IP Literature Watch

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COVID-19 IP Issues

COVID-IP: Staring down the Bayh-Dole Act with 2020 vision

Jordan Paradise (Loyola University Chicago School of Law)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3599621

As the human and economic toll of the COVID-19 coronavirus steadily escalates, there is extreme uncertainty about the timeframe for preventing, detecting, and treating it. There is also concern about the eventual costs associated with approved products and the barriers to access created by the patent system. Industry, government, and academic collaborations are leading the charge in the discovery race, partnerships which have triggered calls for the activation of the federal governments so-called "march-in rights" established in the Bayh-Dole Act. The Bayh-Dole Act dramatically altered the patent protections available to federally funded academic institutions and scientists and initiated a 40-year debate over appropriate incentives for innovation and the scope of the government's authority.

The COVID-19 coronavirus pandemic provides an opportunity to reflect on the purpose and impact of the historic legislation as well as contemplate the implications for our public health future. Existing and future patent rights for therapeutic compounds, methods of delivery, and medical diagnostics will significantly impact access to and cost of life-saving innovations. In the midst of rapid and wide-ranging research investigations, this article examines advocacy efforts urging the government to utilize governmental march-in rights to quell concerns about patent monopolization and product pricing. It also analyzes the Facilitating Innovation to Fight Coronavirus Act as it relates to impending COVID-19 coronavirus products.

Intellectual property rights and innovation in the times of Corona epidemic – Policy brief

Krishna Ravi Srinivas (Research Information System for Developing Countries (RIS))
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3586335

This paper discusses emerging issues in enabling affordable access and incentivization in the context of Corona Epidemics. It discusses proposed ideas on Patent Pools and Patent Pledges. The option of using Compulsory Licensing, particularly in India is discussed. The challenges for India are analyzed.

Research and repair: Expanding exceptions to patent infringement in response to a pandemic

Jorge L. Contreras (University of Utah – S.J. Quinney College of Law)
6 J. L. & Biosciences (2020, Forthcoming)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3588945

The doctrinal areas on which this essay focuses are two longstanding but narrow exemptions from patent infringement: one that permits scientific research, and one that permits the owner of a patented device to repair it. Though distinct at first glance, both of these doctrines act to permit activity that would otherwise be considered patent infringement. They are exceptions to the exclusivity that the law grants to patent holders – particularly the right to "make" a patented article and, to a lesser degree, to "use" it, and for this reason they are particularly salient when patents may impact critical lifesaving technologies. This essay recommends broadening the scope of the research exemption to cover a larger range of research activities conducted prior to the release of a commercial product; and recognizing the right of an owner of a patented product to make, or have made, replacement parts for that product, even if those parts may be covered by the claims of a patent or cross the line of "reconstruction" under current law. The implementation of these adjustments, conceived in light of the current coronavirus pandemic, could facilitate increased research, development and use of patented technologies and better prepare the U.S. to deal with the next great public health crisis.

Vaccines and IP preparedness in the Coronavirus outbreak

Ana Santos Rutschman (Saint Louis University – School of Law)
Northwestern University Law Review of Note, 2020
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3604336

The COVID-19 pandemic has shed renewed light on the importance of research and development (R&D) on biopharmaceutical products needed to prevent or lessen the burden posed by outbreaks of infectious diseases. Among these, the need for new vaccines has become of paramount importance. While a race to develop different types of vaccines unfolds at unusual speed, there are still significant shortcomings in the ecosystem that leads to the production and dissemination of vaccines targeting infectious diseases like COVID-19.

Innovation policy and the market for vaccines

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Journal of Law and the Biosciences (Forthcoming)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3595756

Vaccines play a crucial role in improving global public health, with the ability to stem the spread of infectious diseases and the potential to eradicate them completely. Compared with pharmaceuticals that treat disease, however, preventative vaccines for infectious diseases have received far less attention from both biomedical researchers and innovation scholars. This neglect has substantial human and financial costs, as vividly illustrated by the COVID-19 pandemic.

