IP Legal Ethics in Patent Litigation

My research-in-progress is a qualitative empirical study of legal ethics issues that arise in patent litigation. This research explores how, why, and to what effect patent litigators identify and respond to everyday ethical issues that arise in practice. This research also examines the limited capacity of courts or other enforcement agencies to police unethical and/or abusive attorney conduct that is widespread in contemporary complex litigation and which may be particularly acute in large-scale patent lawsuits.

This study is based on (1) analysis of original empirical data derived from semi-structured, face-to-face interviews with over 45 experienced patent litigator and (2) case study research analyzing a recent high-profile patent lawsuit where the court initially sanctioned several individual lawyers and their client for unethical and abusive discovery tactics, but ultimately declined to issue sanctions after an extensive evidentiary hearing.

This research promises to make a significant contribution to the scholarly literature in the fields of intellectual property law, the legal profession, and “law and society” studies. Although there is a rich socio-legal studies literature on the legal profession, including empirical studies of lawyers’ ethics in a variety of practice settings, there are no comparable empirical studies of patent lawyers. Indeed, the field of intellectual property more generally is understudied from an empirical and interdisciplinary perspective, which is both unfortunate and somewhat surprising given the increasing significance of intellectual property law and intellectual property lawyers in recent decades. My research aims to begin to fill this void.