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The Enforcement of Competition Policy on Intellectual Property and Its Implications on Economic Development: The Latin American Experience

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Abstract:

This paper explores the limitations of the current patent system regulating invention by contending that in its current form, such regulation is bound to create legal monopolies and entry barriers to potential competitors. Thus, the paper explains why the law should adopt a different pro-competitive approach towards the assignment of these rights.

Our hypothesis is that the flaws on the regulatory system created by patents stems from a misunderstanding of the role they play in promoting entrepreneurship on individuals, and indeed, on a contrived "static" view of market functioning, which does not correspond to reality. Hence, there is an inclination among scholars to confuse the core protected by patents (entrepreneurial inventiveness) with an alleged natural right to what is mistakenly taken as a form of "intangible property." This confusion leads regulators to grant extensive legal temporal monopolies, thereby denying the access of potential competitors to use the ideas protected by patents, in their own innovation process. Thus, rather than protecting entrepreneurship, the current legal system is prone to stifle competition and innovation.

The conclusion of this paper is that regulators should consider their knowledge limitations to devise optimal legal monopolies such as patents, and instead, should leave entrepreneurs the responsibility of deciding when and how should they make "public" the ideas embedded in their inventions.

The paper explores these ideas in the context of the Latin American experience, and highlights some of the problems to be tackled in order to improve policymaking in the region. In particular, this paper outlines the present dilemmas placed on young Latin American competition policy enforcing agencies.

Keywords: Intellectual property, competition policy, innovation, entrepreneurship, Latin America

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