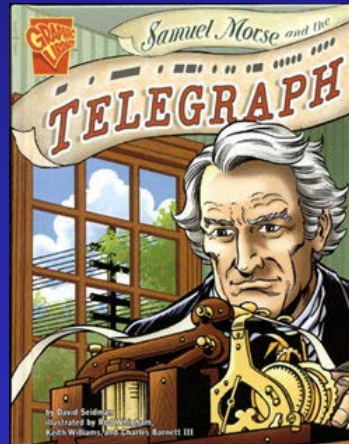
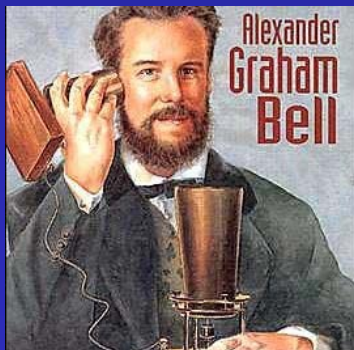


Cycles of Innovation & Litigation: Today's Patent Wars in Historical Context

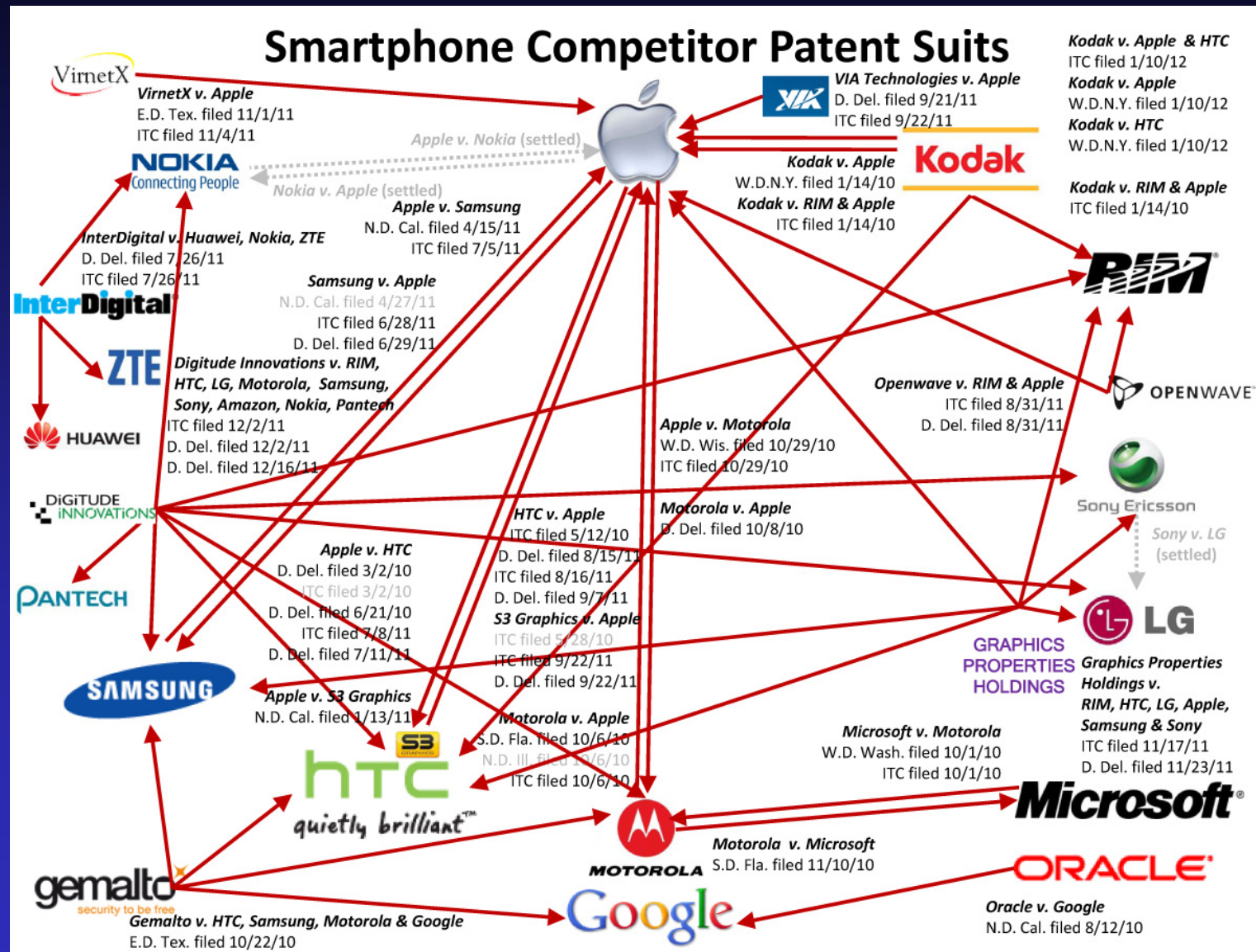
CPIP 4th Annual Conference
“Intellectual Property and Global Prosperity”
October 7, 2016



