



IP Literature Watch

CRA Charles River
Associates

June 2014

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

The smartphone royalty stack: surveying royalty demands for the components within modern smartphones

Ann K. Armstrong (Intel Corporation)

Joseph J. Mueller (WilmerHale)

Tim Syrett (WilmerHale)

Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443848

The smartphone industry has experienced a high number of patent cases over the past few years. These cases have highlighted the interplay among patent law, competition law, and the marketplace itself. This paper addresses the informational gap in the ongoing debate among courts, litigants, regulators, standard-setting organizations, and academics about the “royalty stack” for smartphones and the legal and policy implications that follow from the magnitude of such royalties. Using publicly-available data, the paper details U.S. patent royalty costs across smartphone components from wireless technologies to operating systems to user interfaces to outer-product design, addressing royalties on both product-differentiating technologies and standardized functions subject to commitments to license on fair, reasonable and non-discriminatory (“FRAND”) terms. Where specific royalty information is not publicly available for a particular component, the article provides an overview of the amount of litigation relating to the component as a proxy for the likelihood of royalties.

Differentiated standards and patent pools

Aaron Schiff (University of Auckland – Department of Economics)

Reiko Aoki (Hitotsubashi University; University of Auckland)

The Journal of Industrial Economics, Vol. 62, Issue 2, pp. 376-376, 2014

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446302

We consider patent pool formation by owners of essential patents for differentiated standards that may be complements or substitutes in use. Pooling improves coordination in terms of royalty setting within a standard but provokes a strategic response from licensors in the competing standard. We characterise the incentives to form and defect from pools within standards and show how pool formation and stability depend on competition between standards. We also examine strategic patent pool formation by

consortium standards and show that policies promoting compatibility of standards may increase or decrease welfare depending on the effects on the incentives to form pools.

IP & Innovation

Experimental tests of intellectual property laws' creativity thresholds

Christopher J. Buccafusco (Illinois Institute of Technology – Chicago–Kent College of Law)

Zachary C. Burns (University of Chicago – Booth School of Business)

Jeanne C. Fromer (New York University School of Law)

Christopher Jon Sprigman (New York University School of Law)

Texas Law Review, Vol. 93, 2014, Forthcoming

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443667

In the United States, intellectual property (IP) law is intended to encourage the production of new creative works and inventions. Copyright and patent laws do this by providing qualifying authors and inventors with a bundle of exclusive rights relating to the use and development of their creations. Importantly, however, these fields differ greatly in the ways that they determine whether some new creation is sufficiently innovative to merit legal protection. Copyright law sets the creativity bar especially low for new works of authorship, whereas patent law demands that a putative inventor prove that her creation is highly innovative. Relatively little research has focused on whether the different IP thresholds affect the incentives and behavior of creators.

Legal scholarship on the effects of differing IP thresholds on creators has generally relied on standard economic assumptions about the way that people respond to incentives. Creators are assumed to be rational and to respond to increased incentives by producing more and better creations. According to this reasoning, because patent law requires more creativity as a precondition to the conferral of IP rights compared to what copyright law requires, creators subject to the patent regime will be encouraged to be more creative than those subject to the copyright regime.

Recent research in the social sciences, however, suggests that the connection between incentives and behavior — particularly with regard to creativity — is not always so straightforward. Although some research indicates that providing incentives to act creatively has the expected effect of increasing creativity, other research suggests that offering certain types of incentives can undermine creative behavior. For example, monetary incentives to perform creative tasks may dampen creativity. Moreover, and importantly for our purposes, increasing the magnitude of an incentive to be creative may not always lead to more or better behavior. Once creativity incentives are sufficiently salient or intense, there is a risk that people will be overly focused on achieving the incentive and “choke.”

In the series of experiments reported in this Article, we extend the research on the effects of incentives for creativity into the realm of intellectual property. Specifically, we test whether the existence of a creativity threshold that conditions entry into a prize lottery on meeting certain performance standards affects how creative people are. The experiments reported here involve various creativity tasks in which subjects are randomly assigned to conditions that are intended to model the different creativity thresholds employed by copyright and patent law. Doing so allows us to test whether the existence and nature of a threshold increases, decreases, or does not affect subjects' creativity.

This research contributes to the growing debates about whether copyright law's creativity threshold is set too low and should be increased and whether patent law's creativity threshold is appropriately set. More broadly, this research adds to the growing literature in law, psychology, economics, and management on the effects of incentives on behavior.

