



IP Literature Watch

CRA Charles River
Associates

May 2018

This newsletter contains an overview of recent publications concerning intellectual property issues. The abstracts included below are as written by the author(s) and are unedited.

IP & Antitrust

Competition advocacy and the patent system: Promoting competitive markets for technology

John Dubiansky (Federal Trade Commission)

Boston University Journal of Science and Technology Law, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3170668

Current efforts at patent reform, through vehicles such as legislation, regulation, and appellate caselaw, are often met with advocacy advancing competing concerns reflecting the interests of discrete and separate groups of market participants. These viewpoints may not necessarily align with the policy goal of promoting consumer welfare. Historically, competition advocacy by competition authorities has been one mechanism for advocating for reforms that advance consumer welfare. Competition authorities such as the Federal Trade Commission have a lengthy history of empirical research and policy advocacy regarding the patent system. This paper reviews that advocacy and examines the circumstances under which competition advocacy has been employed. It observes that advocacy has been directed to two markets in which the patent system impacts competition: patents influence competition in the market for goods that embody them and patents are also themselves articles traded in technology markets. Regarding the latter form of competition, advocacy has been used to address legal doctrines that give rise to transaction costs and market failures in the market for the trade and license of patent rights.

IP & Licensing

Secured transactions and IP licenses: Comparative observations and reform suggestions

Andrea Tosato (University of Nottingham - School of Law)

Law and Contemporary Problems, Vol. 81, No. 1, 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3165170

The information age has heralded formidable technological progress in all segments of society. Miniaturization, communication networks, social media, and cloud computing have ushered in new

business models that have disrupted existing commercial sectors and spawned new ones. Knowledge has become the key factor of production in mature economies, elevating IPRs to one of the most economically and strategically valuable asset classes.

In this evolving landscape, attention has drifted away from the rules governing the creation and transfer of proprietary rights in tangible assets and documentary intangibles and gravitated towards the legal tenets that regulate private law dealings involving IPRs.

This paradigm shift has brought unprecedented focus on the legal regime for the taking of security over such assets, reflecting the mounting desire to realize their full value as means to facilitate access to credit and reduce associated costs. At a national level, legal reform initiatives seeking to overhaul the outdated laws that presently govern the use of IPRs as collateral have gained traction both in common and civil law jurisdictions. Internationally, the United Nations Commission on International Trade Law (UNCITRAL) has developed a suite of legislative texts on secured transactions law that jointly articulate a sophisticated normative model for the taking of security in IPRs.

This article aspires to make a contribution to this discourse by investigating a specific challenge that the twenty-first century levels at the legal framework governing the taking of security over intellectual property: the use of IP licenses as collateral.

IP license contracts are progressively assuming a leading role in both the business-to-business and business-to-consumer markets. The proliferation of the internet of things will reinforce this trend, as most tangible goods progressively integrate digital components and communications capabilities that necessitate licenses for the embedded intellectual property.

The majority of IP licenses are of low value, arising from mass-market, business-to-consumer transactions. Nevertheless, there are also licenses of substantial monetary worth that are granted in business-to-business agreements. Notable examples include trademark retail-distribution licenses, patent licenses for both manufacturing processes and products, copyright licenses for audio-visual creative content, and business applications software. There is compelling evidence to support the view that these types of licenses will be ever more prominent in the decades ahead, acquiring unprecedented economic and strategic significance. In addition, it is increasingly apparent that high-value licensing arrangements of this kind will be multi-jurisdictional in nature, as market participants design business models that transcend national borders.

In such an environment, both licensees and lenders will gradually recognize IP licenses as a palatable source of collateral, repeating a pattern that has recurred throughout history whenever an asset class appreciates substantially. The challenge will be for secured transactions law to provide these parties with suitably supportive legal infrastructure.

