September 2023

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 and (Foreign) Innovation: Evidence from the Xerox Case**
Robin Mamrak (Ludwig-Maximilians-Universität (LMU) Munich)
*Rationality and Competition Discussion Paper Series 396*
[https://epub.ub.uni-muenchen.de/96293/1/396.pdf](https://epub.ub.uni-muenchen.de/96293/1/396.pdf)

How does antitrust enforcement against patent-based monopolies affect innovation? I address this question by empirically studying the US antitrust case against Xerox, the monopolist in the market for plain-paper copiers. In 1975, Xerox was ordered to license all its copier-technology patents in the US and abroad. I show that this promoted innovation by other firms in the copier industry, measured by a disproportionate increase in patenting in technologies where Xerox patents became available for licensing. This positive effect is driven by increased innovation by Japanese competitors. They started developing smaller desktop copiers and their innovation became more diverse.

**IP & Licensing**

**The Copyright Problem with Emerging Generative AI**
Apoorva Verma (Gujarat National Law University)
*Working Paper*

Generative AI, a rapidly advancing field in artificial intelligence, has gained significant attention and recognition for its ability to create original and diverse content such as images, music, text, and even entire virtual worlds. Intelligence (AI) technologies, such as ChatGPT, have ushered in a new era of content creation, enabling users to produce vast amounts of original text at an unprecedented speed. By leveraging complex algorithms and deep learning techniques, generative AI systems can autonomously produce new and innovative outputs that mimic human-like creativity. However, as this technology continues to evolve and become more pervasive, it raises various legal, ethical, and societal implications. This technological advancement has brought forth a range of complex copyright issues that demand careful consideration. This paper examines the challenges and implications surrounding copyright in the context of generative AI. The study delves into the unique characteristics of generative AI, where the AI system autonomously generates creative content, blurring the lines of authorship and ownership. The concept of "originality" in the context of AI-generated works is critically examined, with a focus on the extent of human intervention and the transformative nature of the output. Furthermore, the
paper analyzes the challenges posed by the lack of clarity regarding authorship and ownership, the enforceability of copyright laws, and the potential infringement risks associated with AI-generated content in context to India.

Additionally, the study sheds light on the responsibility of AI developers and platform providers, emphasizing the need for proactive measures to protect original creators and users from copyright infringement. It explores potential solutions, such as licensing mechanisms, attribution protocols, and technological safeguards, to strike a balance between promoting innovation and safeguarding copyright interests.

**How Can Business Schools Create and Appropriate Value in University-based Technological Innovation?**

Dmitry S. Smirnov (HHL Leipzig Graduate School of Management)
Kelvin Willoughby (HHL Leipzig Graduate School of Management)

https://doi.org/10.1142/S02198770235005

Discussion in the scholarly literature about partnerships between entrepreneurs and universities for the creation of technological spinouts, and for helping universities to extract more value from their technology-related intellectual property, is lively. However, the literature exhibits a gap in understanding how business schools may participate in the process of technology commercialization by facilitating the creation of intellectual property (IP) rights. In this conceptual paper we seek to fill this gap in three ways. First, we offer some novel conceptual insights by studying the partnership between technical universities and entrepreneurs using a multi-level approach, incorporating a phenomenological research method, through the lenses of several established theoretical perspectives from the domains of economics, social science, and management: the division of labor, motivation, the nature of the firm, organization, and IP. Second, we develop a working hypothesis focused on learning reinforcement through multiple organizational levels that predicts how business schools may play a prominent role in technology commercialization, together with the theoretical conditions under which they may do so. Third, we offer an IP management model under which business schools, as such, may create and appropriate financial value by generating innovation-related IP that may be transferred to enterprises. Our research reveals a misalignment between promising approaches to university-based technological innovation suggested by normative theory and typical approaches associated with extant practice; and it also highlights a strategic issue, which is that the performance of most universities in the domain of technology transfer is disappointing. We suggest a way to address this misalignment, and this strategic issue, which is through the establishment of what we label as “Technology Innovation Laboratories” in business schools—analogous to technical laboratories usually associated with technical universities—that could generate various types of product- or service-related IP. This type of intellectual property—typically different from invention IP, and which we label here as “business IP”—could be exchanged for equity in spinouts or royalties from licensing, similar to the manner in which the invention IP of technical universities is usually commercialized.
IP & Litigation

