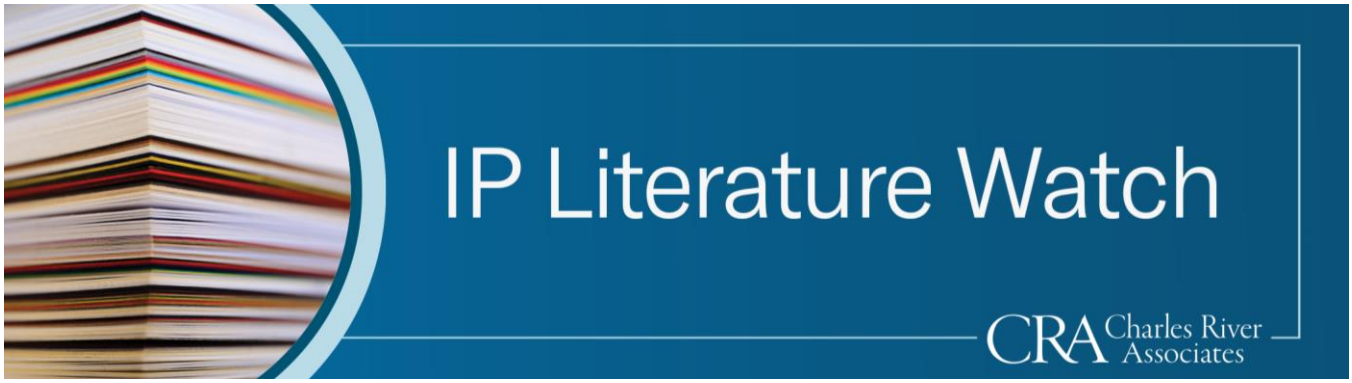

October 2025

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

M&As, Innovation and Superstar Firms

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Rentocchini Francesco (European Commission – Joint Research Centre)
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European Commission
https://publications.jrc.ec.europa.eu/repository/handle/JRC143362

Rising market concentration and the dominance of `superstar' firms have sparked concerns about declining competition and innovation. While technological change and globalization are key drivers, mergers and acquisitions (M&As) may also play a role. This paper investigates whether firms use technological M&As — acquisitions of innovative subsidiaries with patent portfolios — to enhance market power. Using a global panel of 8,314 publicly listed firms from 2008 to 2020 and a staggered difference-in-differences approach, we find that such acquisitions increase acquiring firms' markups by 2% on average. Effects are stronger among top R&D investors, US-based firms, and those in high-tech manufacturing. The main mechanism appears to be greater insulation from competitors via acquired patents, which limit knowledge spillovers and raise entry barriers. These findings highlight the need for antitrust policies that balance innovation incentives with the risks of growing market power.

Anticompetitive Acquiescence

Mark A. Lemley (Stanford Law School)
Jacob Noti-Victor (Yeshiva University – Benjamin N. Cardozo School of Law; Yale Information Society Project)
Stanford Public Law Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5320353

Across a wide range of lawsuits, regulations, and administrative adjudications, companies are giving up. They settle cases they are likely to win. They agree to regulations they know they could avoid. And they pay for

intellectual property (IP) and other assets even when the law does not require it. We think the explanation for this puzzling behavior is a phenomenon we call “anticompetitive acquiescence.”

We argue that companies behave in this seemingly irrational way in many different circumstances because they know that even if they will suffer the consequences of paying too much or limiting their behavior, doing so will make their competitors suffer even more. We document nearly a dozen different categories of conduct that fit within the anticompetitive acquiescence label, from generative AI companies agreeing to pay for data that they might not be legally required to license, to generic drug manufacturers agreeing not to invalidate a patent that prevents them from entering the market, to social media companies asking Congress to subject them to costly regulation.

In providing the first account of anticompetitive acquiescence, we also explain why this problem is particularly complicated, and why courts and regulators have so far done virtually nothing to stop it. Settlements, and compromise in general, are generally considered good for litigants and good for society, and it can be hard to disentangle good faith attempts to resolve disputes from anticompetitive motivations. We offer four categories of solutions of solutions to reduce the harm from anticompetitive acquiescence without sacrificing the benefits of settlement: procedural solutions that focus court attention on problematic behavior, substantive legal solutions that minimize the impact of settlements and private deals have on third parties, safeguards for regulators intervening in competitive industries, and proposals to ban certain of the most problematic categories of anticompetitive acquiescence.