Compulsory licensing and patent protection: A North-South perspective

Eric W. Bond (Vanderbilt University)

Kamal Saggi (Vanderbilt University - College of Arts and Science - Department of Economics)

The Economic Journal, Vol. 128, Issue 610, pp. 1157-1179, 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3174981

In a stylised model involving a developing country (called South) and a foreign patent holder, we analyse whether and how the incidence and social value of compulsory licensing (CL) depends upon the South's patent protection policy. If South is free to deny patent protection, CL fails to arise in equilibrium and the option to use it makes both parties worse off. If South is obliged to offer patent protection, CL can occur

and even yield a Pareto improvement. The ability to control price increases the South's incentive for patent protection as well as the likelihood of CL.

Inefficiencies in essential patent pool formation; are pool administrators also involved?

Pooyan Khashabi (Ludwig Maximilian University of Munich - Institute for Strategy, Technology and Organization (ISTO))

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3163726

Technology standards are becoming increasingly important in economic extent. Facilitating and building patent pools for technology standards is a crucial part for their success, which is done by pool administrators. Practitioners believe that political economy of pool formation has led to inefficiencies such as failures in launching new pools and inclusion of non-essential patents (pool inflation). However, the potential role of expert pool administering party on the efficiencies has not been studied yet. This paper develops a simple model of pool formation which determines the optimal strategies of a rent seeking "pool administrator". The results show that pool forming strategies by the pool administrator may contribute to failures in patent pool formation process. Also, in the environments where the essentiality claims are difficult to assess or in industries with higher pace of technology, the pool administrator may find it optimal to include the patents in the pool regardless of the essentially evaluation (pool inflation) and launch the patent pool faster.

Patent pool and deprivatization of patents

Weimin Wu (University of Iowa, College of Law)

Working paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3167629

Harold Demsetz proposed an evolutionary theory of property rights that a transition of property rights structure results from interacting parties' efforts to maximize utilities in face of change of external elements that bear on their benefit cost calculation. Although Demsetz's theory was developed by analyzing tangible properties, it can adequately explain why patent owners voluntarily form patent pools. Under Demsetz's theory, the existence of externalities, the cost of enforcing the right to exclude, and the economy of scale can all respectively change the benefit-cost calculation of property owners/users. The formation of patent pools can be understood as a transition from a private property system to a commons system in response to three phenomena in the patent system: complementary patents, high cost of enforcing patent rights, and excessive patent fragmentation. When the transaction cost of reaching agreements in patent pools is outweighed by its benefits, we can expect to see more patent pools being established.

IP & Innovation

Measuring the novelty of US patents

Jonathan H. Ashtor (Paul, Weiss, Rifkind, Wharton & Garrison LLP; George Mason University School of Law)

Working paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3172298

I construct a measure of patent novelty based on linguistic analysis of claim text. Specifically, I employ advanced computational linguistic techniques to analyze the claims of all U.S. patents issued from 1976-2014, nearly 5 million patents in total. I use the resulting model to measure the similarity of each patented invention to all others in its technology-temporal cohort. Then, I validate the resulting measure using multiple established proxies for novelty, as well as actual USPTO Office Action rejections on grounds of

lack of novelty or obviousness. I also analyze a set of pioneering patents and find that they have substantially and significantly higher novelty measures than other patents.

Using this measure, I study the relationship of novelty to patent value and cumulative innovation. I find significant correlations between novelty and patent value, as measured by returns to firm innovation and stock market responses to patent issuance. I also find strong correlations between novelty and cumulative innovation, as measured by forward citations. Furthermore, I find that patents of greater novelty give rise to more important citations, as they are more frequently cited in Office Action rejections of future patents for lack of novelty or obviousness. I also investigate how novelty relates to the USPTO examination process. In particular, I find that novelty is an inherent feature of a patented invention, which can be measured based on the claim text of either an issued patent or an early-stage patent application.

Next, I use this measure to analyze the characteristics of novel patents. I find that novelty is an effective dimension along which to stratify patents, as key patent characteristics vary significantly across the distribution of novelty measures. Moreover, novel patents are closely linked to basic scientific research, as measured by public grant funding and citations to non-patent scientific literature.

