

Launching the USPTO Economics Research Agenda

Conference Report

On Friday, September 10, 2010, the United States Patent & Trademark Office (USPTO) and the Berkeley Center for Law & Technology (BCLT) hosted a joint conference in Berkeley, CA. At the event, the USPTO unveiled the newly formed Office of the Chief Economist's economic research agenda. Participants from academia and industry were invited to share their perspectives and discuss their own IP-related research.

The morning began with Venay Puri and Dr. Alan Marco from USPTO discussing data issues. Much of the USPTO's data has already been made available to the public for free via partnership with Google, with more data and parsing tools on the way. Preliminary analysis of data from the past three decades reveals several interesting patterns, including information on how applicants and examiners are interacting.

USPTO Chief Economist Dr. Stuart Graham led the next session, discussing his Office's economic research agenda. Five major areas of inquiry were highlighted: the nexus between intellectual property (IP), job creation, and economic growth; the role of IP in standards setting; the economics of USPTO initiatives to achieve agency goals, such as reducing the patent backlog; the economics of trademarks and trademark examination; and analyzing the role of IP in markets for technology and knowledge. The Office has established several planned deliverables in the coming year addressing these topics.

Rounding out the morning was a panel of economists: Dr. Richard Gilbert of UC Berkeley; Dr. Bronwyn Hall of UC Berkeley & Maastricht University; and Dr. Suzanne Scotchmer of UC Berkeley. Dr. Gilbert discussed the influence of venture capitalists on innovator incentives and the rising trend of large damage awards in patent infringement suits. Dr. Hall pointed out the need for clear information on the coverage and ownership of granted patents, as well as better information on patent dispute settlements. Dr. Scotchmer spoke about the need for standardized definitions of terms like "non-practicing entity" and "defensive patenting" in patent research.

After lunch, the first afternoon session saw economists Dr. Keith Maskus of University of Colorado, Dr. Petra Moser of Stanford University, and Dr. Brian Wright of UC Berkeley take the stage. Dr. Maskus commented on international changes in IP behavior after the TRIPS agreement and the need for more data on private agreements covering IP use and licensing. Dr. Moser presented a historical look at the effects of patent pools and compulsory licensing on patenting behavior over the last 150 years. Dr. Wright discussed the effects that improving IT and search technology may have on information aggregation and patent quality in the future.

The second afternoon panel consisted of industry representatives Brian Kahin of the Computer & Communications Industry Association, Anne Layne-Farrar of the Law and Economics Consulting Group, Preston McAfee of Yahoo!, and Bernard Munos, a private consultant formerly with Eli Lilly. Kahin commented on diversity in the patent system

according to technology area and the consequences of managing IP as a portfolio asset. Layne-Farrar discussed how patent strategies affect corporate growth and the effects of IP in the standards setting process. McAfee spoke of the teaching function of patents and the role of acquisitions as a mechanism for acquiring IP. Munos pointed out how new collaborative methods of research, particularly in pharmaceuticals, affect the patent system and the differences between incremental and breakthrough innovations.

The afternoon concluded with a law professor panel, including Dennis Crouch from University of Missouri and Peter Menell, Robert Merges, and Pamela Samuelson, all from UC Berkeley. Crouch discussed the effect of deadlines on applicant behavior and the nature of the Chief Economist position. Menell compared the IP system to land title registries, pointing out the advantages of more transparent information. Merges talked about the value of large data sets in exploring theories of patent value and the optimal level of investment in patent examination. Samuelson called for follow-up work on the 2008 UC Berkeley study on patents in entrepreneurship and discussed ways the Chief Economist and the academic community can benefit from each other's work.

The conference was highly successful in its goal of promoting dialogue between the USPTO, industry representatives, and the academic community. In addition to the topics mentioned above, members of the audience posed many insightful questions for the panelists. USPTO and BCLT would like to thank the Ewing Marion Kauffman Foundation (BCLT's principle financial sponsor for the event), panelists, and attendees who helped make this event such a success.