

## *Do Patents Disclose Useful Information?*

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Courts often state that patents are justified by disclosure theory, the idea that patents are awarded as *quid pro quo* for the public disclosure of inventions. But many commentators have argued that disclosure theory should be accorded no weight in the design of the patent system because patented inventions would have been disclosed anyway. Even the few legal scholars who dispute these economic arguments agree that, in practice, patents are currently not useful as technical sources for other innovators. This Article reorients the debate over disclosure, arguing that we do not grant patents because of disclosure—we require disclosure because we grant patents. Using results from a new survey of nanotechnology researchers and case studies of individual patents, this Article demonstrates that the benefits of disclosure are stronger than is generally believed: patents do contain useful technical information that is not available elsewhere. The benefit of further improving this technical content (and researchers' ability to find and use it) likely outweighs any resulting loss in innovation incentives. This improvement could occur through stronger enforcement of disclosure requirements (such as an obligation to respond to good faith reproducibility questions from skilled researchers), elimination of legal barriers to using patents as technical sources, and improved access to patents through peer production. These changes will help defuse the tension between patents and the open culture of science.