Who’s Suing You?
David McGowan (University of San Diego School of Law)
Working Paper

Recent controversies in the District of Delaware raise questions regarding the degree to which litigants may or should be compelled to disclose ownership, funding, and management structures. The controversies have led to an extraordinary series of hearings resulting ultimately in a challenge to the authority of a district judge to investigate compliance with disclosure rules and related litigation conduct. This article surveys six different rationales for compelling disclosure. It discusses their strengths and weaknesses and the scope of disclosure they support. It concludes that increased disclosure is desirable and that most of the disclosure ordered in the current controversies in Delaware is justified under current law. The article also proposes amendments to the FRCP, Title 28, and the Patent act to facilitate future case management.

IP & Innovation

Monetary Policy and Innovation
Yueran Ma (University of Chicago - Booth School of Business)
Kaspar Zimmermann (Leibniz Institute for Financial Research SAFE)
NBER Working Paper No. w31698
University of Chicago, Becker Friedman Institute for Economics Working Paper No. 2023-125
https://www.nber.org/papers/w31698

We document that monetary policy has a substantial impact on innovation activities. After a tightening shock of 100 basis points, research and development (R&D) spending declines by about 1 to 3 percent and venture capital (VC) investment declines by about 25 percent in the following 1 to 3 years. Patenting in important technologies, as well as a patent-based aggregate innovation index, declines by up to 9 percent in the following 2 to 4 years. Based on previous estimates of the sensitivity of output to innovation activities, these magnitudes imply that output could be 1 percent lower after another 5 years. Monetary policy can influence innovation activities by changing aggregate demand and correspondingly the profitability of innovation, and by changing financial market conditions. Both channels appear relevant in the data. Our findings suggest that monetary policy may affect the productive capacity of the economy in the longer term, in addition to the well-recognized near-term effects on economic outcomes.

A Study of Business Transition Directions Based on Patent Data: Focusing on the Display and Automotive Industries
Sanguk Nam (Korea Institute for Industrial Economics and Trade)
Seunghwan Oh (Korea Institute for Industrial Economics and Trade)
Korea Institute for Industrial Economics and Trade Research Paper No. 23/IER/28/4/1
KIEE Industrial Economic Review Vol. 28, No. 4, pp. 6-18

When firms anticipate a major change in the business environment or some kind of crisis, they often pursue some kind of business transition in an effort to overcome the challenge and discover new growth momentum. Rapid changes to the industrial environment such as COVID-19, carbon neutrality, and the digital transformation have made business transformation increasingly urgent. However, Korean small medium-sized enterprises (SMEs) have not adequately prepared to meet this challenge. According to a survey by the Korea SMEs and Startups Agency (KOSME), 85.4 percent of SMEs reported that management felt a need to change the structure of the business. Yet only 26.9 percent of firms were found to be making active preparations to do so.
The industrial environment of the display and automobile industries in particular is undergoing a rapid change. Display industry manufacturers are switching to organic light-emitting diode (OLED) displays as the competitiveness of liquid-crystal displays (LCD) declines due to increased competition from China, and the automobile industry is rapidly shifting from internal combustion engine (ICE) vehicles to electric vehicles (EVs) due to the promotion of carbon neutrality policies. Domestically, both industries possess world-class technologies thanks to long-term R&D and investment, but they are in danger of losing demand for these technologies due to changes in the industrial environment.

It is against backdrop which this study is set. In it, we examine the direction of business transformation based on technological capacity through an analysis of patent data. The dataset in question consists of information on SMEs’ patents in the display and automotive industries.

