



DEPARTMENT OF ECONOMICS

“Misclassification Between Patent Offices”

by

Alfons Palangkaraya

Melbourne Institute of Applied Economic and Social Research

Abstract: In this paper, we estimate statistically the extent of inconsistent patent examination decisions across the EPO and JPO – that is, applications that are incorrectly refused a patent and applications that are incorrectly granted a patent. Using a proxy for inventive step as the predictor of the correct decision, we estimate that 6.1 and 9.8 per cent of patent applications in our sample are, respectively, incorrectly rejected and incorrectly granted. We find evidence that patent offices are less likely to make inconsistent decisions the longer the duration of examination and the greater is the applicant’s experience with submitting applications. Furthermore, the likelihood of incorrectly granting a patent is an increasing function of the speed of technological change. While many believe that over the last decade the USPTO has been increasingly liberal in its treatment of ‘bad’ patents, there is no evidence that this also occurred at the EPO and JPO.

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