

# PUBLIC LAW, STANDING, AND THE FEDERAL CIRCUIT

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## ABSTRACT

Patent law is generally viewed as a species of private law. Patent litigation is generally viewed as isolated disputes between a patent holder suing an infringer, with little consequence to third parties. However, patents are more accurately described as a hybrid of public and private law. For example, in *Association for Molecular Pathology v. Myriad Genetics*, we saw how the issuance and enforcement of patents can have dramatic effects on third parties, and may even violate individual constitutional rights. But despite the hybrid nature of patent law, the Federal Circuit has made it all but impossible for third parties to gain standing to challenge patents. This essay examines the public law underpinnings of patent law. It maintains that the Federal Circuit's narrow construction of standing disregards the harm that patents can cause the general public, and makes suggestions that reflect the hybrid nature of patent litigation.

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