



IP Literature Watch

CRA Charles River
Associates

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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

Antitrust law and patent settlement design

Erik Hovenkamp (Harvard Law School; Yale Law School)

Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219954

For competing firms, a patent settlement provides a rare opportunity to write an agreement that forestalls competition without transparently violating the antitrust laws. Problematically, such agreements are highly profitable for reasons that have nothing to do with resolving a patent dispute. Thus, even if the firms think the patent is very likely invalid or noninfringed, they prefer to restrain competition to monopoly and share in the proceeds. In response, antitrust has recently come to focus on how the settlement's competitive effects compare to the expected result of foregone patent litigation, which seemingly requires some assessment of the likelihood that the patentee would have prevailed. But this "case-within-a-case" approach leads to major complications in practice. Indeed, outside of one well-known settlement format—so-called "pay-for-delay" agreements—how to administer this burgeoning antitrust standard remains an open question.

Applying recent work in economics, this article argues that antitrust law should reframe its settlement analysis to focus entirely on the nature of the settlement agreement—the particular way it restrains competition or otherwise redistributes profits between the firms. That is because the settlement's design is ultimately what determines how private bargaining outcomes will compare to the firms' litigation expectations. Under this approach, the antitrust question can be addressed without inquiring into the likelihood that any particular patent is valid and infringed, making it much more administrable. Instead, the focus is on how the settlement design affects private bargaining generally. This disentangles the relevant antitrust violation from the extent of the resulting harm, and can be applied to all kinds of settlement agreements. Finally, this approach is broadly consistent with the Supreme Court's recent Actavis decision. All of this points to a clear prescription for antitrust reform: evaluate the agreement, not the patent.

Managing cartels through patent pools

Weimin Wu (University of Iowa, College of Law)

Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3205794

Patent pools can serve many purposes. Some of them are procompetitive while others anticompetitive. This article addresses one aspect of patent pools that has not received much attention—patent pool's role in stabilizing a cartel of downstream producers. The article first reviews the problem of cartel cheating, which threatens the stability of cartels. Any potential mechanisms that cartels can use to increase stability face three main challenges: (1) the cost of management, (2) agency costs, and (3) the requirement of secrecy. Our analysis shows that a vertically-related firm is an ideal candidate to manage a cartel. Our analysis has important implications for our understanding of patent pools. Because a patent pool is in a vertical relationship with multiple downstream producers, they can use a patent pool as a mechanism to facilitate collusion. The article argues that the vertical licensor-licensee relationship gives a patent pool better chances to evade antitrust scrutiny and more latitude in monitoring downstream producers' performances. It also argues that aggregation of patents in a patent pool would make it more effective in punishing cartel cheating. The article's main finding that a patent pool is uniquely suited to manage a downstream cartel is a reminder that an overly permissive view of patent pools can invite anticompetitive hazards.

IP & Licensing

Total patent exhaustion!

Samuel Ernst (Golden Gate University School of Law)

IDEA: The IP Law Review, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3227002

The exhaustion doctrine generally provides that when a patent holder sells or authorizes another party to sell a patented item, the patent rights in that item are exhausted, and the patent holder cannot pursue that product down the stream of commerce to demand royalties from each party that subsequently acquires the item. Patent holders have often sought to evade patent exhaustion by drafting licensing agreements attending or authorizing the sale of their patented products that place restrictions on the use of the patented item or otherwise provide that no patent exhaustion has occurred. In *Impression Products v. Lexmark* the Supreme Court held that such post-sale restrictions are ineffective to prevent patent exhaustion. This overruled Federal Circuit precedent holding that contractual restrictions to evade exhaustion were effective so long as they did not run afoul of antitrust laws or constitute patent misuse. This author has long argued that the Federal Circuit's interpretation of Supreme Court precedent was incorrect – that post-sale restrictions could not prevent patent exhaustion, as set forth in cases dating from the 1917 case *Motion Picture Patents v. Universal Film* to the 2008 case *Quanta Computer v. LG Electronics*. A per se prohibition on contracting around exhaustion is justified by multiple policy principles, including (1) the policy against restraints on alienation of personal property; (2) the policy against compensation for patent holders above what is necessary to promote invention (commonly known as “double-recovery”); (3) the need to protect the boundary between federal patent law and the common law of contracts and property; and (4) all of these policies in addition to judicial efficiency when parties attempt to evade exhaustion in drafting a patent license agreement to settle litigation. Some scholars argue that contracting around exhaustion allows for welfare gains such as increased output and vertical price discrimination. These scholars contend that the policy against restraints on alienation is a misunderstood and outdated relic of the common law; and that the policy against double-recovery has no empirical justification. To the contrary, total exhaustion protects modern consumers by preserving the used resale market, reducing the cost of goods, and protecting consumers from being locked into particular brands and secondary products. Arguments against total exhaustion for consumer goods fail to account for the inefficiencies of personal

