

The Supreme Court's Intellectual Property Caseload: A Historical Study

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Recently, scholars have observed the U.S. Supreme Court's heightened interest in intellectual property cases over the past two decades. Yet scant attention has been paid to the Court's historical interest in IP cases and whether this modern peak is as phenomenal as it appears. This work-in-progress fills that void and places the Court's interest in IP in its historical context.

This work-in-progress aims to complete my existing work to collect and analyze all the IP cases decided by the Court from 1791 through 2012 and quantitatively illustrate how over the last 221 years, the Court's IP caseload has fluctuated. Not only does this study examine the trends of all IP cases collectively, but it also examines the trends for patent, copyright, and trademark cases.¹ These data are illustrated by viewing the IP cases as a percentage of the Court's total docket, which also serves to control for variations in the total number of cases decided by the Court during each term. The vast majority of this quantitative research is complete and based on my preliminary results, several notable developments appear to be revealed in the Court's IP caseload.

Based on what these data show, I will overlay these trends against the backdrop of technological, social, economic, and legal developments taking place in our nation's history and tell the stories of how the Court's IP caseload may or may not be reflective of these developments.

To date, I have created a database containing every IP case the Court has decided, have read each of them, and coded the cases for the type(s) of IP involved, the term, and the justice who wrote the opinion of the Court. My research this summer will be to code each case to include the technologies or industries involved in each case and to survey the relevant technological, economic, social, political, and legal landscapes during the last 221 years. I expect to have the coding complete by the time of the IP Scholars Conference.

This research will generate a rich historical dataset to help provide the foundation for future evaluation of the Court's IP caseload and its jurisprudence during particular time periods. It will be a valuable resource for social scientists and legal historians to use to develop and test their hypotheses as to what may have contributed to the Court's interest in IP (or lack thereof as the case may be).

¹ Trade secret and misappropriation cases are also considered, but do not play an appreciable role in the total number of IP cases.