

# 3LP Advisors

## Patent Crisis?

Council on Foreign Relations  
Patent Roundtable

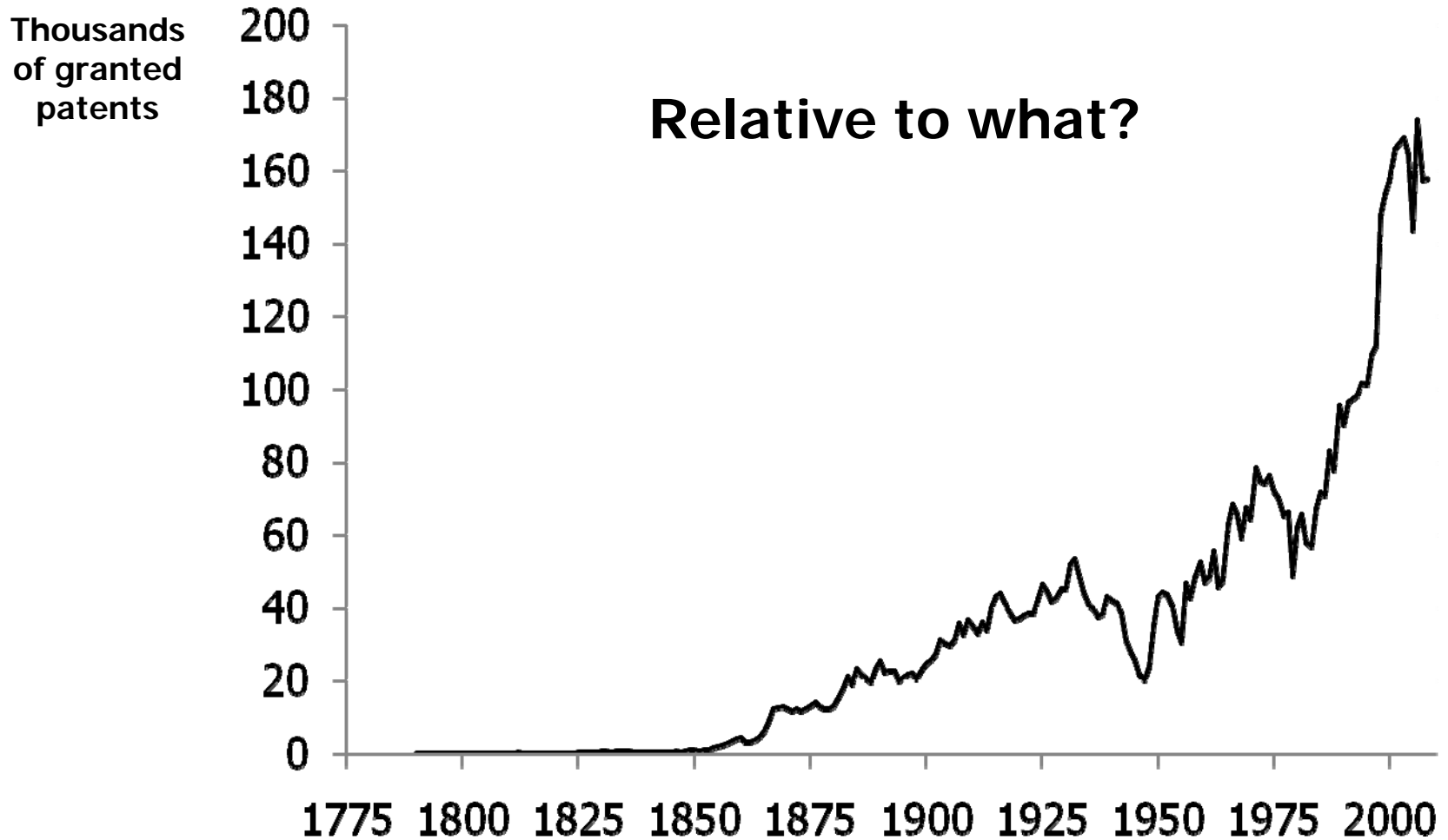
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April 7, 2009