In this article, we argue that the large number of "missing" vaccines is likely due to more than lack of scientific opportunities. Two key aspects of vaccines help account for their anemic development pipeline: (1) they are preventatives rather than treatments; and (2) they are generally durable goods with long-term effects rather than products purchased repeatedly. Both aspects make vaccines less profitable than repeat-purchase treatments, even given comparable IP protection. One set of problems arises from irrational preferences by purchasers, including both patients and healthcare payers. For example, patients generally underestimate their likelihood of getting sick, and they underestimate costs that are in the future or divided into separate purchases, causing them to pay more overall for repeat-purchase drugs than for vaccines. But even for rational, risk-neutral purchasers, we explain how—counterintuitively—both key aspects of vaccines still prevent monopolists from extracting the same profits as they can for repeat-purchase therapeutics.

The preventative and durable aspects of vaccines generate substantial social benefits, but policymakers should recognize that these features also reduce incentives to develop vaccines in the first place—particularly when these benefits lead to political pressure for low vaccine prices. We conclude by arguing that innovation policy should address these market distortions by experimenting with larger government-set rewards for vaccine production and use. Most modestly, policymakers should increase direct funding—including on grants and public–private partnerships—and insurance-based market subsidies for vaccine development. We also make the case for a large cash prize for any new vaccine made available at low or zero cost.

IP & Antitrust

House Judiciary Inquiry into Competition in Digital Markets: Statement of Herbert Hovenkamp

Herbert Hovenkamp (University of Pennsylvania Law School; University of Pennsylvania – The Wharton School; University College London)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3579693

This is a response to a query from the Judiciary Committee of the U.S. House of Representatives, requesting my views about the adequacy of existing antitrust policy in digital markets.

The statutory text of the United States antitrust laws is very broad, condemning all anticompetitive restraints on trade, monopolization, and mergers and interbrand contractual exclusion whose effect “may be substantially to lessen competition or tend to create a monopoly.” Federal judicial interpretation is much narrower, however, for several reasons. One is the residue of a reaction against excessive antitrust enforcement in the 1970s and earlier. However, since that time antitrust has shifted very far in the other direction. Today the marginal antitrust decision is much more likely to reflect under- rather than overenforcement. A second reason is the fact that many judges obtained any antitrust training they received a quarter century or more ago. Since then, notable progress in theoretical and empirical economics has both improved our techniques of analysis and shown the need for greater enforcement, particularly in markets with a significant technological or digital component. A third is a naivete about efficiencies, which assumes that they explain many more anticompetitive practices than they do in fact. Finally, a fourth is residue of a belief, once widespread, that markets tend naturally to self-correct, resulting in a bias against enforcement. These same developments in economics indicate that this proposition is false, and that we have paid a heavy price for it in the form of lower output, unnecessarily high price-cost margins, and reduced innovation.

The federal judiciary exhibits a damaging anti-enforcement bias in some areas of antitrust. For example, the Supreme Court has been unreasonably harsh in defining the burden that plaintiffs must meet in rule of reason cases. A plaintiff’s obligation should be to provide evidence of power and a sufficiently suspicious restraint that it requires an explanation. At that point the burden of proof should shift to the defendant. Important Supreme Court decisions require plaintiffs to prove far too much at the beginning. The result is that the rule of reason has lost much of its usefulness as an enforcement tool. The Court has also been unnecessarily harsh on class actions, and more particularly on enforcement of arbitration agreements. The Federal Arbitration Act was intended to provide a different, less cumbersome forum, not to take away rights that the law grants.

When applying antitrust in digital markets direct measurement of market power, rather than by indirect inference from market share, is often superior. For example, to state that “Google and Facebook control 70% of digital advertising” tells us little unless we know the extent to which digital advertising competes with more traditional advertising media. By contrast, if we include traditional advertising in the market, we treat the two forms as perfect competitors, which understates market power. Market definition is necessarily binary: something is either inside or outside the market. In general, market definitions that include differentiated products will understate power. One unfortunate roadblock to direct measurement is the Supreme Court’s conclusion in its American Express decision that a relevant market must be defined in cases involving vertical relationships. Any statutory reform for dealing with digital commerce should make clear that market power for antitrust purposes should be measured by the best available technique for the situation, and it should avoid the error of continuously expressing market power in terms of a market share of a relevant market.