**Growth and Innovation in the Modern Data Economy**
Gomes (Lisbon Polytechnic Institute - Lisbon Accounting and Business School)
Roxana Mihet (Swiss Finance Institute - HEC Lausanne)
Kumar Rishabh (University of Basel, Faculty of Business and Economics; University of Lausanne - Faculty of Business and Economics (HEC Lausanne))
Swiss Finance Institute Research Paper No. 23-86

In this paper, we formulate a growth model of the data economy, highlighting data's dual role as a business optimization tool and a cybercrime target. We investigate the impact of cybercrime on firm innovation and economic growth, finding that it unequivocally leads to reduced knowledge stocks, decreased productivity, and slower overall economic growth for all firms. However, there is a silver lining: cybercrime risk prompts data-intensive companies to pursue digital innovation, enhancing productivity in other domains. We observe increased R&D, patenting, and patent diversity in response to higher cyber risk, especially among data-intensive firms. Non-data-intensive firms do not exhibit increased general innovation in response to cyber risk. Notably, in-house cybersecurity innovation sustains this cycle, while third-party cybersecurity delegation lacks the same innovation benefits.

**IP Law & Policy**

**Deconstructing Design Decisions: Why Courts Must Interrogate Machine Learning and Other Technologies**
Andrew D. Selbst (UCLA School of Law)
Suresh Venkatasubramanian (University of Utah)
I. Elizabeth Kumar (Brown University, Students)
85 Ohio State Law Journal ___ (forthcoming 2024)
UCLA School of Law, Public Law Research Paper No. 23-22

Technologies do not just come about. They are designed, and those design choices affect everything the technology touches. Yet unless a legal question directly implicates the technological design, courts are not likely to interrogate it. In this Article, we use examples from machine learning to demonstrate that the design choices matter even for cases where the legal questions do not involve technology directly. We start by describing formal “abstraction,” a fundamental design technique in computer science that treats systems and subsystems as defined entirely by their inputs, outputs, and the relationship that transforms inputs to outputs. We show how this technique causes the resulting technologies to be effectively making claims about responsibility and knowability that competes with courts’ own determinations. We further show that these claims are rendered invisible over time. Thus, we argue that courts must unearth—or deconstruct—the original design choices in order to understand the legal
claims in a given case—even those cases that do not on their face appear to be about technological design.

There is, of course, a reasonable concern that courts are not capable or are not the best venue to make judgments about technological design. While we agree that courts are not the optimal front-line regulators of technology, we argue that they cannot avoid these questions as technologies begin show up in every type of case—a phenomenon that will only grow with time. But besides being forced to consider technology, courts are actually capable of doing so when motivated to. We demonstrate that in certain cases that clearly tee up technological design, such as products liability, copyright retransmission, and the functionality doctrines of intellectual property, courts have no problem diving in and questioning the design choices, asking what could have and should have been. Where courts can perform analysis in one arena, they can do so in another. Finally, through extended hypotheticals in the areas of negligence, discrimination, and criminal justice, we demonstrate how courts can effectively deconstruct technological design.

Artificial Intelligence for Drug Discovery: A New Frontier for Patent Law
Matthew Chun (Harvard University - Harvard Law School; Fish & Richardson P.C.)
Journal of the Patent & Trademark Office Society (Forthcoming)

The artificial intelligence (AI) revolution is here and is changing healthcare as we know it. In the world of biotechnology and pharmaceuticals, AI systems are increasingly being used to discover new drugs, with multiple AI-designed drugs already entering clinical trials. AI for drug discovery represents the convergence of software and life science technologies—two industries that are heavily reliant on patents—and poses many unprecedented questions under U.S. patent law. In general, a new invention must be useful, novel, and non-obvious to meet the requirements for patentability. In addition, the application for a patent must be written so as to enable a person “skilled in the art” to make and use the invention and must “describe the invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.” Walking step-by-step through the patent requirements laid out in the Patent Act, this Article (i) demonstrates how each and every one of these requirements will be put to the test by the increasing use of AI in drug discovery, (ii) analyzes how each of these questions is likely to be resolved under current law, and (iii) explores the resulting implications for the drug discovery industry. Where the existing law would lead to undesirable effects, this Article also proposes preferable alternatives and policy suggestions for fostering innovation. Finally, for the patent practitioner, this Article further provides practical recommendations for those seeking to prosecute patents in the current realm of legal uncertainty.

