

THE INFORMATIONAL VALUE OF PATENTS

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Traditional patent law theories teach that a patent's rights of exclusion are a patent's key benefit to the patentee and are necessary to make the patent system work. Yet patentees are increasingly giving away such rights, in whole or in part, as part of a growing phenomenon: patent pledges. In these scenarios, patentees voluntarily commit to limit their patent rights. This phenomenon seems to contradict traditional patent law theories. After all, if exclusive rights are necessary, why are patentees increasingly sacrificing some or all of those rights?

This Article argues that they do so because in patent pledging contexts, patents often entail a different value proposition than traditional patent law theories posit. That is, patent pledgers use patents as informational tools to signal to product, labor, and capital markets their development preferences and activities. This information may then facilitate a variety of economic purposes behind such pledges. This Article reviews several patent law features that make patents valuable as informational tools, as well as others that may limit their informational potencies. It also reviews several recent Supreme Court cases and their possible implications for the informational value of patents identified in this Article.

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