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Symposium: The Disclosure Function of the Patent System

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Introduction

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A fundamental goal of the patent system is to encourage the dissemination of technical knowledge.[1] The patent system achieves this goal through a quid pro quo—in exchange for the right to exclude, the inventor must fully disclose the technical details of the invention.[2] As soon as a patent document publishes, there is hope that the public will use the technical details disclosed therein to improve upon the invention, to design around it, or to engage in other innovative activities.[3] So while the patentee maintains the right to exclude others

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1. Brenner v. Manson, 383 U.S. 519, 533 (1966).

2. *See* Graham v. John Deere Co., 383 U.S. 1, 9 (1966) (describing a patent as "a reward, an inducement, to bring forth new knowledge"); Pennock v. Dialogue, 27 U.S. (2 Pet.) 1, 19 (1829) (recognizing that the patent system seeks to promote the progress of the useful arts and to reward inventors).

3. Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 481 (1974) (explaining that when the information disclosed in a patent becomes publicly available it adds to the "general store of knowledge" and assumedly will stimulate ideas and promote technological development); MICHAEL A. GOLLIN, DRIVING INNOVATION: INTELLECTUAL PROPERTY STRATEGIES FOR A DYNAMIC WORLD

from practicing the invention until the patent expires, the technical information disclosed in the patent document has potential immediate value to the public.[4] This supports the patent system's broader mission to promote scientific progress and extend the frontiers of knowledge.[5]

The Supreme Court has stated that the patent system's ultimate goal is to bring new ideas and technologies into the public domain through disclosure.[6] In fact, the entirety of the patent system hinges on disclosure.[7] For example, requiring a full disclosure of how to make and use the invention not only demonstrates that the inventor actually possessed what is claimed in the patent, but also ensures that the public will gain full possession of the invention once the patent expires.[8]

Achieving a robust disclosure from patent applicants is no easy task because it brings to the fore competing goals of the patent system. For example, the law must strike a balance between its interest in early disclosure and the need to transform the patent into a substantive technical document that can itself promote innovation.[9] The law must also strike a delicate balance between the public's interest in disclosure and the inventor's incentive to disclose.[10] A lax disclosure requirement

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15–19 (2008) (explaining that disclosure adds to the pool of accessible knowledge that other creative individuals can use and improve upon).

4. Sean B. Seymore, *The Teaching Function of Patents*, 85 NOTRE DAME L. REV. 621, 624 (2010).

5. This goal emanates from the Intellectual Property Clause of the Constitution: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. CONST. art. I, § 8, cl. 8; *see also Graham*, 383 U.S. at 6 ("Innovation, advancement, and things which add to the sum of useful knowledge are inherent requisites in a patent system . . . ."); Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U.S. 502, 511 (1917) (observing that "the primary purpose of our patent laws . . . is to promote the progress of science and useful arts").

6. Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 151 (1989).

7. *See* Sean B. Seymore, *Making Patents Useful*, 98 MINN. L. REV. 1046, 1075 (2014) (explaining how the statutory patentability requirements "work individually and collectively to ensure that the public gets a meaningful disclosure").

8. Evans v. Eaton, 20 U.S. (7 Wheat.) 356, 418 (1822) ("The object is to put the public in complete possession of the invention . . . [so that] its benefits may be fully enjoyed by the public, after the patent expires."); Aronson v. Quick Point Pencil Co., 440 U.S. 257, 262 (1979) (explaining that patent law "seeks to foster and reward invention" with the hope that the disclosure will "stimulate further innovation and . . . permit the public to practice the invention once the patent expires").

9. Seymore, *supra* note 4, at 643 n.107; *cf.* Sean B. Seymore, *The Presumption of Patentability*, 97 MINN. L. REV. 990, 1037 (2013) (articulating a proposal that "is designed to strike a balance between an inventor's need to file early and a broader interest in using disclosure to promote the patent system's overarching goal of scientific and technological progress").

10. *See* EDWARD C. WALTERSCHEID, THE NATURE OF THE INTELLECTUAL PROPERTY CLAUSE 143 (2002) (explaining that the quid pro quo rationale for patents is to incentivize the disclosure of information that the public might not otherwise get).

compromises the quid pro quo, meaning that the public might get shortchanged in the so-called patent bargain.[11] But a stringent disclosure requirement might push some inventors toward trade secrecy (i.e., no disclosure)—the antithesis of the patent system.[12]

Despite its central role in the patent system, only recently have scholars begun to seriously wrestle with the theoretical and doctrinal aspects of the disclosure function. Hopefully, this Symposium issue will stimulate future debate over and inquiry into this important issue in patent law.

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11. Sean B. Seymore, *Heightened Enablement in the Unpredictable Arts*, 56 UCLA L. REV. 127, 143–54 (2008) (identifying problems with the current disclosure standard).

12. J. Jonas Anderson, *Secret Inventions*, 26 BERKELEY TECH. L.J. 917, 919 (2011); *see also* Michael Abramowicz & John F. Duffy, *The Inducement Standard of Patentability*, 120 YALE L.J. 1590, 1622 (2011) ("[T]rade secrecy protection can theoretically provide even more powerful incentives than patents because trade secrecy rights are potentially infinite in duration.").

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