Do university patents pay off? Evidence from a survey of university inventors in computer science and electrical engineering

Brian J. Love (Santa Clara University School of Law)

Yale Journal of Law & Technology, Vol. 16, Forthcoming

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2448521

Studies of the costs and benefits of university patent ownership have, to date, focused on life sciences technology. Increasingly, however, many of the most lucrative university-owned patents relate to computing and telecommunications, not genes or pharmaceuticals. In 2007, a University of California spin-off named Eolas settled a patent suit with Microsoft for \$100 million. In 2010, Cornell University won a \$184 million jury verdict against Hewlett-Packard in a case that later settled on confidential terms. And most recently, in 2014, Carnegie Mellon University received a \$1.5 billion judgment — one of the largest patent damages awards in history — in an ongoing suit against Marvell Semiconductors.

As universities shift their focus in the patent arena, so too must those studying tech transfer. Commentators generally agree that the costs and benefits of the patent system vary greatly across industries and many place the high-tech and bio-tech industries at opposite ends of that spectrum. Accordingly, universities would be well advised to reassess the costs and benefits of their own tech transfer programs as they shift from bio-tech to high-tech.

This Article examines the pros and cons of university patenting in the high-tech field by reporting the findings of a survey of professors at major U.S. universities who teach and research in the areas of electrical engineering and computer science. Among other findings, survey responses suggest that: Patenting high-tech inventions made on university campuses may not be a profitable undertaking, even at those universities best-positioned to profit from tech transfer. Based on the patenting and licensing activities of survey respondents, I estimate that university patent programs earn a negative 3.5% rate of return on high-tech patents. The prospect of obtaining patent rights to the fruits of their research does not motivate university researchers in high-tech fields to conduct more or better research. Eighty-five percent of professors report that patent rights are not among the top four factors motivating their research activities. Moreover, fifty-seven percent of professors report that they do not know how, or if at all, their university shares licensing revenue with inventors. University patent programs may, instead, actually reduce the quantity and quality of university research in high-tech fields by harming professors' ability to obtain research funding, to collaborate with faculty from other institutions, and to disseminate their work to their colleagues. University patent programs are, at best, a modest benefit to professors seeking to commercialize high-tech academic research. Entrepreneurial professors report that these programs hinder their ability to work as a consultant with companies that show interest in their research, and fewer than half of university spinoff founders report that the ability to patent their research affirmatively helped their commercialization efforts.

Does patent litigation reduce corporate R&D? An analysis of US public firms

Roger Smeets (Rutgers, The State University of New Jersey – Management & Global Business)

Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443048

This study investigates if firms' involvement in patent litigation as alleged infringers hinders their innovation. I develop a simple model that predicts a decrease in innovation following patent litigation. I investigate the model's implications in a sample of publicly listed US firms, using a combination of propensity score matching and difference-in-differences estimation. I find a negative impact of patent litigation on corporate R&D intensity - in the range of 2.6-4.7%-points - in small firms (with less than 500 employees), that are involved in extensive patent lawsuits (captured by the number of legal documents filed).

From patent thickets to patent networks: the legal infrastructure of the digital economy

Jonathan Barnett (USC Gould School of Law)

Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2438364

Scholarly and popular commentary often assert that markets characterized by intensive patent issuance and enforcement suffer from “patent thickets” that suppress innovation. This assertion is difficult to reconcile with continuous robust levels of R&D investment, coupled with declining prices, in technology markets that have operated under intensive patent issuance and enforcement for several decades. Using network visualization software, I show that information and communication technology markets rely on patent pools and other cross-licensing structures to mitigate or avoid patent thickets and associated inefficiencies. Based on the composition, structure, terms and pricing of selected leading patent pools in the ICT market, I argue that those pools are best understood as mechanisms by which vertically integrated firms mitigate transactional frictions and reduce the cost of accessing technology inputs. Appropriately structured patent pools can yield cost savings for intermediate users, which may translate into reduced prices for end-users, but at the risk of undercompensating R&D suppliers.

