# *A Relevant Intent Theory of Patents*

**Saurabh Vishnubhakat**
Postdoctoral Associate, Duke University School of Law
Durham, NC

This article challenges the axiom of U.S. patent law that direct patent infringement is a strict liability tort. Even among critics of the strict liability conception in certain patent contexts, the consensus view of direct infringement remains that impermissibly practicing a patented invention creates liability without regard for the infringer's intent to infringe the patent or even for her knowledge of the patent, and that this is a form of strict liability. This strict liability view disregards the wrong intent because torts at every level of purposive action create liability based on an intent to perform an act that the law deems tortious, not on an intent to commit a tort. Though the patent infringement statute supports such a reading, patent infringement jurisprudence in practice does not proceed from this true strict liability premise. The law of direct infringement currently takes little positive or negative account of the relevant intent of an alleged infringer. This article fills that gap with a framework that applies well-understood tort principles to patents based on a theory of relevant intent. The proposed framework offers a powerful new policy lever in the current debate about the notice function of patents and about the effects of patent assertion on static and dynamic efficiency in the U.S. patent system.

**Biography:** I have served in the USPTO Office of Chief Economist since shortly after its creation in early 2010. I am currently a faculty fellow at Duke Law School and the NIH Center for Public Genomics at Duke.

**Email:** vishnubhakat@law.duke.edu

Vishnubhakat