The Role of Patent Law in Knowledge Codification

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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