

Dmitry Karshtedt, The Completeness Requirement in Patent Law

This Article argues that courts have created a de facto extra- statutory condition of patentability, herein termed the “completeness” requirement, which bars patents on certain inventions whose chief value lies in their function as inputs into downstream research. The Article contends that the notion of completeness explains doctrinal innovations that are difficult to rationalize any other way. The Article also argues that, although it reflects the important policy of limiting unduly preemptive patent claims on foundational, building-block inventions, the completeness requirement in its current form nonetheless fails to implement this policy in a way that is coherent and consistent with patent law’s utilitarian goals. In addition, courts’ attempts to develop the completeness requirement based on existing statutory provisions have resulted in controversial interpretations of the Patent Act, creating legitimacy costs.

The Article argues that these problems are best addressed by explicitly recognizing completeness as a separate requirement of patentability and modifying the doctrinal tools that are used to enforce it. In order to determine whether a patent claim passes this requirement, a new test is proposed that focuses on the generality and unpredictability of a claimed invention’s applications. The Article further contends that an amendment to the Patent Act codifying the requirement of completeness is probably the most effective way to implement the proposal. In addition, the Article explores the possibility of awarding a limited patent right to claims that satisfy existing requirements of patentability, but fail completeness. The right, herein termed “Research Patent,” would provide the intellectual property incentives that are likely needed to develop and commercialize foundational inventions, but help decrease the potential for stifling downstream innovation caused by granting full patent protection to such inventions.