property servitudes, such as the uncertainty and research costs resulting from post-sale restrictions, hidden costs of products through tied secondary products, notice costs for licensed manufacturers, and the need for costly litigation to test the validity of contractual restrictions under rule of reason economic analysis – litigation that will rarely occur because it is beyond the reach of the great majority of consumers. In short, the Supreme Court was correct as a matter of its own precedent and of sound policy that contractual post-sale restrictions are wholly ineffective to prevent exhaustion, regardless of whether they run afoul of antitrust law or constitute patent misuse. Patent law is not the poor stepchild of antitrust law. It pursues separate policies. Moreover, to the extent contracting around exhaustion is economically desirable for high-end, non-consumer goods, the Court's opinion does not result in absolute exhaustion in all circumstances. Pre-sale restrictions and leases may remain viable options for patent holders to evade exhaustion. For high-end, non-consumer products where there are lower transaction and notice costs relative to the price of the product, these avenues are practicable, and the concerns with servitudes and double recovery adhering in the consumer goods context are ameliorated.

IP & Innovation

Emerging technologies challenging current legal paradigms

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Minnesota Journal of Law, Science & Technology, Vol. 19, No. 2, 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3220440

U.S. patent law has made assumptions about where new inventions will be created, who will create them, and how they will be infringed. Throughout history, emerging technologies have challenged these paradigms. This decade's emerging technologies will allow humans to create in virtual worlds, connect billions of every day devices via the Internet, and use artificial intelligence to invent across technology fields. If countries like the U.S. wish to encourage inventors to seek patent protection in these emerging areas, then a paradigm shift in the law must occur. Specifically, the law must clarify patent eligibility, recognize the increasing role of artificial intelligence in inventing, and continue to develop the doctrinal framework for enforcing interactive patents.

IP & Litigation

Experts, generalists, laypeople – and the Federal Circuit

Matthew Sipe (George Washington University Law School)

Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3228585

A natural experiment is currently unfolding in the patent world. The same validity issues are sent to a diverse range of adjudicators: administrative patent judges, with technical and scientific expertise; district court judges, who range from classic legal generalists to de facto patent law specialists; and juries, composed of layperson novices. The findings made at the trial level, regardless of forum, are in turn reviewed by a singular controlling entity — the Court of Appeals for the Federal Circuit. This Article capitalizes on the current adjudicatory structure of patent law, analyzing more than two thousand Federal Circuit orders and opinions — each hand-coded for validity findings and their disposition on appeal issue-by-issue. The result is a uniquely complete and clear dataset, offering a window into these tribunals' different mutual relationships — and one into the varying effects of expertise and specialization in the patent world overall. A straightforward empirical analysis of the data, moreover, challenges several longstanding and widespread anecdotal assumptions about patent adjudication. In brief, the data suggest that the Federal Circuit affirms findings made by the PTAB reliably more often

than findings made by district court judges — particularly when the findings involve questions of fact rather than questions of law. Whether the district court judge (or district itself) has more prior experience with patent cases appears to be irrelevant. Whether the finding was made by a jury, on the other hand, is highly relevant, with those findings affirmed at the highest rate of all. Moreover, PTAB findings that invalidate patent claims are affirmed more often than findings that uphold patent claims. No similar pattern exists in district court appeals. And the underlying technological subject matter of the patent at issue does not seem to perceptibly influence results on appeal for either.

