

A New Public Interest Model for Patent Law

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Recent scholarship has aimed to reexamine and reinvigorate the theoretical relationship between patent law and private law disciplines, considering how it might be informative to view different doctrines and theories within patent law from a private law perspective. However, somewhat less attention has been given to reexamining the public law and public interest dimensions of substantive patent law, outside the context of the PTO's procedures. This project aims to provide new theoretical content to the public rights theory of patents and to articulate what the potential implications would be, from a theoretical and doctrinal perspective.

First, this project will engage with the debate over whether patent rights are private rights or public rights, paying special consideration to identifying doctrinal areas which may receive differential treatment under different theoretical views. Although public rights and private rights frameworks may have similar implications for some areas of patent law, other areas may be interpreted very differently depending on the choice of framework and its theoretical underpinnings. Second, this project will draw not only on legal theory but also on philosophical theories about justice and resource allocation to give substantive content to a public interest-focused view of patent law.

Third, this project will apply this model to substantive areas of patent law which are particularly susceptible to differing interpretations under public and private law theories. This includes both areas of doctrine which explicitly call for a public interest analysis (such as the doctrine around injunctions) as well as areas which have been interpreted by the courts to have strong public interest dimensions (such as patentable subject matter) and those with legislative origins in public interest concerns (such as march-in rights or compulsory licensing provisions).