

Peripheral Disclosure

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The requirement that inventors disclose their inventions in return for a patent is one of the primary justifications for the patent system. Yet that justification has been subject to substantial criticism, and with good reason. Conventional disclosure scholarship focuses on inventor's disclosure within the patent itself, a document that often fails to provide meaningful information to others. As a result, conventional disclosure theory has largely been relegated to the category of a straw man that scholars address perfunctorily when criticizing the patent system. A prime example of this approach is the recent literature advocating a shift towards a secrecy-based regime for encouraging the development of technological innovations.

Instead of thinking of disclosure benefits solely in terms of the contents of the patent itself, I argue that equally - if not more - important is the disclosure of technological information that patents encourage and permit to occur, a concept I call "peripheral disclosure." This information plays a key role in encouraging prospective technological innovation. In essence, I argue that the greatest benefit of patents is not in the information they contain, but rather in the numerous peripheral disclosures they permit, from scientific papers and conferences to product marketing to the informational benefits of self-disclosing inventions. Without patents, none of these disclosures - all of which may provide crucial information to future inventors - would be possible.