Topic: Patent Law and the Two Cultures

Abstract: A half century ago, physicist and author C.P. Snow warned of a “gulf of mutual incomprehension” between the liberal arts and sciences. Snow’s “Two Cultures” thesis, though subject to various critiques, has particular relevance to patent law, a realm where law and science intersect. Drawing on Snow’s framework, this Article addresses fundamental challenges arising from a system where lay judges must engage, understand, and ultimately pass judgment on complex technologies. It first argues that technological subject matter imposes significant cognitive burdens on generalist judges. It then explores two common psychological responses for mitigating those burdens: heuristics and deference to expert authority. Drawing from this “cognitive miser” model, this Article then offers a descriptive theory of patent jurisprudence, which employs formalism and institutional deference to mitigate the degree to which lay actors—particularly district court judges—must engage technological complexity.

The Article then identifies a countervailing trend in recent Supreme Court patent decisions. While these decisions are significant for narrowing substantive patent rights, they also reflect an underappreciated methodological shift. In short, the Court is systematically rejecting inquiry-truncating, formalistic rules in favor of contextually-sensitive, holistic standards. This so-called “holistic turn” promises to increase the degree to which lay judges must engage technologically complex subject matter. To address resulting cognitive burdens, this Article proposes an “enablement” standard for patent opinions that provides appropriate guidance to generalist adjudicators. It concludes by exploring the unique salience of formalism to technological subject matter and by examining the implications of present methodological tensions between the Federal Circuit and the Supreme Court.