IP & Licensing

A Text-Based Analysis of Technical Contributions to 3GPP

Justus Baron (Northwestern University – Center on Law, Business, and Economics; BRELA Research in Economics and Legal Analytics)
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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5369199

Measuring firms' contributions to the 3rd Generation Partnership Project (3GPP) standards development is increasingly important for patent licensing, policymaking, and strategic positioning. However, existing approaches relying on counts of submitted Technical Documents (TDoc) fail to account for the wide variation in TDoc content, purpose, and technical significance. This study explores the use of metadata (such as type and status), bibliometric data (number of pages, figures, tables, and references), and semantic data extracted from the full text of contributions to better assess the nature and value of companies' contributions to 3GPP standards. We focus on RAN1, a particularly important working group (WG), and the WG most closely associated with patented innovations. Despite the great importance of RAN1, RAN1 standards development has been particularly difficult to study, as there are few contributions that are subject to a binary approval decision. Instead, companies submit large numbers of diverse “Discussion Papers”, and consensus emerges gradually. Here, we show that it is possible and useful to identify different categories of RAN1 “Discussion Papers” (“Research Papers”, “Position Papers”, and “Summaries”), and we show how to account for double-counting of contributions. Further work is needed to account for heterogeneity between contributions in terms of complexity, novelty, and impact.

Irrational Unwillingness in SEP Licensing

Runhua Wang (The University of Science and Technology Beijing; University of Science and Technology Beijing; University of Illinois at Urbana-Champaign)
34 Texas Intellectual Property Law Journal (forthcoming 2025).
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5393902

The role of injunctions in guiding standard-essential patent (SEP) licensing negotiations is important but remains unclear. Many SEP holders argue that a high threshold for injunctions fails to protect them against holdout and efficient infringement. By contrast, SEP implementers are concerned about patent holdup resulting from threats of injunctions by SEP holders. This conflict raises a broader policy issue: how should legal institutions guide parties toward efficient licensing negotiations? However, since the United States withdrew its most recent guidance in 2021, it has lacked a clear position on this issue. Other jurisdictions likewise face challenges in designing effective injunction rules. Among these challenges, the definition of unwilling licensees, a key factor in granting injunctions, remains inconsistent and under development. This Article addresses the unsettled role of injunctions in SEP licensing negotiations and contributes to the policy debate by analyzing cognitive and structural barriers to implementer cooperation. Specifically, it examines whether injunction rules can be designed to effectively enhance the willingness of implementers to license. To that end, it reviews public feedback submitted in a semi-structured survey, which was conducted by the United States Department of Justice in 2022. The survey examined both the thresholds for injunctions and the standards for identifying unwilling licensees. This Article documents various approaches to identifying unwilling licensees, as suggested in the feedback. Based on the documented feedback and textual analysis, the Article identifies four motivations that underline SEP implementers' lack of cooperation in licensing negotiations: 1) resistance to holdup, 2) information asymmetries, 3) habitual holdout and efficient infringement, and 4) financial constraints. These motivations reflect not only strategic behavior but also deeper cognitive biases held by both SEP holders and implementers. This Article argues that due to the cognitive biases, injunction rules, regardless of their design, face inherent limitations in promoting efficient licensing.

The Commodification of Human Traits: Market Dynamics in the Genomic Economy

Joshua Luberisse (Western Governors University)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5381787

This article theorizes the emergence of a genomic marketplace in which traits-from disease resistance to enhanced cognition-are priced, licensed, and traded as proprietary assets. We introduce two mechanisms that organize value capture in this economy: inherited revenue assurance (IRA), a lineage-binding royalty structure for germline edits, and genomic asset backed securities (GABS), financial instruments that securitize expected royalty cashflows from edited populations. We build a conceptual model of the trait value chain-from IP origination through multigenerational licensing and secondary finance-and analyze distributional and ethical consequences under competing regulatory regimes (patent exclusivity, FRAND-style licensing, royalty caps, and trait commons). The contribution is a political-economy account that connects molecular IP to household welfare and macro-finance, while offering policy tests that distinguish emancipatory from extractive designs.