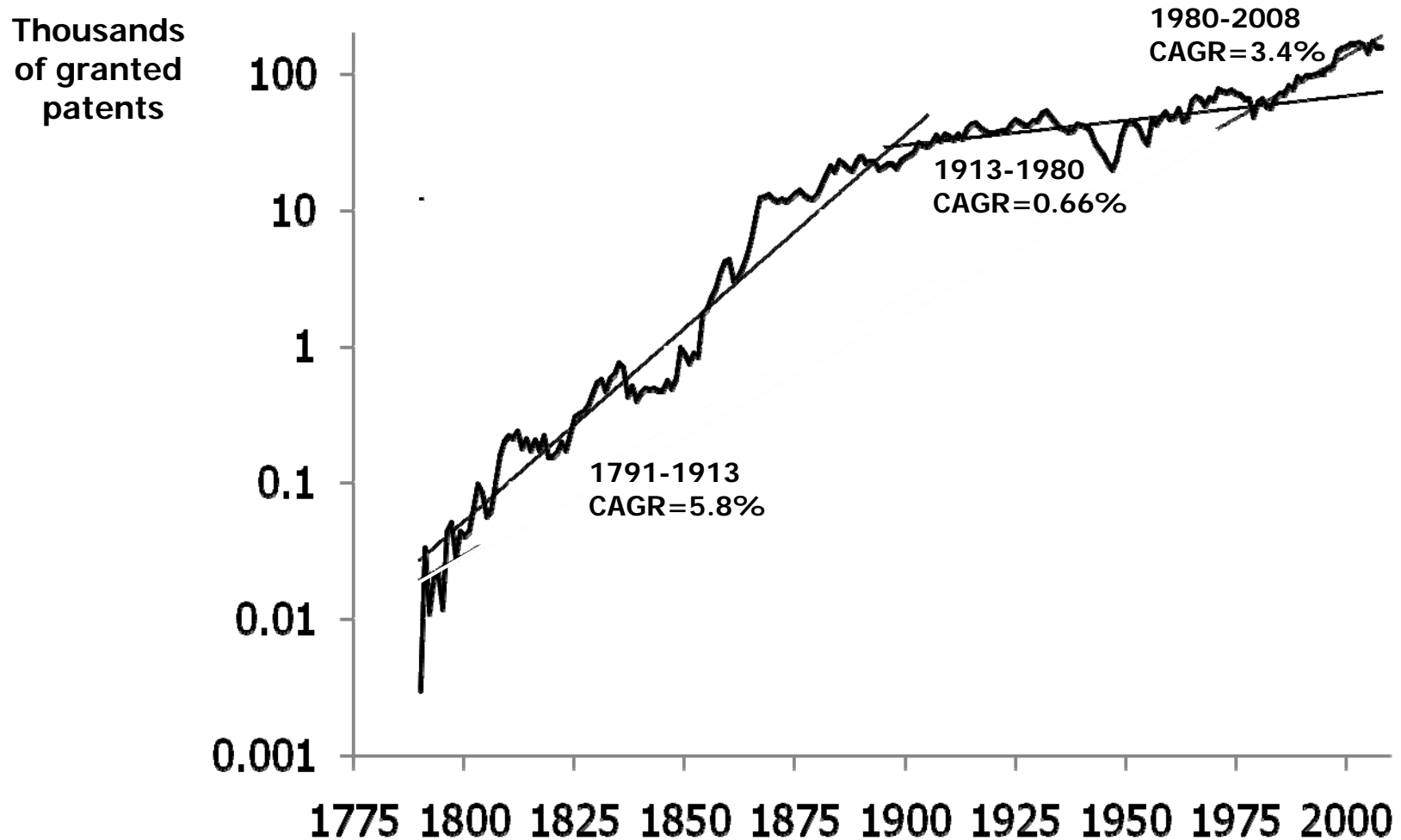


*Harnessing the power of innovation*

# Too many patents?



## Relative to the past?

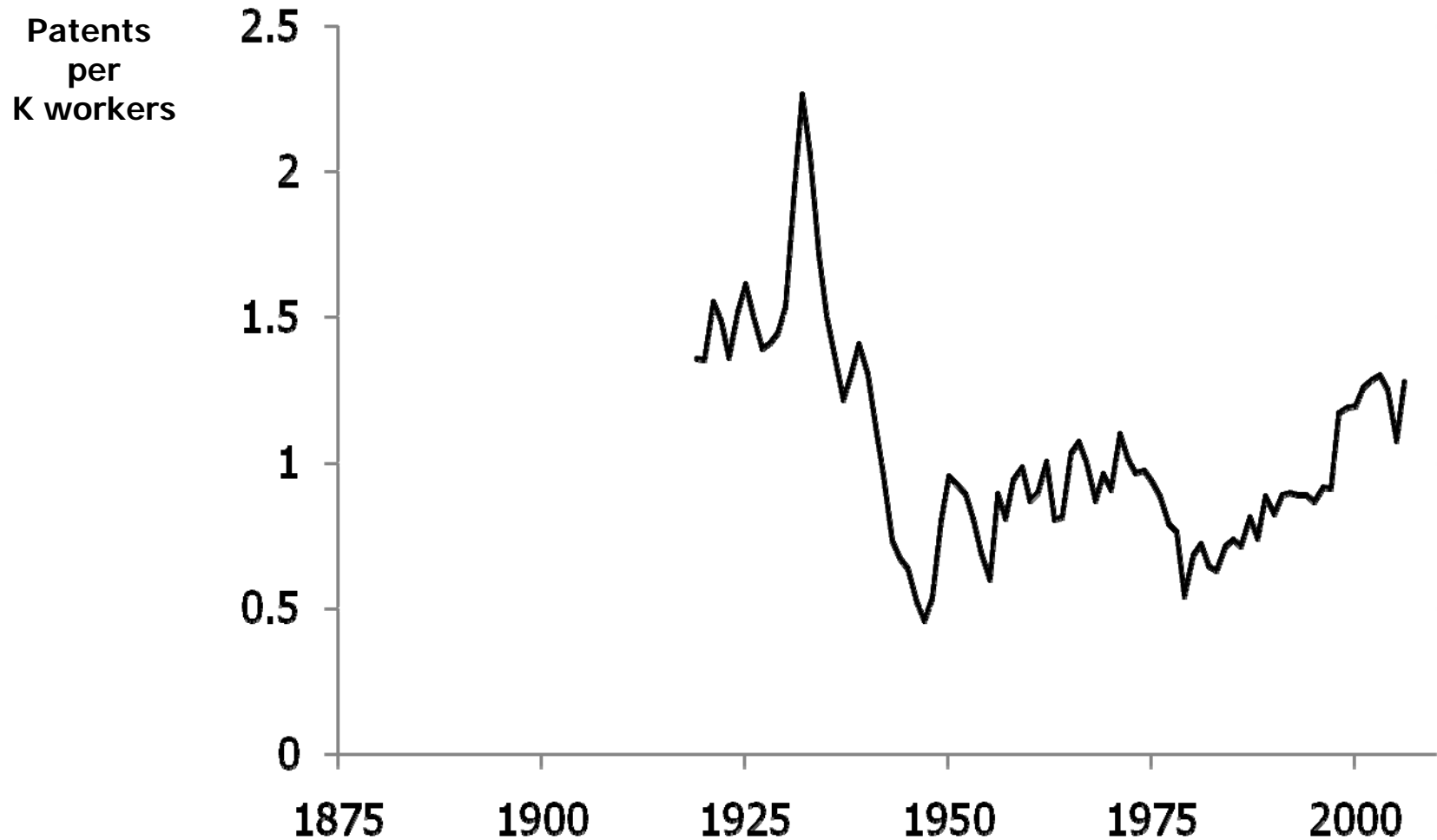




