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The Failure of a Pure Patent Market

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Abstract: This paper presents an analysis of the movement to make patents a new asset class, and its relative failure. Our thesis is that this creation is largely dependent on the construction of a market devoted to transactions in patents, and not just in technology licenses, and on the emergence of new intellectual property intermediaries akin to finance, whose activity must nevertheless be regulated. Our analysis is based on the various patent valuation conventions that underpin its institutionalization and the variety of its uses.

Keywords: patent; asset class; market intermediary; convention; regulation

JEL Classification: O3; K2; L5

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1 Introduction

At the turn of the 2010s in France, the merits of building a market for patents to finance innovative start-ups specializing in research activities (Guellec et al., 2010) generated little debate in the academic world of economists (Bessy, 2022). Yet some had already denounced the financial logic driving the activity of new intermediaries in the intellectual property rights (IPRs) market, particularly in the United States. These market intermediaries seek to broaden the scope of these rights in order to increase their legal security and their contribution to companies’ financial capitalization (Coriat and Orsi, 2002). On the one hand, the belief in strong IPRs has contributed to the phenomenon of financial overvaluation, to the formation, and then to the bursting of a speculative bubble reminiscent of the Internet bubble of

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2000 (Orléan, 2014). On the other hand, this belief has raised the stakes around IPR lawsuits and led to massive investment in legal resources, such as Non-Practicing Entities (hereafter NPEs) that, at their core, do not create or use technologies; instead, these firms build up patent portfolios with the sole aim of monetizing them in the form of licensing and, above all, obtaining damages for their infringement actions (the famous patent trolls).

These major legal maneuvers are carried out against operating companies (both large and small) accused of infringing their patents. As a result, the law has become a factor of uncertainty instead of being a source of security (Appel et al., 2019; Wang, 2010). Finally, the development of NPEs distorts the original purpose of the patent system, which is to encourage R&D investment, dissemination of knowledge, and technology transfer (Lemley, 2007).

Other economists have expressed skepticism about the possibilities of developing a large-scale patent market (Lallement, 2010). These skeptics doubt the singularity of these property titles, the legal uncertainty that affects them, and their potential for technological development (Bessy & Brousseau, 1997). These characteristics make it difficult to standardize methods for estimating the value of a patent market and its “true” prices (Hagiu & Yoffie, 2013). The results of foreign experiments are not very encouraging, particularly in the USA and Germany, where attempts to organize auctions have not achieved the expected results (Jarosz et al., 2010). At the same time, however, patent brokers draw on their experience of transactions and their detailed knowledge of patent prices in equivalent technological fields to increase their intermediation margins. They can also benefit from bringing together partners from different technological fields who do not anticipate the potential value of a possible exchange (Benassi & Di Minim, 2009).

Ten years on, patent markets are still in an embryonic state and are hardly transparent. Over-the-counter transactions dominate so much that we can speak of a failure to create a new “asset class” in the sense of a lack of development of a (secondary) marketplace promoting transparency in IPR exchanges, the existence of pricing mechanisms and greater transaction efficiency (McClure, 2015). Since the “patent market” boom of the 2000s, hope has largely faded. An entire literature heralding the profit opportunities for patent brokers and NPEs had developed (Alfonso et al., 2007; Benassi & Di Minim, 2009). However, expectations of growth have not been verified, calling into question the collective belief that patents are easily capitalized, liquid assets capable of attracting investors to intermediation activities in IPR markets.

Venture capitalists remain undeterred from investing in biotech and IT start-ups and MNE financial holding companies use these intangible assets in contracts between subsidiaries and in their external growth operations. Meanwhile, investors also use them as leverage in LBO transactions. We can advance the hypothesis that,
faced with the difficulties of measuring the potential value of intellectual assets, patents (or any other IPR) have been set up as a proxy for valuing the intellectual capital of companies, and in particular the skills of their employees. Indeed, in the case of start-ups (especially in the semiconductor industry), it constitutes a signal of credibility and quality to venture capitalists when their founders have no entrepreneurial experience (Hsu & Zeidonis, 2013).

In this paper, we look back at this movement to create a new asset class and its relative failure. The thesis we defend is that this creation is largely dependent on the construction of a market devoted to transactions on patents (assignments), and not just on technology licenses, and on the emergence of new intellectual property intermediaries close to finance, whose activity must nevertheless be regulated. We begin by presenting the various conventions for valorizing patents that underpin their institutionalization and the variety of uses they have been put to over the course of history.

