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Reinventing the ‘Inventive Concept’: Applying Copyright’s Merger Doctrine to Patent Eligibility

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This Comment proposes borrowing a principle from copyright law—the merger doctrine—to bear on patent eligibility. Under the merger doctrine, if there are only very few ways of expressing an uncopyrightable idea, then each of those expressions is uncopyrightable because they are merged with the idea. The merger doctrine aim of separating the protectable from the unprotectable parallels the eligibility question in patents, and it offers more intuitive application and framing than what is currently used in the patent sphere.