Abstract: The categories of patentable subject-matter has drawn increasing debate. The stated policy reason for subject-matter exclusions—to prevent monopolies of excessive breadth—sits in tension with the categorical nature of subject-matter exclusion. For example, while some business method patents might be excessively broad, others are not, and excluding all business methods from patentability seems overkill.

This Article puts forward a new theory to assess the desirability of subject-matter limitations. Categorical exclusions from patent eligibility function as bright-line rules; while individualized analysis of whether one particular patent will cause excessive monopoly functions as a standard. Applying categorical rules is easy but causes error; examining every patent individually to determine whether it causes excessive monopoly cost is less error-prone but more expensive.

Thus, whether subject-matter limits are justified should be determined by balancing administrative cost with error costs. For example, if 99% of business method patents are socially detrimental, it is likely better to categorically reject 100% of business method patents using a simple rule, and accepting the loss of 1% of meritorious patents, because doing so saves the administrative cost of individualized examination while resulting in only 1% error.