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There's no crisis in current patent law

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Patents are important because people have ideas. People develop products and processes. That makes them property, and people have a right to profit from what they've come up with.

But in part because there's been some abuse of patent law lately, there are calls for upending the patent process and replacing it with — well, something.

That's a destructive idea. It would strangle innovation and steal property from hard-working individuals.

“Patent grants have always been at the center of controversy, and the U.S. patent system is no exception,” writes the Cato Institute's B. Zorina Khan. “Today many critics of the patent system employ rhetoric reminiscent of Yeats' poem about the first World War, implying that ‘things fall apart; the centre cannot hold;’ and some even call for ‘mere anarchy’ or the abolition of patents.”

Still, she contends, “patent and legal institutions are not perfect, but the news of a crisis and the need for a Second Coming have been much exaggerated.”

Now, that's an awkwardly mixed metaphor; Yeats and the Bible? But still, Ms. Khan has a point. Those calling for patent reform have the obligation to first show there's a real problem and a real crisis.

She points to an essay by Eli Dourado, who calls for reforms. Sure, there's room for some reform, but there's little evidence that any other system would work half so well.

“Joseph Story, the most influential Supreme Court Justice in the realm of intellectual property law, stated that we need to remind ourselves that it is the U.S. Constitution itself that bestows secure property rights on patents,” Ms Khan writes. “The legal default is thus a presumption of strong protections for patented inventions, and the burden of proof is on anyone seeking to circumscribe or overturn those rights.”

The public is shocked at the amounts granted in some recent patent decisions — some of them handed down here in Tyler. And they're huge amounts, to be sure.

Recently, a Tyler native argued a case here that resulted in a \$533 million judgment against Apple. Smartflash LLC had a patent for a process that combined payment functions and secure downloads — a process that eventually became iTunes.

“Smartflash makes no products, has no employees, creates no jobs, has no U.S. presence and is exploiting our patent system to seek royalties for technology Apple invented,” Apple said in a statement.

But Smartflash — more specifically, its founder Patrick Racz, had an idea. And ideas are private property.

And while that half-billion dollar judgment sounds high, a little perspective helps. The judgment won't take too big a bite out of Apple; the company earned \$39.5 billion in profit in 2014, with \$182.8 billion in sales.

“The patent controversy in the United States today is not significantly different from previous eras,” she notes. “A longer-term perspective leads one to be much more cautious about lobbying for drastic reforms in a system that has functioned effectively for over two centuries.”

The patent system is functioning effectively. Let's let it continue to do so. Ideas are property, too.