Class 2

History and Theory of Patents

Patent Law & Policy
Professor Wagner

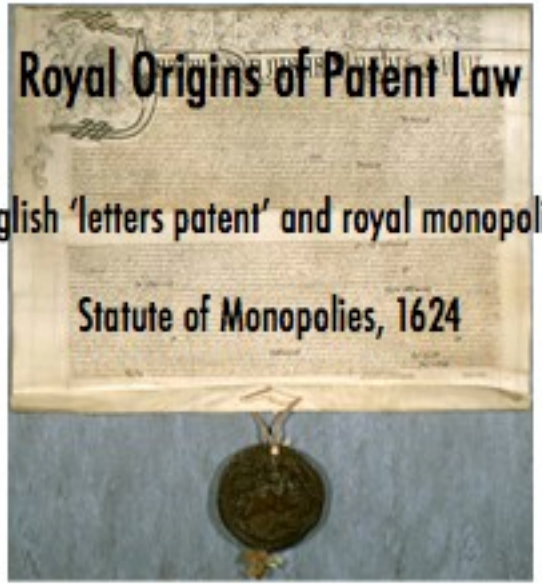
Today's Agenda

The Origins of Patent Law

An Introduction to Economics in the Patent Law

Some Debates about Patent Economics

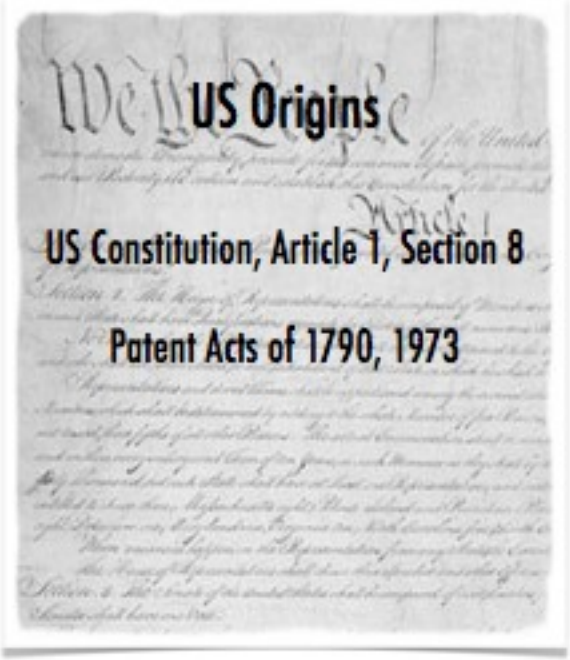
1
The Origins of Patent Law



Early Legal Development

The 'specification': Liardet v. Johnson, 1778

[the 'consideration' for the patent grant]

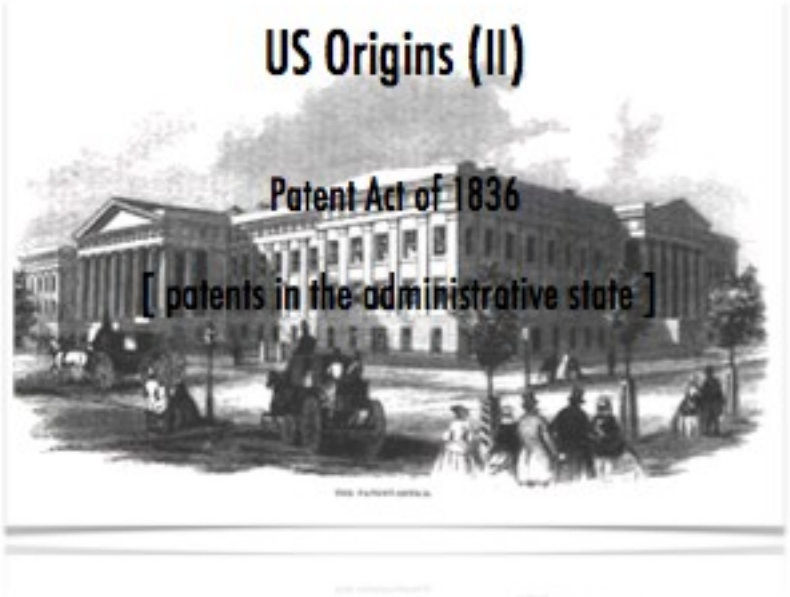


US Origins

US Constitution, Article 1, Section 8

Patent Acts of 1790, 1973

US Origins (II)