Counting standard contributions to measure the value of patent portfolios – a tale of apples and oranges

Justus Baron (Northwestern University - Searle Center for Law, Regulation and Economic Growth)
Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3223878

Measuring the value of portfolios of Standard-Essential Patents (SEP) is a difficult and controversial exercise. It has recently been suggested to use counts of technical contributions to Standard Development Organizations (SDO) as an indicator of the share of the value of a standard created by an SEP holder. Analyzing a comprehensive database of contributions to the Third Generation Partnership Project (3GPP), I find that contributions are highly heterogeneous in technical significance, outcome, and impact. The standardization process is not intended to screen contributions for value or significance. Against this background, contribution counts are not a suitable basis for apportioning the value of a standard between different SEP holders. The measure is prone to be easily manipulated. Furthermore, apportioning royalty payments by contribution counts would exacerbate commercial considerations and opportunistic strategies, which could hamper or even derail the technical work of SDO working groups.

Who's suing us? Decoding patent plaintiffs since 2000 with the Stanford NPE litigation dataset

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Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3216095

Despite widespread interest in the impact of patent assertion entities (“PAEs”) on the U.S. patent system, there has been no publicly available dataset that categorizes more than a fraction of lawsuits as involving practicing entities, non-practicing entities (“NPEs”), or PAEs. To address this knowledge gap, Stanford Law School student researchers, led by Mark Lemley and Shawn Miller, have created the Stanford NPE Litigation Dataset (“the Dataset”). The Dataset is the first comprehensive patent litigation dataset to categorize patent asserters and will do so for every U.S. patent lawsuit filed since 2000. With over 80% of total cases categorized as including practicing entities or one of eleven types of NPE patent asserters, the Dataset is nearing completion of the 63,000 lawsuits filed between 2000 and

2017. Thereafter, we will continue to update the Dataset with more recently filed lawsuits. The Dataset provides an invaluable tool to help policy makers craft effective rules, and help judges, litigators, and scholars better understand the nature of the entities filing patent suits. This is especially true because the Dataset captures how patent litigation patterns evolve over an era of heightened activity and policy reform. The Dataset will reveal trends before and after passage of the America Invents Act, key Supreme Court patent cases including eBay and Alice, and various executive orders focused on increasing transparency and reducing costs in patent suits. The first half of this paper explains the motivation for creating the Dataset and details the methodology used to create it. At present, we have completed and made public a random sample of 20% of the lawsuits filed from 2000 through 2015 (10,812 lawsuits). We utilize this sample in the second half of the paper to reveal, for the first time ever, trends in the share of patent disputes attributed to different types of patent asserters over a span of sixteen years. These trends show that while practicing entities dominated patent litigation in the first half of the 2000s, NPEs and PAEs now assert patents in most lawsuits. Further, the trends show that the rise of NPEs and PAEs began before—and thus is not attributable to—the 2011 change in joinder rules. We hope this data will be used to further policy discussions and therefore conclude this paper with examples of how the Dataset can be used in future research on the impact of different types of patent asserters on the patent system.

Copyright Law

Shouting the people: Authorship and audience in copyright

Timothy McFarlin (University of La Verne College of Law)

Tulane Law Review, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226696

In gospel music they say, “If you ain’t shouted the people, you ain’t done shit.” If someone in the audience doesn’t scream, dance, or faint, then the singer has failed. Shouting the people — how good someone is at making an audience react — is the essence of authorship. Authorship, at its core, is self-expression. Why do we express ourselves? We do it to elicit a reaction, even if it’s just from the audience within. Shouting the people is also the reason for copyright. If not for a hungry audience, law would have little reason to grant authors the right to control copying of their works. Without demand, why protect supply? This notion of audience as the reason for copyright has deep roots in the law’s origins. And courts have long looked to the “reasonable audience member” in disputes over infringement and fair use to help define the proper scope of copyright protection. But in 2000, in the case of *Aal Muhammed v. Lee*, the Ninth Circuit injected “audience appeal” into the test for deciding if a contributor to a work is one of its authors. Given that legal recognition as an author is (absent a contract, gift, or inheritance) the only way a person gets a copyright, courts following *Lee* have effectively begun using the audience to decide whether someone is entitled to a copyright at all. Offered little guidance by *Lee*, these courts have groped for a way to properly evaluate and use audience appeal in determining authorship. Legal scholars, moreover, have thus far paid scant attention. Despite this judicial confusion and dearth of commentary, the concept’s potential impact on copyright is far-reaching. In sum, using audience appeal to judge authorship injects uncertainty and manipulability into authorship’s definition, thereby increasing subjectivity in the courts, decreasing the incentive to innovate, and eroding creators’ deeply personal connections to their expression. In other words, shouting the people may be the essence of authorship, but the audience is fickle, and rights — including copyright — should be more stable.

