

Discussion Comments of Adam Jaffe

Comments on Kahin paper:

- For research to be useful to policymakers, need to undertake “translation” of concepts and constructs used by academics, into the day-to-day and strategic “levers” available to policymakers.
- It has to be the job of the researchers to make this translation. This requires spending time “in the world” of policymakers, in order to understand at a very concrete level how things work.
- A major area of disconnect between research and policy is that research—which necessarily relies on abstraction—misses much of the “nuts and bolts” of how things work. For example: analyses of “optimal” patent rules typically take for granted that whatever rules are chosen will, in fact, be implemented correctly. But in the real world, mistakes are going to be made, and rules are going to be exploited strategically. These “things going wrong” are likely to be at least as important in determining how well the policy works, as are the consequences when the policy works as intended.
- An example of this last point is the strong conclusion in the economics literature on optimal patent policy that policy should vary according to the attributes of the technology in question. (E.g., patent scope should be smaller in technological areas where technological change is highly cumulative.) In reality, reliably calibrating patent policy to difficult-to-measure technological attributes is likely to be very difficult. The likely consequence of moving in the direction of technology distinctions is that the process will be co-opted; special pleading will push for special treatment for particular groups, and individuals will find ways to reclassify their applications so they qualify for the more favorable treatments.
- Thus “one size fits all” (in the sense that patent policy is not differentiated by technological area) may be a good policy, despite the theoretical argument for technology distinctions.

Comments in Panel

One area in which researchers might be helpful to policymakers is in facilitating systematic analysis of how changes in procedures change the incentives of participants in the process, and thereby change substantive outcomes. One important example is the “vicious cycle” that is created when examination standards are allowed to decline. A decline in standards creates an incentive for more applications to be made, as marginal applications that would not have been worth submitting before now seem to have a chance. The increase in applications creates resource strains on the examinations process, likely worsening the deterioration of standards. This process can perhaps be made to work in reverse. If a credible commitment to higher standards can be made, marginal applications will be discouraged, and the resources necessary to achieve the higher standards will not be as great as might be thought based on numbers of applications when standards are low.