

# Incentives to Challenge IP

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# Challenge Central In Modern IP

- Shapiro: IP as mere ticket to sue
  - Crucial if many weak patents
  - Lemley: “Rational ignorance”
- Gilbert: Agencies might challenge IP
  - where private incentive much too low
- Miller: Bounty for successful challenge?
- Pools, bundling
- Settlements

# Private Incentives (Ex Post)

- End-users benefit but seldom challenge
- Relativity often reduces private incentives
  - *Blonder-Tongue*
  - Competition as relative performance scheme
- Settlements

# Social Incentives

- Ex post: DWL or  $DWL + \Pi$
- Ex ante: effect on future innovation
- Innovators' expectations
- Is challenged IP linked *in their minds* to treatment of their efforts?
  - “Can lawyers distinguish?”
  - Publicity and competition policy
- What potential IP is weakened by a decision?

# Special Case: No Innovation Effect

- No spillover from this challenge to future efforts
- No effect on future innovation
  - Strong condition
  - “Invalidity” not enough
- Social benefit of overturning (extension of) IP

# Special Case: Uniform Innovation Effect

- Reduces probability of full enforcement
- Much like reducing patent life
- Analogy with patent extension
  - Settlements etc

# Things Like Changing Patent Life

- Assume a diagram
- Compare to Congress's judgment