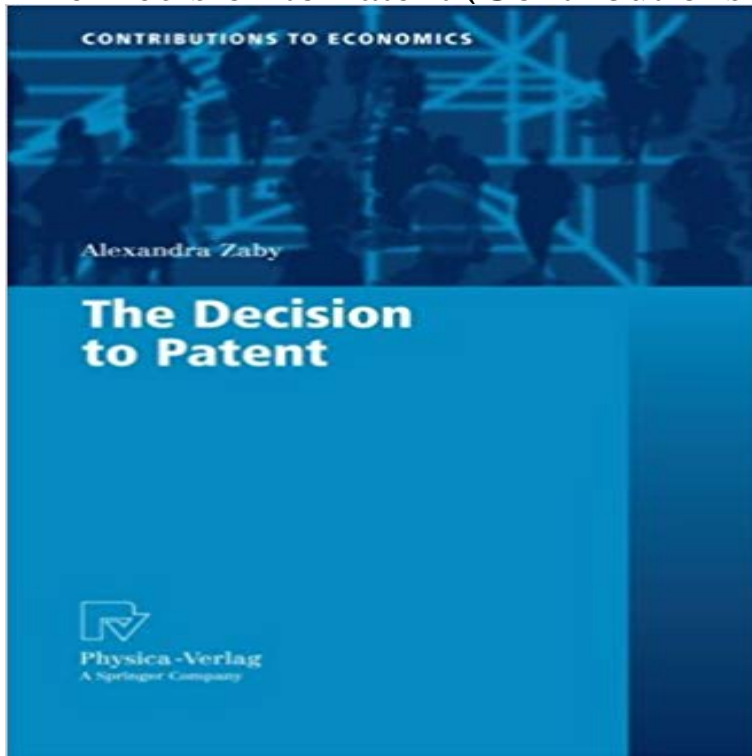


The Decision to Patent (Contributions to Economics)



Firms do not patent every invention. In many cases they rather rely on trade secrecy or other non-legal means to protect their intellectual property, i. e. the returns on their investments in research and development (R&D).

A patent confers to its owner the exclusive rights to prevent third parties from making, using, offering for sale, selling, or importing for these purposes the patent protected product (Art. 28, Agreement on Trade-Related Aspects

of Intellectual Property Rights (TRIPs)). In exchange for the temporary monopoly which is secured by this protection, the patentee has to disclose the invention in a manner sufficiently clear and complete for it to be carried out

by a person skilled in the art (Art. 83, European Patent Convention (EPC)). Thus every patent has the drawback of a possible loss of a technological leadership caused by the mandatory disclosure of formerly proprietary knowledge. The patentee has to fear that this transfer of enabling knowledge included in the patent description may benefit his rivals by facilitating their rapid catch-up. The relevance and actual enforcement of the

disclosure requirement is underlined by the European Commission's Green Paper on Innovation (European Commission (1996)). In the so-called Route of Action 8 on the promotion of intellectual and industrial property it is stated that a desirable action should be the promotion of patent information services as a method of technology watch based, in particular, on the information system set up by the European Patent Office (European Commission (1996), p. 42).

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