Patent Act of 1836

[patents in the administrative state]

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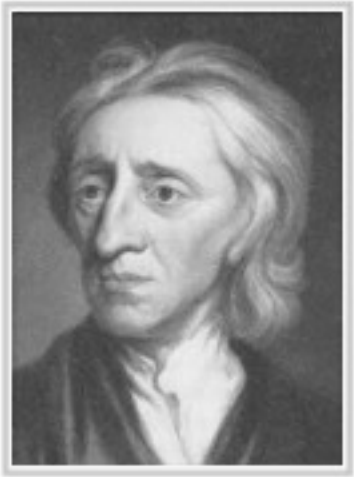
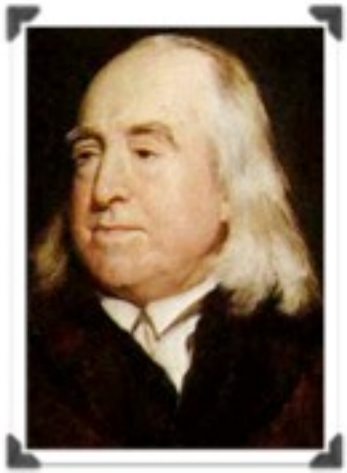
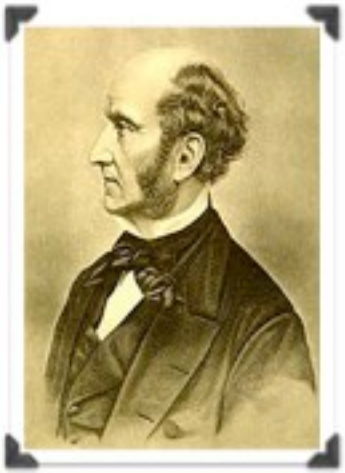
Economics and Patents







[to] promote the Progress of Science and the useful Arts by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries.

– US Constitution, Article I, § 8, cl. 8

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Patents: A Means to an End

The Utilitarian Basis of the Patent Law

What are the "Ends"?

What is the Mechanism?

The Utilitarian Basis of the Patent Law

The Ends ...

or, What Does the Patent Law Create?

Incentives to Invent

The Utilitarian Basis of the Patent Law

The Ends ...

or, What Does the Patent Law Create?

Incentives to Disclose

The Utilitarian Basis of the Patent Law

The Ends ...

or, What Does the Patent Law Create?

Incentives to Commercialize

The Utilitarian Basis of the Patent Law

The Ends ...

or, What Does the Patent Law Create?

Incentives to Design-Around

The Utilitarian Basis of the Patent Law

The Ends ...

or, What Does the Patent Law Create?

Incentives to Invest in R&D

The Utilitarian Basis of the Patent Law

Incentives to Invent
Incentives to Disclose
Incentives to Commercialize
Incentives to Design-Around
Incentives to Invest in R&D