Workable solutions to the challenges of patenting an innovative process

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Suffolk University Journal of High Technology Law, Vol. XIV, No. 2, 2014

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2455898

Over the past fifteen years, business method patents have been a focal point of judicial opinions, law reviews, and legislative reform, culminating in the Supreme Court's decision in *Bilski v. Kappos* and the passage of the 2011 America Invents Act. The so-called “rise” or “proliferation” of business method patents was kick-started in 1998 by *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, which set forth “the useful, concrete, and tangible results” test for determining the patentability of a business method. However, the courts have continued to rework the tests for determining the patentability of business methods and the focus of patentability has shifted away from the United States Patent Act's language toward the judicially created machine or transformation (MOT) test. The applicability of these judicially created tests have been played out through a variety of high-profile lawsuits, such as *Netflix v. Blockbuster*, and patent filings from large financial and technology institutions such as J.P. Morgan, Lincoln Financial, and VISA. Additionally, the *Bilski v. Kappos* decision created significant confusion as to how the United States Trademark and Patent Office and courts should review the patentability of a business method patent.

This article explores the history of the Patent Act, examining what role, if any, the judicially created MOT test should play concerning the patentability of business methods. Additionally, it delves into the current landscape of high profile companies seeking business method patents and what benefit these business method patents may provide. Ultimately, two workable solutions to the current problems facing business method patentability after *Bilski v. Kappos* are presented in an effort to reinforce the natural language of the Patent Act, ensure the patentability of legal business method patents, and safeguard company directives to invest in new and innovative business methods.

Competition & innovation: evidence from U.S. patent and productivity data

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The Journal of Industrial Economics, Vol. 62, Issue 2, pp. 258-285, 2014

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446301

Is there any evidence that innovation and technological progress are constrained by competition and fostered by monopoly power? Our results, based on a constructed dataset of U.S. manufacturing

industries observed over more than two decades, suggest that this is not the case. On the contrary, using both patent statistics and productivity growth as alternative measures of innovation and technological change, we observe faster technological advances in more competitive markets. These results are robust to changes in the econometric techniques used to model nonlinearity in the competition-innovation relationship and to alternative methods of computing market power.

Knowledge spillovers within the triad: a patent citation analysis

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Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2451241

The aim of this paper is to analyse the pattern of knowledge flows as evidenced by the patent citations in three economic areas: USA, Japan and Europe. In each economic area, we exploit information from two international patent offices data, the United States Patent and Trademarks Office data and the European Patent Office data. In this way, we can investigate the effect of technological proximity on knowledge spillovers for 240 international firms. In particular, the contribution to the existing literature is twofold: first, we use an international sample so that we can compare the empirical results among different economic markets; second, we explore the robustness the technological proximity effects and the extent to which it may be affected by patent system features. In order to compute the technological proximity, we follow two procedures. From one hand, we use the methodology developed by Jaffe (1986), where a technological vector is based on the distribution of patents of each firm across technology classes. From the other hand, we use the methodology developed by Mowery, Oxley, and Silverman (1996) and Stuart, Podolny (1996) which have introduced the ‘overlap citation’ measure, an alternative way of evaluating proximity between firms. The empirical results, in line with results from previous studies, indicate that there is a statistically positive impact of technological proximity on knowledge spillovers measured by patent citations and that these results are robust with respect to patent office data used in the analysis.

IP & Litigation

Understanding the realities of modern patent litigation

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Texas Law Review, Forthcoming

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2442451

Sixteen years ago, two of us published the first detailed empirical look at patent litigation. In this Article, we update and expand the earlier study with a new hand-coded data set. We evaluate all substantive decisions rendered by any court in every patent case filed in 2008 and 2009 — decisions made between 2009 and 2013. We consider not just patent validity but also infringement and unenforceability. Moreover, we relate the outcomes of those cases to a host of variables, including variables related to the parties, the patents, and the courts in which those cases were litigated. The result is a comprehensive picture of the outcomes of modern patent litigation, one that confirms conventional wisdom in some respects but upends it in others. In particular, we find a surprising amount of continuity in the basic outcomes of patent lawsuits over the past twenty years, despite rather dramatic changes in who brought patent suits during that time.

The rise of the end user in patent litigation

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Boston College Law Review, 2014, *Forthcoming*

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2440914

The patent system focuses on the actions of two players: the patentee and its competitor. It assumes that the competitor will represent the interests of the end user. But increasingly, end users are becoming significant players in the patent system, their interests sometimes diverging from those of competitors. Attention has recently turned to Patent Assertion Entities (“PAEs”) – also known as patent trolls – who are suing vast numbers of customers using patented technologies in their everyday businesses. Yet, end users were also principal players in some of the main recent patent cases before the Supreme Court. In *Bowman v. Monsanto*, Monsanto sued farmers for re-using its patented self-replicating seeds. In *Association for Molecular Pathology v. Myriad Genetics*, patients and physicians sued to invalidate breast cancer gene patents. And, patients and drug stores repeatedly challenge pay-for-delay agreements between patentees and competitors, claiming they undermine patients’ interests in access to generic drugs.

