

Patent Holdup: the Role of Uncertainty in IPRs

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Patent Holdup

A consequence of

- Transaction costs, or
- Uncertainty over patent rights

What evidence would we expect to see?

- More litigation?
- Delayed litigation?

Economists like models



Source: nymag.com

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Bargaining over IPRs

Licensing in the shadow of competitors

Alan Marco and Kieran Walsh, *Working Paper*

- Patent holder negotiating with multiple producers in a Priest-Klein context (asymmetric stakes)
- Property rights are uncertain (wrt validity)
- Parties have different beliefs about patent strength
- Equilibrium: renegotiation-proof royalty payments
- Willingness to negotiate with A depends on willingness to risk offer from B (opportunity cost)
- Equilibrium litigation is less frequent and is not affected by asymmetry.

Bargaining over IPRs

The option value of patent litigation: theory and evidence

Alan Marco, *Review of Financial Economics* (2005)

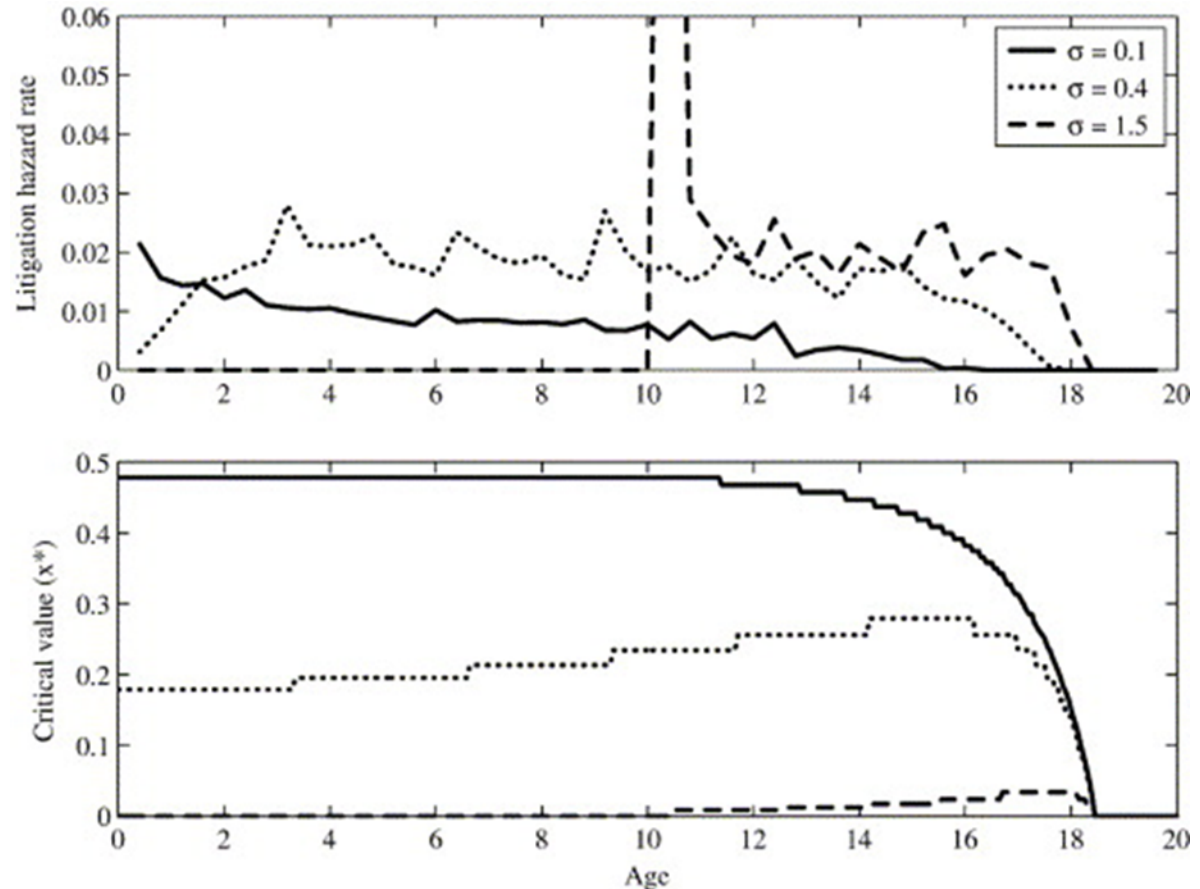
- Patent holder faces stochastic (uncertain) royalty flows, based on producers' willingness to pay.
- If royalty flows are low, patent holder can opt to enforce in court: give up the current royalty flow in exchange for the court outcome.
- Uncertainty can lead to delayed litigation.

The option value of patent litigation: theory and evidence

Alan Marco, *Review of Financial Economics* (2005)

Greater uncertainty can lead to delayed litigation:

The patent holder waits until the litigation “option” is “deep in the money.”



Holdup, Uncertainty, and policy

- Uncertain patent rights may increase the possibility of holdup
 - ...but, they also increase the possibility of reverse hold-up
- Policy prescription is the same
 - ...reduce uncertainty

