

Patent Law's Neglect of the Extraordinary Role of the Ordinary user in Disseminating Technologies

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Disputes regarding the effectiveness of the patent system focus on the appropriate scope of patent rights. This Article departs from the traditional debate by looking instead at the players regulated by the patent system. The Article shows that the patent system fails to effectively encourage technological dissemination because it focuses on the patent owner and his competitors, while largely ignoring a crucial player: the ordinary user.

The user in his everyday decisions of whether to adopt or not to adopt a technology plays a critical role in determining whether a new technology will be disseminated. Yet, patent law contains an overly simplistic view of the ordinary user. It views the ordinary user as motivated by price and availability alone. This Article uncovers the intricacy of ordinary users' decisions regarding technological adoption. It identifies two main sources of user resistance: resistance due to novelty and resistance due to perceived consequences.

Many believe that the market rule should govern the adoption process of new technologies, that is, the market should decide which technology is adopted. Yet, this rule fails to recognize the multi-faceted nature of the ordinary user. This Article proposes that while government action to encourage user adoption should not be the norm, government action gently nudging the user could be particularly effective in cases of market failures. It concludes by suggesting two instances, in which government action is particularly warranted. First, when market failure occurs because a technology is dependent on network effects and the accumulation of a critical mass of users. Second, when time is of the essence and there is a critical need to disseminate a technology quickly.