IP & Litigation

AI Training is Fair Use: The Beginning of the End of the Copyright Assault on Gen AI

Michael D. Murray (University of Kentucky – J. David Rosenberg College of Law)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5395242

Two federal courts overseeing claims against the developers of generative artificial intelligence (GenAI) have pointed the way to resolving these infringement actions by finding that the training of GenAI models is a transformative fair use under copyright law. While the two opinions differed in tone and scope, this article takes these rulings as the starting point for a discussion on resolving the ongoing copyright claims against AI developers, signaling what may be the beginning of the end of the copyright assault on GenAI.

The goal of this article is to inject urgency into resolving these matters. It asserts that uncertainty over the legal status of AI training is a drag on innovation and development in this vital economic sector. While massive investments are pouring into this field, the money flows to an extraordinarily small number of players whose resources allow them to run the risks posed by class actions and multi-party actions demanding damages that might cripple even the largest companies. With the threat of destruction by copyright infringement action removed, AI development could expand and flourish among even the smallest of innovators.

Ending the infringement actions requires more than just a recognition that indiscriminately drawing data from existing works without permission and without licensing to create a generative artificial intelligence expression machine is fundamentally transformative under factor one of the copyright fair use test. Plaintiffs have fought to sell a theory of the case that keeps AI developers in the defendants' seats, even though the parties responsible for the production of outputs and for any resulting market harm are the end-users of the technology.

This article asserts that the proper theory of these infringement cases is that GenAI developers made a general-purpose technology that can create an infinite variety of new, original expression, but end-users of the technology can choose to use it to compete with the plaintiff artists and creators in their same style and in their same medium, at massively reduced costs and massively increased speeds. And sometimes end-users will use the technology to create infringing works. Far from being a unique 21st century high technology story, this story is the same as that of photocopy machines, Betamax and VCR devices, scanners, image-editing software, and internet search engines, all of which are capable of making duplicates of expressive works that can be put to uses that infringe on the original works and harm their markets. Yet, the designers of these copying technologies are not sued for copyright infringement because of the disconnect between the action of creating a useful tool and the action of an end-user who co-opts the tool for their own purposes.

The designers of these GenAI models made them powerful and extraordinarily fluent tools for creating new expression with a "further purpose or different character, altering the first with new expression, meaning, or message," but in the end, GenAI systems are just tools. They are not artists or authors and do not automatically regurgitate infringing content. Rather, they are tools capable of being used by end-users who may act purposefully to create substantially similar and potentially infringing works that can be used to compete with the plaintiffs.

Mistaken Belief Defenses in Patent Law

Andrew C. Michaels (University of Houston Law Center)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5380515

Mistake of law defenses are generally disfavored in the law, but nevertheless are sometimes permitted. In patent law, mistaken belief defenses are sometimes permitted in at least two different contexts: more often such defenses are permitted to negate the willfulness required for enhanced damages; and in more limited circumstances, to negate the knowledge required for indirect infringement. However, the scope and application of these defenses remains unclear and problematic.

The current doctrine creates several troubling inconsistencies. For example, while it seems that a mistake as to any patent law defense may negate willfulness for enhanced damages, in the context indirect infringement, the Supreme Court has made clear that mistaken beliefs in claim construction may negate the requisite knowledge, but that mistaken beliefs in invalidity may not, despite both being ultimately questions of law. The law is not currently clear as to the status of other defenses, such as patent exhaustion, license, or equitable unenforceability defenses; that is, whether a mistaken belief in these defenses could negate knowledge for indirect infringement.

Courts have also inconsistently applied timing and reasonableness requirements across different defense types. Even more perplexing, courts at times seem to apply more lenient standards for negating the lower “knowledge” requirement for indirect infringement, as compared with the higher “willfulness” standard for enhanced damages. There are also unsettled questions regarding whether a mistaken belief rejected by a lower court could still be reasonable and held and good faith while being appealed, and courts often fail to recognize the key issue of changing beliefs and reasonableness over time.