Adam Mossoff
Professor of Law
Antonin Scalia Law School
George Mason University

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Smart Phone Patent War

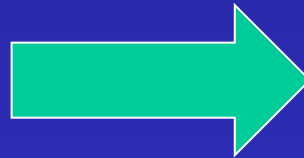


Is there a “patent litigation explosion”?

- “there is **clear harm to innovation** caused by **excessive patent litigation**”
 - Michael Meurer quoted in “Professors Issue Conflicting Views of Patent Reform,” *National Law Journal*, March 11, 2015

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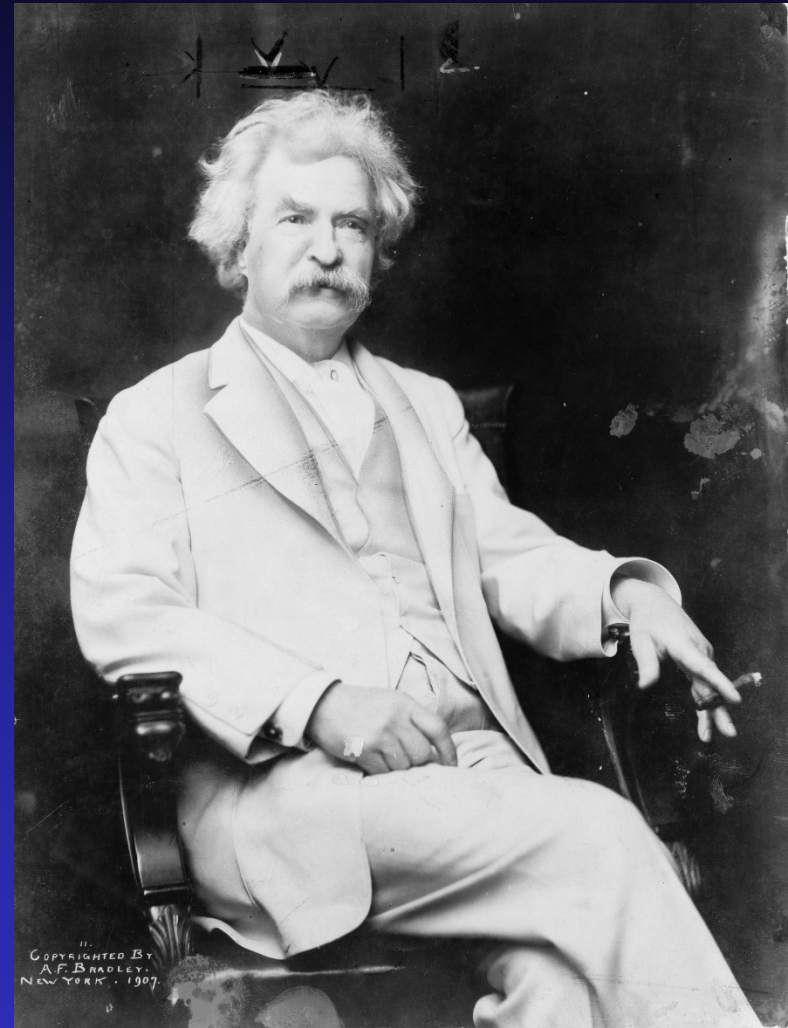
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- James Bessen & Michael J. Meurer, *The Patent Litigation Explosion* (2005), at <http://ssrn.com/abstract=831685>

