

Sovereignty, Social Contract and the Patent Office

Peter Drahos

Abstract

Common law courts have been influenced by the idea that the patent represents a social contract between society and the inventor. Does this juridical conception of the patent remain a useful way in which to approach issues of patent reform and regulation? The paper argues that it does. On one view of the social contract, the patent office is society's agent in the contracting process. Is it fulfilling the duties of social agency? In a world of networked governance should society be relying on current models of patent office examination? More broadly, social contract thinking can be used to generate important evaluative principles relevant to patent regulation, perhaps the most important of these being the principle of the separation of powers.