

Comments on Barnett, “Has the Academy Led Patent Law Astray?”

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The existing claims in the literature

- Patent “thickets” stifle innovation by creating transaction and litigation costs
- Patent “holdup” gouges downstream producers who need technology
- Royalty “stacking” results in final product prices that are too high
- Together these comprise the “conceptual” triplet of property rights that are too strong

Barnett's counter claims

- Patent thickets do not obstruct innovation because markets work around the thicket
- Evidence for royalty stacking is weak (and would require anyway defining a rate or price that is “too” high). Observable royalty rates see too low for this to be a problem.
- Recent empirical work (e.g. Galetovic, Haber & Levine) don't see evidence of royalty stacking

Comments

- How far astray as the Academy led patent law? (prevalence in Table 1)
- What are deadweight losses from the conceptual triplet, i.e., efficiency costs of limiting injunctive relief? (invert Haber-Maurer approach)
- Most of the focus is on IT. Would the problem change if shift to other sectors?