

An Agency Theory of Patent Law: Linking Innovators and Invention Users

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This article presents a reinterpretation of patent laws as components of agency relationships linking innovators and innovation users. In these relationships, patent rights substitute for privately negotiated contract terms tying the interests of persons with technology needs to the interests of persons with sufficient technological knowledge and resources to provide technological solutions. Patent rights establish rewards for successful problem solving via agency processes in which innovation users are principals and these principals' interests in improved or modified technologies are served by one or more technologically adept agents. This model suggests that cost-effective levels of innovation will be encouraged by patent-enhanced agency processes if patent rewards are perceived by innovation agents as large enough to incentivize cost-effective innovation, taking into account the risks of such innovation, the risk preferences of the innovators, and the benefits achieved for innovation users. This type of agency model has several advantages in interpreting present patent laws and suggesting desirable reforms. First, it emphasizes the technology-enhancing goals of patent laws over sometimes misleading considerations of property rights and controls. Patent law standards are desirable under this model solely if they promote the interests of principals in acquiring new technologies. Rights and incentives provided to innovators are seen as instrumental means to promote the interests of innovation users and consumers who occupy the position of principals in the patent-structured relationships of interest. Second, by viewing innovation processes as agency processes and assessing patent rights as one feature shaping these agency processes, a developed body of methodologies for analyzing agency processes can be applied additionally to descriptive and normative studies of the patent system. Descriptive studies using agency models can help us assess the probable impact of present patent standards in promoting innovations of benefit to invention users. Normative studies using agency models can suggest how patent incentives should be adjusted to bring innovative efforts serving invention users to more efficient levels. Third, by viewing patent rights as instrumentalities for governing agency relationships aimed at innovation we can gain new insights about situations where patent rights should not apply. In settings where agency processes are unlikely to be effective in promoting useful innovation, associated patent rights will also serve no useful role and may produce wasteful costs or restrictions on business activities. Looked at this way, boundaries of potentially effective agency processes for innovation help to delineate the proper boundaries of the patent system and provide a new means to study the proper scope of patentable subject matter and related issues.

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