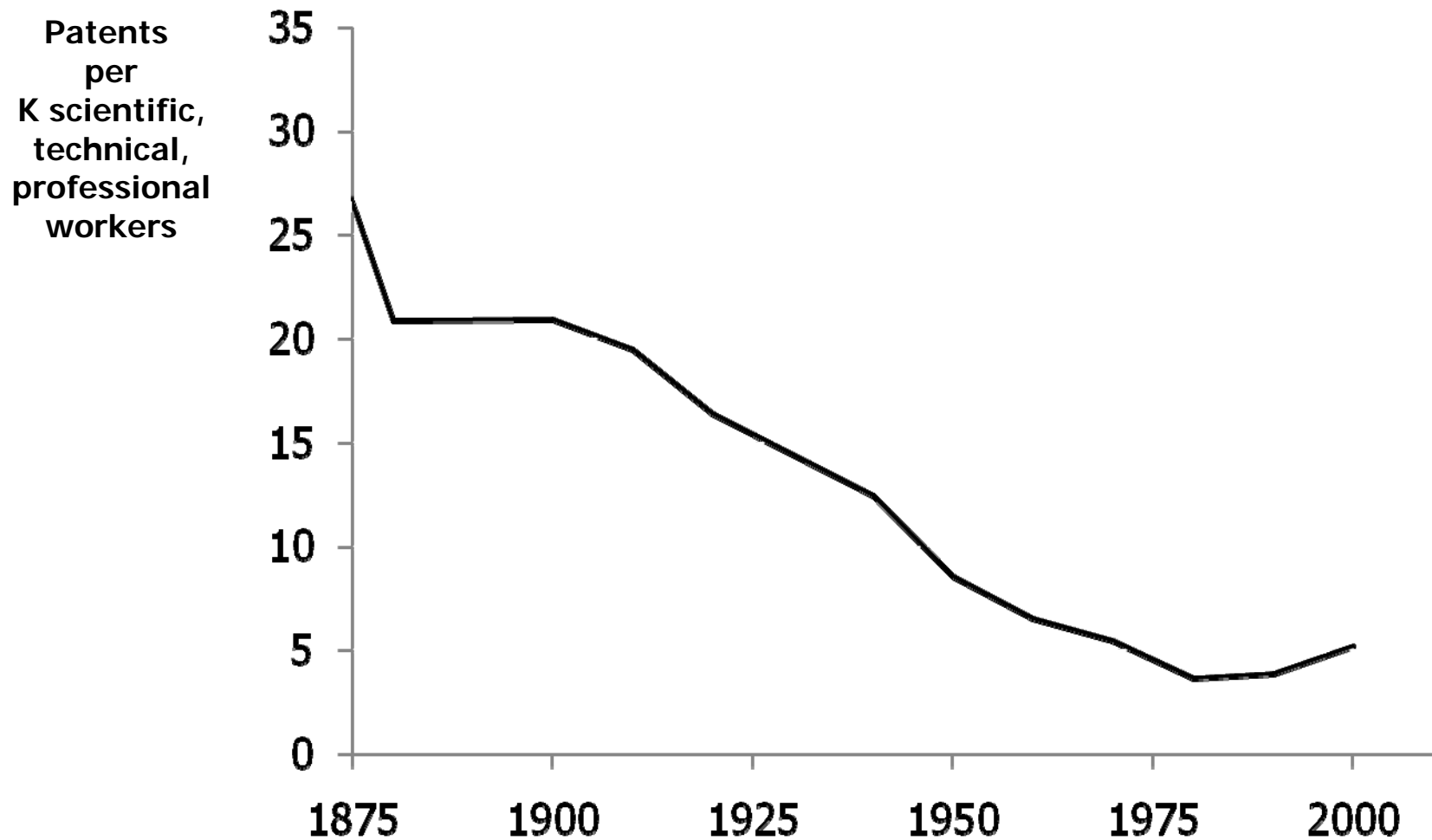
## Relative to population?



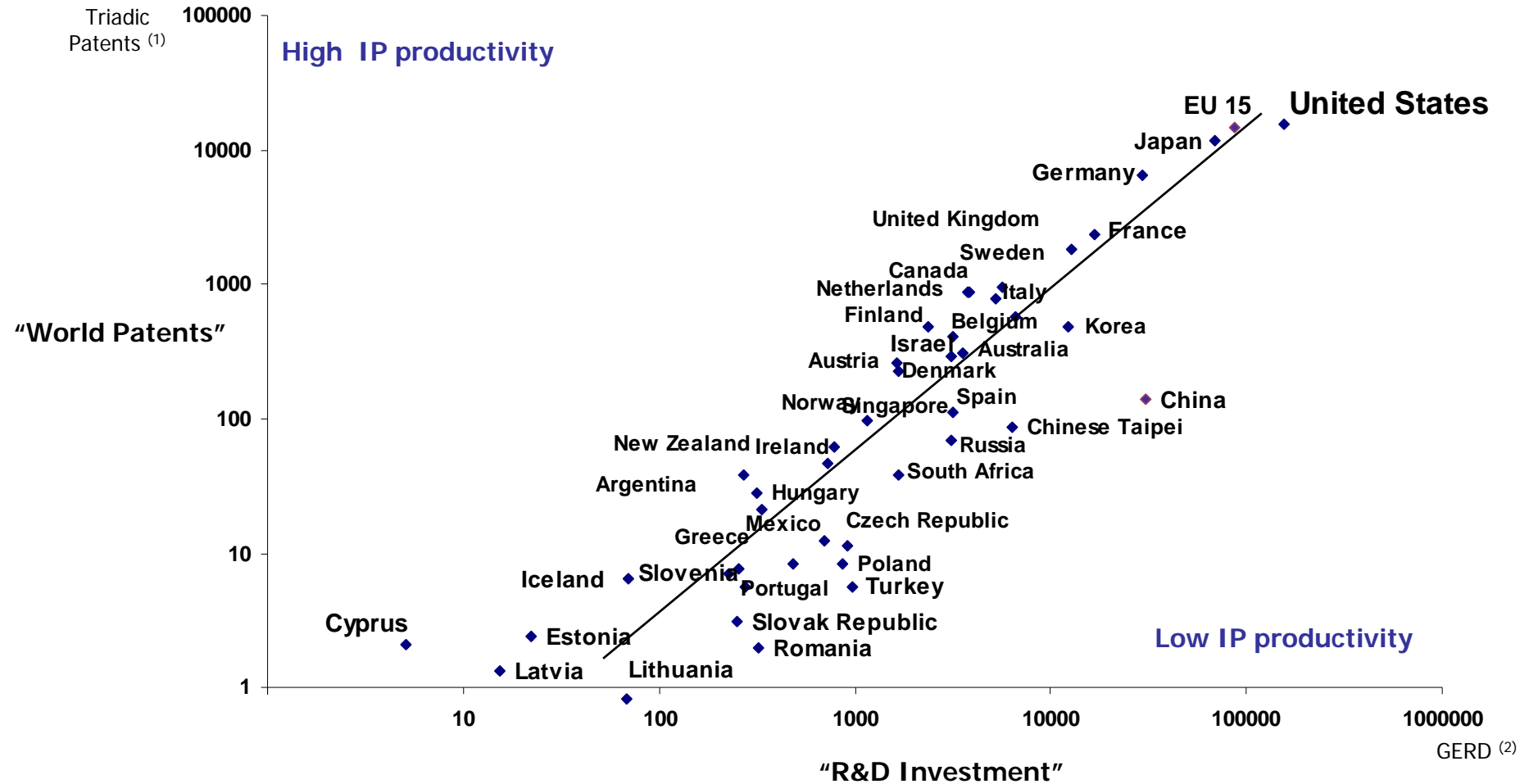
## Relative to the non-farm labor force?



