

Regulatory Competitive Shelters as Patent Substitutes

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It is generally accepted that the patent system is not equally suitable for all areas of technology as a means of incentivizing technological innovation. For a long time, patents have been a tolerable compromise, mostly for lack of a feasible, better option. Experience with regulatory competitive shelter regimes (RCSs; a.k.a. "regulatory exclusivities," "data exclusivities," etc.) over the last three decades suggests that such a better option may now exist in certain areas of technology. In an earlier article - *Introducing: Regulatory Competitive Shelters, The New Patents*, 76 Ohio St. L. J. __ (forthcoming 2015) - I described this relatively new class of incentives to innovate, which has been supporting technological innovation where patents have fallen short. The current article suggests considering RCSs as an alternative to patents in certain regulated areas of technology. It reviews the advantages of RCSs over patents in such areas, offers parameters for the implementation of RCS regimes in lieu of patents, and suggests several areas of technology in which such substitution may be feasible. The article further highlights gaps in our knowledge regarding RCSs that would need to be filled prior to moving forward with the expansion of RCSs into further areas of technology and substitution of patents with RCSs.

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