

Patents and the University

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This Article traces the co-evolution of the patent system's interactions with university research. It advances a "convergence thesis" that argues that patents and academic science have moved from each other's peripheries to their respective cores. Patent decisions up to the mid-twentieth century recognize tacit boundaries between the patent system and academic science by emphasizing the basic, noncommercial nature of academic research and the impropriety of extending exclusive rights over university discoveries. In reciprocal fashion, academic scientists often invoked communal norms in eschewing patents on their work. However, with shifts in research programs and increasing patenting and commercial activity by universities, fueled in part by the Bayh-Dole Act, universities have moved to the center of the patent system. This is reflected doctrinally in a host of decisions recognizing the active participation of universities in the patent system and refusing to treat them any differently from other actors in the innovation economy. These developments both reflect and reinforce a related cultural shift in which universities and university scientists now see patenting and commercial activities as valuable elements of their academic missions. With the Leahy-Smith America Invents Act, the incorporation of universities into the patent system has reached a new level, as elements of the new first-inventor-to-file system were adopted in significant part to accommodate academic research practices. Following this descriptive account of the interpenetration of academia and the patent system, the Article concludes with normative guidelines for how the patent system should treat academic science differently than other types of innovative activity.