The large digital platforms do not likely have enough market power in product markets to be deemed “monopolists.” One exception may be Amazon’s large share of the eBook market. There is ample market power, however, to support many allegations of anticompetitive contract practices, including exclusive dealing, MFN clauses, and tying.

Various proposals to break up large digital platforms appear to see size itself as the wrong to be proscribed and offer little assurance that price or output will improve. The opposite is more likely. Setting aside recent mergers, breaking up highly integrated digital platforms will do serious harm to both consumers and investors. While exclusionary contract practices might be unlawful, they are not justifications for structural relief. Rather the remedy should be a prohibitory injunction plus, where appropriate, disgorgement of unlawfully obtained gains. To that end, the Seventh Circuit’s 2020 Credit Bureau decision limiting the equitable power of the FTC to obtain disgorgement is both bad policy and, in any event, inconsistent with Supreme Court precedent.

Antitrust policy should also avoid overly categorical conclusions about the impact of large platform practices on certain groups. For example, while some small businesses who compete with Amazon are undoubtedly harmed, many others are benefitted because Amazon has effectively become their internet broker. They receive access to internet distribution tools including billing and collection that they could not match on their own.

One issue in the digital economy that may require new legislation is firms who renege anticompetitively on FRAND patent licensing commitments. Many substantial networks, including telecommunications, video technologies, and autonomous vehicles, are the product of collaborative innovation. These networks require both technological compatibility and interconnection, which is facilitated by firm commitments to license their patents on fair, reasonable and nondiscriminatory terms. If one firm is able to renege on these commitments with impunity, others will certainly follow. The result will be the unraveling of a system of cooperative innovation that has made significant contributions in an area where economic growth is high. Here, much depends on the outcome of the Qualcomm litigation currently in the Ninth Circuit.

One pressing merger threat is widespread digital platform acquisitions of much smaller firms. Many of these acquisitions do not fit into the framework that the antitrust Agencies apply. First, the acquisitions of competitors typically involve firms that are too small to trigger scrutiny under existing law. Many troublesome acquisitions involve complementary products, such as when a platform acquires a technology that improves its messaging abilities or augments its product line. The principal threat is potential competition: these acquisitions foreclose the possibility that these firms will grow into significant players themselves. Analyzing platform acquisitions will require more categorical treatment of a class of practices, as antitrust currently does with its per se rule. One promising solution would be to prohibit such acquisitions broadly, but permit dominant firms to obtain nonexclusive rights in acquired technology.

Finally, I offer some thoughts about the wisdom of two-agency antitrust enforcement, as well as current policy conflicts between the Antitrust Division and the Federal Trade Commission on digital competition issues.

IP & Licensing

Truly standard-essential patents? A semantics-based analysis

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CEPR Discussion Paper No. DP14726
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3603956

Standard-essential patents (SEPs) have become a key element of technical coordination in standard-setting organizations. Yet, in many cases, it remains unclear whether a declared SEP is truly standard-essential. To date, there is no automated procedure that allows for a scalable and objective assessment of SEP status. This paper introduces a semantics-based method for approximating the standard essentiality of patents. We provide details on the procedure that generates the measure of standard essentiality and present the results of several validation exercises. In a first empirical application we illustrate the measure's usefulness in estimating the share of true SEPs in firm patent portfolios for several mobile telecommunication standards. We find firm-level differences that are statistically significant and economically substantial. Furthermore, we observe a general decline in the average share of presumably true SEPs between successive standard generations.

The myths and facts of patent troll and excessive payment: Have non-practicing entities (NPEs) been overcompensated? - A commentary

