

PATENTS AND ANTITRUST EMERGING PARADIGMS

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THE NEW PARADIGMS

- Scope of IPR and their exclusion
- Leverage with network externalities
- Cross-infringing oligopolists

SCOPE OF IPR

- Issue: What is the optimum strength of IP to encourage innovation and not discourage subsequent innovation?
- Examples
 - Patents on EST or research tool
 - Patent on diagnostic sequence
 - Utility patent on plant restricting use of seed for breeding
 - Reach-through rights in license

LEVERAGE WITH NETWORK EXTERNALITIES

- Issue: What is the optimal ability for a firm to use IP-based power to enter a separate market, especially one with network externalities?
- Examples:
 - Microsoft moving into browser market
 - Tying of patented video game device to use of designated cartridges
 - Use of rights in automotive computer program to control access to repair or replacement part markets

CROSS-INFRINGING OLIGOPOLISTS

- Issue: When should oligopolists in a dense patent environment be entitled to employ selective licensing strategies?
- Examples:
 - Use of patents to exclude entrants in semiconductor or a financial industry
 - Effort by part of industry to obtain royalties from rest of industry for use of a standard such as the DVD standard