

COORDINATION-FOCUSED PATENT POLICY

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This Article explores the practical consequences of an important shift that has recently taken place in patent theory. Although it was long agreed that the purpose of granting patents is to reward invention, today many scholars instead attempt to justify the patent system based on its role in facilitating information exchange and enabling technical coordination among firms. This change in justification is controversial, and its viability remains a fiercely contested question. But despite intense attention at the level of theory, little has been said about the consequences of this debate for patent policy itself. This Article seeks to fill that void, developing a set of mid-level principles from coordination theory and showing how these principles imply different outcomes for a wide range of important patent policy questions.

This analysis has a number of surprising consequences. Since its inception, the goal of facilitating coordination has been closely associated with a policy of granting broader patent rights at an early stage in the technology lifecycle. But this conventional view is mistaken about the kind of breadth and the nature of the timing that determine the success of the coordination function. As a result, and contrary to long-held assumption, a coordination-focused system wouldn't necessarily require broader patent rights or earlier grants—in fact, it might allow just the opposite. Moreover, there are many constraints in the current rewards-focused system that prior commentators have taken for granted, but that could be substantially relaxed under a coordination-focused regime.

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