Collective Patent Pricing

Michael Mattioli
Associate Professor of Law, Indiana University Maurer School of Law (Fall 2012)
Microsoft Research Fellow, U.C. Berkeley School of Law
michaelmattioli@alumni.upenn.edu
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My work-in-progress examines whether patent licensing collectives stimulate innovation through optimal royalty-sharing. This study probes a question of scholarly and practical concern: Do private collectives preserve innovation incentives more potently than bilateral bargains or compulsory licenses? My hypothesis contains three subparts:

> H1, Collectives Are Capable of Including New Patents: A licensing collective cannot preserve the economic incentives of patents without offering prospective patent holders a bite of the apple—i.e., a share of the revenue stream. Therefore, I expect to find that at least some collectives have been structured to incorporate new patents.
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> H2, Congruence Between Contributions and Distributions: If licensing collectives "tune" royalty distributions better than courts or Congress, we should expect to see a congruence between royalty distributions and the economic value of patents contributed. Unlike inflexible compulsory rates, we should also expect that royalty allocations can change over time.
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> H3, Members' Preferences are Represented: If licensing collectives allocate royalties based on the collective will of members, we should expect to find systems that allow members to influence pricing decisions through voting. (Voting, for example, over the inclusion of new patents or changes to existing royalty distributions.)

To test this hypothesis, I gathered and analyzed dozens of private contracts that governed patent licensing collectives between 1856 and 2012. These documents originate from a variety of sources, including historical societies, the National Archives and Records Administration, FOIA requests directed to government agencies, congressional records, and private collections.

These contracts reveal greater variety and complexity than theory alone predicts. The royalty-sharing systems that I have analyzed so far include, for example: expert valuations, tiered voting systems, and "rough and ready" rules. Early results from this study reveal that, in certain settings, crude and imprecise royalty-sharing schemes are preferable to carefully-tuned collective pricing procedures. This insight and others provide a new, empirically-informed view of how collectively-governed institutions can foster innovation in society.