The Surprising Value of Abandoned Applications to the Patent System

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Some patent applicants abandon their applications after publication without ever receiving a patent. The conventional wisdom is that an abandoned patent application is deficient in some way and consequently worthless. This Article empirically studies abandoned patent applications, finding they are more valuable on average than issued patents across a number of dimensions. For example, abandoned applications are more likely to be used as prior art by the USPTO when rejecting claims of others. There are even numerous abandoned patent applications in the list of the USPTO’s most highly cited pieces of prior art in office actions. Our results present an enigma for both patent scholars and economists: abandoned published applications, widely considered worthless, appear more valuable than issued patents and play a larger role in the patent system than previously thought. This high use of abandoned applications in rejecting other applications and thus preventing broader patent rights for others is arguably a public service, and potentially a huge private loss, that has not been previously recognized in the literature.

Our findings also have important implications for patent law and doctrine. Many scholars claim that scientific researchers ignore patents, rendering the disclosure portion of the patent bargain as an illusion. Our study exposes a yet unrecognized beneficial disclosure—an administrative disclosure where the USPTO relies upon abandoned applications as a significant source of prior art for rejections and improving issued patent quality. Our findings also raise questions about the effectiveness of the patent granting process. Why are there applications that go abandoned but are also amongst the most important pieces of prior art? We empirically study these most cited abandoned applications to attempt to discover the answer.