Jonathan Blogg (N/A)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3585073

The much-cited article ‘the Myths and Facts of Patent Troll and Excessive Payment: Have Non-Practicing Entities (NPEs) Been Overcompensated’ by Jack J. Lu is fundamentally flawed and based on data which cannot be retrieved. The key error results from poorly defined samples, selected to substantiate the statement that hold-up does not exist and that Non-Practicing Entities are not overcompensated. Even if the article had succeeded in adequately selecting the samples subject to the analysis, the document would still fall short of determining what constitutes a comparable licensing agreement. Also, the findings cannot be verified as the article does not disclose the underlying data that leads to the conclusion that NPEs are not overpaid. Hence, the paper falls short of meeting three fundamental requirements of empirical research. There is no adequate selection of the two samples that are compared (the NPE sample and a vaguely defined sample of ‘other companies’), there is also no adequate selection of comparable rates and last but not least, the data cannot be retrieved. Other than that, the research paper suffers from the application of concepts which are not defined and lacks adequate references to the academic literature. These aspects taken together mean that it is not possible to draw any sorts of conclusions on the grounds of the analysis presented and render the article obsolete.

IP & Litigation

A unified theory of convoy goods

Michael Risch (Villanova University Charles Widger School of Law)
Jurimetrics, Vol. 60 (Forthcoming)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3570124

Patent damages jurisprudence continues to struggle with how to treat the sales of noninfringing goods. When such goods have nothing to do with the patent, the answer is easy -- no damages. But when the goods are sold along with patented goods (so-called convoy goods), then courts and commentators are all over the place. The confusion is even worse because most discussion fails to consider whether and how convoy goods should affect lost profits versus reasonable royalty analysis. This commentary provides a general definition of convoy goods and provides a unified theory about how to treat them in both lost profits and reasonable royalties patent damages - when they should count and when they shouldn't.

IP & Innovation

Patents, innovation, and development

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Max Planck Institute for Innovation & Competition Research Paper No. 20-07
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3598855

I survey some recent research on the role of patents in encouraging innovation and growth in developing economies, beginning with a brief history of international patent systems and facts about the current use of patents around the world. I discuss research on the implications of patents for international technology transfer and domestic innovation. This is followed by a review of recent work by myself and co-authors on regional patent systems, the impact of patents on firm performance, and the impact on pharmaceutical patenting and domestic innovation. The conclusion suggests that patents may be relatively unimportant in development, even for middle income countries.

Innovation in the U.S. government

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NBER Working Paper No. w27181
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3603811

This paper examines the U.S. government’s intramural research and development efforts over a 40-year period, drawing together multiple human capital, government spending, and patent datasets. The U.S. Federal Government innovates along four dimensions: technological, organizational, regulatory, and policy. After discussing these dimensions, the paper focuses on the inputs to and outputs of government intramural technological innovation. We measure innovative effort and results by accounting for the government scientists and dollars committed to R&D and patents created with government involvement. Overall, we show that intramural innovations, measured by government-assigned patents, are slightly more original and general, but less cited, than patents awarded to private-sector companies and extramural organizations patenting in the same technology classes. The majority of the 200,000 federal government scientists work at the Department of Defense, the Department of Energy, and NASA, and are largely in physical science and engineering occupations; the scientific expertise of other agencies is heavily weighted toward mathematics, social sciences, and data analytics. As these latter disciplines' innovative outputs are less readily catalogued with patents, measuring total government innovative output with government-assigned patents is likely to over-emphasize innovations in engineering and physical sciences while under-reporting intramural innovations in other disciplines. We discuss the implications of our findings for both public- and private-sector innovation efforts and pose questions for future research.

IP Law & Policy

Recent developments in patent law 2020

Mark A. Lemley (Stanford Law School)
Andrew McCreary (Stanford University, Graduate School of Business; Stanford Law School)
Tyler Robbins (N/A)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583103

A summary of the most significant developments in patent law for the year ending April 19, 2020.

Access to CRISPR genome editing technologies: Patents, human rights and the public interest

Duncan Matthews (Queen Mary University of London – School of Law)
Queen Mary School of Law Legal Studies Research Paper No. 332/2020
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3595392

This paper argues that, while intense debates are underway about the scientific and ethical implications of genome editing, insufficient attention is being paid to the patent policy issues that these transformational technologies raise. The paper argues that WTO Members need to consider urgently the implications of patenting genome editing inventions for human rights and the public interest, taking into account concerns about ordre public and morality, as mandated by the "necessity test" under Article 27.2 of the TRIPS Agreement. Furthermore, while genome editing has great potential to transform healthcare and the wellbeing in society across a broad range of scientific fields, the granting of patent rights for these technologies will have profound implications for affordability and access, particularly for people living with chronic lifelong illnesses and for future generations not yet born who are at risk of inheriting preventable medical conditions from their parents. This paper argues that WTO Members need to consider carefully the impact of granting of genome editing patents, balancing the need to reward inventorship while at the same time having regard to implications for affordability, access and the enjoyment of fundamental human rights.

