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Building Encroachment and the Doctrine of Equivalents in Patent Law

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Abstract

This article uses an American property theory—the boundary principle—to discuss the neighboring relations in Taiwan’s property law and the doctrine of equivalents in patent law. The aim is to point out that although these two branches of legal doctrines seemingly head toward the opposite directions concerning the distribution of rights, they both base on a similarly principle: to distribute positive or negative externalities in accordance with equitable considerations; both doctrines are anti-fragmentation principles aiming at recomposing fragmented property rights.

The theory of this article is founded on Michael A. Heller’s theory of anti-fragmentation and Frank I. Michelman’s arguments related to the efficiency of private property. Heller argues that the boundary principle long existing in property law is to prevent waste of resources caused by fragmentation. Michelman’s internalization and nonintervention rules, two composing principles for an efficient private property regime, are the origin of Heller’s anti-fragmentation theory. This article asserts that the rules regarding building encroachment and the doctrine of

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equivalents in patent law are the examples of Heller's boundary principle and Michelman's internalization principle.

In the relation of building encroachment, the right to request land purchase by the trespasser is a typical internalization rule. To consolidate rights based on the reason of internalization often realizes in law as the operation of equity, and non-intervention rules appear as the formalistic reasoning of the law. Yet the fact that the law leaves ample possibility of unconsolidated fragments shows the disparity between the economic and the legal rationale.

An act of encroachment is one that causes positive or negative externalities on another. The doctrine of equivalents in patent law is a set of rules that distributes the benefits beyond the literal scope of a patent claim. Formed by case law, the doctrine of equivalents used to distribute the whole external benefits to the patentee; this kind of internalization rule caused too much consolidation of the rights and was opposed by the dissenters at the U.S. Supreme Court and the Court of Appeals for the Federal Circuit. The development of the limiting rules of the doctrine of equivalents allows the courts to distribute some of the benefits beyond the literal scope of a claim to competitors by re-categorizing them as externalities; the limitation rules thus avoid complete consolidation of rights. By contrast, it seems a pity that Taiwan's courts rarely comment on the legitimation basis of the doctrine of equivalents.

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