This type of problematic questions the idea of “market for patents”, which has become dominant since the 2010s, replacing the notion of “market for patented technologies” or “market for technology”. An author such as Benassi and Martin-Sanchez (2022) uses this notion, whereas he also used that of “market for technology” more than a dozen years earlier, to account for the activity of Silicon Valley patent brokers (Benassi & Di Minim, 2009). By using the term “market for patents”, the author aims to highlight the development of patent transactions (particularly title transfers), due in particular to the specialization of companies in R&D, via specialized intermediaries that emerged in the USA from the 1980s onwards (Rosenberg, 1990).

These patent intermediaries are in the process of re-emerging, following the first phase in which they appeared in the mid-19th century, when inventors were separated from the owners of industrial property titles. This concomitance between the growth in transactions involving patents and the development of patent agents at the time has been particularly highlighted in the United States by historians Lamoreaux and Sokoloff (2002), who use the term “market for technology” in the title of their article. This market would then have been dormant for over a century, due to the integration of R&D in large companies.

However, for Benassi and Martin-Sanchez (2022), what has changed is that the contemporary patent rush has been accompanied by new opportunities for the development of “patent intermediaries”, whose business models go well beyond the activity of matchmaker between sellers and buyers. They assume multiple functions within increasingly diversified firms and, in the case of NPEs, act as marketmaker by aggregating patent portfolios. The result is new uses for patents, linked to financial activities which, as we shall see, distance them from their initial function of encouraging and disseminating innovation. The patent becomes an asset on which
one can speculate on a market, the paradigmatic case being the organization of public auctions preserving the anonymity of transactions (Cristina et al., 2014).

2 The Plurality of Patent Valorization Conventions

The financialization of IPRs, and specifically patents, that we are seeing today at the global level, is linked to the multiplication of their collectively recognized uses over the course of history. The dynamic is of the same nature as that which leads a currency to become a liquid asset, from the moment it simultaneously fulfills different functions based on a long chain of institutions and conventions (Callon, 2017). This is an important contribution to economic history, which is interested in the transformation of goods into assets that fuels speculation processes. But, more specifically, this historical analysis shows how the institution of the patent has evolved according to the different conventions of valuation and appropriation of IPRs, each referring to a vision of innovation and the organization of work, as well as a symbolic representation of the patent.

These conventions can also be distinguished according to the nature of the main players involved in patent development. Our main hypothesis is that the actors involved in filing or claiming rights, in the issuance of titles, and in their various uses, especially industrial exploitation or various transactions (assignment, sale or licensing), seek to coordinate their action according to a certain legitimate use of IPRs. The notion of “valorization convention” is introduced to highlight the coordination and the reduction of uncertainty on the behavior of all practitioners during the different phases of their activity (see Table 1).

Schematically, from the eighteenth century onwards, a first convention for patent use was based on the privileged status of the inventor, considered as the exploiter of his invention whose industrial value is acknowledged and protected from imitation of competitors for a limited period. Moreover, once expired, patents contribute to the constitution of a public domain of technical knowledge assuming a good quality of description of patents particularly useful for industrial development (Steen, 2001). The first patent agents, in collaboration with inventors on the one hand, and “examiners” on the other, were to play a key role in the birth of languages of description, conventions for interpreting the legal rules of patentability in each industry, and also benchmarks for anticipating market development and counterfeiting, testifying to the usefulness of the invention.

Then, from the middle of the nineteenth century, with the separation of the inventor and the applicant, the shared representation of the patent as a source of market power for companies developed. The patent then gave manufacturers a competitive advantage over his potential competitors and provided a substantial a
### Table 1: Conventions for patent use.

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<th>Signal and exchange currency</th>
<th>Financialization</th>
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</thead>
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<tr>
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</tr>
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<td></td>
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<td>Licensing policies, assignment of secondary patents</td>
<td>Sending a signal to competitors</td>
<td>Capitalization and speculation</td>
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<td></td>
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<td>Exchange currency</td>
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<tr>
<td>Functions of the patent attorney</td>
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<td>Licensing policies, help with technical co-operation (due diligence)</td>
<td>Positioning a business on the market</td>
<td>Initial public offerings for start-ups</td>
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<td></td>
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<td>Price-setting mechanisms</td>
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<td>Value</td>
</tr>
</tbody>
</table>
source of income through carefully licensing policies, which encourage technology transfers (Bessy & Brousseau, 1998). A defensive approach, emphasizing protection, gave way to a much more offensive economic strategy, directed especially at the penetration of national and later international markets (Caves et al., 1983). Through their networks of professional contacts (Lamoreaux & Sokoloff, 2002), patent agents bring together “licensors” and “licensees” (as well as patent buyers and sellers). Thanks to their expertise, they are involved in defining license pricing conventions, which vary from sector to sector and contribute to the construction of large-scale markets for patented technologies (Bessy et al., 2008).