Finally, I use this measure to observe trends in novelty over a forty-year timespan of American innovation. This reveals a noticeable, albeit slight, trend in novelty in certain technology fields in recent years, which corresponds to technological maturation in those sectors.

The impact of exports on innovation: Theory and evidence

Philippe Aghion (College de France and London School of Economics and Political Science, Fellow; Centre for Economic Policy Research (CEPR); National Bureau of Economic Research (NBER))

Antonin Bergeaud (Banque de France)

Matthieu Lequien (National Institute of Statistics and Economic Studies (INSEE))

Marc J. Melitz (Harvard University - Department of Economics; Centre for Economic Policy Research (CEPR); National Bureau of Economic Research (NBER))

NBER Working Paper No. w24600

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3177957

This paper investigates the effect of export shocks on innovation. On the one hand a positive shock increases market size and therefore innovation incentives for all firms. On the other hand it increases competition as more firms enter the export market. This in turn reduces profits and therefore innovation incentives particularly for firms with low productivity. Overall the positive impact of the export shock on innovation is magnified for high productivity firms, whereas it may negatively affect innovation in low productivity firms. We test this prediction with patent, customs and production data covering all French manufacturing firms. To address potential endogeneity issues, we construct firm-level export proxies which respond to aggregate conditions in a firm's export destinations but are exogenous to firm-level decisions. We show that patenting robustly increases more with export demand for initially more productive firms. This effect is reversed for the least productive firms as the negative competition effect dominates.

Is there a role for patents in the financing of new innovative firms?

Bronwyn H. Hall (University of California at Berkeley; National Bureau of Economic Research (NBER); Institute for Fiscal Studies (IFS); Max Planck Institute for Innovation and Competition)

Max Planck Institute for Innovation & Competition Research Paper No. 18-06

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3177027

It is argued by many that one of the benefits of the patent system is that it creates a property right to invention that enables firms to obtain financing for the development of that invention. In this paper, I

review the reasons why ownership of knowledge assets might be useful in attracting finance and then survey the empirical evidence on patent ownership and its impact on the ability of firms to obtain further financing at different stages of their development, both starting up and after becoming established. Studies that attempt to separately identify the role of patent rights and the underlying quality of the associated innovation(s) will be emphasized, although these are rather rare.

Patent rights and subsequent innovation: Evidence from patent renewals

Julian Boulanger (Stockholm School of Economics, Department of Economics)

Working paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3163800

Using patent renewal data, I study the causal effect of patent rights on subsequent innovation. Renewal decisions being endogenous, I propose an instrumental variable approach based on a recent change in maintenance fees. I find large positive effects of patent expiry on subsequent innovation. These results hold in several robustness checks and are similar to the findings of Galasso and Schankerman (2015) who study the effects of patent rights on subsequent innovation using data on patent invalidation. I then explore how the blocking effect of patents varies across several important dimensions of the patent landscape and compare my results with previous studies. I show that the blocking effect of patents is mostly driven by patents in discrete technologies, in the cohort of patents that have to be renewed for the first time and that are stronger and broader.

IP & Litigation

How patent law keeps the hope of fair housing alive for all, even after *Bank of America Corporation v. City of Miami*

Jesse Snyder (Unaffiliated Authors – Independent)

Harvard Latino Law Review, Vol. 21, No. 107, 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3168754

In 2015, Circuit Judge Jimmie V. Reyna warned that the inexorable expansion of free speech protection could enable businesses to post signs like “SPICS NOT WELCOME,” simply because of their personal expressive prerogatives. Those words came from his dissent in *In re Tam*, which had an understated connotation that civil-rights legislation writ large could be destabilized and eventually extirpated. The en banc majority opinion authored by Circuit Judge Kimberly A. Moore was reticent about those musings. Although the Supreme Court in October Term 2016 affirmed Judge Moore’s views on free speech in the context of trademark law, it said nothing how those views affect civil rights or fair housing now that an entity can ostensibly trademark a business under a racial epithet. Returning to Judge Reyna’s point, if some barriers preventing a segregated society are removed, can other laws provide more than a makeweight defense to prevent minority communities from drifting into the margins?

