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
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