The technical standardization ecosystem and industrial decision making: The case of intellectual property rights policies

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Pierre Larouche (Université de Montréal; Center on Regulation in Europe (CERRE))
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TILEC Discussion Paper No. DP2020-014
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600819

In this paper, we analyze decision making on Intellectual Property Rights (IPR) policies in the standardization ecosystem. While a large literature has studied IPR policies of Standard Developing Organizations (SDOs), we contribute a more rigorous analysis of how these IPR policies are shaped by the interdependencies between SDOs and between SDOs and a variety of stakeholders. While SDO stakeholders often have opposing policy preferences, they are tied together by non-generic complementarities and a joint interest in the overall performance of the standardization system, which are constitutive characteristics of an ecosystem. The standardization ecosystem is characterized by widely shared institutional norms, which – in the field of IPR – result in the preponderance of what we call a “Baseline Policy”. SDOs’ positions in the ecosystem contributes to explain where in the ecosystem institutional innovations going beyond the Baseline Policy are more likely to arise. We analyze different mechanisms of transmission of such novel practices, such as emulation and precedent.

Copyright Law

The sub rosa rules of copyright fair use

Justin Hughes (Loyola Law School Los Angeles)
Harvard Journal of Law & Technology, Vol. 34, 2020
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3592312

This Article analyzes copyright law’s fair use doctrine using basic ideas from the “rules” and “standards” literature. The Article proposes that instead of understanding of 17 U.S.C. §107 as one copyright exception, it is better to see §107 as a legal standard which serves as a mechanism to establish distinct, judge-made rule-like exceptions. The §107 jurisprudence does this in the same way that 15 U.S.C. § 1 of the Sherman Act allows courts to generate per se illegal rules for some economic conduct while itself remaining a legal standard to judge other business activities. The principle difference is that fair use jurisprudence abhors “bright-line rules,” so the rules must remain sub rosa. The fact that what we call “fair use” is both the overall §107 balancing test and these specific, de facto rules explains Jekyll/Hyde descriptions of fair use as both “vague” and “predictable,” as “stable” yet “so flexible as virtually to defy definition.” After exploring some de facto rule-like exceptions that have spun off the fair use legal standard in §107, the Article places this observation about fair use in the context of Karl Llewelyn’s Theory of Rules.

The Article then considers two debated topics among commentators: whether fair use determinations can ever be automated and what impact the transformative use doctrine has on fair use. Despite some doctrinal instability, transformative use analysis has already spun off one stable, rule-like exception from §107: comprehensive reproduction of expressive works to prepare searchable databases. The Article concludes that we can expect that the fair use balancing test in American copyright law will continue to generate specific, rule-like exceptions in response to new social and economic developments.

The respective roles of judges and juries in copyright fair use

Justin Hughes (Loyola Law School Los Angeles)
Houston Law Review, Vol. 58, No. 2, 2020
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3592361

This Essay Article explores the respective roles of judges and juries in fair use determinations, a previously ignored topic that is now – in light of the Oracle v. Google litigation – a subject to considerable debate. Reviewing the scant 18th century case law, the essays concludes that there is only a moderate argument for a Seventh Amendment right to jury determination of the overall fair use question and that that argument depends on several steps that could run afoul of the Supreme Court's Seventh Amendment jurisprudence. If there is not a clear-cut Seventh Amendment right, then one must consider the kind of mixed question of fact and law involved in a fair use determination under the Court's 2018 U.S. Bank framework. While factual issues relevant to fair use belong to the jury, the essay concludes that the overall fair use determination should rest with judges, not juries, to produce the kind of "legal clarity" that thoughtful and thorough appellate review can bring.