This article argues for a more coherent approach that would limit mistaken belief defenses in patent law to reasonable beliers that were actually held at the time of infringement. For indirect infringement, only mistakes about non-infringement, patent exhaustion, and licensing should provide defenses, while mistakes about invalidity and equitable defenses should not. This framework would better align with statutory structure, reduce litigation burdens, and create appropriate incentives for patent system participants to investigate and respect patent rights while still protecting those who make genuine, reasonable errors about the scope of their legal obligations.

IP & Innovation

Bridging the Global Artificial Intelligence Divide

Peter K. Yu (Texas A&M University School of Law)
Inclusive Innovation in The Age of AI and Big Data, Daryl Lim and Peter K. Yu, eds., Oxford University Press, 2026, Forthcoming
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5394040

This chapter addresses an increasingly important yet still underexplored challenge in the AI arena: the need to bridge the inequitable AI gap between the Global North and the Global South. In the past few years, this gap has received considerable attention within the United Nations, including from the UN Secretary-General's High-Level Advisory Body on Artificial Intelligence and the U.N. Conference on Trade and Development. In

2024, the UN General Assembly also adopted two resolutions expressing the UN members' resolve to bridge “the artificial intelligence and other digital divides between and within countries.”

Lamenting how research on AI-driven innovation thus far has focused primarily on developed countries, this chapter outlines the challenges confronting AI development in the Global South. It then identifies six policy options that developing countries could adopt to boost local AI adoption and development: (1) intellectual property reforms; (2) international technology transfer obligations; (3) the Global Fund for AI; (4) AI resource pools; (5) open innovation and datasets; and (6) indigenous innovation. This chapter concludes by offering three key takeaways from the discussion of national, regional, and international efforts to bridge the global AI divide.

IP in Superposition: Patents, Trade Secrets and Open Innovation in Quantum Information Technology

Gabriela Lenarczyk (University of Copenhagen – Centre for Advanced Studies in Bioscience Innovation Law (CeBIL))
Timo Minssen (University of Copenhagen – Centre for Advanced Studies in Bioscience Innovation Law (CeBIL))
Mateo Aboy (LML, University of Cambridge)
Quantum Technology Governance: Law, Policy and Ethics in the Quantum Era, forthcoming Springer (2025/2026)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5363171

This chapter analyzes the intellectual property (IP) strategies deployed in quantum information technologies (QIT), showing that firms operate in a “superposition” of approaches: selectively combining patents, trade secrets, and open innovation across different layers of the quantum stack. While patent filings have increased significantly, trade secrecy remains important due to the tacit, context-specific nature of key processes and the constraints of export control regimes. At the same time, openness is a scientific and often strategic lever, enabling interoperability, cumulative research, and ecosystem formation through mechanisms such as open-source frameworks and cloud-access platforms which can lead to competitive advantage through network effects. Using a governance-stack heuristic that links legal instruments to specific technical layers-from hardware and control systems to software and interfaces-the chapter maps how exclusivity, confidentiality, and collaboration are configured in practice. This layered combination, involving the superposition and entanglement of IP and open innovation, shows that QIT competitive strategy depends not on choosing between proprietary and open models, but on calibrating their combination to fit technical, commercial, and policy objectives. The chapter reframes the prevailing debate in quantum innovation: rather than asking whether patents or secrecy are appropriate for quantum technologies, the key question becomes when, where, and in what form each instrument best serves both private incentives and public goals.

