An Organizational Design Approach to Patents & Its Policy Implications

Abstract

Can we increase innovation by changing patent law, and if so, how? Most would agree that the primary goal of patent law is to encourage innovation. Yet despite decades of study and debate we remain largely in the dark as to whether and how patents and their design impact innovation. Traditional approaches to the study of patents, with their shared foundation in abstract models of incentive based, producer-driven invention, have been unable to move us beyond this impasse. A disconnect exists between current patent policies and innovation strategies, resulting in missed opportunities for improving innovation outcomes through changes in patent law. This Article argues for a shift away from traditional modes of analysis as a prerequisite for more effective policy design, proposing instead an Organizational Design Approach to patent policy that focuses on how patents influence the organization of innovation. The Organizational Design Approach builds upon the tools and methodologies of New Institutional Economics (NIE), with an emphasis on Williamson’s work on the organization of economic behavior. Under this Approach the human arrangements that drive processes of innovation become the basic units of analysis. Attention is focused on how a change in patent rights might influence the organization of innovation and to what effect. An analytical framework based on layers of social analysis grounds the core principles of the Approach and provides a platform for connecting and expanding existing NIE work and mapping the insights more directly into real world innovation strategies. Adopting this Approach has significant implications for where the focus of patent policy should be, including a focus on how patents determine modes of collaboration, support for a tailored approach to patents, and emphasis on the role of informal norms as determinants of policy effectiveness, particularly at the international level where issues of compliance dominate. The Article concludes that an organizational design approach of this sort is critical if the potential of the patent system is to be realized.