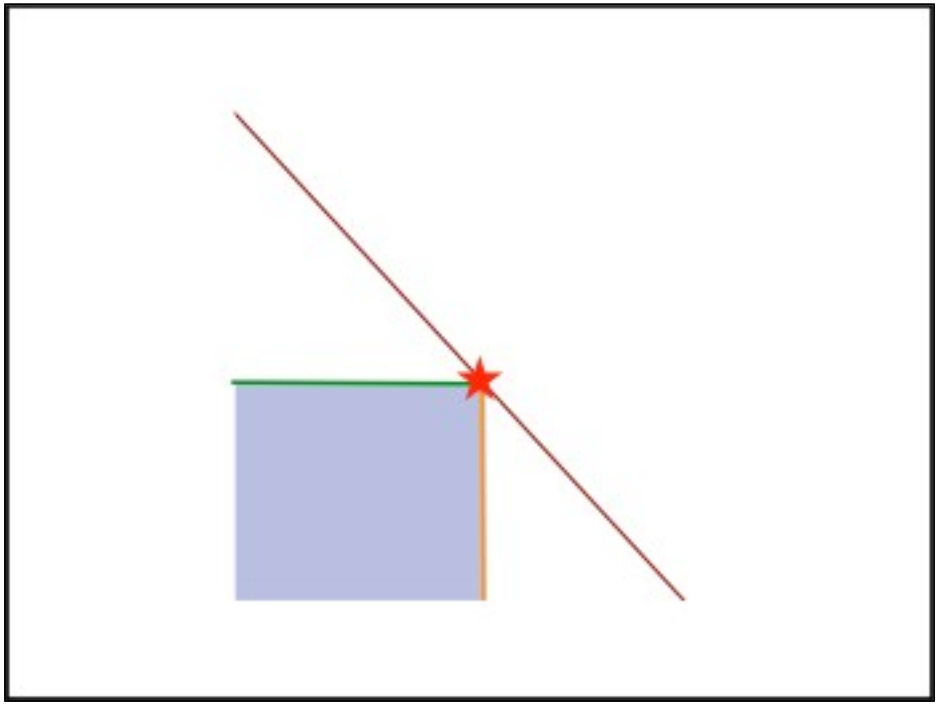
... which of these is most important?

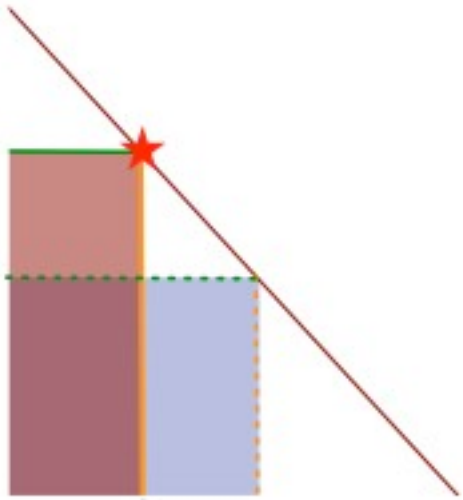
Incentives to Invent
Incentives to Disclose
Incentives to Commercialize
Incentives to Design-Around
Incentives to Invest in R&D

The Utilitarian Basis of the Patent Law

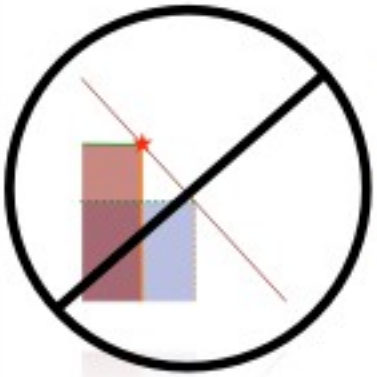
The Mechanism

or, How does the Patent Law Work?



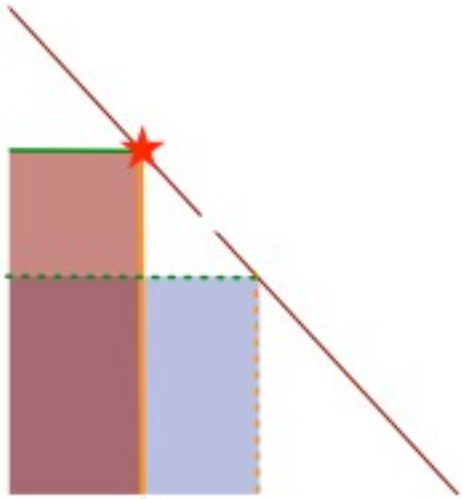


Dam: "Secondary Economic Consequences"



- Monopolization Costs
- Rent-Seeking Behavior
- Restriction of Future Innovation

Monopolization Costs



Rent Seeking

Future
NEXT EXIT
Restriction of Future Innovation

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Debates about Patent Economics

Are Patents Justifiable?

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How Strong Should Patent Rights Be?

Key Inquiries in Patent Economics

- 'Upstream' versus 'Downstream' Innovation
- A "tailored" system versus a general system
- The role of the doctrine in shaping incentives
- Rules versus standards in the patent law

Next Class

The Patent Document I: Enablement & Written Description

Patent Law & Policy
Professor Wagner

Penn Law