

Berkeley–NYU Symposium on The Impact of the Patent System on Markets for Technology

Date: February 23-24, 2023

Location: Haas School of Business, UC-Berkeley, Berkeley, CA

Partners: TIIP Program at the Classical Liberal Institute (NYU School of Law), Berkeley Center for Law and Technology (BCLT), and the Tusher Center, Institute for Business Innovation, Haas School of Business.

Chairs/Editors: Robert Merges, Adam Mossoff, and Bowman Heiden

Topic overview: Markets for technology are a key feature of a successful innovation economy. A growing innovation economy is driven in part by licensing of technologies along the entire value chain, in which producers and suppliers exploit the benefits of specialization to efficiently contribute the fruits of their inventive labors to products and services sold to consumers. These markets for technology, however, require effective intellectual property (IP) rights systems to function efficiently, especially in today’s global innovation economy. This is especially true for open innovation ecosystems, such as the private development of technological standards, as well as for startups and technology-intensive ventures.

For almost two decades, commentators and policymakers have debated the role of the patent system as a driver of economic growth in innovation economies, especially in IP-intensive sectors of the global innovation economy such as the mobile telecommunications sector. Some commentators predicted higher prices for consumers and reduced innovation resulting from patent owners who are upstream in the value chain seeking injunctive relief against downstream implementers and manufacturers. Courts responded by restricting the right of patent owners to obtain injunctive relief against infringers, and antitrust regulators responded by issuing policy statements and initiating enforcement actions against patent owners. Others have observed that these legal developments have undermined the efficient upstream licensing of patented technologies by incentivizing predatory infringement in the use of patented technologies, not only for standardized technologies but also for small technology firms looking to enforce their patents towards much larger incumbent market actors.

After two decades of commercial, policy, and legal developments, this symposium will explore the current state of the evidence and theory of holdup by patent owners or of holdout by implementers. The symposium will explore the general role of the U.S. patent system in driving growth in markets for technology and specifically how it has functioned in different market contexts, including standardized technologies and small technology firms. Paper authors may address any aspect of the legal, institutional, economic, or doctrinal landscape.

Program

Thursday, Feb. 23rd

8:30 – 9:00am: Registration (coffee and continental breakfast available)

9:00 – 9:15am: Opening Remarks: Robert Merges, Adam Mossoff, and Bowman Heiden

9:15 – 10:15am: **Session 1**

Moderator:

Paper 1: *David Teece & Kalyan Dasgupta*, “Towards a Solution to the Holdout Problem: Restoring balance in the licensing of cellular SEPs”

10:15 – 10:30am: Break

10:30 – 12:30am: **Session 2**

Moderator:

Paper 2: *Barbara Lauriat*, “Pay No Attention to the Comparable Behind the Curtain': Information Gamesmanship in Standard Essential Patent Licensing”

Paper 3: *Jonathan Barnett*, “Antitrust Mercantilism: The Strategic Devaluation of IP Rights in Wireless Technology Markets”

12:30 – 1:30pm: Lunch

1:30 – 3:30pm: **Session 3**

Moderator:

Paper 4: *Kristen Osenga*, “Hit the Road Jack: The Auto Industry as the Next Vehicle for Predatory Infringement”

Paper 5: *Ted Sichelman*, “Patents as Hedges”

3:30 – 4:00pm: Break

4:00 – 5:00pm: **Session 4**

Moderator:

Paper 6: *Bowman Heiden & Matthew Rappaport*, “Patent Holdout and Small(er) Technology Firms”

6:00 – 9:00pm: Symposium Dinner

Friday, Feb. 24th

08:30 – 09:00am: Registration (coffee and continental breakfast available)

09:00 – 10:00am: **Session 5**

Moderator:

Paper 7: *Urska Petrovcic & Kirti Gupta*, “Evidence of Systematic Holdout”

10:00 – 10:15am: Break

10:15 – 12:15pm: **Session 6**

Moderator:

Paper 8: *Manveen Singh*, “The 2022 IEEE IPR Policy Changes: Legal and Policy Implications”

Paper 9: *Adam Mossoff*, “The Nature and Function of FRAND: The ETSI Intellectual Property Rights Policy”

12:15 – 12:30pm: Closing Remarks: Robert Merges, Adam Mossoff, and Bowman Heiden

12:30 – 1:30pm: Lunch

End of conference.

Authors/Presenters/Chairs

- [Jonathon Barnett](#), Professor, Gould School of Law, University of Southern California
- [Kalyan Dasgupta](#), Principle/Director, Berkeley Research Group
- [Kirti Gupta](#), Vice President, Economic Strategy | Chief Economist, Qualcomm
- [Bowman Heiden](#), Executive Director, Tusher Center, UC-Berkeley
- [Barbara Lauriat](#), Frank H. Marks Intellectual Property Fellow & Visiting Associate Professor of Law, George Washington University
- [Robert Merges](#), Professor of Law, UC-Berkeley
- [Adam Mossoff](#), Professor of Law at Antonin Scalia Law School, George Mason University
- [Kristen Osenga](#), Austin E. Owen Research Fellow & Professor of Law, University of Richmond
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