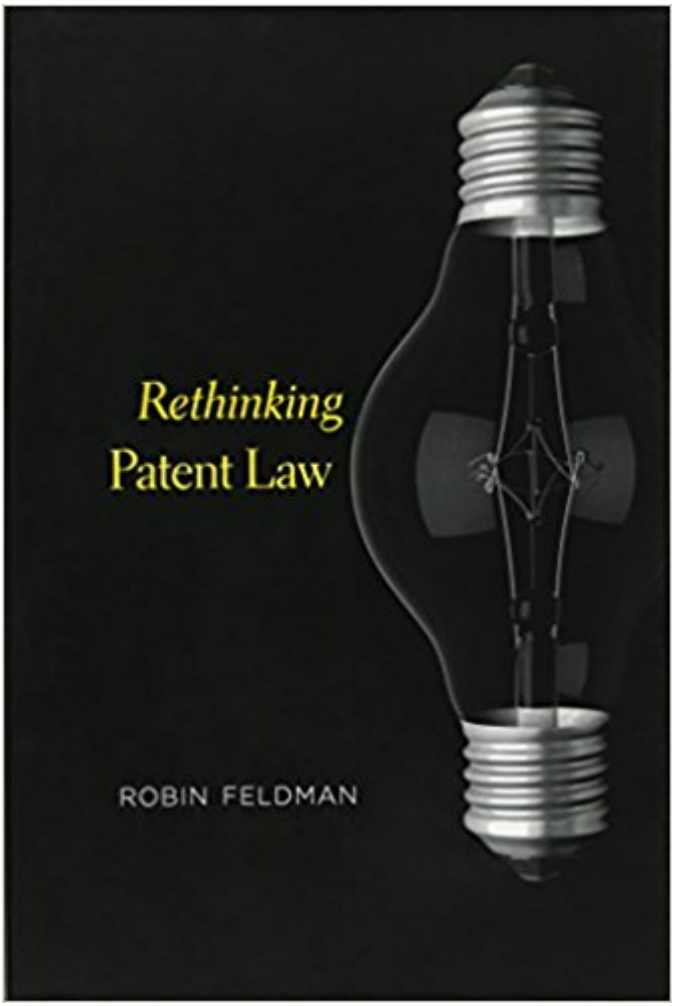
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Rethinking Patent Law



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Synopsis

Scientific and technological innovations are forcing patent law into the spotlight and revealing its many glaring inadequacies. Take, for example, the patent case that almost shut down the BlackBerry, or the growing phenomenon of patent trolling, in which patents are acquired for the sole purpose of entrapping companies whose products relate to them. And patents on genes have everyone up in armsÃ¢â ¬â ¢and our courts confused. Robin Feldman explains why patents are causing so much trouble. The problem lies in our assumption that patents set clear boundaries for rights to an invention. In reality, they do no such thing. The very nature of inventions makes them impossible to describe unambiguously for all time. When something is so new that we do not understand yet how it works, what it is capable of doing, or how it could be appliedÃ¢â ¬â ¢as is often the case in biotechnologyÃ¢â ¬â ¢description is necessarily slippery. Instead of hoping for clear boundaries, and moaning when we donÃ¢â ¬â„¢t get them, Rethinking Patent Law urges lawmakers to focus on what the law can do well: craft rules that anticipate the bargaining that will occur as rights unfold. By steering clear of laws that distort the bargaining process, lawmakers can help courts answer difficult questions, such as whether genes, software, and business methods constitute patentable subject matter, whether patents in the life sciences should control inventions that have yet to be discovered, and how to resolve the battles between pharmaceutical companies and generics.

Book Information

Hardcover: 288 pages

Publisher: Harvard University Press (June 19, 2012)

Language: English

ISBN-10: 0674064682

ISBN-13: 978-0674064683

Product Dimensions: 6.1 x 0.9 x 9.2 inches

Shipping Weight: 1.3 pounds

Average Customer Review: 4.0 out of 5 stars 2 customer reviews

Best Sellers Rank: #1,625,575 in Books (See Top 100 in Books) #122 inÃ Â Books > Law > Administrative Law > Antitrust #169 inÃ Â Books > Law > Intellectual Property > Patent, Trademark & Copyright > Patent #552 inÃ Â Books > Law > Business > Contracts

Customer Reviews

A beautifully written, engaging account of the bargain aspect of patent entitlements. Feldman’s

influential theory transforms the way we look at inventions and the laws protecting them. A pathbreaking work that is required reading for anyone wishing to understand how our patent system operatesÃ¢â ¬â ¢and how it should change for the future. (Sonia K. Katyal, Fordham University School of Law)

Robin Feldman is Professor of Law at the University of California, Hastings College of the Law.

Well, the author is a law professor, and you get a book written by a law professor. Industry appears to consist only of patent attorneys, Congress is a distant shadow, and only the courts play a role in life. This is a very narrow view of the position of patents in society, focused only on the "bargaining" that occurs while litigants contend, as if litigation were the normal state of ordinary people. While Prof. Feldman has a few useful points to make about how the patent law interacts with other areas of law, she appears completely unconcerned with the more fundamental questions: do patents benefit society? what constitutes an invention and why should it get protection from the law? She also presents essentially no data to support any of her statements, being content to cite occasional bits of case law with no view for what happens outside a courtroom. The idea that one might look at how legal regimes affect innovation, technology, and prosperity seems beyond her consideration. In summary, this book provides a few very narrow proposals for revising how the game is played, not changing the game itself -- a disappointment to those who are looking for substantial reform.For clarity, I'm an engineer and scientist (and author) who does a lot of work in the patent system, gaining thereby a considerable respect for many of the people in it but little respect for the system itself.

If you think that the patent litigation system is out of control, and hindering rather than advancing innovation and creativity, then you will want to read this book.

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