## Relative to knowledge workers?

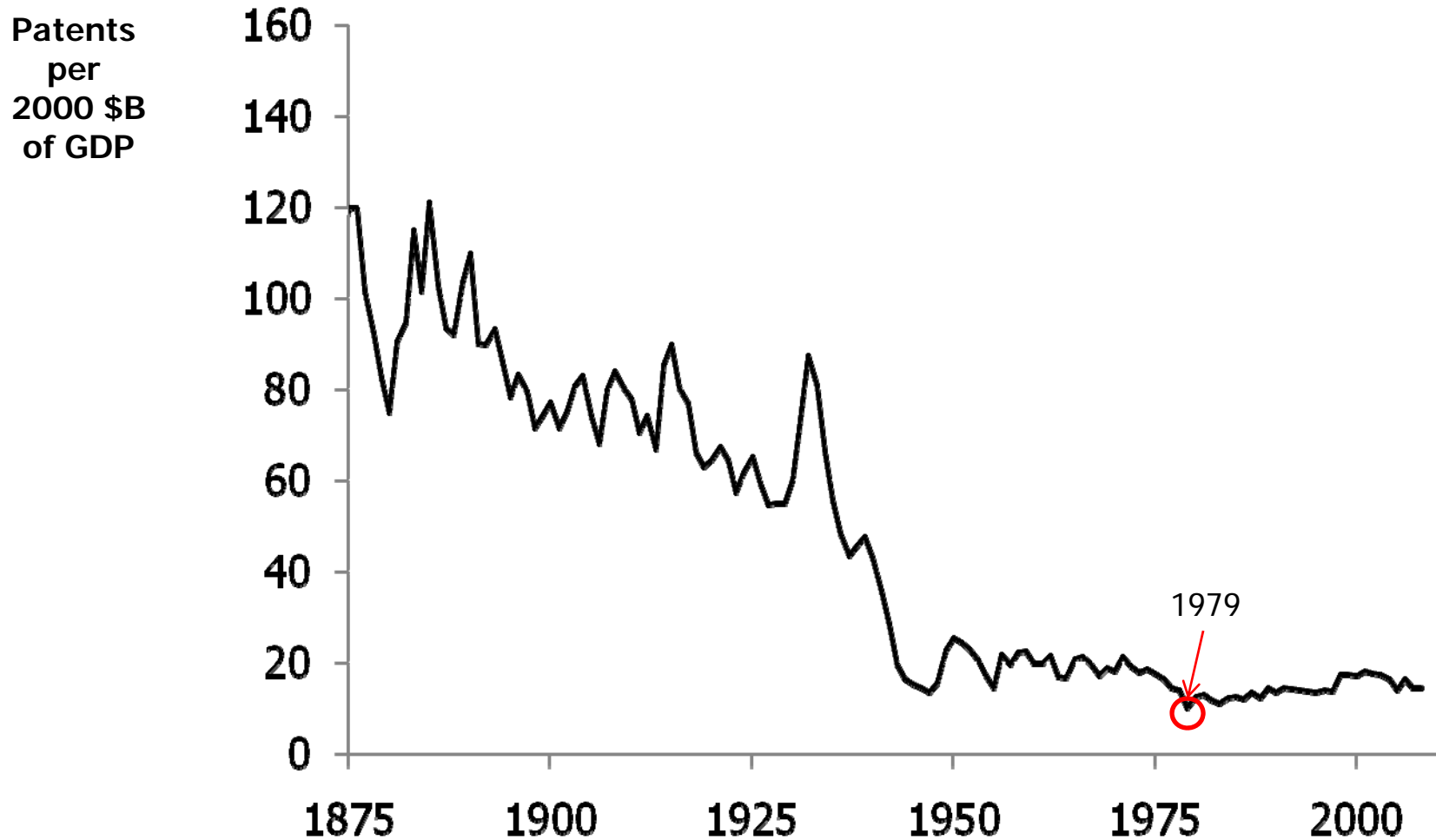


## Relative to National R&D spending?

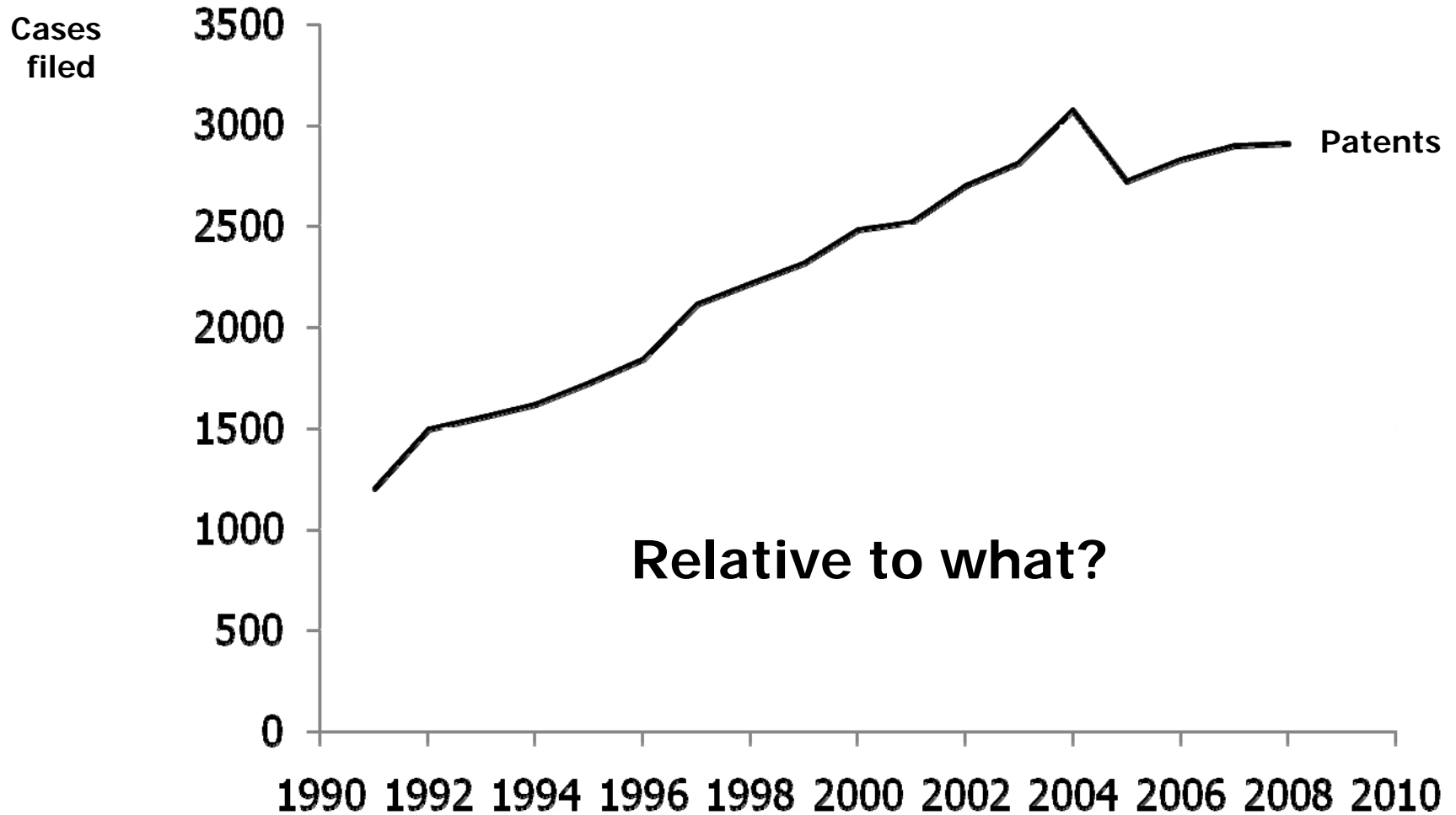


(1) Avg # of Triadic Patent Families 1996-2002  