The drafters of the America Invents Act (the “AIA”) intended the legislation to catch up with the changing patent landscape. Yet, the AIA did not predict and is largely ill-equipped to address the growing role of end users. The AIA addresses the needs of small entities, mainly, by adding procedures to challenge patents in the United States Patent and Trademark Office (“PTO”), providing a cheaper and faster forum for challenging validity. However, end users are different from small technological competitors. End users lack technological sophistication, they are often one-time players and tend to become involved in the patent dispute relatively late in the life of the patent. The AIA’s novel PTO procedures are largely unsuitable for end users because they permit expansive challenges mostly early in the life of the patent before end users are likely to be implicated.

Paradoxically, as end users play an increasingly larger role in patent law disputes, they have few legal tools to assert their interests. This Article argues for the need to equip end users with tools to defend their interests in this new litigation landscape. Specifically, since end users, who lack internal resources of technological sophistication, are especially ill suited to fund the expense of patent litigation, fee shifting is particularly warranted when the prevailing party is an end user. In 2014, the Supreme Court decided two fee shifting cases: *Highmark v. Allcare* and *Octane Fitness v. Icon Health*, in which it lowered the standard courts need apply to award fee shifting in patent cases. And, at the same time, a flurry of Congressional bills proposes different versions of fee shifting. Yet, while these bills and cases address the general fee shifting standard and the issue of PAE lawsuits, they do not consider the unique status of the end user. This Article argues for the need to consider the special status of end users in any fee shifting reform.

If you can't beat 'em, join 'em? How sitting by designation affects judicial behavior

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Shawn P. Miller (Stanford Law School)

Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2449349

Judges, lawyers, and scholars have long decried the high reversal rate district judges face in patent cases. Many have suggested greater district court specialization as a solution, and Congress in 2011 enacted legislation to promote such specialization. In this paper, we investigate the impact of a novel measure of experience – whether a district court judge has sat by designation on a Federal Circuit panel in a patent claim construction appeal – on the likelihood a district judge’s subsequent claim constructions are reversed. Before sitting by designation, judges who later do so actually have a slightly higher claim construction reversal rate than judges who never do so. After sitting by designation, the reversal rate of district court judges on subsequent claim construction appeals decreases by 50 percent.

This decrease is not fully explained by other measures of experience, including the number of prior patent cases or years on the bench. Nor is it fully explained by the timing of the appeal, the particular district court judge or various other characteristics of the patents, the parties and the litigation. Our results suggest a simple way to reduce the reversal rate in patent and perhaps other sorts of cases. However, our evidence suggests this increased agreement is due to increased Federal Circuit trust in the decisions of individual judges who have sat by designation and not increased district judge understanding of claim construction.

The effect of patent litigation and patent assertion entities on entrepreneurial activity

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Working Paper

<http://cdn.arstechnica.net/wp-content/uploads/2014/06/Tucker-Report-5.16.14.pdf>

From 2004 through 2012, patent lawsuits in the U.S. more than doubled, from around 2,500 to over 5,000 annually; these suits affected more than 12,600 defendants in 2012 (Pistorino, 2014). Patents themselves are often thought to proxy for innovation and associated entrepreneurial activity, but it is not clear whether this increase in patent litigation, often brought by Patent Assertion Entities (“PAEs”), is necessarily beneficial for innovation. New evidence suggests that more lawsuits can distract management from developing new and innovative products, and may cause them to ignore products targeted by lawsuits, in addition to the more obvious litigation costs (Tucker, 2012). To identify the implications of the rise in patent litigation for U.S. innovation and consumers, our work addresses the following questions: How do high levels of patent litigation shape entrepreneurial activity, such as investment in startups and the creation of jobs? What are the costs, if any, associated with high levels of patent litigation? And finally, what is the effect, if any, of patent litigation brought by PAEs on entrepreneurial activity?