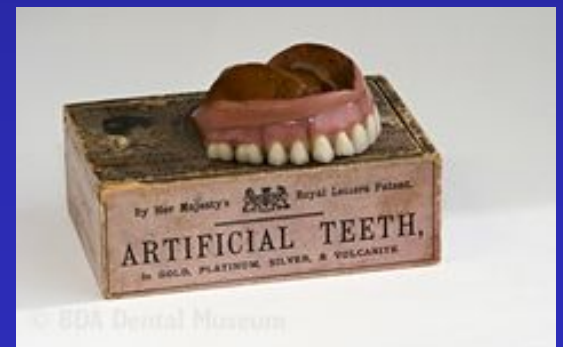
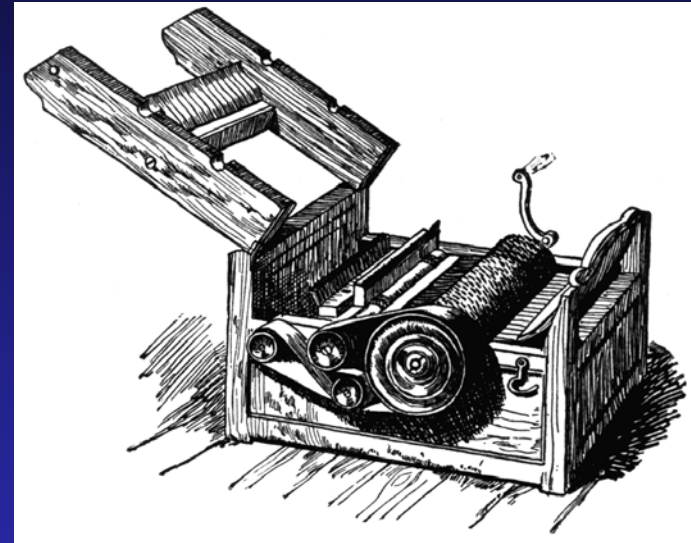
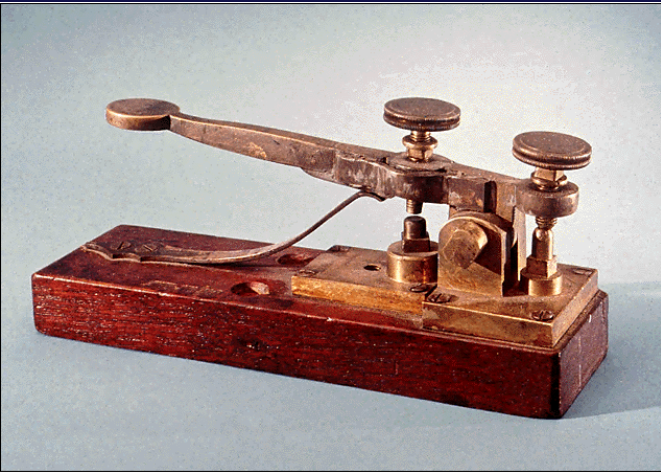
Who cares about history?



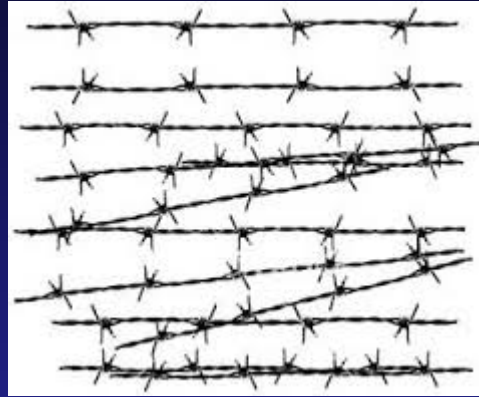
"There are three kinds of lies: lies, damned lies and statistics."



