Getting IP Rights Right

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3.3.2006
Primary Issues

• Historical Overview: Ethical considerations and US Patent Law

• Brief Review of major IP issues related to California Stem Cell Initiative

• Specific recommendations
  – “Some strings attached” approach
Historical Overview

• Moral and ethical considerations enter into patent law decisionmaking in only a very limited way
“Division of labor” theory

Case Study: Gambling Patents
David Nye, America as Second Creation (2003)
David Nye, American Technological Sublime
Patents and R&D Investment
New Drug Approvals and Withdrawals 1990-1999

*Withdrawals indicated by year of drug approval

Source: Tufts CSDD, 2000
Many patents . . .
Very few product approvals
Paul A. David - Stanford

“Can ‘Open Science’ be Protected from the Evolving Regime of IPR Protections?”
David Mowery et al.

- “Ivory Tower and Industrial Innovation: University-Industry Technology Transfer Before and After the Bayh-Dole Act”

- 2004

  – University licensing offices do a good job balancing economic goals with social goals, “such as ensuring utilization and availability of federally funded inventions.”

    -- p. 39

Exclusivity in **limited fields**, to promote maximum usage of inventions

Milestones and termination provisions to ensure diligence by licensees

35% of respondents said secrecy a bigger problem in 1990 vs. 1980; 58% said data withholding hurt their research

Recommendations: “Some Strings Attached”

• Encourage private commercialization via licensing

• Require limited exclusivity, where relevant, milestones and termination provisions

• Discourage publication delays