This paper empirically investigates the statistical relation between levels of patent litigation and venture capital (“VC”) investment in the U.S. We find that VC investment, a major funding source for entrepreneurial activity, initially increases with the number of litigated patents, but that there is a “tipping point” where further increases in the number of patents litigated are associated with decreased VC investment, which suggests an inverted U-shaped relation between patent litigation and VC investment. This appears strongest for technology patents, and negligible for products such as pharmaceuticals. There is some evidence of a similar inverted U-shaped relation between patent litigation and the creation of new small firms. Strikingly, we find evidence that litigation by frequent patent litigators, a proxy for PAE litigation, is directly associated with decreased VC investment with no positive effects initially.

IP Law & Policy

Competition policy and the technologies of information

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Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2444349

When we speak about information and competition policy we are usually thinking about oral or written communications that have an anticompetitive potential, and mainly in the context of collusion or exclusionary threats. These are important topics. Indeed, among the most difficult problems that competition policy has had to confront over the years is understanding communications that can be construed as either threats to exclude or as offers to collude or facilitators of collusion.

My topic here, however, is the relationship between information technologies and competition policy. Technological change can both induce and undermine the use of information to facilitate anticompetitive practices. This change is partly a result of digitization and the many products and processes that it enables. The technologies of information account for a significant portion of the difficulties that competition law encounters when it addresses intellectual property rights. In addition, changes in the technologies of information affect the structures of certain products, in the process either increasing or decreasing the potential for competitive harm.

This paper focuses briefly on five issues: (1) assessments of market power and the opportunities for its exercise in information technologies; (2) the U.S. and EU antitrust or quasi-antitrust inquiries into Google Search; (3) the eBooks price-fixing and most-favored nation litigation; (4) the appropriate role of competition policy in facilitating internet neutrality; (5) the special problems posed by the patent laws in antitrust analysis of information technologies.

Congress as a catalyst of patent reform at the Federal Circuit

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63 American University Law Review 961 (2014)

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443970

The U.S. Court of Appeals for the Federal Circuit is the dominant institution in patent law. The court's control over patent law and policy has led to a host of academic proposals to shift power away from the court and towards other institutions, including the U.S. Supreme Court, the U.S. Patent and Trademark Office, and federal district courts. Surprisingly, however, academics have largely dismissed Congress as a potential institutional check on the Federal Circuit. Congress, it is felt, is too slow, too divided, and too beholden to special interests to effectively monitor changes in innovation and respond with appropriate reforms.

This Article takes the opposite position. It proposes a prominent congressional role in patent policy, a role that extends beyond passing reform legislation. Congress's relationship with the Federal Circuit is a dialogic one in which Congress often plays an initial role of catalyst and a final role of arbiter. Understanding Congress's dialogic role in patent reform is not merely a theoretical exercise; this Article traces recent dialogic interactions between Congress and the Federal Circuit during the passage of the America Invents Act. The institutional framework proposed by this Article provides a promising alternative to continued Federal Circuit expansion over patent policy. Furthermore, dialogue between Congress and the Federal Circuit can improve decision making at the Federal Circuit while leveraging the relative advantages of both institutions in reforming the patent system.

Formal but forgiving: a new approach to patent assignments

Karen Sandrik (Willamette University – College of Law)
Rutgers Law Review, Vol. 66, No. 2, 2014

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2448978

This Article contributes to an emerging literature and jurisprudence regarding what role other legal regimes should play in the development of patent law. Some scholars argue that common law systems should be purged from patent law, while others argue that patent law is already too specialized and devoid of generalist law. Further, the Supreme Court has recently struggled deciding patent cases that require consideration or application of other legal regimes, such as contract law, the Bayh-Dole Act, and antitrust law.

This Article argues that scholars and courts have not yet appreciated the interrelatedness of the tension between defining the scope of patent law and the Federal Circuit's adjudicative rule formalism. The Federal Circuit's bright-line, rigid rules are designed to promote certainty, but when those rules are paired

with a movement away from a generalist approach to law that is not supported by all of the judges sitting on the Federal Circuit, the result is the opposite of certainty. These interrelated concerns within patent law are perhaps most apparent when contract law and patent law combine to create patent licensing law. The Federal Circuit has created its own contract law so that it does not need to consider state contract law, but it is applying this law inconsistently.

