

Patent Assertion Entities

Potential Costs

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Potential Costs imposed by PAEs

- Systematic overcompensation
- Resource diversion
- “Unpooling”
- Impact on competition

- Caveats:
 - harm to competitors vs. harm to competition
 - what matters for policy is net impact on innovation and competition

Systematic Overcompensation

- Rewards to PAEs may be “high” relative to some benchmark value of an asserted patent
 - What benchmark? How much higher?
- Impacting:
 - Pricing in the MFT => misallocation of R&D
 - End-user prices => welfare losses
 - Double-marginalization distortions?
 - Risk/reward for innovators => less innovation

Resource Diversion

- Transfer of rewards away from innovators => less innovation
- Increase in equilibrium number of lawsuits and associated unavoidable costs
- Opportunity costs of time/treasure/talent used by PAEs
- Burden on PTO of processing speculative/opportunistic applications
- Defensive responses by innovators and producers
 - Abandoned projects
 - Second best technological solutions
 - Pre-emptive acquisition of “unnecessary” IP

“Unpooling”

- Strong complementarities between inventions creates challenges in apportioning economic value among components of a portfolio
 - portfolio licensing, pooling, bundling of IP
 - royalty stacking provisions
- Innovators/producers tend to contract efficiently ex-ante over the entire bundle of IP relevant to a product or technology
- If a PAE unpacks a bundle, creates potential for paradoxical results (and overcompensation)
 - sum of values of subsets $>$ value of the whole

Impact on Competition

- PAEs have little incentive to participate in cross-licensing “truces” (which are likely socially efficient)
- In principle, could accumulate a large enough share of a relevant IP market to create distortions in pricing (?)
- In principle, innovators could enter into IP transactions with PAEs that raise product market rivals’ costs
- Time consistency? Ex-post opportunism can “break”
 - socially efficient contractual arrangements like FRAND licensing of Standard-Essential Patents
 - equilibrium division of rents between innovators and improvers in sequential innovation