Secondary copyright infringement liability and user-generated content in the United States

Jack I. Lerner (University of California, Irvine School of Law)
Chapter 18, IN: Oxford handbook of online intermediary liability, Oxford University Press, 2020, forthcoming
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600322

In the United States, the question of whether and when online service providers can be held liable for copyright infringement committed by their users has been one of the most heavily litigated controversies of the digital age. The answer to this question begins with the common law doctrine of secondary copyright infringement, as articulated by leading United States Supreme Court opinions in Sony Corp of America v Universal City Studios, Inc, and MGM v Grokster. In 1998, Congress enacted a statutory 'safe harbor' as part of the Digital Millennium Copyright Act ('DMCA'). Section 512 of the DMCA limits secondary copyright infringement liability for various types of online intermediaries. Over the next two decades, the entertainment and technology industries waged epic court battles over the meaning of Section 512 and the shape of the secondary infringement doctrine in common law—most famously in Viacom International Inc v YouTube, Inc, in which the parties spent over $100 million in attorney's fees. Though controversies around new business models and market entrants continue to arise and will do so for the foreseeable future, and some uncertainty remains—particularly with respect to the willful blindness doctrine— over the last ten years the dust has mostly settled in the law for intermediaries that host user-generated content ('UGC'). In order for such intermediaries to avail themselves of the Section 512 safe harbor, they must comply with Section 512's many requirements such as terminating the account of repeat infringers, but also may wish to take more active steps to identify and take down infringing content posted on their platforms. To that end, private ordering solutions such as YouTube's ContentID and Copyright Strikes programs abound.

There have been multiple attempts at reform, including 2012's Stop Online Piracy Act and companion bills, but none have been fruitful.8 It remains an open question whether the law strikes the right balance between preventing copyright infringement and enabling free expression and innovation—and if not, what reforms are warranted.

Copyright and attention scarcity

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Cardozo Law Review, 2020
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3590733

As the costs of creating and sharing information have plummeted, some scholars question the continued utility of copyright protection, which imposes artificial scarcity so that authors can recoup creation and dissemination costs. Scholars have ignored, however, that when information is abundant, attention becomes a scarce resource. Superabundant information can overtax consumer attention.
Reducing copyright protection in this new environment may worsen the costs of attention scarcity on consumers of creative expression. Firms often compete for attention by free riding on the public interest generated by copyrighted works. If copyright protection is narrowed, new entrants have reduced motivation to create works that are clearly distinguishable from existing works. Indeed, a new entrant is more likely to create a close substitute for an existing work already available to consumers than to spend the time necessary to create a distinctly original contribution. Thus, new works are more likely to be wastefully duplicative of available content.

Calls to diminish copyright protection in response to falling costs of creation and dissemination often target the derivative right as the first mechanism to weaken or excise. But preserving copyright protections – especially the derivative right – may have unexpected benefits for consumers, including keeping attention costs in check. The effort required to create around copyright constrains entry. Compared to entry under weaker copyright protection, new entrants are likely to offer works that are less redundant, and therefore both more valuable to consumers and less likely to distract or divert attention in ways that impose undue costs on consumers. Legislators and judge may wish to exercise caution before sacrificing the attention-assisting aspects of copyright protection based solely on the intuition that creators could survive with weaker incentives.

Other IP Topics

Patent concentration, asymmetric information, and tax-motivated income shifting

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WU International Taxation Research Paper Series No 2020-05
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600839

We study the relation between patent concentration and tax-motivated income shifting. Using affiliate-level data for European multinational corporations (MNCs) and employing the relative share of patents held by an MNC as a measure for patent concentration, we predict and find that tax-motivated income shifting is increasing in the degree of patent concentration. This effect is economically meaningful: A one standard deviation higher patent concentration increases the extent to which affiliate-level profits are sensitive to income-shifting incentives by 25.6 percent. Additional tests exploiting variation in the information set of the local tax authority suggest that patent concentration facilitates tax-motivated income shifting by reducing comparable information available to the local tax authority. Overall, our results suggest that patent concentration shapes an MNC's incentives to shift income via patents. Our findings also indicate that the effectiveness of tax-policy measures in curtailing this form of income shifting critically depends on their ability to improve the information set of the local tax authority.

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