

The Disclosure Function of the Patent System.

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I explore the informational goals of a patent system and the stymieing of those goals by major systemic forces that suppress or discourage the production, dissemination, and processing of useful information. The predominant theory behind the patent grant is that it will stimulate innovation. As part of a quid pro quo, the U.S. government requires the disclosure of information about a patented invention so that potential inventors and others can practice the invention after the expiration of the patent term and can learn from, design around, and be inspired by the invention during and after the patent term. Until now, much of the literature on patent law has addressed the ideal quid*the scope and term of the patent right*but not the ideal quo*the structure and content of invention disclosure in the patent system. And while there is debate in the economic literature about how to strike the right balance in the patent system between stimulating innovation and minimizing deadweight loss, both sides of the debate assume that the gold standard of disclosure is effectuated. I seek to remedy this gap in the patent literature by suggesting why disclosure is important, by examining how the rules of the patent system affect the quality of the disclosure of patented inventions, by arguing that the patent system fails to encourage effective disclosures, and by proposing how the patent system might be overhauled to strengthen the disclosure function. First, there is a structural failure of information in both the patent document and the library of patents. A second systemic problem is the patent system's legal disincentive for experts to read others' patent disclosures. A third problem is a systemic failure of enforcement of adequate disclosure. After analyzing these systemic problems and suggesting how to fix them, I sketch the costs and benefits invigorated disclosure might impose on the patent system.