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***Highlights (for review)**

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- The fundamental optimality condition that applies to both awards and injunctions equates the marginal static cost of intellectual property protection with the marginal “dynamic” benefit from the innovation thereby induced.
- When the social value of the patent is sufficiently high, the optimal award induces socially efficient investment by giving the innovator the entire social value of her investment.
- A patent’s social value is equal to the expected profits and expected consumer surplus from the patent net of expected litigation costs and precautionary (infringement avoidance) costs.
- Optimal patent damages may exceed the lost profits measure, depending on the social value of the patent.
- Patent damages should be greater where profits and surplus are relatively high and scope relatively clear.

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