 (2) Average Industry Financed GERD in 2000 U.S.\$ 1995-2001  
 Source: OECD 2005 Compendium of Patent Statistics  
 Copyright 3LP Advisors - 2009

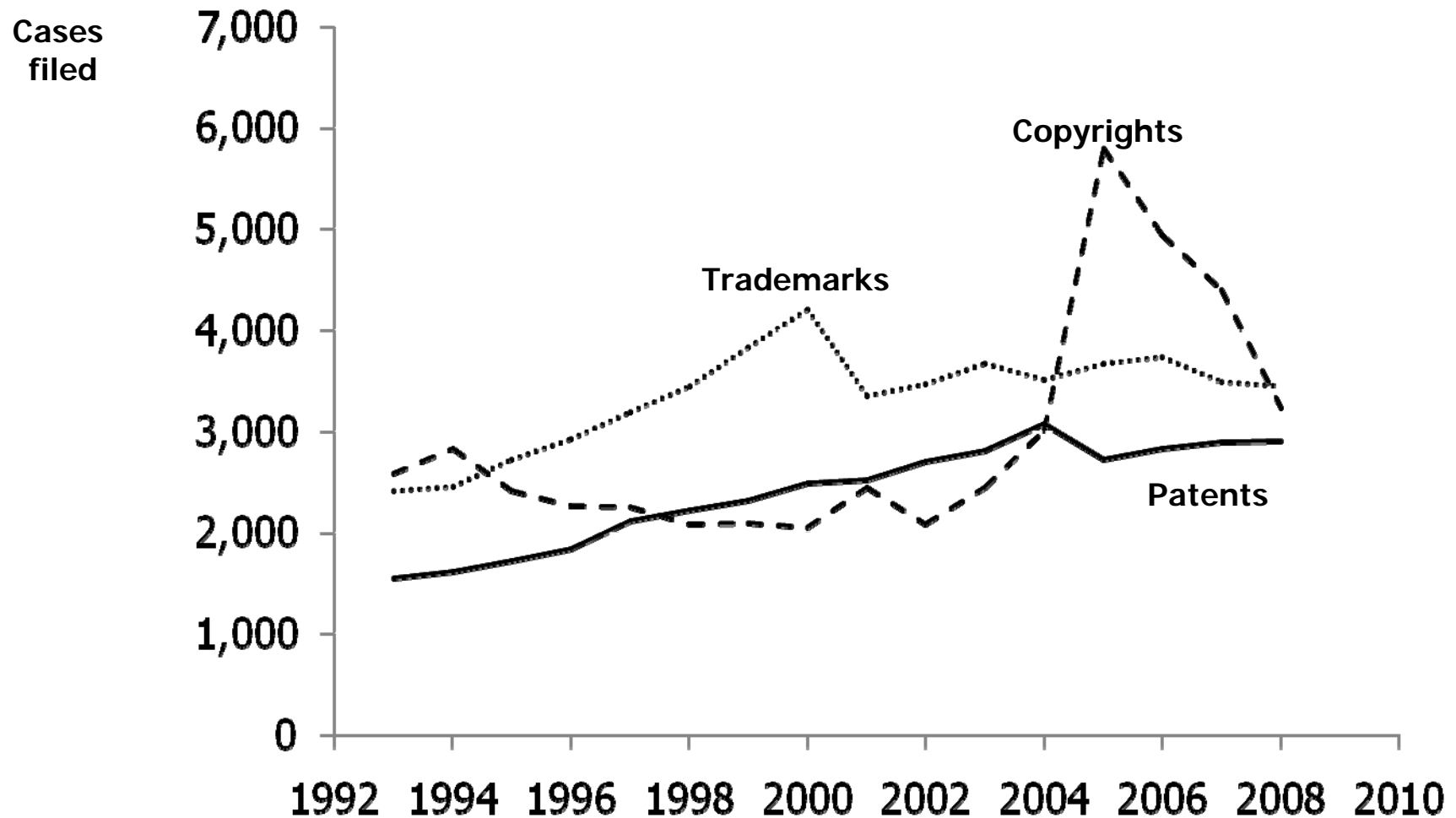
# Relative to the economy?



