The Choice of Patent Scope when Invention Disclosure is Costly

This paper investigates the relationship between private and social incentives to invest in patent disclosure. The scope of patent rights depends in part on the content of the application submitted to the Patent Office by an inventor. The content of the application depends on more than just the inventive activities of the applicant; it also depends on disclosure requirements set by patent law and an applicant’s investment devoted to disclosure. Both the magnitude and the certainty of scope can be affected by disclosure investment. Naturally, inventors prefer increasing scope magnitude, they may also prefer increasing certainty, especially if it reduces litigation and increases licensing – but disclosure is costly, and applicants trade-off the private costs and benefits of disclosure. This paper takes a standard model of cumulative innovation and adds a disclosure stage. I show that disclosure investment may be a complement or a substitute for investment in invention, and I explore optimal patent policy toward disclosure.