Patents and open innovation:
Can bad fences also make good neighbors?

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Why do we need patents?

- The second best view (Schumpeter, Arrow, Nordhaus)
  - One instrument does two things: Incentives and diffusion
  - Static inefficiency versus dynamic efficiency

More recently:
- Patents and open innovation
Patents and open innovation

- Firms must interact with their external environment
  - Open innovation 1.0 versus open innovation 2.0

- Two types of interactions are possible
  - Market interactions / market for technologies / crowdsourcing
  - Non-market interactions / alliances / communities

- In both cases patents can help
  - Signaling
  - Avoid opportunistic behaviors (Arrow paradox)
  - “Good fences make good neighbors”

- Patents as structuring elements of open innovation
Good Fences Make Good Neighbors

*Puts you at Ease*
Patents and open innovation

One central assumption: patents provide good fences!

What if it is not the case?

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Why patents do not provide good fences?

- Too many patent applications and patents in force

- Bad quality of patent information
  - There is no reliable patent index to define “adjacent inventions” (*International Patent Classification – IPC – is not like a land public registry*);
  - Patents are difficult to read and understand (*unclear border*);
  - Patent stakeholders are not always clearly identifiable;
Which consequences?

- Patents are subject to « notice failure » « or notice externality » (Menell and Meurer, 2013)
- Huge uncertainty about what is protected by the patent and what is not!
- FTO analysis are prohibitively costly
Which consequences? (2)

- Transaction costs in technology deals
- Anticommons and patent tickets (when technologies are complex)
- Patent trolls (hold-up strategies)
What can be done?

Possible changes along two lines:

1) Provide better incentives (to firms, to examiners)
2) Change mentality

Most of all:
- Fight against secrecy and dissemination
- Improve patent classification