# Too much litigation?



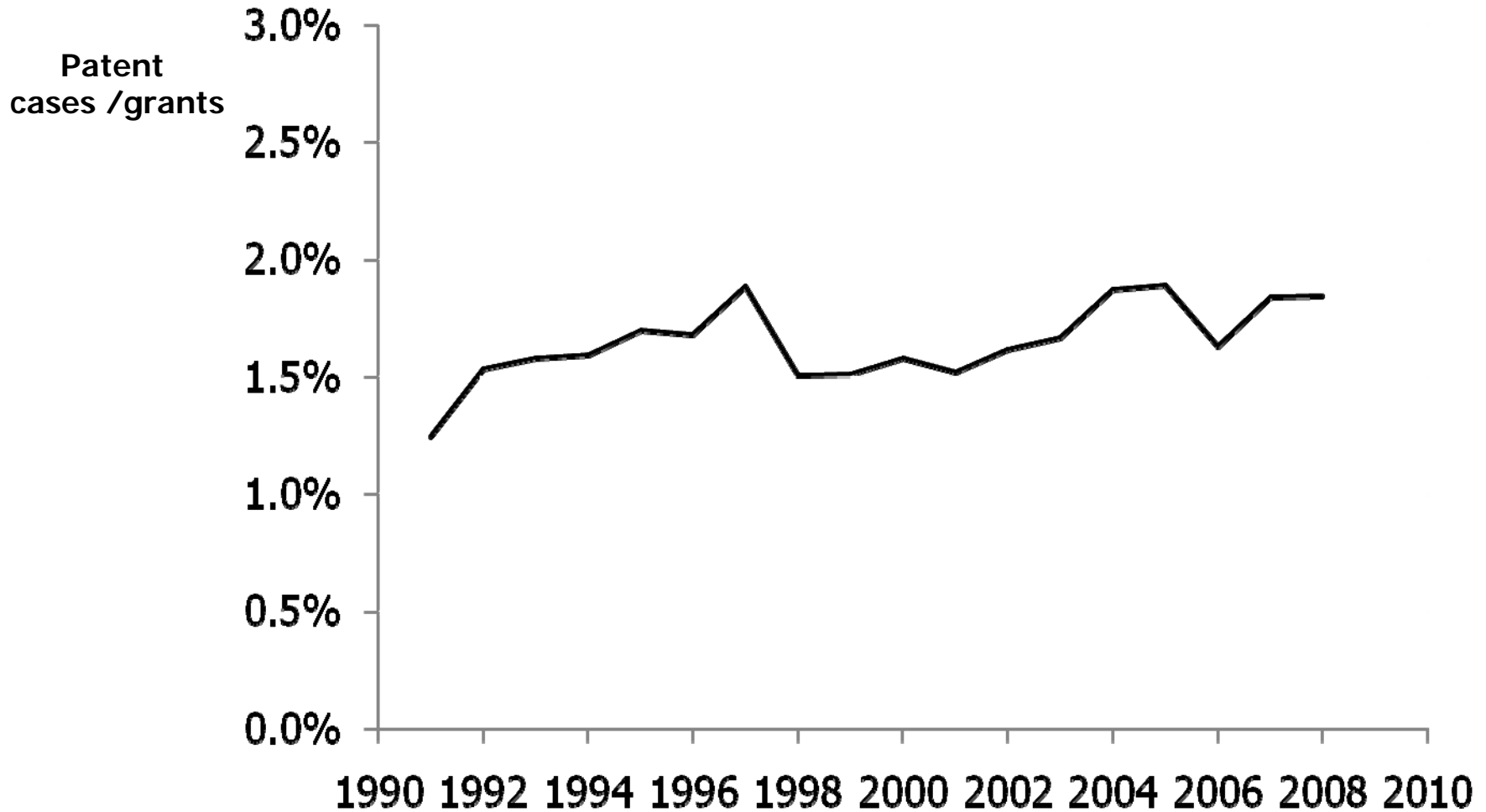
## Relative to other IP cases?



Source: "Judicial Business of the US Courts" between 1997 and 2008 – Table C2A "Cases Commenced, by Nature of Suit".



## Relative to patents granted?



# Relative to case quality?



Source: PricewaterhouseCoopers, "A Closer Look: 2008 Patent Litigation Study"

# One material change: More open markets for technology exchange

	From	To
Technology markets	Barter trade in cross licensing networks	Price-based exchange in licensing markets
Business models	Bundled with products	Open market exchange
Nature of cases	One to one	One to many
Nature of defendants	Product competitors	Technology aggregators
Firm structure	Vertical integration	Specialization

Is this a crisis or simply creative destruction at work?

