

# *Principles of Problematic Patents*

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It is common to refer to individual patents, or larger categories of patents, as "problematic." In many cases, a category is considered problematic because patents in that area are thought to generally impose greater social costs than the social benefits they bring. For instance, scholars often criticize business method patents as tending to impose disproportionate social costs. While the scholarship has a robust literature on specific issues that make certain patents more problematic than others in particular contexts (e.g. Bessen and Meurer, 2008, and inadequate patent boundary notice), in general, the literature has not methodically organized the theoretical dimensions along which patents tend to be more or less problematic. The goal of this article is to create a taxonomy of problematic patent characteristics. It aims to synthesize the existing literature in order to create an organized structure and vocabulary for expressing the various characteristics that tend to make individual patents, or patenting areas, more or less problematic, along with the underlying theoretical reasons why. For instance, such a taxonomy articulates characteristics including: inadequate notice of patent boundaries, mismatches between patent law's underlying economic model and an inventive area, over-breath, multi-component inventions, capture of after-arising technologies, mismatch between 20 year term and rate of change in inventive areas and many others. Moreover, each of the dimensions articulated is organized thematically by theoretic similarity. Such a taxonomy offers several benefits. First, it will allow us a vocabulary for expressing in a more methodical, consistent, and finely grained manner why any particular patent, or larger category of patents, tend to impose greater social costs. In other words, rather than broadly condemning areas such as business method patenting, one will have the vocabulary for more precisely articulating why, for instance, business method patents tend to be problematic, and the particular dimension of social cost that they tend to implicate more intensely compared to other inventive areas. Second, it will provide insights as to the legal institutions that may be best equipped to mitigate specific patent problems.

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