

Patent Law and the First Amendment

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Although there is an enormous literature on the relationship between copyright law and the First Amendment, the analogous question of patent law's relationship to the First Amendment has gone mostly unasked. In this Article, I argue that patents can unconstitutionally abridge the freedom of speech, and that such speech-abridging patents are neither a rarity nor confined to limited areas such as software. Patent law needs to acknowledge, and then address, its First Amendment problem. In this vein, the Article proposes some reforms to ameliorate the tension between patent law and the First Amendment.