The Court released *Tam* during the same term that it released *Bank of America Corporation v. City of Miami*, a May 1, 2017, opinion involving a city’s challenge to, among others, predatory lending to Latino-majority communities. Although *Bank of America* recognized that cities have Article III standing to sue under the Fair Housing Act for economic injuries suffered from predatory lending, the Supreme Court rejected the Eleventh Circuit’s more lenient causation standard, favoring proof of “some direct relation between the injury asserted and the injurious conduct alleged.” Doubtless the result could have been worse for cities suing on the premise that racially discriminatory lending caused municipal blight. The courthouse doors could have closed if the Court had declined to recognize Miami’s standing to bring a

lawsuit under the Fair Housing Act. The visceral reaction to the approbated standard announced in *Bank of America* is that cities face a daunting task to prove causation.

This paper argues that patent law can inform analysis on and demonstrate how cities can prove causation between discriminatory lending practices and the blighted atmospherics of depressed housing. In three parts, the paper provides an overview of the Fair Housing Act, reviews *Bank of America*, and discusses how patent law can assist in proving whether predatory lending causes a city economic harm. *Bank of America* is an exemplar of how purported predation can harm Latino communities writ large and writ small. All is not forlorn for cities seeking relief from lending practices that discriminate among loan applicants. The auspice of a more exacting causation standard does not doom these lawsuits; it forces cities early on to perform the economic analysis necessary to prove actual damages. Patent law offers experts versed in detecting what attribute drives consumer decisions. Although loss of tax revenue from economic blight is fraught with complexity, economists have the tools in a proper adversarial system to present competing views on what caused a city's downturn. Upon presentation of admissible evidence, whether the banks or cities prevail should turn on a jury's decision about whether racially motivated predation proximately caused a city—and indirectly its residents—to suffer financial calamity.

Is ADR suitable for the resolution of intellectual property disputes?

Mohamed Salem Abou El Farag (Qatar University - College of Law)

Working paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3174147

Intellectual property (IP) is the branch of law that protects innovations and creations, such as new technological inventions; literary, artistic and musical creations; distinctive signs; computer programs; trade secrets; microchips and geographical designations. These creations and inventions may be protected by patents, trademarks, trade secrets and copyright, or other types of intellectual property. These intellectual property rights (IPRs) can nevertheless give rise to many types of disputes. A number of these disputes relates to validity and ownership, whereas others concern licensing to use the protected types of IP. In a number of cases, these disputes relate to illicit copying or counterfeiting or agreements concerning the transfer of IP.

This paper will examine two main issues. It firstly explores the possibility of using different types of ADR, namely arbitration and mediation, to settle disputes concerning IPRs. In other words, can all disputes relating to patents and trademarks in particular, be settled by arbitration or mediation? Secondly, if it is possible to use these mechanisms to resolve IP disputes, this paper will highlight the advantages to the parties of choosing arbitration or mediation over litigation, when confronted with such conflicts. In exploring the two issues, this paper will draw attention to a number of IP cases that have successfully been decided by arbitration.

Unreasonably-low royalties in top-down FRAND-rate determinations for *TCL V. Ericsson*

Keith Mallinson (WiseHarbor)

Working paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3169291

While Ericsson is a leading contributor to mobile communications standards, a US District Court in California has significantly undervalued Ericsson's standard-essential patents (SEPs) by relying heavily on flawed "top-down" valuation analysis that prorates royalties by company for 2G, 3G and 4G based on SEP counting. This analysis applies a series of inaccurate assumptions which whittle down royalty rates from an understated notional maximum in a succession of unreliable steps. The resulting rates derived are a lot lower than those found in a European court's FRAND determination for the same company in

the same year (2017) and for the same 2G, 3G, and 4G patent portfolios. The differences between these US and European determinations are irreconcilable.

