

Trolls and Other Patent Inventions:

Economic History and the Patent Controversy in the Twenty-First Century

By

B. Zorina Khan

ABSTRACT

The most significant changes to the patent and innovation system in the past two centuries have been, or are in the process of being, implemented in the United States today. Critics of patent grants and intellectual property institutions propose alternatives such as unprecedented constraints on the rights of patent owners, and many advocate the award of technological prizes as superior alternatives. Such proposals are motivated by claims that the patent system is in crisis, with new developments that require departures from traditional approaches to property rights and technology policy. The historical record sheds light on the nature and validity of these controversies. In particular, data on patents granted, litigation rates over the past two centuries, and the role of non-practicing entities, indicate that these features of the current market in intellectual property are hardly anomalous. Indeed, they have been inherently associated with disruptive technologies that transformed the United States into the world leader in industrial and economic growth. By contrast, extensive empirical analyses of prize systems in Europe and the United States explain why early enthusiasm about such administered nonmarket-oriented awards had waned by the end of the nineteenth century.