consider also that patents can create jobs and increase the level of success of an entity that holds patents. In fact, you may owe your level of compensation and, indeed, your very job, to patents.

Before continuing, let's review what a patent is. A patent is a legal document that, for a limited time, grants an inventor the exclusive right to make, to use, to offer to sell and to sell a product that includes the invention claimed in the patent. In the United States, with few exceptions, the "limited time" is up to 20 years from the filing date of the application that matures into the patent.

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Granting the inventor exclusive rights to the invention for this period of time gives him or her, or an entity (for example, the inventor's employer) to whom the inventor transfers rights in the patent, an opportunity to recoup the financial investment in developing the invention and to reap the financial rewards that may flow from the invention.

As an analogy, consider a developer of an apartment building. The developer may hold exclusive rights to the building such that after the building is finished, apartments may be rented not only to recoup the construction costs, but also to earn a return on the money invested to construct the building.

If you work for an early-stage company, then your employer may owe its ability to obtain investment funds, and its ability to stay in business, to patents on products that the company is developing. Investors generally shy away from investing in a company developing products that are unprotected by patents. The reason is that if one of the early-stage company's products is commercially successful, then an established competitor may swoop in, copy the product and sell a competing product. And because the competitor had lower development costs (all it did was copy an already developed product), it can offer the competing product at a lower price. To continue the apartment building analogy, would you be keen to invest money in the aforementioned apartment building if you knew that after the building was complete and ready for occupancy, any third party could legally rent out the apartments without paying the developer a red cent?

And, if you work for an established company, then you may still owe your job, or at least your level of compensation, to patents on products that the company develops and sells. In 1990, Polaroid won more than $900 million (that's about $1.6 billion today) when a court found that some of Kodak's instant cameras infringed upon some of Polaroid's patents (*Polaroid Corp. v. Eastman Kodak Co.*). That $1.6 billion settlement would be enough to fund more than 10,500 jobs at salaries of $100,000 per year (accounting for $50,000 in overhead per job), or provide each employee of a 50,000-employee company a $32,500 bonus, or fund research and development for a company's next generation of products.

So the next time you hear people say that patents are the root of all evil, just remember to tell them they may owe more to patents than they think.

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