

HOW (CONSISTENTLY) VALID ARE PATENTS? AN ANSWER FROM MULTIPLE EXAMINERS

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The presence of patents rights of ambiguous validity generates business uncertainty and may create unjustified monopoly rights. Whether a patent application is deemed valid depends on first, objective criteria such as inventive step and secondly, on subjective errors of judgement and personal partialities. Ambiguous validity is of considerable concern to businesses operating in patent-dense markets. The only previous evidence on the frequency of issue of invalid patents has come from studies of litigated patents, which represent a very small and unrepresentative sample. This paper addresses this lacuna by using data from a large number of patents that have been examined by at least two of the patent offices of the U.S., Japan, Europe, Korea and China. We estimate a probit model that predicts grant in the different offices based on invention-specific and office-specific effects. Based on this analysis, we estimate that about one-quarter of issued patents are of dubious validity.