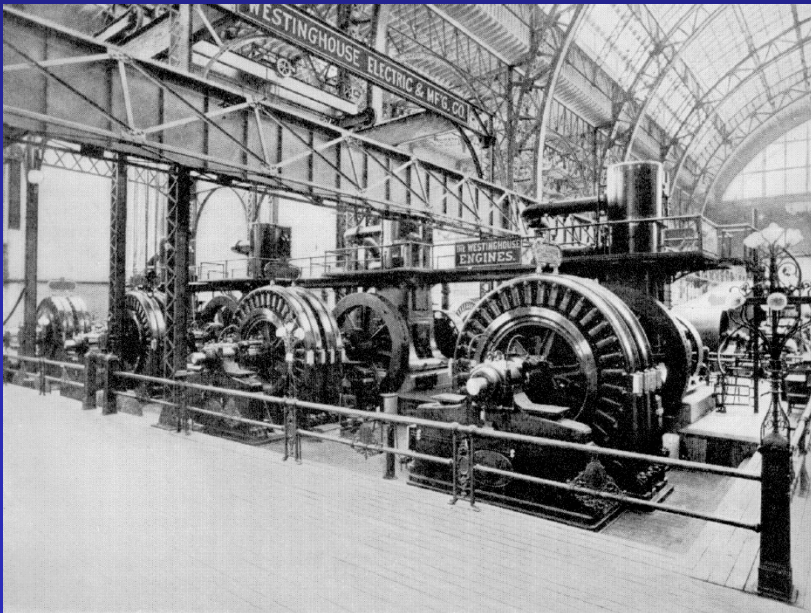
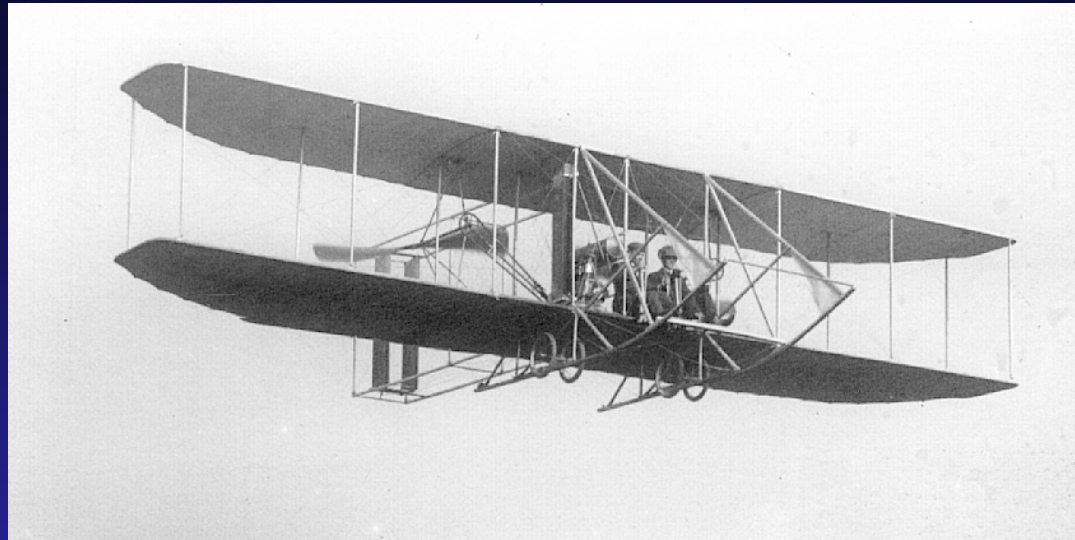
Historical Cycles of Patent Wars Following Innovation



