

American Chemical Society AMA: I am Robert Koch, a resident partner in the Washington, D.C., and Munich, Germany, offices of Milbank, Ask me anything about science and intellectual property.

AmerChemSocietyAMA ¹ and r/Science AMAs¹

¹Affiliation not available

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Abstract

Hi Reddit, I have more than 40 years of experience in patent an intellectual property litigation, including several landmark cases of pioneering biotechnology breakthroughs, revolutionary medical devices, and blockbuster pharmaceuticals. But before becoming a leading biotech and pharmaceutical patent attorney, I was a professional chemist. I went on to be a patent examiner at the U.S. Patent and Trademark Office, and went on to serve as a scientific adviser on intellectual property issues at Max Planck Institute in Munich, Germany, during the formation of the European Patent Convention. I have represented start-up biotech firms and major U.S. and European chemical and pharmaceutical companies. Feel free to ask me anything about the intersection of science and the law, biotech/pharmaceutical patents, or scientific intellectual property. Later today, I'll be hosting an ACS "Program in a box" Webinar on establishing and protecting your intellectual property. Feel free to ask questions about that, or tune in later here: <http://www.acs.org/content/acs/en/acs-webinars/program-in-a-box/pib-on-demand/protect-ip.html> I'll be back at 1 pm ET (10 am PT, 6 pm UTC) to answer your questions, ask me anything! EDIT: Hi folks, this is ACS's Reddit team speaking. Robert Koch's flight was delayed, but he just landed and is making his way to a reliable internet connection as we speak. He'll be online at 2 PM ET now to answer all of your questions. Sorry for the delay – keep sending those questions. Thanks! Greetings and sorry for the delay due to flight problems. I will run until 3 pm eastern and hopefully be able to supplement tomorrow. Have to run now but I'll check back tomorrow.

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ABSTRACT

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What is your position on the TPP? What parts of it bother you and how would you improve it? What parts of it do you believe will help innovation and why?

[igottashare](#)

I resist taking a position on legislation or treaties until I have read the whole document. Unfortunately, I have not been able to plow through all the sections of TPP yet so I am reserving judgment.

What are your thoughts on genetic patents? On the one hand, its a fairly expensive endeavor to identify a gene's function and how it can be incorporated into, say a breed of corn. On the other, its kind of like patenting whale blubber... It's just find a use for something that always existed.

[GABBYYES](#)

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Research and development are surely expensive but the benefits can be enormous, fully justifiable economically and gladly paid for by the consumer. The I-phone and GMO crops are two such examples.

What is your opinion of how different fields tend to approach litigation differently? For example, pharmaceutical companies are very apt to litigate while many other industries prefer cross-licensing agreements.

[leshake](#)

I think any mature industry, without more, would favor cross licensing. The pharma industry, however, has more - the legal structure of Hatch Waxman which favors early litigation as the way to resolve disputes and compensate innovation and competition. It is a very delicate balance.

Assume for a moment that a person has something really good. Consider it an idea that many large companies would commercialize quickly and profitably. So this person files and receives a patent. Then the big companies just utilize the idea without paying any licensing or even recognizing the patent.

How many cases out of 10 would the little guy win in a patent lawsuit? Basically, I'm asking you to address the cynical view of patents in a little guy vs big guy scenario.

[brereddit](#)

This is a really good practical question. In my opinion the patent system is not for the little guy. It costs far too much for patent enforcement and patent defense. Moreover, regulatory costs and obstacles are added onto patent costs in many fields. That is not to say innovation cannot begin with the individual or small business. But the best general advice to an individual who has something really good, as you say, is to sell that something to a company which can develop, enforce and defend the eventual patent portfolio. Obviously, the individual will not likely reap the millions that the company seeks to earn but instances of the little guy outlasting the well-heeled opponent in a patent lawsuit are very rare. The NTP v Blackberry litigation comes to mind as one of those exceptions.

Do you believe the current patent system is sufficient for the pharmaceutical industry?

I've heard that there is an issue with 'orphaned' drugs where the FDA approval expires after the patent expires, and nobody wants to pay for renewal. Can you expand on this?

Are there such a thing as 'patent trolls' in the chemistry world? Companies that buy up patents on 'methods' and then sue companies that use those methods?

[monkeydave](#)

The current system works pretty well. Could it be better? Probably. But it is truly amazing that the Hatch-Waxman laws that so drastically changed pharma patent enforcement and generic entry into the market have worked so well. Bottom line, the present system requires a lucrative market to justify the research and development costs. Other systems could also work but this is what we have and the new discoveries that are being turned into useful pharmaceutical products are proof that the system works. Yes, there are patent trolls in the chemistry world. maybe not so many because chemistry is so much more complicated than business methods (joking).

Thanks for doing the AMA! Feel free to take a crack at any of the questions below.

If you could change one patent law, which would it be and why?

If you could alter one patent case decision which would it be and why?

Who is your favorite federal circuit judge?

IPR proceeding seem to be becoming a new battlefield for pharma/biotech companies, what if any changes would you make to the current IPR rules?

Will big pharma companies (who typically want strong IP laws) be forever opposed to big software/tech companies (who typically want weaker IP laws), is there a way to solve this problem? To me (and I am generalizing), it seems big tech is far more concerned with 'patent trolls' while big pharma is more concerned about protecting against a generic competitor.

Will CRISPR going to be the new patent battlefield?

[windslashz](#)

Alter one patent decision: Alice, that decision must have Judge Rich rolling over in his grave. Favorite Fed Cir Judge: Pauline Newman. IPR changes: wait a bit.