Authors and machines

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Columbia Public Law Research Paper No. 14-597

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3233885

Machines, by providing the means of mass production of works of authorship, engendered copyright law. Throughout history, the emergence of new technologies tested the concept of authorship, and courts in response endeavored to clarify copyright's foundational principles. Today, developments in computer science have created a new form of machine — the “artificially intelligent” system apparently endowed with “computational creativity” — that introduces challenging variations on the perennial question of what makes one an “author” in copyright law: Is the creator of a generative program automatically the author of the works her process begets, even if she cannot anticipate the contents of those works? Does the user of the program become the (or an) author of an output whose content the user has at least in part defined? This article frames these and similar questions that generative machines provoke as an opportunity to revisit the concept of copyright authorship in general and to illuminate its murkier corners. This article examines several fundamental relationships (between author and amanuensis, between author and tool, and between author and co-author) as well as several authorship anomalies (including the problem of “accidental” or “indeterminate” authorship) to unearth the basic principles and latent ambiguities which have nourished debates over the meaning of the “author” in copyright. We present an overarching and internally consistent model of authorship based on two basic pillars: a mental step (the conception of a work) and a physical step (the execution of a work), and define the contours of these basic pillars to arrive at a cohesive definition of authorship. We then apply the conception-and-execution theory of authorship to reach a series of conclusions about the question of machine “authorship.” We contend that even the most technologically advanced machines of our era are little more than faithful agents of the humans who design or use them. Asking whether a computer can be an author therefore is the “wrong” question; the “right” question addresses how to evaluate the authorial claims of the humans involved in either preparing or using the machines that “create.” We argue that in many cases, either the upstream human being who programs and trains a machine to produce an output, or the downstream human being who requests the output, is sufficiently involved in the conception and execution of the resulting work to claim authorship. But in some instances, the contributions of the human designer and user will be too attenuated from the work's creation for either to qualify as “authors” — leaving the work “authorless.”

Sampling increases music sales: An empirical copyright study

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American Business Law Journal, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226292

This Article presents an empirical study of digital sampling's effect on the sales of sampled songs and — based on the collected data — argues that a reassessment of fair use in this area is needed. To conduct the research, a group of previously sampled songs was identified and sales information for these works collected. The analysis found, to a 99.99% degree of statistical significance, sales of sampled songs increased after being repurposed in a new work. The Supreme Court instructs that the most important consideration in analyzing fair use is the effect on the market for the original. Evaluating a set of songs sampled by works appearing in the Billboard Music Year End Charts for 2006-2015 found increases in sales for the earlier works post-sampling. These gains were enhanced where the sample included lyrics from the original or was pervasively used throughout the new song. Findings of this nature favor judicial determination that sampling constitutes a fair use (and thus no license is needed), but they are not conclusive. In evaluating fair use, courts must also review the influence that a new work has on extant licensing markets to create derivatives of the original. Thus, to the extent a market for licensing copyrighted songs properly exists, influence on this market should be considered in

addressing sampling and fair use. This paper argues that the current sample-licensing market is a product of aberrant anti-sampling caselaw and a want of relevant information (such as the data in this study) which incited risk-averse actors to purchase unnecessary licenses. Evaluating digital sampling and copyright law through this lens warrants a whole-cloth review of whether the practice is a fair use. Based on evidence provided herein, this article asserts that sampling should be a presumptive fair use in certain instances that maximize the new work's capacity to increase sales of the original. Such a presumption furthers the goal of encouraging creative activity without hindering the copyright owner's capacity to financially gain from their work. Lastly, while the genesis of this investigation was application of the fair use doctrine to sampling, the findings are applicable outside this limited purpose. The article applies its results in the realm of private law through a law and strategy lens. Forward thinking music firms should reframe their approach to sample licensing to achieve a competitive advantage. This goal can be achieved by deviating from the norm of zealous sample policing, and instead offering costless sample licenses to maximize the free advertising and increased sales associated with therewith.