During the twentieth century, the patent drew attention because it became a currency in the industrial negotiation process (patent pools, consortia, alliances). In particular, the creation of patent pools focused on defining technical standards and based on cross-licensing between pool participants and a standard licensing agreement for manufacturers outside the pool (Merges, 1996). According to this convention for IPRs' valorization, patents are a means of strategically positioning a company on the market. The patent's uses thus transcend industrial exploitation of the inventions that they protect. They are also used as information signals to attract financiers or to guide the actions of potential competitors, either to dissuade them from entering the technological field, or to be able to negotiate with them in the event of disputes.

In the contemporary period and in connection with the financialization of the economy and the strengthening of IPRs, the widespread attraction of patents participates to the valuation of the firms that hold them, contributing to their financial capitalization and to the listing of the youngest companies on the stock exchange. This goes hand in hand with the general trend towards the development of intangible assets and the introduction of accounting and financial standards for their valuation (Chiapello, 2015), particularly when new companies are floated on the stock market. The example of biotech start-ups provides a good illustration of this, with patents constituting pledges of their potential future revenues (Malki, 1997). Financial valuation is based on the optimal construction of patent portfolios to increase the negotiating power of companies with their competitors. This portfolio construction presupposes the existence of a market for patents that is sufficiently fluid to allow

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1 Patent pools have responded to the multiplication of rights holders on blocks of the same technology, with users having to pay chain royalties to the various holders. With a patent pool, they buy a global license at a reduced cost when the patents are complementary.

2 Hsu and Zeidonis (2013) argue that patents can be used as quality signals to “venture capitalists”, based on a sample of funding activities of 370 semiconductor start-ups. More specifically, they show that this signaling effect works even if patents do not prevent counterfeiting on the product market, and vice versa. The two effects can be cumulative.

3 As illustrated very early by biotech start-ups (Malki, 1997).
exchanges to take place with the help of intermediaries specialized in the valuation and securing of titles. The market in turn fuels their monetization of patents by estimating their true value.

In Europe, in the face of insufficient transactions and the existence of many ‘sleeping patents’, proponents of patent markets are campaigning to increase their legal value by strengthening their examination procedure within patent offices, and by creating a jurisdiction specialized in patent litigation (Guélec et al., 2010). Through the creation of this unified jurisdiction, which has yet to see the light of day, the European Union is seeking to produce a new patent law in order to pursue the path initiated by the 1973 Munich Convention and build transnational standards regulating the conditions of patentability through to litigation (Lazega, 2016). While the aim is to develop European trade, in particular exchanges linked to patents, it is also important to compete with US law in this area and attract foreign investors, particularly to finance start-up innovation.

3 Conditions for the Emergence of a Patent Market

However, the concrete conditions for the emergence of a patent market, going beyond a market for the licensing of patented technologies, are highly restrictive. Although it may differ from a stock exchange, the construction of such a market requires control and regulation of the intermediaries involved (Wang, 2010). Furthermore, Coriat and Orsi (2002) have shown how, in the United States, parallel and complementary developments in patent law and financial regulation have opened up new possibilities for actors involved in innovation processes. On the IPR side, this ranges from the Bayh-Dole Act of 1980 (allowing academics to patent the results of their research) to all the drifts of the patent system enforcing IPRs and

4 See Alfonso et al. (2007). These recommendations relied on the idea that there are “sleeping” patents that are neither directly exploited internally, nor valued in the form of licensing agreements. They were based on the results of the PatVal survey conducted between 2003 and 2004 among companies located in six European countries, including France and Germany (Alfonso et al., 2007). This survey was explicitly designed to identify these “pools of value to be activated (in billions of euros).” The results showed that sleeping patents constitute 20% of the patents of large companies (compared to 10% for SMEs and 30% for public organizations). A large part of these patents would be of great value, but their holders could not manage to license them under good conditions.

5 This jurisdiction was set up to rule on the infringement and validity of European patents under the February 19, 2013 agreement on a unified patent jurisdiction (see OJ European Patent Office 2013, 187). As this agreement has not yet been ratified by all EU member states, this jurisdiction is not yet in operation.
extending the domain of patentability. On the financial side, it is a new regulation within the framework of the NASDAQ allowing the introduction on the market of non-profitable firms whose assets consist mainly of IPRs.

