

*Rebranding the Patent System:
A Market for Inventions,
Not Exclusion for Incentives*

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Scholars and commentators cannot agree whether we should have a patent system. We really aren't sure it helps or hinders technological progress. As technological progress is the key to economic growth, this is particularly worrisome. This essay argues that the problem isn't the patent system rather the problem is the patent narrative. Patents are seen as a kind of industrial policy that, through their exclusionary rights, provides *legal* incentives that induce the optimal amount of inventive activity.

This essay argues that the continued lack of acceptance of the patent system is directly related to this narrative, its public relations failures, and its ultimate indeterminacy. The *legal* incentive story has squandered important public relations opportunities and has alienated important constituents including traditional property market advocates, access to knowledge advocates, and even actual inventors. More generally and more importantly, the narrative has failed because it cannot ultimately prove that the system provides benefits that exceed its costs. That indeterminacy along with the alienation fuels never ending controversy and instability.

We can and must do better. This essay argues that the patent system should be re-conceptualized as a property-based institution that aims simply to enable inventors to sell their inventions. The focus of this story is the productive acts of creating and then distributing the inventor's actual invention to those that can use it. Exclusion is still important in this story but it exists in the background proscribing those specific acts that would otherwise prevent the flourishing of this market for inventions. A patent system guided by this narrative can be not only determinate but it also retells the patent story in a way that allies itself with those interest groups that had previously been alienated. It is hoped that such a narrative can lead to widespread acceptance and stability for the patent system.