

Death squad or quality improvement? The impact of introducing post-grant review on U.S. patent quality

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Increasing evidence indicates that a large share of granted patents are "undeserved" because they do

not meet the criteria of novelty or non-obviousness. In recent decades, many jurisdictions introduced

patent reforms to avoid weak patent applications and improve legal patent quality. In particular, the

American Invents Act (AIA), enacted into law in 2011, introduced the post-grant validity

challenge at the United States Patents and Trademarks Office (USPTO). This procedure allows any

third party to question granted patents, possibly leading to patent revocation or scope reduction.

This paper aims to assess the impact of such policy change on the legal quality of the

patent system. To identify the policy effect we exploit the fact that the same invention is patented

in different legislation and that not all of them have post-grant review procedures. In particular, we

compare the same patent led at the USPTO and the Canadian Intellectual Property Office (CIPO).

In this setting, we apply standard Di-in-Di analysis to estimate the effect of the post-grant validity

challenge on the patent scope. Our results indicate that the AIA reform contributed to a reduction

of U.S. patent scope in the last decade, indeed increasing the legal quality of the patent system.