In addition to institutional factors, it is primarily the offensive strategies of companies that must be taken into account, as in the case of Silicon Valley’s innovation dynamic. Indeed, Monk (2009) shows that it was high-tech companies such as IBM and Texas Instruments that first became aware of the profits to be made by systematically granting licenses, and then selling off patents that did not generate royalties or offer any particular bargaining power with competitors. On the other hand, some companies have sought to purchase patents in order to negotiate with their competitors in case of litigations, and avoid the use of very expensive lawsuits.

Secondly, the development of this market is constrained by the emergence of new intermediaries such as brokers specialized in the sale of IPRs, patent aggregators (NPEs), as well as specialists in IPR securitization and the creation of IPR funds who provide financial advice and develop valuation methods. All these intermediaries anticipate new sources of profit and design business models through a relatively spontaneous collective learning process. They combine a range of technical, legal and financial skills that are rarely found together, gathering ex-lawyers, ex-engineers and ex-financiers.

Based on a qualitative analysis of patent brokers, Benassi and Di Minim (2009) have shown that these market intermediaries not only bring exchange partners together, but also contribute to complex transactions by engaging in a particularly risky entrepreneurial activity. Brokers, for their part, have encountered difficulties very early on in developing the patent market on a large scale, as have the professionals of patent pools and standard-setting organizations. Online IPR sales platforms, such as Tynax and yet2.com, have failed to attract buyers and sellers en masse. As Hagiu and Yoffie (2013) note, the sensitivity of patent information and the need to build trust make potential buyers and sellers reluctant to reveal enough details to negotiate a patent online. Moreover, bilateral transactions, such as those secured by patent brokers, can only be carried out on a small scale, and the confidentiality of information on sale prices does not lead to transparency in the market and to its liquidity.

Very early on, the classical literature on licensing agreements insisted on the negotiation obstacles raised by such agreements and thus on the importance of

6 These specialists come from investment banks, venture capital firms, law firms, tax firms and IP consultants.
8 Of the 14 companies interviewed by these authors, more than half are involved in licensing, two in assisting patent buyers and sellers, three in consulting and one in aggregating patent portfolios.
transaction costs (Caves et al., 1983). Moreover, the right to use the patent is not sufficient to start industrial exploitation. The latter implies the transfer of other resources (industrial and commercial data, prototypes, training of the licensee’s personnel and consulting services). The transactions targeted by these new intermediaries are mainly taking place in sectors where cross-licensing practices without any other transfer of resources are the norm, such as consumer electronics, computers, and telecommunications (Anand & Khanna, 2000; Bessy, 2006).

4 The Development of Patent Aggregators

Faced with this lack of market scope, players have emerged who are more focused on IPR trading, i.e. “marketmakers”, whereas patent brokers are more like “matchmakers”. NPEs’ business model is based on the aggregation of patent portfolios, which they seek to resell, license or extract damages from in the event of infringement proceedings.

In addition to the rise of NICTs making these entities more visible and accessible from their websites, Hagiu and Yoffie (2013) note that the value of patents and their attractiveness have increased in parallel with the profits derived from the activities of NPEs, following a process of self-reinforcement. The software, semiconductor, and cell phone industries have designed complex products that allow for both patenting with particularly blurred boundaries and the distribution of patents among a large number of firms (Anand & Khanna, 2000). This sector’s fragmentation of activities has been conducive to the intervention of NPEs by multiplying their possibility of “arbitration” (others see it as illicit speculation) and of extracting payment following infringement lawsuits that are favorable to them (Bessen & Meurer, 2012). These opportunities for judicial profit, supported by teams of patent lawyers experienced in this type of exercise, attracted investment funds looking for diversification of their assets and particularly high rates of return.

Based on the American case, an author such as Allen Wang (2010) distinguishes between “defensive patent aggregators,” who license their patent portfolios in complete security to subscribers, and “offensive patent aggregators,” who also seek to provoke infringement situations in order to make money, like the famous

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9 For a survey of the literature on licensing in the 1970s–1990s, see Bessy and Brousseau (1998). We are struck by the fact that the literature on “patent markets” from the 2000s onwards largely ignores its classics. This is obviously due to the explosion of the literature, but also to its increasing specialization, the speed of publication and, no doubt, the absence of any historical perspective on the phenomena studied.

10 As Yavas (1992), who was at the origin of this distinction, intermediaries can use the information gathered about the matches they make to directly buy and sell goods (assets).
It is in fact to counteract this strategic use of the patent system that the first ones appeared, thus increasing the potential of the intellectual property market. These Non-Practicing Entities are similar to the intermediary organizations that collectively manage patent licenses, since they deal with the use authorization, control use of the license, the collection of royalties, and the settlement of disputes. The difference lies in the fact that they are real companies driven by a profit logic and not professional associations based on the pooling of resources, as are societies of authors.

