Ancillary IP markets and the Firm

Intellectual property frequently carries with it exclusive rights not only over the primary subject matter of the rights granted, but also over ancillary subject matter that is not part of the primary grant. Such ancillary rights appear in many places, including the patent doctrine of contributory infringement, copyright’s parallel doctrine of contributory infringement, and trademark’s law of dilution. In some cases the ancillary right covers substitutes for the primary subject matter of the intellectual property grant, in other cases, the ancillary right covers inputs to the primary subject matter; in yet other cases it covers complementary products.

In previous work we have explored the potential for intellectual property rights to affect the size and structure of firms by mitigating transaction costs both between firms and within firms. Here we extend that framework to the impact of ancillary rights, which we expect to have their own effects on a firm’s “make or buy” decision. Ancillary rights may place an intellectual property holder in a position to license production of complementary products or components to other firms. In some instances the absence of ancillary rights may prompt firms to vertically integrate, in order to bring such production functions in house. We will particularly explore the choice whether to attach ancillary rights to primary intellectual property rights as a question of transaction costs in different industries.