Swinging into the absurd

by By the St. Louis Post-Dispatch

Five-year-old Steven Olson of Minnesota was playing on the swings when he noted a remarkable thing. If he yanked on the chains just right, he could make the swing go side to side instead of back and forth.

It is a technique well-known to kids on playgrounds, but Steven's dad was a patent lawyer. Hence the U.S. Office issued Patent No. 6,368,227, "Method of Swinging on a Swing," in 2002. Although the application seemed tongue-in-cheek - it suggested that swingers yell like Tarzan - kids everywhere were suddenly patent infringers. "Licenses are available from the inventor upon request," the application said.

Steven thus became a poster child for a larger problem in America: It's possible to patent nearly anything these days, from the absurdly obvious to the obviously absurd. Last year a would-be spaceman patented plans for a galaxy-hopping anti-gravity spaceship.

Those goofy patents are harmless, but others aren't. Patents are supposed to encourage real innovation by giving inventors exclusive rights to them, usually for 20 years. But there's been a trend recently to patent things that are obvious intermediate steps or minor adaptations of existing technology, like the ability to buy things on the Internet with one click.

Inventors build on what's already known and done. If lots of trivial stepping-stones are patented, then bona fide inventors must hire lawyers and negotiate licenses. That discourages invention.

Nearly as bad are the instances of an undeserved patent stopping anyone else from building a similar product. Less competition means higher prices for consumers.

The result is a mad rush to the patent office - and then to the courthouse. The legal profession has evolved a species of "patent troll," which specializes in buying up trivial patents then suing people who use them in truly useful inventions.

That gets us to a case now before the U.S. Supreme Court. After decades of virtually ignoring patent law, the court has taken on a series of patent cases.

Patents generally are supposed to be denied for things that would be obvious to people in the same line of work. But lower courts have made it difficult to prove obvious things obvious. The case argued in November involves extendable gas pedals that help short people drive cars and trucks. Since the 1990s, automakers have

been using electronic sensors on gas pedals to adjust speed. Teleflex, a Pennsylvania company, was the first to move such sensors to the extendable pedals. Teleflex got a patent and sued another company that tried the same thing.

Here we have an existing technology, the electronic sensor, that simply is moved a few inches. What could be more obvious? But lower courts upheld the patent. In recent cases, the Supreme Court has tended to loosen patent rules that stymie commerce rather than encourage invention. The court should declare that "obvious" means obvious.

Congress could help here, first by limiting patents to significant, useful innovations, not minor adjustments or vague "business methods." Then it could better fund the Patent Office, which is overwhelmed by the stampede of applications.

It also could end the perverse incentives that make the patent office a rubber stamp. The patent bureaucracy in effect is paid more for granting a patent than for rejecting one. For a patent examiner, granting a patent cuts the workload, because he doesn't have to deal with appeals.

Getting a patent shouldn't be as easy as swinging sideways.

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