

An Agency Theory of Patent Law: Linking Innovators and Invention Users

by

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Abstract

This paper presents a reinterpretation of patent laws as components of agency relationships between potential innovators and innovation users. In these relationships, patent rights serve as the substitutes for direct contract terms between persons having needs for new technological solutions to practical problems and those persons with sufficient technological knowledge and resources to provide those solutions. Here, innovation users are treated as principals whose interests in improved or modified technologies are served by one or more technologically adept agents pursuing innovations of interest to the principals. Ideal patent incentives and rewards provided to innovators under this model should approximate those which an informed user would incorporate into an efficient agency contract calling for an agent to pursue innovations serving the needs of the principal.

The analysis in the paper is presented in four parts. Part I describes the proposed model of patent rights as a means to promote innovative agency processes. Part II provides a brief overview of agency theory and its implications for the study of innovation efforts. Part III examines how agency theory can be applied to the particular case of patent-mediated principal and agent relationships aimed at innovation. Part IV examines the implications of the proposed model in identifying the desirable boundaries of patent incentives and patentable subject matters. Part V identifies several additional patent law features for future study in light of their potential impact in promoting efficient behavior of innovators acting as agents on behalf of innovation users.