In the Interest of Full Disclosure: Consequences of the Grand Bargain in Patenting
Marilyn Pease (Indiana University - Kelley School of Business - Department of Business Economics & Public Policy)
Michael Andrews (University of Maryland Baltimore County)
Rajkamal Vasu (Indian School of Business)
Working Paper

How can policymakers encourage innovators to disclose information in their patents when innovators have an incentive to strategically withhold this information? We build a duopoly model in which the innovator chooses how much to disclose about their cost-reducing invention before engaging in Cournot competition. More disclosure allows the follower to copy more of the invention, while also signaling that the innovator is a strong competitor. More disclosure also increases the probability that the innovator wins an infringement suit against a follower that copies. We find that policies that increase patent protection have different effects on disclosure depending on whether they change the damages imposed if an innovator wins an infringement suit or change the probability that the innovator wins. If damages increase, all innovator types disclose more, while if the probability of winning increases, high-quality innovators disclose less and low-quality innovators disclose more. To test this prediction, we use the 2016 Halo v. Pulse decision, which increased damages conditional on the inventor winning, and the
2011 Microsoft v. i4i decision, which increased the probability of an inventor winning. We find that the Halo decision increased disclosure for the entire distribution of patents, while the i4i decision reduced patent disclosure for the highest quality patents and increased disclosure for the lowest quality patents. We conclude that the manner in which patent protection is increased matters for information disclosure, and some pro-patent policies can be counterproductive by reducing disclosure for the highest quality inventions.

**Historical Kinship and Categorical Mischief: The Use and Misuse of Doctrinal Borrowing in Intellectual Property Law**
Mark Bartholomew (SUNY Buffalo Law School)
John Tehranian (Southwestern Law School; University of California, Los Angeles (UCLA) - School of Law)
_Iowa Law Review, Forthcoming_

Analogies are ubiquitous in legal reasoning and, in copyright jurisprudence, courts frequently turn to patent law for guidance. From introducing doctrines meant to regulate online intermediaries to evaluating the constitutionality of resurrecting copyrights to works from the public domain, judges regularly deploy patent law analogies to lend ballast to their decisions. At other times, however, patent analogies with copyright law are quickly discarded and differences between the two regimes highlighted. This Article asks why.

In examining the transplantation of doctrinal frameworks from one intellectual property field to another, this Article assesses the circumstances in which courts engage in doctrinal borrowing, discerns their rationale for doing so, identifies whether certain patterns of borrowing exist, and scrutinizes the value, propriety, and impact of such borrowing. By tracing the different strains that animate the courts’ analogical jurisprudence in patent and copyright law, the Article builds on broader insights from the scholarship on legal borrowing and offers guidance on how to approach analogies between related legal regimes in a more disciplined fashion. In the end, the Article seeks to provide a better understanding what juridical techniques courts may deploy to strengthen the efficacy of borrowing—so that importation of legal doctrine can do more good than harm—in intellectual property law and more generally.

**Copyright Law**

**Do Copyright Professors Pay Attention to Economists? How Empirical Evidence on Copyright Piracy Appears (or Not) in Law Literature**
Justin Hughes (Loyola Law School Los Angeles)
Michael D. Smith (Carnegie Mellon University - H. John Heinz III School of Public Policy and Management)
_Loyola Law School, Los Angeles Legal Studies Research Paper No. 2023-04_

One of the great empirical questions of early 21st century intellectual property has been whether online copyright infringement causes harm to authorized sales of copyrighted works.

Beginning in 2003, economists turned their attention to studying this question empirically. As of early 2022, there have been 34 empirical studies published in peer-review journals on whether online copyright infringement harms authorized distribution of copyrighted works. Of these 34 studies, 29 have found that online copyright infringement causes statistically significant harm to legitimate sales. Only five (5) peer-reviewed studies found no harm to legitimate sales. Given the weight of empirical studies, it is fair to say that there is a consensus among economists that online copyright infringement does harm legitimate sales of copyrighted works. That consensus is reflected in the economics/management literature, where a supermajority (78%) of citations are to papers finding statistically and economically significant harm from copyright piracy.
But the world seen through law reviews tells a different story: in the law literature a majority of citations are to the five papers finding no harm, with almost half of all citations being to just one 2007 study finding no harm. Most of the 29 studies finding statistically and economically significant harm from copyright piracy are ignored in the law literature.