## Be careful what you wish for

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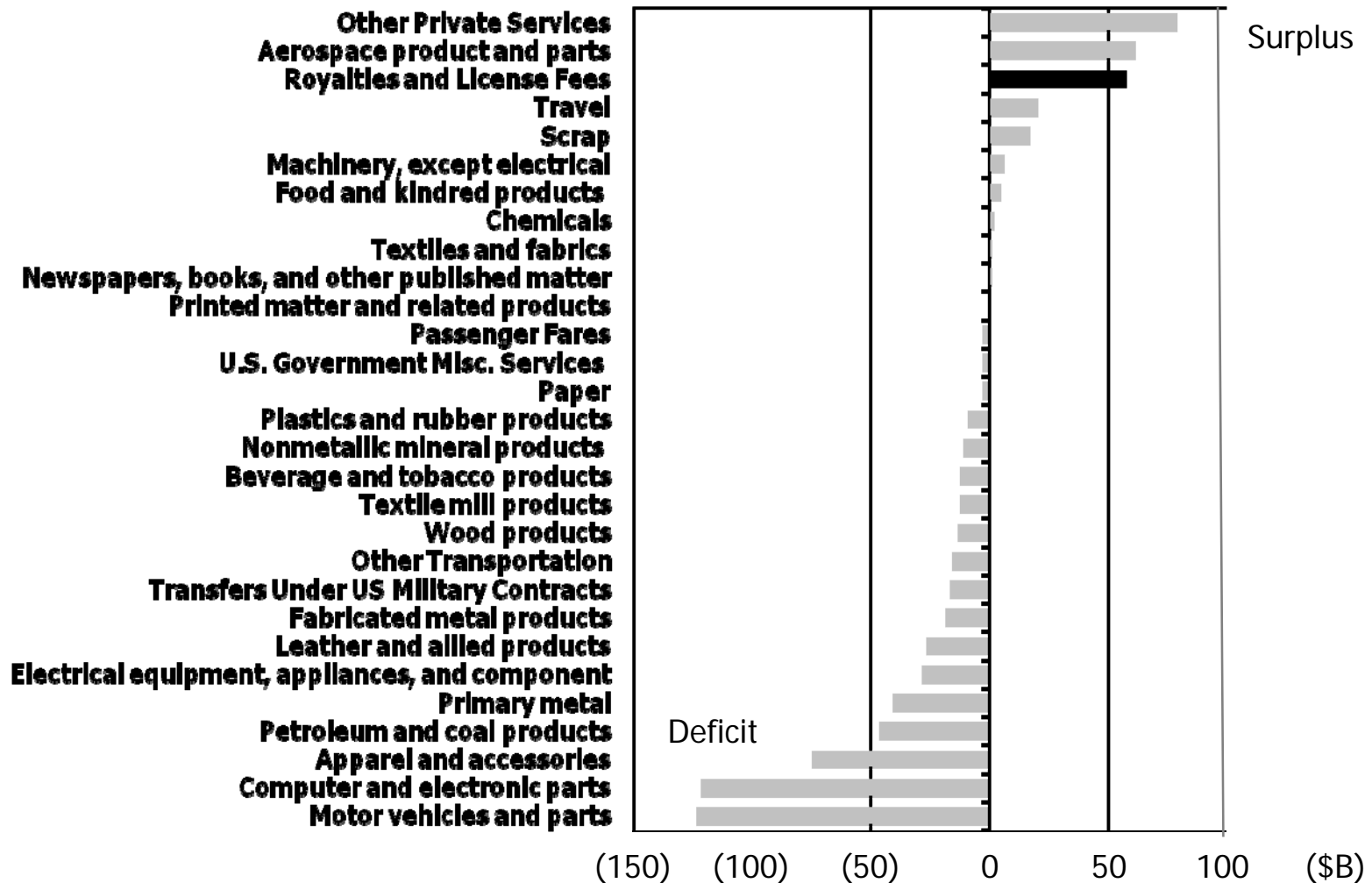
"Everything that can be invented has been invented."

- Charles H. Duell  
Director of U.S. Patent Office,  
1899

[The paper's] most interesting finding is the apparent decline...in patenting per scientist and engineer between the late 1960s and 70s. This supposedly occurred because the pool of inventive possibilities became depleted...[or] "fished out"...I find his observation consistent with my own qualitative observations on what happened in a number of industries that...entered a period of technological maturity.

- FM Scherer  
(former chief FTC economist),  
1984

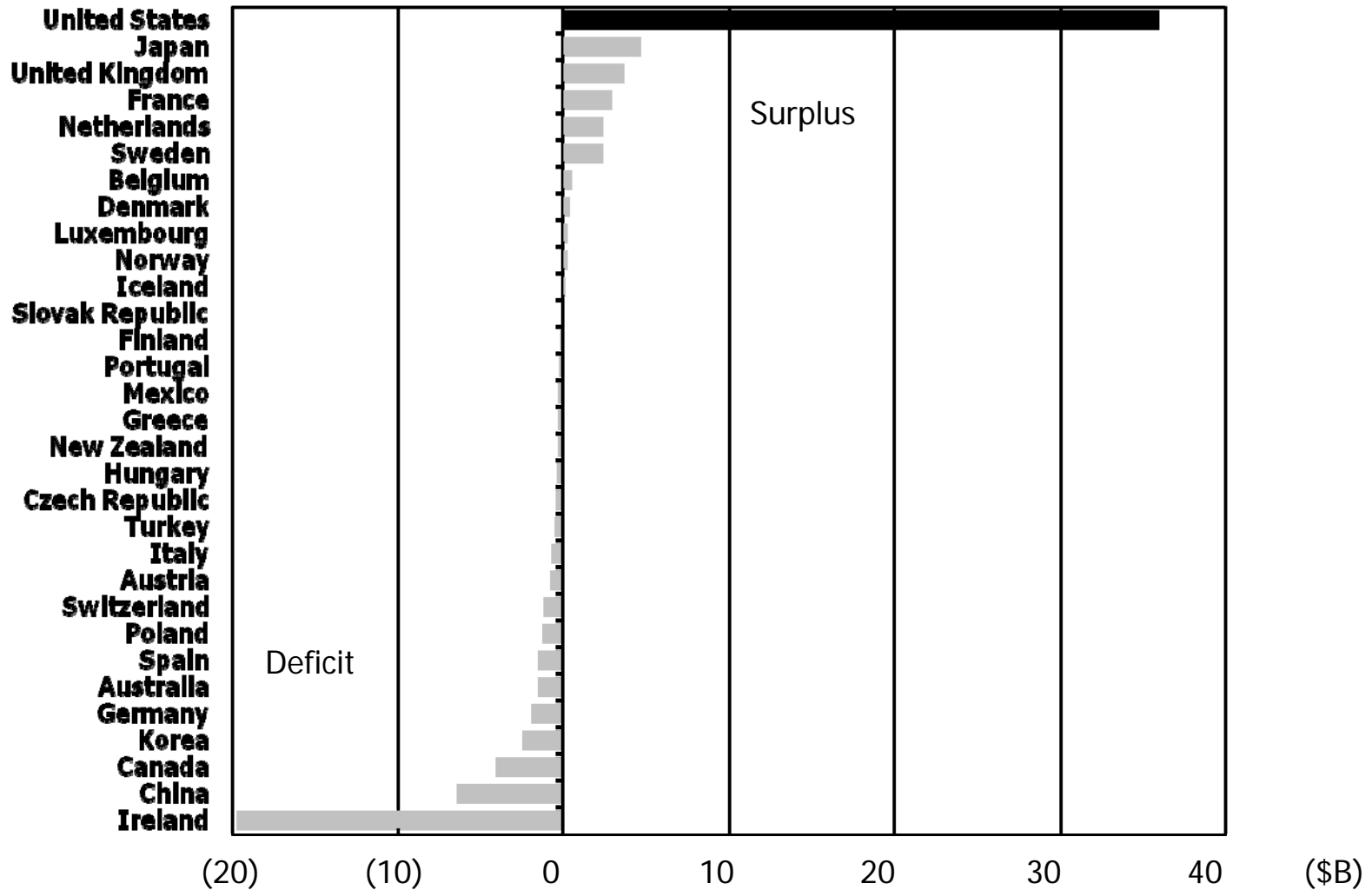
## U.S. balance of trade by sector, 2007