This paper identifies inherent problems in top-down analysis with patent counting. It also identifies various additional mistakes and inaccuracies in the application of this methodology to the royalty rate determinations in *TCL v. Ericsson*, as compared with the use of a similar methodology in *Huawei v. Unwired Planet*.

IP Law & Policy

Global standard-setting 2.0: How the WTO spotlights ISO and impacts the transnational standard-setting process

Panagiotis Delimatsis (Tilburg Law and Economics Center (TILEC); Tilburg Law School)

28 *Duke Journal of Comparative and International Law* (2018)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3178133

Transnational technical standard-setting has grown in prominence in recent years. The World Trade Organization (WTO) requires the use of international standards but adopts a deferential approach towards international standards. However, practice shows that several international standards are promulgated through opaque and exclusionary processes. In line with this observation, in its recent *US—Tuna II* ruling, the Appellate Body adopted a more critical stance regarding international standards and the processes that lead to their adoption. Against this backdrop, this article focuses on an analysis of the properties and mechanics of international standard-setting processes within the International Organization for Standardization (ISO), discussing procedural and substantive guarantees regarding transparency, openness, deliberation and participation. As the WTO becomes the de facto arbiter of the legitimacy of international standards, much needed institutional reform in international standard-setting is bound to occur. Arguably, this is bringing a paradigm shift in standardization practices and introduces “global standard-setting 2.0.” Such trend is in line with emerging demands for a more inclusive global legal order.

Understanding the ANSI Patent Policy and why it matters

Richard Taffet (Morgan, Lewis & Bockius LLP)

William Cravens (Morgan, Lewis & Bockius LLP)

George Mason Law Review, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3168158

The Patent Policy of the American National Standards Institute (“ANSI”) historically has provided a broad framework that allows ANSI-accredited Standards Development Organizations (“SDOs”) to tailor and interpret their own patent policies to meet the specific needs of their members and the industries they serve.

Market evidence shows that this flexible approach has worked well, facilitating the development and commercial success of thousands of American National Standards by ANSI-accredited SDOs in a wide variety of industries. Recently, however, ANSI has struggled with an issue concerning the specific wording of license commitments submitted to and accepted by ANSI-accredited SDOs, and specifically whether the use of “customized” language in a license commitment (including language that limits a license commitment to “wholly compliant” implementations of a standard), is consistent with the ANSI Patent Policy.

Although ANSI has accepted license commitments using such language for more than two decades, it has recently suggested that it may restrict that flexible approach going forward. It would be unfortunate if ANSI were to ignore the potential adverse consequences for SDOs and patent owners that might arise if ANSI reverses its decades-long practice and no longer permits SDOs and patent holders the freedom to take a flexible approach to licensing commitments, particularly when there is no evidence of any benefits that would arise for the overall standards development process from a more restrictive approach that deviates from ANSI's established practices.

Copyright Law

Selling the artist, not the art: Using personal brand concepts to reform copyright law for the social media age

Zach Blumenfeld (Columbia Law School)

Working paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3167366

In Part I of this Note, I'll explain how internet creators, ordinary users, companies, and social media influencers operate under the current system of formal copyright law and informal norms. What they appear to want out of an attendant legal regime looks more like personal brand protection, specifically in so far as it encompasses the attribution right and the ability to monetize their whole oeuvre rather than specific content. In Part II, I'll discuss privately ordered methods of enforcing the rights that creators seem to want, before explaining that these methods are insufficient to meet creators' needs. Finally, in Part III, I'll outline a path to greater protection of attribution and integrity rights by way of promising judicial developments, which would provide more robust protection than current norms.