Digital sampling v. appropriation art: Why is one stealing and the other fair use? A proposal for a code of best practices in fair use for digital music sampling

Melissa Eckhause (Golden Gate University School of Law)

Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224724

This Article examines the disparate treatment of music sampling and appropriation art under copyright law and advocates for the creation of a code of best practices in fair use for digital music sampling. In the music industry, when artists sample two-seconds of a song, courts call it stealing, piracy, and copyright infringement. In contrast, in the art world, when artists sample whole photographs, courts label it appropriation art, collage, and fair use. Yet, appropriation art and digital sampling are artistically analogous acts. Both arise from the practice of collage and the long-standing practice of musicians and visual artists sampling other artists' works by incorporating them into new pieces, often without permission from the original artists. Therefore, this Article argues that the more liberal fair use and de minimis principles adopted in recent visual arts cases should be applied to music sampling. This Article then sets forth a Code of Best Practices in Fair Use for Digital Music Sampling which articulates principles for determining under which circumstances permission is needed for sampling. This code is based on the author's online survey that questioned music professionals about their opinions, experiences, and practices concerning digital music sampling. This Article does not advocate for bright-line rules classifying all sampling as per se fair use. Just as some appropriation art is copyright infringement, some digital sampling will require a license too. The point is that it is time for musical artists to reclaim their right to fair use and to put digital music sampling on the same legal par as other artistic collage practices.

The costs of cutting advertising to manage earnings: Evidence from the survival of newly launched trademarks

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Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103340

This paper examines the relation between reductions in advertising expenditures to meet earnings targets and the survival rate of newly launched trademarks to shed light on the impact of real earnings management on firms' product market space. We use the trademark dataset from the U.S. Patent and Trademark Office to measure the survival rate of newly launched trademarks. We find that abnormal reductions in advertising expenditures related to earnings management lead to a lower survival rate of newly launched trademarks. This finding is more pronounced for firms in industries with high advertising

expenditures, and is robust to controlling for investment opportunities, managers' abilities, corporate governance, and market competition. Lastly, we find that this lower survival rate has a significantly negative impact on firms' subsequent sales growth and ROA.

IP & Technology

The policy challenge of artificial intelligence

James E. Bessen (Technology & Policy Research Initiative, BU School of Law)

CPI Antitrust Chronicle, June 2018

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219887

New "artificial intelligence" (AI) technology promises to bring dramatic social and economic changes, demanding major policy changes. In intellectual property and antitrust law, AI will exacerbate a damaging trend: across all major sectors of the economy, proprietary information technology is increasing the market dominance of large firms. This trend might not seem like bad news, but it is evidence of a slowdown in the spread of technical knowledge throughout the economy. The result is rising industry concentration, slower productivity growth and growing wage inequality. The key challenge to IP and antitrust policy will be counter this trend yet maintain innovation incentives.

The second digital disruption: Data, algorithms & authorship in the 21st Century

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Christopher Jon Sprigman (New York University School of Law)

UCLA School of Law, Public Law Research Paper No. 18-28

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226566

This article explores the intellectual property ramifications that flow from the explosive growth of mass streaming technologies. Two decades ago rising internet usage led to what we call the first digital disruption: Napster, file-sharing, and the transformation of numerous content industries, from music to news. The second digital disruption is about the age of streaming and, specifically, how streaming enables firms to harvest massive amounts of data about consumer preferences and consumption patterns. Coupled to powerful computing, this data—what Mark Cuban has called “the new gold”—allows firms such as Netflix, Amazon, and Apple to know in incredible detail what content consumers like and how they consume it. The leading edge of this phenomenon—and the primary vehicle for our examination—is the adult entertainment industry. We show how Mindgeek, the little-known parent company of Pornhub and the dominant player in pornography today, has leveraged data about viewing patterns to not only organize and suggest content but even to dictate creative decisions. We first show how the adult industry adapted to the internet and the attendant explosion of free content. That story aligns with many similar accounts of how creative industries adapt to a loss of control over IP by restructuring and recasting revenue streams. We then show how content streaming firms have used data to make decisions about content aggregation, dissemination, and investment. Finally, we consider what these trends suggest for IP theory and doctrine. A key feature is that by making creative production less risky, what we call “data-driven authorship” drives down the need for strong IP rights.

