

Social Innovation

Peter Lee

UC Davis School of Law

Cognitive behavioral therapy, microfinance, and strategies to reduce hospital-based infections all represent immensely valuable innovations that enhance social welfare. In addition, they all arose outside of the patent system, the primary legal mechanism for promoting innovation. This Article seeks to move beyond patent law's traditional focus on protectable technologies to consider a broad range of "social innovations" and how legal mechanisms may (or may not) encourage them. In so doing, it draws into sharper focus the characteristics of innovations that patent law promotes as well as those that it neglects. Schematically, innovation in the patent context is individualistic, arises from a discrete origin and history, and prioritizes novelty. Much social innovation, however, arises from communities rather than identifiable inventors, emerges from multiple histories and points of origin, and entails extending that which already exists from one context to another. This is a generalization, however, and this Article highlights how many innovations are hybrids, blending aspects of technological and social innovation.

This Article seeks to contribute to a more holistic legal and policy framework for promoting innovation and goes beyond the patent/technology paradigm. The immediate aim of this Article is to enhance the processes by which individuals, groups, and governments can promote, develop, and disseminate social innovations. In so doing, it draws insights from a much more studied phenomenon—intellectual property law—to consider whether formal legal mechanisms should be extended or adapted to promote social innovation. While the Article argues against extending exclusive rights to social innovations, it explores important IP-related insights regarding tacit knowledge, technology transfer, and the commons that can accelerate social innovations. Conversely, this Article also explores what patent-mediated technological innovation can learn from the development and dissemination of social innovations.