The Public's Interest in Patent Law

The recent case of Association for Molecular Pathology v. USPTO (popularly referred to as Myriad) has posed a fundamental issue in patent law: what is the public’s interest in patent law?

The existence of a broader “public interest” in patent law seemingly complicates predominant norm of patent law, which has sought to protect innovation by protecting the interests of the patent owner. Innovation’s primacy, however, was not always the norm in patent law. Indeed, patent law in the United States had a rich tradition of equity that incorporated the nineteenth and early twentieth century that advanced a broadly conceived public interest. Interestingly, though, the Patent Act of 1052 sought to limit the use of equitable principles in patent law, thus ensuring the primacy of innovation as a predominant norm in patent law. Recently, however, patent law, in a variety of areas—fraud enforcement, antitrust, and exhaustion—has seen a revival of the “just” tradition in patent law. The revival of this “just” tradition, with roots outside of the framework of the Patent Act of 1952, has reinvigorated a doctrinal debate over what constitutes the public’s interest in patent law. Notably, this doctrinal reconsideration of the public interest tradition in patent law has been accompanied, by a reconsideration of the enforcement mechanisms necessary to enforce that particular public interest.

This Article seeks, then, undertakes three tasks. First, this Article seeks to define the exact the contours of the public’s interest in patent law, with a particular emphasis on how the “just” tradition in equitable patent actions, presented the opportunity to define the public interest in patent law. Second, this Article seeks will analyze how the Patent Act of 1952 minimized this just tradition in patent law. Finally, this Article will examine how the current patent regime can be renewed with the context of domestic and international patent law.