Source: Bureau of Economic Analysis, U.S. International Trade in Goods and Services, September 2008:

## “Royalties and license fees”

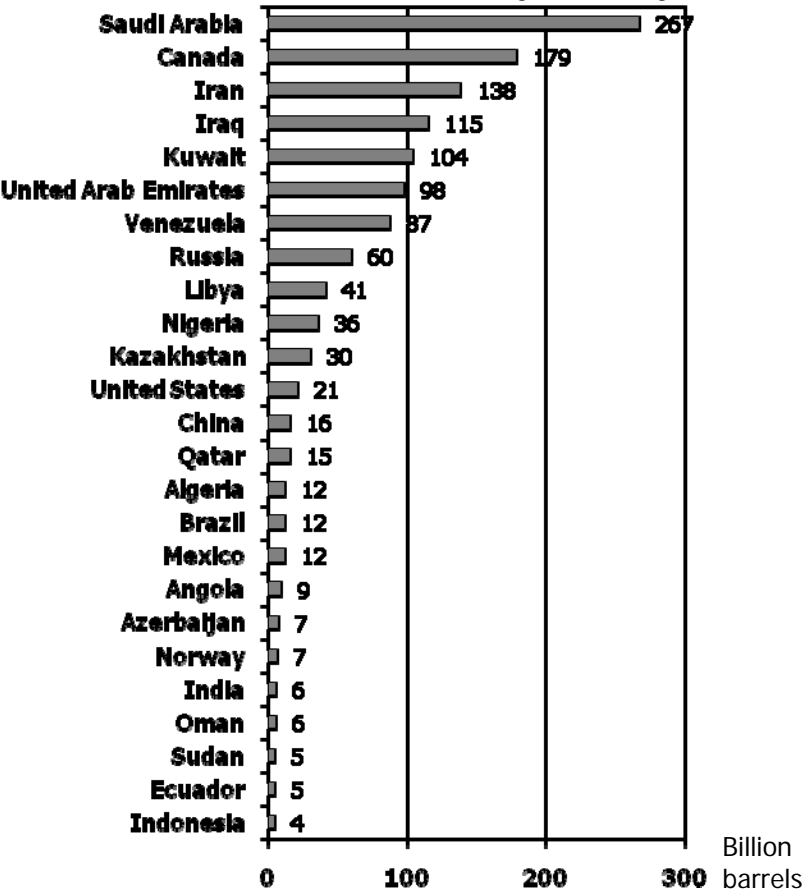
## Trade balance for selected countries in 2006



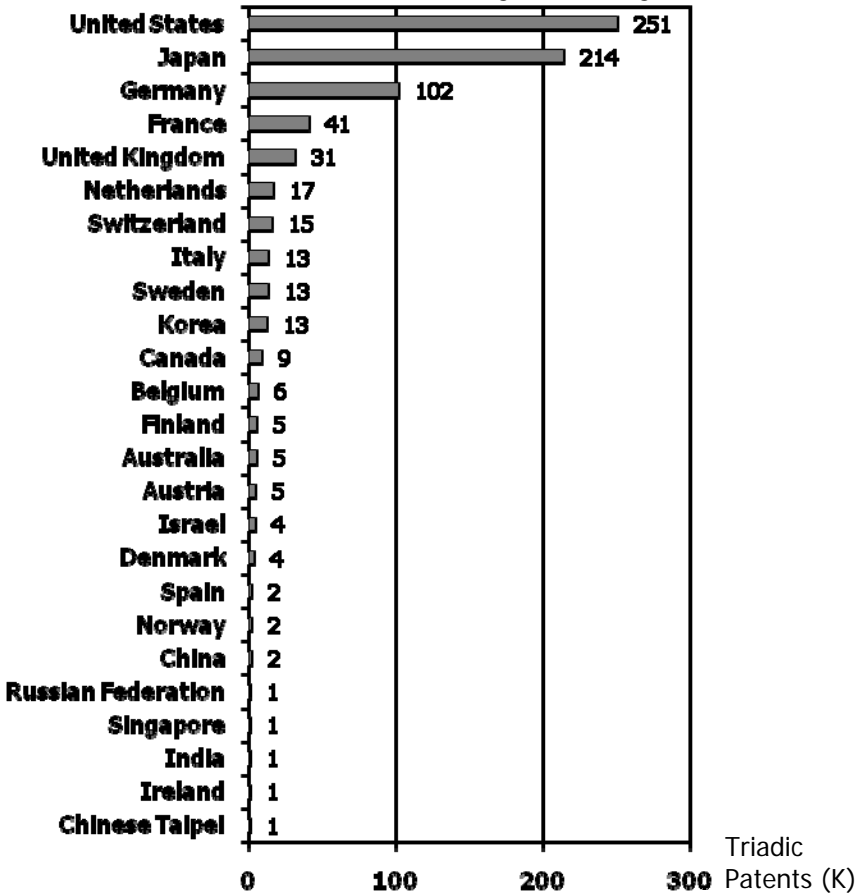
Sources: Organization for Economic Cooperation and Development, OECD Statistics on International Trade in Services;  
 Chinese Ministry of Commerce, China Trade In Services, 2008

# Patents are America's most valuable strategic reserve

Proven Oil Reserves by Country



"Patent Reserves<sup>(1)</sup>" by Country



*Saudi Arabia holds 20% of the world's oil reserves, while the U.S. holds 33% of the world's patent reserves*

Source: Energy Information Administration Estimate 2008; 2008 OECD Compendium of Patent Statistics

1) Triadic patents granted over the last 20 years

## Conclusions

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### There is no patent crisis

- Patent filings are driven by the opportunity in technology investments and are a sign of an advanced and thriving knowledge-based economy

### There is no litigation crisis

- Patent suits are an expected and necessary part of a functioning patent system. There is no evidence of rising abuse or increased bias in favor of patent owners. Indeed, the trend is the opposite.
- One material change is an expanding market for technology exchange and the business response to these increasingly open and liquid markets. What's wrong with that?

However, a sustained assault on patent rights risks compromising America's national competitiveness