Makers empire: Australian copyright law, 3D printing, and the 'ideas boom'

Matthew Rimmer (Queensland University of Technology (QUT))

3D Printing and Beyond: The Intellectual Property and Legal Implications Surrounding 3D Printing and Emerging Technology (2019, Forthcoming)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3158961

In Australia, there has been an interest in integrating 3D printing into government policies in respect of education, innovation, and manufacturing. There has been an increasing concern about the need to boost Australia's national and science technology policy and performance. Of particular concern has been the decline in Australia's manufacturing industries. Much like the United States, there has been a hope in Australia that 3D printing will revive Australia's advanced manufacturing capacities. As Guy Rundle observed, there has been much interest in the manufacturing hubs of 3D printing in the United States. The 'America Makes' program has involved the creation of advanced manufacturing hubs to stimulate innovation – particularly in regions of the United States, which have suffered from economic depression. There has been an interest in emulating this innovation model in Australia. There has also been a deep problem in terms of the commercialisation of technology in Australia – with many inventions languishing in the so-called 'Valley of Death'. The Australian Prime Minister Malcolm Turnbull has promoted an innovation agenda as leader of the Conservative coalition of the Liberal Party and the National Party. He has highlighted the role of 3D printing. For instance, Turnbull promoted the work of Stephen Brinks from 3D Brink at Western Sydney University. The education, innovation, and manufacturing initiatives in the United States have certainly attracted interest and attention in Australia. This Chapter considers a number of developments in respect of Australian copyright law, 3D Printing, and the Maker Movement. Part 1 focuses upon copyright subsistence about 3D printing. 3D printing raises questions about the nature and scope of the intellectual property commons. There have been

issues associated with the protection of art, craft, and designs associated with intellectual property. Part 2 examines concerns about copyright infringement, and 3D printing. It focuses upon questions surrounding the authorisation of copyright infringement. It also looks at the regime of intermediary liability, as well as matters of technological protection measures. There is also consideration of Australia's new copyright site-blocking laws. Part 3 focuses upon the debate over copyright exceptions in Australia, in light of the work of the Australian Law Reform Commission, and the Productivity Commission. In particular, there is a discussion of the merits of Australia adopting an open-ended, defence of fair use – like the United States. Such an exception would be particularly helpful for 3D printing, the Maker Movement, and crowdfunding.

Actors as authors in American copyright law

Justin Hughes (Loyola Law School Los Angeles)

Connecticut Law Review, Vol. 51, 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3173226

Among the different kinds of works eligible for copyright, audiovisual works are arguably the most complex, often involving scores of contributors – screenwriters, directors, actors, cinematographers, producers, set designers, costume designers, lighting technicians, etc. Some countries expressly recognize which categories of these contributors are entitled to legal protection, whether copyright, 'neighboring rights,' or statutory remuneration. But American copyright law does not. Given that the complex relationship among these creative contributors is usually governed by contract, there is – for such a large economic sector – relatively little case law on issues of authorship in audiovisual works. This is especially true on the question of dramatic performers as authors of audiovisual works.

This Article provides the first in-depth exploration of whether, when, and how actors are authors under American copyright law. After describing how case law, government views, and scholarly commentary support the conclusion that actors are authors, the Article turns to the strange saga of the Ninth Circuit's 2015 en banc *Garcia v. Google* decision – a decision more about fraud and fatwas than clear conclusions on how copyright law applies to acting. The Article then uses some simple thought experiments to establish how dramatic performers generally meet both the Constitutional and statutory standard for "authorship." Finally, the Article reviews the various filters that prevent actors-as-authors legal struggles and how, when all else fails, we can consider actors as joint authors of the audiovisual works embodying their dramatic performances.

The lost tort of moral rights invasion

Patrick Russell Goold (Harvard Law School)

Akron Law Review, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3167284

Moral rights are often portrayed as an unwelcome import into U.S. law. During the nineteenth century, European lawmakers, influenced by personality theories of authorship, began granting authors rights of attribution and integrity. However, while these rights proliferated in Europe and international copyright treaties, they were not adopted in the United States. According to a common historical narrative, U.S. courts and lawmakers resisted moral rights because they were deemed incompatible with the copyright tradition of treating expressive works as alienable property. What little moral rights U.S. law provides today is thus seen as a necessary evil, grudgingly accepted, simply to comply with international obligations.