The paper discusses different possible explanations, including how citations beget citations in law literature, whether law academics are insensitive to the importance of peer-review, the false objectivity of “both sidesism,” and the possibility of ideological preferences shaping citations.

**A Sui Generis Approach to the Protection of AI-Generated Works: Balancing Innovation and Authorship**

Benjamin Hardman

James Housel (United States Patent and Trademark Office (USPTO))

*Working Paper*


As artificial intelligence (“AI”) reshapes creative production, debates intensify around the protection of works authored by or with AI (“AI-generated works”). The debate over whether to protect these works under the copyright system is a complex and ongoing discussion that raises significant legal, ethical, and practical considerations. The consensus is that works generated by or with AI are not protectable simply because copyright only protects the creative works of human authors. The current debate would then leave such works without protection. One issue this presents is disincentivizing the use of AI in the creation of books, art, or music.

However, just as with human-created works, consumers can enjoy the art or prose of AI works, and thus these works have the same intrinsic value. Generally, the creation of value is a worthy societal and economic goal—hence the clause in the U.S. Constitution that refers to promoting “the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

In addition, the current consensus is undervaluing human inputs into AI-generated works that initiate and/or enable the work’s creation. For example, if a human gives the AI a plot and writing style details and then tells the AI to write a short story, the resulting work is only created because of that human’s inputs. Therefore, merely as a matter of equity and fairness, the human should be rewarded for initiating the AI-generated work, thereby creating value. However, this doesn’t mean that copyright protection should apply in such a case.

Indeed, it is this last point where we have been missing an opportunity. Debate in this area has been limited to the idea that there are only two possible outcomes, namely, copyright protection or no copyright protection. This article hopes to open the debate surrounding the intricate terrain of legal protection for AI-generated works by proposing a sui generis framework for such works. This framework, characterized by limited protection terms, well-defined rights, a registration requirement, a notice requirement, and a system providing a source of funds for public good, seeks to address the major obstacles to a way forward on solving the AI/copyright debate.

**Earning Trade Secrets**

Joseph Fishman (Vanderbilt University - Law School)

Deepa Varadarajan (Georgia State University - College of Law)

*Cornell Law Review, 2024 Forthcoming*


Every intellectual property right, like every property right generally, has a moment of birth. Whether and when that moment occurs depend on doctrines of original acquisition. In most IP regimes, these doctrines are so fundamental that they’ve been reduced to a single verb. One can get a patent only by inventing, or a copyright only by authoring. The modern law of trade secrecy, however, remains strangely quiet on its own rules of original acquisition. While it asks whether the claimed information is secret enough and
whether the owner is guarding that secret, it sidesteps the basic question of what that would-be owner must do in order to earn legal protection in the first place.

That inattention is becoming more troubling. Firms are increasingly weaponizing the broad definition of trade secrets to assert rights over any information that they want to shield from public scrutiny, from workplace injury statistics to employee diversity data to consumer complaints. In many cases, the firm made no real effort to develop the information, and in the most egregious ones the firm would rather the information not exist at all. Still, under the black-letter eligibility test, it’s not clear that those facts would bar a claim.

In this Article, however, we argue that trade secrecy does indeed possess a neglected doctrine of original acquisition—and its proper application could dispose of some of these perverse claims. In order to receive the legal entitlement, we contend, a claimant must have made some meaningful economic investment in causing the information to exist. While tying trade secret protection to development cost has a long pedigree at common law, it doesn’t get the attention it deserves today because it’s not mentioned in any governing statute. Yet as we show, many cases nevertheless continue to treat development cost as a freestanding eligibility consideration anyway. Emphasizing investment within trade secrecy’s law of original acquisition is a policy lever hiding in plain sight within classical doctrine. While conditioning eligibility on this sort of sweat equity is famously abjured by both copyright and patent law, we explain why it makes far more sense for trade secrets.

