

PATENT CARROTS AND STICKS: A MODEL OF  
NONOBVIOUSNESS

by  
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*The authors develop an informal model of the impact of the nonobviousness standard on the choice of research projects. Previous models assume that the basic question confronting a researcher is, "Shall I produce this particular invention?" More realistically, the authors think a researcher asks, "Which research path shall I pursue?" The model shows that a patent serves as a carrot to induce the choice of more difficult projects than would be pursued under the no-patent alternative. The nonobviousness standard serves as a stick to prod researchers to choose even more difficult projects. The results of the model help us understand why a fact-intensive issue like obviousness is a question of law. The model also helps us understand the optimal relationship between the nonobviousness standard and patentable subject-matter exclusions. Commentators often suggest subject-matter exclusions are unnecessary if the nonobviousness standard is used appropriately. The authors' model suggests this intuition is wrong for inventions characterized by large social spillovers and high social costs of patenting; a simple subject-matter exclusion would be more efficient.*

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