Formality in Patent Assignments

Karen E. Sandrik

There is a lively debate within the patent system over the role (if any) that common law systems should play in the development and application of patent law. In the past, this debate has predominately focused on the role of property law. In recent years, however, the focus of this debate is shifting to the role of contract law. The central interaction between contract law and patent law occurs when parties enter into an enforceable contract to transfer some interest or right to patented technology—a patent license—or to transfer the title of a patent—a patent assignment.

This Article argues that patent scholars are missing a deeper, more fundamental issue when integrating the values of contract law into patent law. Even if we resolve how the common law of contract should affect the path of patent law, we must still determine the desired level of formality in the law of patent licensing. This Article argues that the Federal Circuit should adopt the level of formality found in Article 9 of the UCC—a standard that is formal, but forgiving. Further, this Article enables this adoption by providing a ready-to-deploy framework that may be used to provide tailored levels of formality in patent assignments that will promote certainty and predictability.