

**PROCESS AS PURPOSE: ADMINISTRATIVE PROCEDURE, COSTLY
SCREENS, AND EXAMINATION AT THE PATENT OFFICE**

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Abstract

The United States Patent and Trademark Office has, by this point, acquired a well-deserved reputation for ineptitude and inefficiency. Patent examiners do a remarkably poor job of screening out invalid applications, and yet the patent examination process remains surprisingly expensive. Proposals for reforming the patent office—of which there are many—have thus focused on improving the quality of patent review while decreasing the attendant costs. Yet this view overlooks the valuable function performed by the high costs associated with obtaining a patent: these process costs serve as an effective screen against low-value patents. Moreover, due to an important asymmetry among patent valuations, the costly screen is likely to select against socially harmful patents in disproportionately high numbers. The administrative expense involved in Patent Office examination thus serves as an important complement to the substantive scrutiny that expense is used to purchase. And although the patent office is the most prominent forum in which this type of costly screening operates, it is not the only one. Administrative procedures function as costly screens in areas as diverse as landlord-tenant and employment law, environmental permitting, and immigration law. In each case, the private costs of navigating the process may pose a more effective barrier to entry than the process itself.