Incentivized Licensing: A Global Green Technology Transfer Box to Facilitate the Just Transition

Emma Perot (University of the West Indies (Saint Augustine))
Global Energy Law and Sustainability, Volume 6(1), forthcoming
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5384651

This paper proposes the introduction of a global green technology transfer box which would provide tax deductions to companies which enter green licensing deals with developing countries (DC) and least developed countries (LDCs). The proposal supports the goals of Articles 10 and 11 of the Paris Agreement

which concern technology transfer and capacity building. It also recognizes the need to account for the different developmental states of nations to achieve a Just Transition. The paper reviews the role of patents in technology transfer and recognizes that it is often not the patent, but rather the associated know-how and capacity that prove a hurdle to implementation of adaptation and mitigation technology in DCs and LDCs. It also reviews the general approaches to green taxation before focusing on the use of patent boxes. It argues that, while patent boxes have been subject to manipulation in the past, tying the benefits of the proposed international green technology transfer box to the Technology Needs Assessment of the receiving country can minimize abuse while incentivizing public private partnership. This is necessary since most green innovation is concentrated in private industry in developed countries.

IP Law & Policy

The Public Franchise Tradition as a Limit on Patent Takings

Laura Dolbow (University of Colorado Law School)
Forthcoming 111 Cornell L. Rev.
U of Colorado Law Legal Studies Research Paper No. 25-14
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5361975

A longstanding debate exists over whether patents are forms of “private property” that the Takings Clause protects. Recently, in a different context, the Supreme Court stated that a patent is a specific form of property: a public franchise. Several scholars have argued that the public franchise characterization means patents are not protected by the Takings Clause at all. This Article identifies another potential implication of the public franchise framing. It argues that even if patents are viewed as protected by the Takings Clause, the public franchise framing suggests that the scope of that protection should be quite narrow.

To explore implications of the public franchise framing for patent takings, this Article analyzes case law from the nineteenth and early twentieth centuries about constitutional protections for public franchises. These cases reveal several key principles that can be used to define the scope of property interests in public franchises and to evaluate regulations that affect them. Under the public franchise model, public franchises are limited by ex-ante conditions, strictly construed, and distinguished from physical property. The result is that the government has broad discretion to regulate in ways that affect public franchises without implicating constitutionally protected property interests or incurring financial liability.

This Article then examines how courts could apply the public franchise model to evaluate patent takings claims. It argues that using the model would provide a set of clearer guidelines than the modern regulatory takings doctrine and would be normatively desirable. Under the public franchise model, almost all patent takings claims could be dismissed. For example, it clearly disposes of recent claims that the Medicare Drug Price Negotiation Program is a taking of pharmaceutical companies’ patents.

Copyright Law

Beyond Infringement: Rethinking DMCA § 1202 For Generative AI

Larissa Bersh (Stanford University)
78 Stanford Law Review (forthcoming 2026)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5394867

With the emergence of large language models (LLMs) like ChatGPT, scholars and courts have fervently debated whether LLMs' training on and reproduction of copyrighted materials amounts to fair use. But in a recent series of cases, a lesser-known challenge to LLMs has reared its head: § 1202 of the Digital Millenium Copyright Act. This provision requires that when a work is copied, its associated copyright management information (CMI)—such as its license or terms of use agreement—is copied with it. The requirement was originally intended to modernize copyright for the Internet by ensuring all users would be aware of the terms of their use. Now, § 1202's unintended overbreadth threatens to block LLM development and use as it swallows questions of infringement and fair use entirely.

This Note argues that § 1202 is broader than traditional copyright infringement in three critical respects: It allows liability without any showing of copyrightability, provides no fair use defense, and permits disproportionate statutory damages. While § 1202 includes an intent requirement, that requirement is so minimal that it fails to meaningfully limit the statute's reach—especially in the LLM context, where the act of violating § 1202 may itself satisfy the mental requirement.

In response to these concerns, this Note proposes that courts adopt an identicality requirement for § 1202 claims against LLMs. This requirement would cabin liability to outputs that exactly match training data—cases where the removal or alteration of CMI is both clear and technically avoidable. The approach mirrors Congress's existing accommodation of technological limitations for broadcasters in cases of technical infeasibility or financial hardship. A similar understanding for LLMs would preserve § 1202's core purpose, resolve a growing district court split, and ensure the most consequential copyright question raised by generative artificial intelligence is answered on its merits—not sidestepped by a statute never designed to decide it.