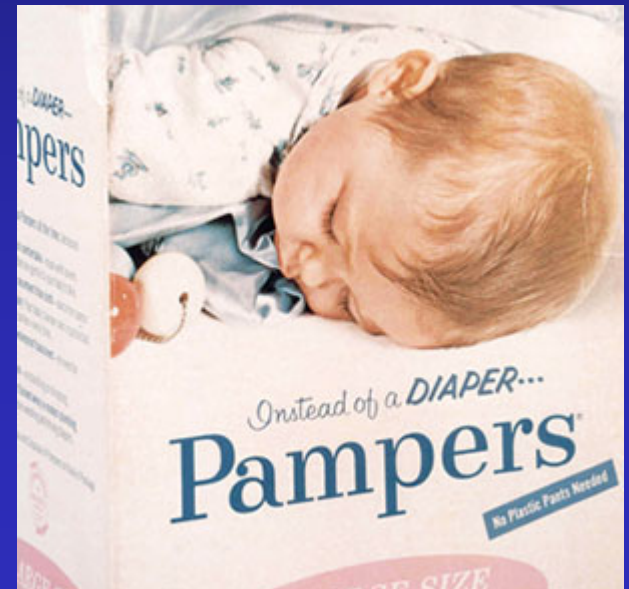
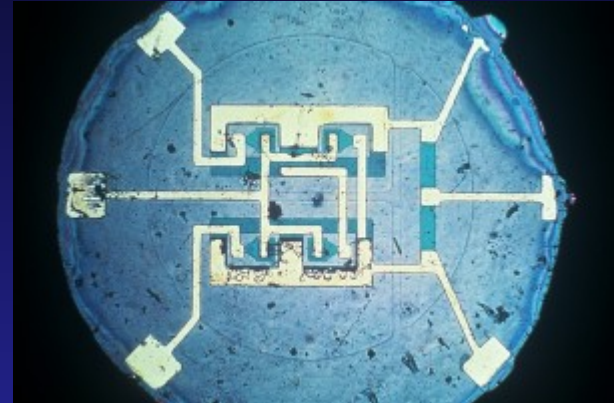
More Innovation & Litigation Cycles



More Innovation & Litigation Cycles

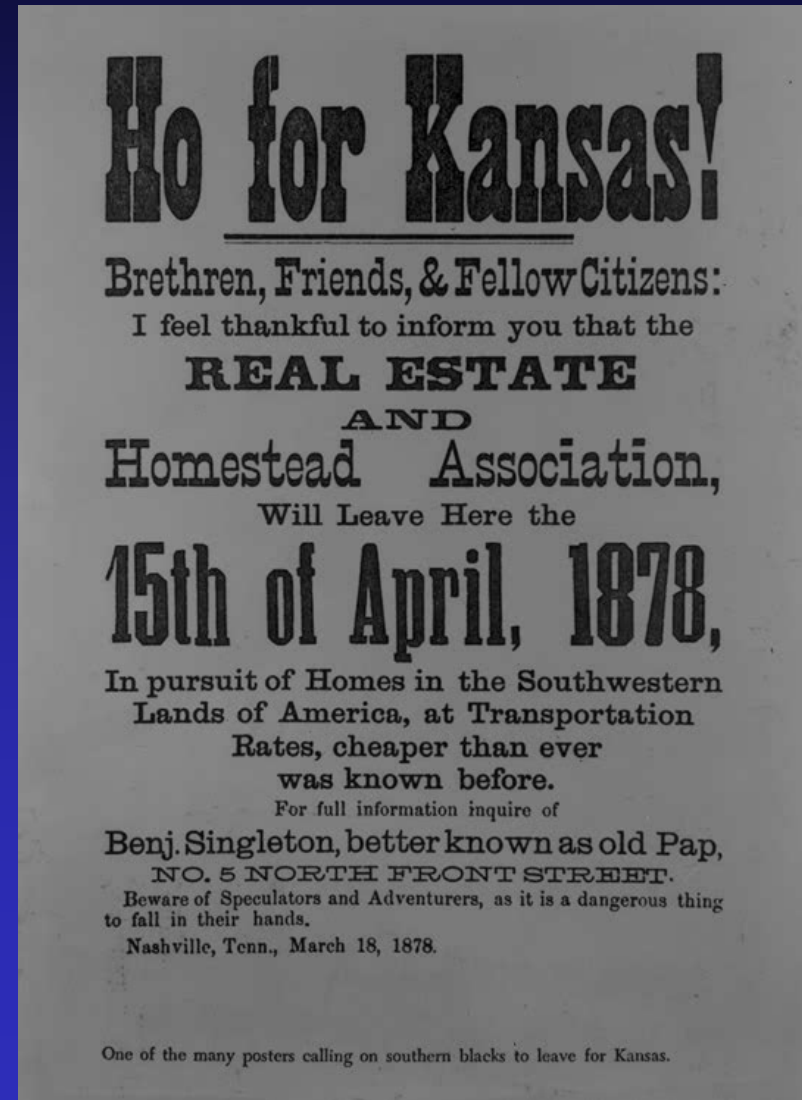


More Innovation & Litigation Cycles



Why this historical pattern?