This Article demonstrates that state contract law teaches it is both possible and beneficial to have a more nuanced approach to formalism than is currently employed by the Federal Circuit. It further provides a framework for the interpretation of patent assignments, showing how patent licensing law can better allow for differences in the sophistication of both the parties and the assignment itself. This new understanding of formalism will promote sharing of technology and collaboration among inventors and companies, and, overall, greater certainty in patent licensing law.

CLS Bank v. Alice Corp.: what does it mean for software patent eligibility?

Charlie Green (The John Marshall Law School)

John Marshall Review of Intellectual Property Law, Vol. 13, p. 601, 2014

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2445673

For more than forty years, patent attorneys, software engineers, examiners, and judges have debated the patent eligibility of software. For most of the 1980s and 90s, the USPTO has viewed software as generally patent-eligible subject matter. Starting with the *State Street v. Signature Financial* case in 1998, courts have examined subject matter patent eligibility with greater scrutiny. This comment reviews six recent software patent eligibility cases, of which the court upheld software's eligibility twice and rejected its eligibility four other times. In particular, the *CLS Bank v. Alice Corp.* case serves as a basis for examining several approaches to the topic. This comment proposes a standard which deems software patent subject matter eligible when an alternate dedicated hardware expression of the invention exists. The proposal also gleans the lessons of the recent cases to avoid potential pitfalls. This standard provides clarity and allows all interested parties to know upfront a software invention's subject matter patent eligibility.

History of the patent policy of the American National Standards Institute

George Willingmyre (GTW Associates)

Working Paper

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2451165

The American National Standards Institute (ANSI) patent policy applies to standards developing organizations (SDOs) accredited by ANSI (known as Accredited Standards Developers (ASDs)) to issue American National Standards (ANS). In order to obtain or maintain status as an ASD, an SDO must include the text of the policy as appropriate, in its accredited procedures along with any additional information as required; or submit to ANSI a written statement of full compliance with the policy in addition to statements that satisfy the policy requirements.

The ANSI patent policy has a long history, and has been evolving since 1932 to address the intellectual property and standards issues of the day. ANSI's experience illuminates what has worked and what has not. Understanding how the policy has changed over time provides practical lessons for SDOs and the voluntary standards community. This includes not only the SDOs accredited by ANSI and whose procedures and operations must comply with ANSI's essential requirements, but also others who will benefit from ANSI's experience.

In the opinion of the author the evolution of the ANSI patent policy highlights instructive experience:

- 1) An SDO needs to protect itself from involvement in litigation about the accuracy and completeness of statements and about infringements of patents due to use of the standard.

2) Between 1969 and 1995 ANSI patent policy included patent holder submission of specific terms and conditions and active evaluation by counsel or committee of such and recording a statement of the basis for considering submitted terms and conditions free of any unfair discrimination;

3) ANSI's policy does not currently require disclosure but describes what is to happen if disclosure happens; however the accompanying Guidelines to implementation of the policy acknowledge the value of early disclosure and suggest procedures SDOs may implement to encourage disclosure;

4) The essence of the ANSI patent policy is a requirement that when an SDO receives a notice that a proposed or an approved standard may require the use of a patent claim (i.e. an SEP), the SDO must obtain an assurance that: "A license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination."

5) The consequence of not fulfilling the requirements of the ANSI policy is that the standard cannot be an ANS. SDOs should consider the "consequences" for not meeting the ANSI policy.

The ANSI patent policy is a living document. Currently in mid 2014, The ANSI Intellectual Property rights policy committee is contemplating revisions to the policy to address the standards and patent issues of the day. The ANSI patent policy is a valuable resource containing the best thinking of leaders within the US voluntary standards community how standards developing processes ought to address the SEP issues of the day.

Copyright Law

Copyright registrations: who, what, when, where, and why

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92 Texas Law Review, 2014, Forthcoming

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2441378

The registration records at the U.S. Copyright Office provide a valuable lens on the use and performance of the copyright system, but have not yet been studied systematically. Using an original data set containing all 2.3 million registrations from 2008 to 2012, we provide a snapshot of current patterns of registration. We describe who is registering what, where, when, and why. Our main findings include the types of work being registered, how the registrations of individuals and firms differ, when works are being registered relative to their date of creation and date of publication, the age distribution of authors in different creative fields, and the geographic distribution and concentration of registration claimants.

The registration data collected and reported are superior to those relied upon in prior literature, and should therefore prove useful to lawmakers and scholars wishing to measure the effect of copyright law on creativity or otherwise reform our copyright law.

About the editor

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

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