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The Role of Patent Law in Knowledge Codification

Justifying Patents

- Disclosure Rationale
 - Quid pro quo
 - Poor technical document
 - Next best alternative
- Innovation Rationale
 - “follow the action”
 - Latent patents
 - Where are the missing masses?

Characteristics of Codification

- Codified Knowledge
 - Contrasted with tacit knowledge
 - Stable symbolic form
 - Transmissibility
 - Commodification
 - Independent of human carriers
- Tacit Knowledge
 - Other repositories

Economics of Codification

- Codification is Costly
 - Developing and maintaining codes
 - Developing and maintaining substrates
 - Some knowledge resists codification
 - Some knowledge better tacit
- Balance of Codification
 - Never codify everything
 - Shifting codification boundary

Patents as Codification

- Three types of texts
 - The patent/patent application
 - The prior art
 - Evidentiary documents
- Incentives to Codify
 - Shifting the codification boundary
 - Inadvertant
 - Optimal or wasteful

Codified Prior Art

- Section 102
 - Tacit knowledge or use
 - Patents or printed publication
- Section 103
 - PHOSITA standard
 - Based on explicit references
 - Tacit knowledge
 - *KSR* dispute

Codified Applications

- Section 112 disclosure
 - Section 112 PHOSITA
 - Tacit gap-filling
 - “not a production document”
- Patents as Common Code
 - Standardized document
 - Negotiation and exchange

Evidentiary Codification

- Inventorship
 - Conception and reduction to practice
 - Documenting mental acts
 - Recordkeeping
- Impact of Reforms
 - Recordkeeping costly
 - Comparative advantages
 - First to file shift

Questions Welcome

Thank You