This Article presents a history of moral rights protection that challenges, to a degree, that common historical narrative. The Article tracks how American courts adjudicated attribution and integrity disputes

during the twentieth century. Doing so not only reveals that the American judiciary was more sympathetic to these claims than commonly appreciated, but, even more surprisingly, came close to developing a tort of moral rights invasion. While copyright historians know that courts have long provided proxy protection for moral rights under preexisting common law causes of action (e.g., defamation, unfair competition, privacy, etc.), what is not widely known is how frequently courts were willing to protect attribution and integrity interests directly under the banner of moral rights. This Article tells the story of how courts in the mid-twentieth century, applying state law, increasingly articulated a “sui generis tort” of moral rights invasion. It then proceeds to question why the moral rights tort stagnated and was forgotten about in the late twentieth century.

Other IP Topics

The road to Paris: Intellectual property, human rights, and climate justice

Matthew Rimmer (Queensland University of Technology (QUT))

Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice, Berlin: Springer, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3177678

As well as outlining the structure and organisation of the collection, this introduction seeks to contextualise the debate over intellectual property and climate change. As a foundation to the collection, it provides an overview of the negotiation, agreement, and implementation of the Paris Agreement 2015. It offers a literature review in respect of international climate law, human rights, and technology transfer. The introduction highlights key research and scholarship on intellectual property and environmentally sound technologies. It outlines the relevance of various disciplines of intellectual property to the debate over climate change. In particular, it looks at the role and function of patent law, trademark law, consumer law, design law, copyright law, trade secrets, open licensing, as well as plant breeders’ rights, access to genetic resources, and Indigenous knowledge. It examines climate litigation in the field of intellectual property. The introduction considers the scope for law reform to ensure that intellectual property laws are better adapted to promote substantial and meaningful action in respect of climate change. It also explores how innovation law and policy may best promote climate justice and human rights.

Managing strategic intellectual property assets in the fuzzy front end of new product development process

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Sema Kirkewoog (Portland State University - Department of Engineering & Technology Management)

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R&D Management, Vol. 48, Issue 3, pp. 354-374, 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3172412

The strategic use of intellectual property (IP) is crucial for technology-based companies to gain competitive advantage. The recent transformation of the US patent system brings new challenges and opportunities in this arena. In this regard, this study attempts to identify techniques which can help with IP evaluation and selection in the fuzzy front end (FFE) of new product development (NPD) process. This study combines data collection methods such as mining the literature, conducting in-depth interviews, surveying questionnaires, and analyzing cases. This research serves as an analysis of modern literature and identifies a multicriteria weighted scoring model that can be employed to help with the patent decision process. The criterion to discern patent eligibility is a contended discussion. For this survey administration, 300 companies, as the targeted sample, were randomly selected to be reached from

LexisNexis database. Consequently, this paper identifies the key decision criteria to incorporate into this model and obtains weights gathered from surveying IP professionals and R&D managers in US-based electronics manufacturing firms (SIC code: 36). This study proposes a structured approach to identify ideas that should be patented in the FFE of NPD process by way of an analysis of pertaining literature and case studies. The technique we present in this paper could be essential for many firms to achieve IP success as their strategic means. Moreover, this tool can help R&D managers not only speed up the FFE of NPD process but also make more informed and target-worthy decisions for IP filing.

About the editor

Dr. Anne Layne-Farrar is a vice president in the Antitrust & Competition Economics Practice of CRA. She specializes in antitrust and intellectual property matters, especially where the two issues are combined. She advises clients on competition, intellectual property, regulation, and policy issues across a broad range of industries with a particular focus on high-tech and has worked with some of the largest information technology, communications, and pharmaceuticals companies in the world.

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