

The Supreme Assimilation of Patent Law

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Although tensions between universality and exceptionalism apply throughout law, they are particularly pronounced in patent law, a field that deals with highly technical subject matter. This Article explores these tensions by investigating an underappreciated descriptive theory of recent Supreme Court patent jurisprudence. Significantly extending previous scholarship, it argues that the Court's recent decisions reflect a project of eliminating "patent exceptionalism" and assimilating patent doctrine to general legal principles (or, more precisely, to what the Court frames as general legal principles). Among other motivations, this trend responds to rather exceptional patent doctrine emanating from the Federal Circuit in areas as varied as appellate review of lower courts, remedies, and the award of attorney's fees. The Supreme Court has consistently sought to eliminate patent exceptionalism in these and other areas, bringing patent law in conformity with general legal standards. Among other implications, this development reveals the Supreme Court's holistic outlook as a generalist court concerned with broad legal consistency, concerns which are less pertinent to the quasi-specialized Federal Circuit. Turning to normative considerations, this Article argues in favor of selective, refined exceptionalism for patent law. Although the Supreme Court should strive for broad consistency, certain unique features of patent law—particularly the role and expertise of the Federal Circuit—justify some departure from general legal norms. Finally, this Article turns to tensions between legal universality and exceptionalism more broadly, articulating principles to guide the deviation of specialized areas of law from transcendent principles.