

## *The First Patent Litigation Explosion*

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The "patent litigation explosion" of the last two decades has done much to drive a sense of crisis in the patent system as a whole. Yet modern developments are not as unprecedented as recent coverage presumes. The nineteenth century also witnessed a massive wave of patent litigation. Indeed, relative to the size of the economy and the number of patents in force, the patent system of the mid-to-late nineteenth century was considerably more litigious than that of the early twenty-first, and there may even have been years when the absolute number of patent suits filed in the United States approached or exceeded modern numbers. To a startling extent, the volume of nineteenth-century patent litigation has remained hidden from view: dim outlines of the period's patent wars are discernible in the record of reported judicial decisions, but the actual scale of contestation was far greater. This paper is a historical study of the first patent litigation explosion. Using hitherto-untapped sources, the paper sketches the quantitative contours of the litigation boom and advances some theories about its composition. The final part of the paper turns to the consequences of this history for the institutional and political development of U.S. patent law.

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