Contractual Override: How Private Contracts Undermine the Goals of the Copyright Act for Libraries and Researchers, and What We Can Do About It

David R. Hansen (Authors Alliance)
Yuanxiao Xu (Authors Alliance)
Rachael Samberg (UC Berkeley)
forthcoming, 72 J. Copyright Soc'y U.S.A.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5393510

A wide variety of scholarly and academic uses of copyrighted materials are governed not by copyright law itself but by licenses, terms of service, and other privately crafted contractual terms. In many cases, those terms purport to override exceptions and limitations granted by Congress in the Copyright Act for the benefit of users. As compared to other jurisdictions, the US does not have clear statutory provisions preventing private contracts from overriding certain user rights-rights that are meant to support innovation, teaching, research, and preservation, and designed to strike a careful balance between the interests of the public and copyright owners. Allowing contracts to upset this balance risks granting copyright owners excessive control at the public's expense, ultimately stifling innovation, creativity and the free expression rights of subsequent

authors. This paper is about the harm caused by contractual override to two of the most vulnerable and impacted user groups-academic researchers and libraries, and ways to limit that harm.

Past Precedent, Future Proof: Toward a New Legal and Commercial Framework for AI-Generated Music

Charles Goldstuck (University of Witwatersrand)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5393574

This article takes the position that if copyright law, case law evolution, and public policy do not evolve to accommodate the structural changes posed by AI music, the creative economy will be absorbed into an opaque, unregulated system in which human authorship is significantly devalued. The task ahead is not to resist AI, but to ensure that it evolves within a multi-stakeholder governance framework that protects creative labor, enables innovation, and scales with the velocity of the disruption. AI services and human content creators must coexist and both be allowed to thrive. With this position in mind, this article will ultimately conclude that the solution to this problem cannot solely emerge from the courtroom or legislative bodies. Rather, the only mutually beneficial path forward is for the music industry and AI platforms to resort to negotiated settlements and collaboratively develop new licensing agreements.

IP & Trade

Sanctions Paradox: Do U.S. Export Restrictions Hurt Domestic Innovation?

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5373282

Yes. We find that U.S. export restrictions reduce innovation incentives among U.S. firms that export to sanctioned entities. These restrictions prompt targeted foreign firms to accelerate their own innovation efforts, ostensibly with increased support from their governments-including weakening enforcement of U.S. intellectual property rights (IPR). Weaker IPR diminishes the ability of U.S. suppliers to appropriate the returns from their R&D investments, leading them to reduce R&D spending by 13% and R&D-related hiring by 9%. Post-sanctions, suppliers to sanctioned firms also shift their IP protection strategy: patent filings decline by 10%, while mentions of trade secrets in regulatory filings rise by 47%. These effects are stronger when sanctioned entities are likely to reverse-engineer their suppliers' technology and weaker when domestic competition necessitates U.S. firms to innovate. The impact is most pronounced in patent-intensive industries and for suppliers who hold patents in sanctioned countries. Our findings suggest that export controls may unintentionally fuel foreign innovation and IP appropriation, prompting U.S. firms to scale back innovation and favor secrecy over patenting.

The Uruguay Round of GATT and the Birth of TRIPS & GATS: A Paradigm Shift in Global Trade Governance

Pankaj Kumar (National Law University and Judicial Academy Assam)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5388687

The Uruguay Round of multilateral trade negotiations (1986-1994) represents a watershed moment in the history of international economic law. It fundamentally transformed the postwar trading system, which had been primarily focused on goods, by creating the World Trade Organization (WTO) and introducing binding rules for services and intellectual property.1 This paper analyzes the genesis and structure of two of the Round's most significant outcomes: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Trade in Services (GATS). It argues that these agreements signified a paradigm shift, moving global trade governance from a narrow focus on tariffs and border measures to a broader regulatory framework that addresses the “behind-the-border” policies central to the modern knowledge-and service-based economy. The paper examines the core principles, structure, and strategic implications of TRIPS and GATS, highlighting the political and economic forces that shaped them and their enduring impact on international trade, development, and national sovereignty.