Pret-a-copy or Pret-a-protect? Fashion Copyright in the United States
Justin Hughes (Loyola Law School Los Angeles)
The Routledge Handbook of Fashion Law (Calboli and Rosati, eds, 2023)
Loyola Law School, Los Angeles Legal Studies Research Paper No. 2013-16

This is a draft chapter from the forthcoming The Routledge Handbook of Fashion Law (Calboli and Rosati, eds, 2023). The chapter presents a general overview of American copyright protection for clothing and fashion, describing the ample protection U.S. copyright offers two-dimensional designs, but the more limited protection available to three-dimensional designs under the “useful article” doctrine. The discussion is intended to provide a guide for someone wanting to understand the lay of the copyright landscape for the fashion industry in the U.S., while offering some ideas on what additional legal protection of fashion might or might not do.

IP & Trade

Are Emerging Market MNEs More Attracted Towards Better Patent Enforcement Regimes When Undertaking Greenfield R&D Focused FDI?
Ludan Wu (Durham University Business School)
Dylan Sutherland (Durham University)
John Anderson (University of Northern Iowa)

Multinational enterprises in emerging markets (EMNEs), owing to weak enforcement of intellectual property rights (IPR), face challenges when undertaking domestic innovation. As a result, they may search for superior IPR environments in which to create greenfield projects focused on research and development (R&D) and innovation. We hypothesize that the likelihood that an EMNE chooses to invest in an R&D-focused greenfield project over other FDI projects is positively associated with increased levels of host-country patent enforcement protection relative to its home market. In addition, we hypothesize that EMNEs, many in the process of catching up through “springboard” FDI with developed-market MNEs (DMNEs), are more sensitive to IPR protection than DMNEs. Results of logistic regression modelling of 112,908 greenfield projects largely support our hypotheses. We discuss implications for understanding EMNE theorizing and policy, which has to date focused more on regulating technology-
seeking mergers and acquisitions (M&As), overlooking the growing importance of R&D-related greenfield FDI as an effective firm-level catch-up strategy for EMNEs.

**Innovation and International Business Policy**

John A. Cantwell (Rutgers Business School - Newark and New Brunswick)
Marianna Marra (University of Sussex)


A recent literature in International Business has argued that a contemporary trend towards technonationalism is attributable to a conflict between countries with stronger intellectual property (IP) rights and countries with weaker such rights. We contend instead that this trend mainly reflects a tension over competing interests in IP markets, as well as over the control of activities deemed to be critical to national security interests. We therefore focus instead on the more general tension across all countries between innovative, entrepreneurial interests and the associated open access institutions on which they rely, and rent-seeking interests linked to extractive institutions, both within countries and across the world. We argue that the current divergence in the agendas of value creation versus value capture lies at the heart of contemporary political polarization and consequent cross-border tensions, and suggest how this might be addressed by policymakers.

**Other Topics**

**Exploratory Innovation in Cities: Inter-city Ties and Technological Relatedness**

René Belderbos (University of Leuven (KUL) - Department of Managerial Economics, Strategy and Innovation; Maastricht University - Department of Organization & Strategy)
Samuel Edet (International Finance Corporation)
Massimo Riccaboni (Scuola IMT Alti Studi Lucca)

_Working Paper_


This paper draws on extant literature on entry into new technology domains by examining the impact of collaboration structure and technological relatedness on the likelihood of entry. We posit that the likelihood that a city explores or enters a new technology domain is facilitated by the inter-city collaborative ties to external inventors who have previously invented in the new domain, and this effect is positively moderated by the size (number of inventors) of the partner city. Also, we hypothesize that the relatedness of the technology base of the city with the new domain positively affects the likelihood of entry, and this effect should be positively moderated by the focal city size (number of inventors). Based on a newly developed geo-reference patent database, we analyze the exploratory activities of 1220 cities (located in six continents) in 646 technological IPCs between 2005-2014 and find significant support for all hypothesis except for the moderating role of focal city size. Finally, we provide evidence that entering a new domain collaboratively increases the technological performance of the city in the new domain.