- New value being created in all of these instances
- New property rights secured to creators and follow-on market actors who own & commercialize these values
- Important context: American legal system is common law system – judicial resolution of disputes (lawsuits)



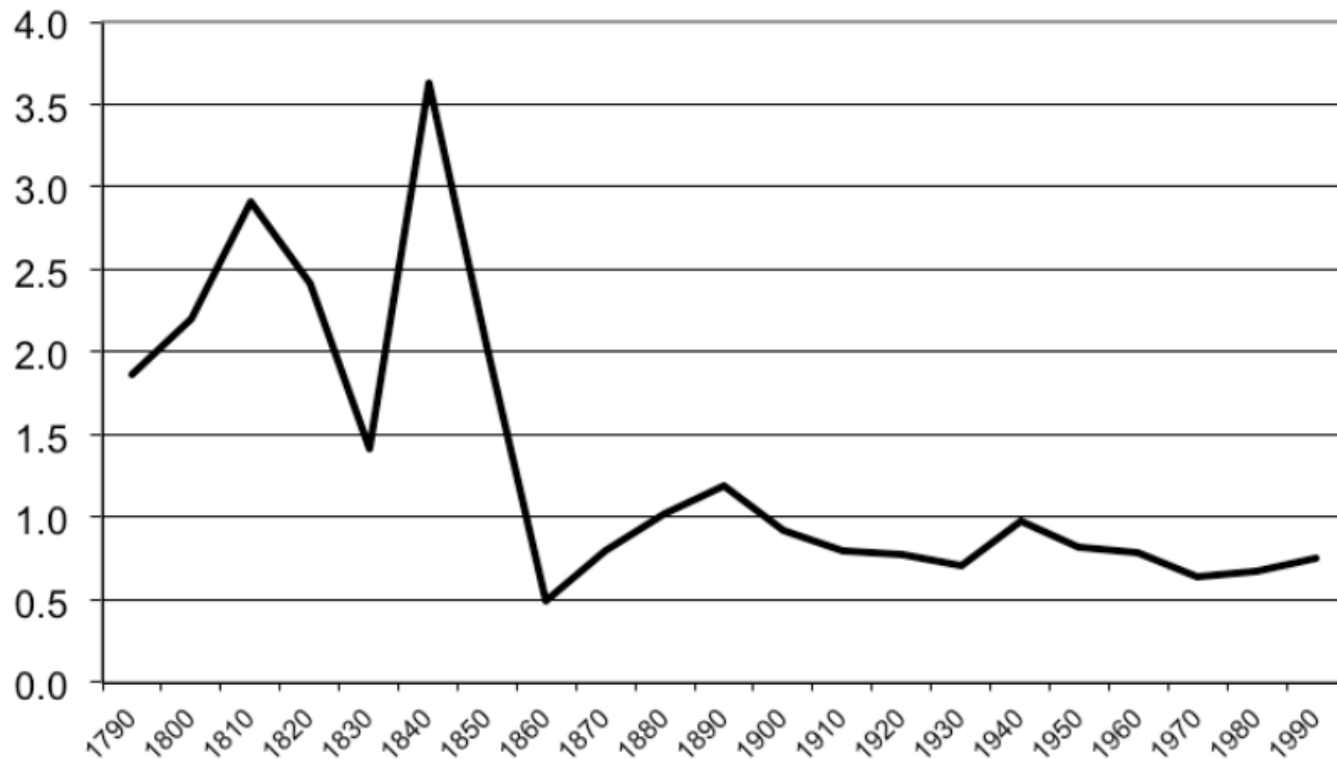
Why this historical pattern for new patented innovation?