Other Topics

Patents in Paradise: The Evolution of Patent Law in the Cayman Islands

Andrew P. Morriss (Bush School of Government & Public Service / School of Law; PERC – Property and Environment Research Center)
Andrew W. Torrance (University of Kansas School of Law; MIT Sloan School of Management)
Lisa Friedman (Patent Vector; Harvard University)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5397813

This study examines the Cayman Islands' unique position in the global intellectual property (IP) landscape, contrasting its success as an exporter of financial and legal services with the inherently domestic nature of patent protection. We hypothesize that due to this limitation, the Cayman Islands functions as a strategic, cost-effective jurisdiction for augmenting patent protection initially obtained elsewhere. Our research provides the first comprehensive analysis of Caymanian patents, and through a quantitative examination of patent family data-including filing trends, economic valuation, geographic distribution, and assignee profiles-we find strong empirical evidence to support this thesis. Our findings reveal a disproportionate presence of high-value patent families in the Cayman Islands, particularly within the pharmaceutical and telecommunications sectors. This concentration aligns with the jurisdiction's specific economic characteristics, such as its medical tourism industry and high per capita income, as well as the established international strategies of major pharmaceutical companies. The analysis demonstrates that patent registration in the Cayman Islands is a distinct, specialized function that complements its broader role in global finance and law, offering tailored, low-cost domestic IP rights within a globally oriented portfolio. This study provides a benchmark for how other small jurisdictions can successfully navigate and compete in the global legal market through a specialized approach to intellectual property.

R2B Contracts: Complexities And Considerations When Contracting With Universities And Other Not-For-Profit Research Organizations

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Brian Coblitz (George Washington University)
Jorge L. Contreras (University of Utah – S.J. Quinney College of Law)
Steven Ferguson (Government of the United States of America – Office of Technology Transfer)
Naomi Hawkins (University of Sheffield School of Law)
Alison Slade (University of Leicester)
Anji Miller (LifeArc; Leicester Law School)
Les Nouvelles, 60(1): 141-151 (2025)
University of Utah College of Law Research Paper No. 649
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5315693

Universities, research institutes, hospitals, U.S. federal labs, and other research-practicing entities (together, RPEs) are increasingly entering into contracts with commercial enterprises, for funding of research, licensing of intellectual property, and other forms of collaboration. RPEs' primary purpose is to generate and disseminate knowledge (and in some cases, to teach), and their staff may be evaluated on the quality and number of their publications. They may also be required by law and by public funding terms to act in the public interest, rather than to support the private interests of commercial enterprises. RPEs may need to involve multiple internal stakeholders in any decision to contract with a commercial business. The mismatch of priorities and decision-making processes between RPEs and industry can be a source of frustration for both parties, both in the negotiation and in the performance of contracts. Those frustrations can be mitigated if each party takes the time required to understand what the other wants and needs from any collaboration. This article describes some of the legal and cultural features and constraints that RPEs face when entering into and performing contracts with the industry.

R&D Accounting and Innovation Signaling: Insights from Japan's Pre-Regulation Era

Kazuyuki Motohashi (University of Tokyo)
Tomomi Takada (Kobe University – Graduate School of Business Administration)
Ayung Tseng (UC Davis, Graduate School of Management)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5239489

Can the way firms account for R&D shape how they innovate? We address this question using Japan’s pre-2000 elective regime, which allowed firms to expense or capitalize R&D at project inception, and its 2000 shift to mandatory expensing. We hypothesize that reporting choice reflects financing orientation: equity-oriented firms capitalize R&D to signal project quality, while debt-reliant firms expense R&D to satisfy creditors and communicate via patent disclosures. Consistent with this view, under the elective regime, capitalization is associated with higher patent quality and stock returns, whereas expensing is linked to greater patent volume and higher debt financing. Post-2000, former capitalizers increased patenting volume, consistent with the loss of capitalization’s signaling role. These results reveal the strategic role of R&D accounting and caution against uniform standards that overlook firm-level heterogeneity in innovation and financing objectives. More broadly, the evidence highlights accounting rules as an influential channel shaping firms’ patenting propensity.

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*The editor would like to acknowledge the contributions of **Rachel Zhou**.*

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