**Intellectual Property Rights and Private Law Entitlements**

Robert P. Merges (University of California, Berkeley - School of Law)

_Working Paper_


This brief chapter covers two topics: (1) it identifies the special nature of IP entitlements, the better to integrate IP into the fabric of private law theory; and (2) it investigates the “origin story” of IP entitlements, by describing two examples of business-related torts that transformed into true property rights (right of publicity and trademark law), under conditions where the functional advantages of property entitlements were apparent.
What sets private law apart is its conceptual core: corrective justice, the form of justice at work when one private actor harms another. The starting point for private interactions is the baseline entitlements held by the actors in question. For torts, the right to bodily integrity; for contracts, the expectation interests of the parties. Intellectual Property (IP) rights are more complex than the relatively simple entitlements in tort and contracts cases. The major IP rights granted under federal statutes (patents, copyrights, and trademarks) must satisfy validity and registration requirements designed to further various public policies. The rights are typically tested for validity at multiple stages of the IP granting and enforcement process, including when an IP right is asserted against an infringer in a district court action. As a consequence, IP rights cannot be considered settled entitlements for purposes of a private IP enforcement action until validity issues are put to rest: they serve as private law "baselines", but they are contested baselines. But once validity is established between two private parties, an IP right is as solid as any private law entitlement. Which – at this proper stage – opens the way for the full force and logic of corrective justice in IP matters.

The second part of the Chapter traces the transition of two IP rights from their origin as a bundle of individual tort duties into a true property right "good against the world". The advantages of this transition to property are that (a) the bundling of duties into a concentrated right makes those duties more salient; (b) the concentrated legal right is alienable in whole or in part, and owners may grant it on an exclusive or nonexclusive basis, to different licensees in different fields, etc.; (c) the IP right forms a legal res, which becomes a valuable business asset around which licensing programs and other business partnerships can be constructed.

The first example of the tort-property transition is the right of publicity, where the transition is fairly recent. The second example comes from further back, in the form of trademark law. The process was different for trademarks because a trademark's entitlement structure differs from the right of publicity (and all other IP rights). Trademark law has a triadic structure: every competitor (C) of the owner (A) of a well known brand has a duty not to deceive A's customers (call them B's), by using a mark confusingly similar to A's brand. C's duty to the B's is breached only when C creates a likelihood that an appreciable number of A's buyers (the B's) will think that C's product comes from A. When A's brand is protected by a trademark, that property right represents a bundling of all duties on the part of all of C's (all A's competitors) not to confuse A's customers, the B's. The duties in A's bundle, in other words, are all owed to the B's; A protects the interest of the B's by enforcing the duty of C (and all C's) not to confuse the B's. Even so, aside from the distinctive triadic structure of its origin, and post-validity of course, a trademark is for the most part like any other private law entitlement.

Climate Innovation and Carbon Emissions: Evidence from Supply Chain Networks
Ulrich Hege (Toulouse School of Economics; European Corporate Governance Institute (ECGI))
Kai Li (Peking University HSBC Business School)
Yifei Zhang (Peking University, HSBC Business School)
Working Paper

We study whether climate-related innovation leads to carbon emission reductions by analyzing supply chain networks. We find that climate innovation reduces carbon emissions at customer firms, but only for the supplier firm's product innovation patents, not its process innovations. The effect is economically significant, dominated by the most emission-intensive customer firms, gradually increases over a five-year horizon, and is significant for customer's Scope 1 and Scope 2 emissions. We analyze transmission mechanisms by exploring customer firms' choices of potential suppliers in reaction to supplier climate patent announcements. We show that customer firms generally have a strong preference for suppliers with climate innovations, and that climate innovation helps suppliers attract new customers, particularly those with high environmental ratings or a large carbon footprint. To sharpen the causality, we utilize the quasi-random assignment of examiners to climate patent applications and leverage the exogenous technological obsolescence of climate patents.
The editor would like to acknowledge the contributions of Arun Maganti.

When antitrust and IP issues converge, the interplay between the two areas will significantly impact your liability and damages arguments. In addition to our consulting in competition and intellectual property, experts across the firm frequently advise on IP-related matters, including in auctions and competitive bidding, e-discovery, energy, forensics, life sciences, and transfer pricing. For more information, visit crai.com.

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