- Some (but not all) Factors to Consider:
- Infringement
 - costs imposed by infringers
 - totally absent from one-sided studies driving the patent policy debates today
- Proxy Fight Between Commercial Competitors
 - Telephone (1880s): *Bell Telephone Co. v. Western Union*
 - Electrical Systems (1900s): *General Electric v. Westinghouse*
 - Smart Phones (today): *Apple v. Samsung*
- Legitimate Questions About How Define Scope of Property Rights in New Technology
- Abusive Practices – Always Issue of Symmetrical Behavior and Costs

Questions About Innovation & Patent Litigation Prompted by the History

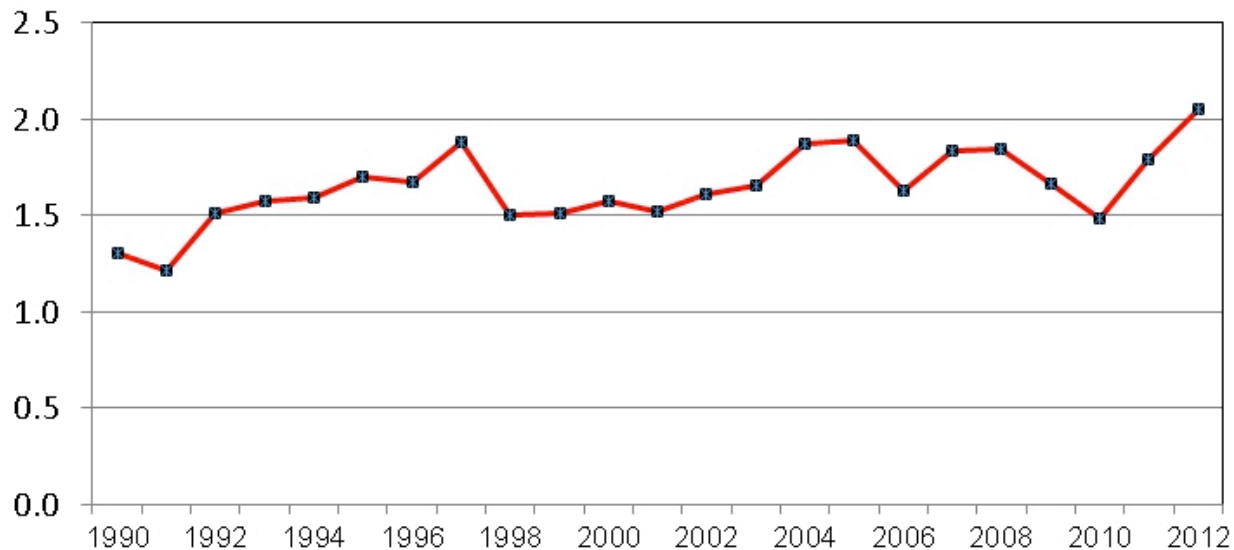
- How properly assess innovation and its relationship to litigation rates? What is benchmark?
- What is benchmark for determining a “patent litigation explosion”?
- What are appropriate variables or proxies for assessing connection of patents, innovation, and litigation?
- ALWAYS THE QUESTION: As compared to what?

Patent Litigation Rates, 1790-2000
(Reported Lawsuits as a Percentage of Total Patents Granted, by Decade)



Source: B. Zorina Khan, *Trolls and Other Patent Inventions: Economic History and the Patent Controversy in the Twenty-First Century*, 21 George Mason L. Rev. 825, 861 (2014)

