
ARTICLES

PATENTS: HIDING FROM HISTORY

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Abstract

This essay analyzes how various patent rules, viewed together, indirectly cause a distorted historical record of technological development. Part II of this essay looks at a recent book, The Democratization of Invention, that relied heavily on patent records to reexamine acutely the historical role of intellectual property in economic development. Part III of this essay discusses how patent law today discourages an inventor from accurately disclosing her invention and its place in technological development. Instead, patent law indirectly encourages vague and overbroad descriptions of the invention. Case law on claim interpretation uses specific disclosures about the invention to limit the scope of the patent claims. This leads to patent drafters using what has been called "intentional obscurity." Similarly, the law governing disclosure encourages inventors not to define their terms, or identify the category of invention in the preamble, or limit the claims to the actual invention. Likewise, inventors are at a disadvantage if they explain the advantages of the claimed invention or submit software code used to implement the invention. Even keeping informed on technology in the field may hurt the inventor. Reform of such rules could help the patent system today, and, as a byproduct, tomorrow's history. Reforms that improve the quality of patent applications for their primary purposes (such as examination, licensing, and litigation) would likewise improve their value for the future.

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