IP & Tax Policy

Should there be lower taxes on patent income?

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

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3216471

A “patent box” is a term for the application of a lower corporate tax rate to the income derived from the ownership of patents. This tax subsidy instrument has been introduced in a number of countries since 2000. Using comprehensive data on patent filings at the European Patent Office, including information on ownership transfers pre- and post-grant, we investigate the impact of the introduction of a patent box on international patent transfers, on the choice of ownership location, and on invention in the relevant country. We find that the impact on transfers is small but present, especially when the tax instrument contains a development condition and for high value patents (those most likely to have generated income), but that invention itself is not affected. This calls into question whether the patent box is an effective instrument for encouraging innovation in a country, rather than simply facilitating the shifting of corporate income to low tax jurisdictions.

Did Congress goof? TCJA and the taxation of self-created patents and inventions

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Suffolk University Law School Research Paper No. 18-13

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3223822

Congress, by the Tax Cuts and Jobs Act of 2017, amended the Internal Revenue Code so that patents and inventions created by the personal efforts of a taxpayer disposing of them are not capital assets, and therefore generate ordinary gain or loss. In and of itself, the action seems straightforward enough. It represents a policy choice about which reasonable minds can certainly differ, but it is a clear policy choice.

Congress, however, did not repeal or amend another, pre-existing, provision specifically granting capital gain treatment to specifically the same class of assets. What is the effect of Congress’s action under the circumstances? It is possible to reconcile the provisions as a matter of pure textual analysis. That reconciliation, however, seems quite contrary to the desire or intent of those who initiated the amendment because it leaves most gain from the disposition of the assets in question taxed at capital rather than ordinary rates.

This Article does not address the matter as a question of tax policy. Rather the question this Article addresses is the efficacy of the legislative process. What are the prospects for the proposition that self-created patents and inventions generate ordinary income as the Internal Revenue Code stands today? What action should be taken if the desire truly is to impose such ordinary income taxation and to deny capital gain taxation?

In the end, if the desire is to tax the disposition of self-created patents and inventions at ordinary rate, legislative action is the best option. This Article demonstrates that courts or the Treasury might rescue that resort, but that might not happen. If there is a bottom line to the analysis, it is this. Congress should, and should be expected to, clean up its own messes.

Other IP Topics

The rise of China in the international intellectual property regime

Peter K. Yu (Texas A&M University School of Law)

HANDBOOK OF THE INTERNATIONAL POLITICAL ECONOMY OF CHINA, Zeng Ka, ed., Edward Elgar Publishing, 2019, Forthcoming

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224443

The rise of China in the international arena has caught the attention of many – whether they are excited about the country's ascendancy or worried about its territorial ambitions. Voluminous literature now exists to cover the impact of China's rise on the international geopolitical and economic systems. One area that has not garnered much attention thus far is the impact of China's rise on the international intellectual property regime.

To examine this impact, the present chapter begins by revisiting the typology scholars have used to chart the progress a country has made in its engagement with international norms – (1) norm breaker; (2) norm taker; (3) norm shaker; and (4) norm maker. Although China has been widely considered a norm breaker or a norm taker in the intellectual property arena, it has now slowly taken on the roles of both a norm shaker and a norm maker.

This chapter then examines three notable developments that have enabled China to shape future international intellectual property norms: (1) the negotiation of free trade agreements; (2) the development of the Regional Comprehensive Economic Partnership; and (3) the establishment of the Belt-and-Road Initiative. The chapter further explains why China has now assumed a more assertive role in the intellectual property arena. It concludes by identifying four sets of questions for future research.

Patent classification systems and technological categorization: An overview and update

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Working Paper

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3220033

Patent classification systems and upper-level grouping have been widely used but are insufficiently documented. This article provides an overview of the major patent classification systems and the basic ideas behind technological categorization of patent classes. I then point out a few recent institutional changes that disproportionately affect patents in specific categories and alternative categorization used in the patent examination process. Finally, I include an update of NBER patent technological categorization based on the latest U.S. patent classification.

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competitive bidding, e-discovery, energy, forensics, life sciences, transfer pricing. For more information, visit crai.com.



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