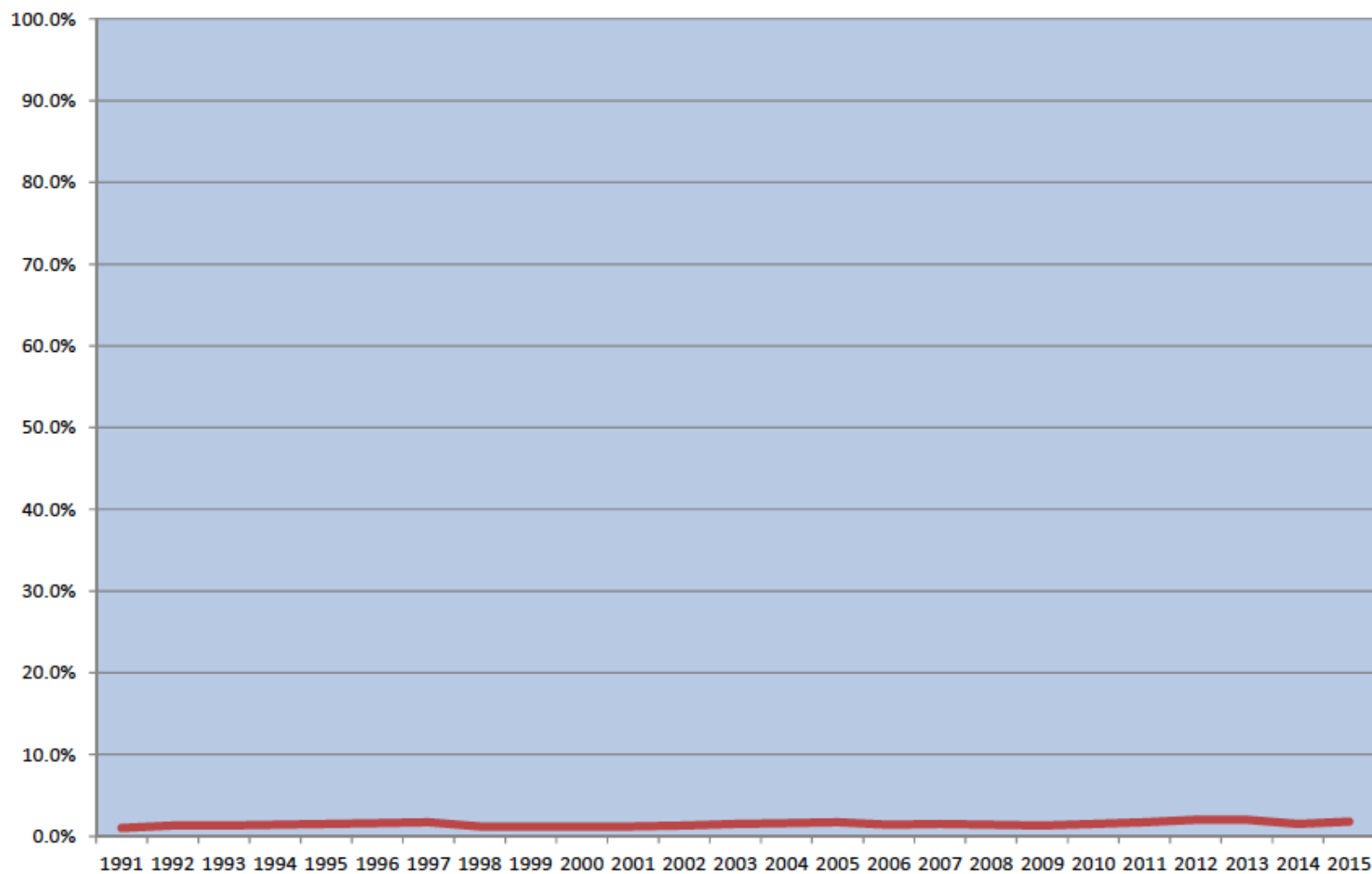
Patent Litigation, Relative to Total and Domestic Patent Grants (1990-2012)



Source: B. Zorina Khan, *Trolls and Other Patent Inventions: Economic History and the Patent Controversy in the Twenty-First Century*, 21 George Mason L. Rev. 825, 859 (2014)

Patent Litigation Rate Has Remained Flat (At or Below 2%) For Decades

Filed Patent Cases as a Percentage of All U.S. Granted Patents



Sources: U.S. Patent & Trademark Office, U.S. Patent Statistics Chart (1963 to 2015); Administrative Office of U.S. Courts, Civil Statistical Table C-2 (Dec. 31, 2015).

All of this has happened before ...



... and it will all happen again.



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