

Coordination-Focused Patent Policy

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In recent years, scholars have observed a variety of ways that patents may be used not only to reward invention, but also to coordinate activity around nascent technologies. For example, patents may be used to facilitate transfers of technology from inventors to commercializers, reduce the cost of sharing confidential information, and enable broader collaboration around emerging standards. However, despite an extensive discussion about the legitimacy and desirability of these alternative roles for the patent system, very little has been said about the consequences of this debate for patent policy itself. This Article seeks to fill that void, examining how the recognition (or not) of a coordination role for the patent system leads to divergent patent policies - both at the level of intermediate goals and in the context of specific rules. This inquiry suggests that the current debate about the justifications for patenting has real consequences, not only for the ideal level of patent protection, but also for the kind of patent system that should offer that protection. A deeper understanding of the relationship between these alternative functions and specific patent rules is necessary for tailoring patent policy to the evolving goals of the patent system - and for determining whether the patent system is well suited to these objectives in the first place.

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