These profit opportunities based on the aggregation of patents and asymmetries of legal resources then attracted investment funds looking to diversify their assets and achieve particularly high rates of return. With this unprecedented alliance between law and finance, patent trolls contributed to the craze surrounding these property titles held by companies in the NICT sector during the 2000s, following the bursting of the “internet bubble”. This bursting enabled NPEs to acquire the patents of failing companies at low prices. By systematically seeking out litigation with companies that do not always have the legal means to defend themselves, as in the case of SMEs, but not only, their legal strategy, based on teams of experimented patent lawyers, has led to increased legal uncertainty and limited the development possibilities of innovative companies (Appel et al., 2019).

For their part, patent auctions organized in the 2000s in compliance with the rules of informational procedure and anonymity have had mixed results, with only a small subset of patents finding buyers (Jarosz et al., 2010). Data on the nature of auction participants show that NPEs are the main buyers at auctions, accounting for

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11 See Wang, 2010. The legal maneuvers of patent trolls are often carried out against exploiting companies and start-ups that do not have the means to defend themselves against particularly aggressive repeat players accusing them of infringing their patents. Panicked by the risk of having their production activity banned, small companies prefer to settle rather than enter the legal arena. In contrast to this demonization, some authors show that they can play a positive role by allowing research-based SMEs to sell their patents. Geradin et al. (2012) offer a counterpoint to the negative view attached to NPEs by showing how they can play a pro-competitive role in an industry. See also Pénin (2012), Hagiu and Yoffie (2013). An experimental study shows that non-practicing entities can be considered as financial intermediaries for two specific type of patent holders constrained by the costs of litigation: inventors (rather than entrepreneurs) and individuals who are relatively more sensitive to financial losses (Haber and Werfel, 2016). More recently, see Benassi and Martin-Sanchez (2022).

12 See the work on collective management of IPRs by Brousseau and Bessy (2006).

13 See B. Kahin, « The patent bubble ... still growing », Huffington Post, Sept. 26, 2008. This journalist evokes “a bubble of investment that is far removed from the common sense underpinnings the patent system, using Intellectual Ventures as example. This new firm founded in 2000 by a former Microsoft employee “has reportedly amassed $5 billion in capital and a portfolio of over 20,000 acquired patents — and it is looking for more. From the perspective of the tech sector, Intellectual Ventures combines two questionable business models, the patent troll and the pyramid scheme, in a form that evokes Wall St.’s cleverness in designing glitzy vehicles for esoteric assets”.


two-thirds of purchases, with the other third represented by companies, while the latter are the main sellers (Cristina et al., 2014). Companies like Ocean Tomo relaunched auctions in 2015 using a digital platform and sophisticated bidding models, without really improving their revenues. Several explanatory factors are put forward: the marketing of “poor quality” patents, the difficulties encountered by buyers in assessing the real value of bids, as well as the lack of time, as most auctions only last a few weeks.

In the absence of efficient price discovery mechanisms, such as online title sales platforms or auction organizations, litigation remains the preferred price discovery mechanism. Far from corresponding to an efficient price formation process, the value of patents is thus indirectly set by the courts in the American configuration, on a case-by-case basis during infringement trials, without any obvious link to the quality of the inventions protected by these titles.

Over the past decade, there has been a relative stagnation in the patent market (excluding licenses), including in the USA. This slowdown is due to an institutional environment that is less favorable to NPEs. On the one hand, since the end of the 2000s, their chances of winning lawsuits against exploitative and defaulting companies have diminished (Allison et al., 2017). This would stem from the fact that the US patent court would be relatively less inclined to defend rights holders than it had been since its creation in 1982, following rulings by the US Supreme Court to limit the scope of titles, if not to cancel them as in the medical field. Thus, the patents held by US firm Myriad Genetic were annulled by the Supreme Court. While this decision calls into question the patentability of the human genome, it also denounces the firm’s monopoly on genetic tests for breast cancer (Cassier, 2018). On the other hand, and related to the previous factor, patent trolls are reportedly much less in vogue, with US legislation seeking to limit their activity, either at federal level, via notably the “Leahy-Smith America Invents Act” of 2011, or at the level of certain US states by reducing the ability of NPEs to address bad-faith infringement charges to companies (Appel et al., 2019). On the other hand, American university charters have condemned their activity, even though some of them sell patents to them. This institutional limitation would have led these new patent intermediaries to move to the European market (Benassi & Martin-Sachez, 2022).

14 The company provides financial advice and investment services in IPR. Between 2006 and 2009, it organized a dozen auctions in the US and Europe.
15 For Benassi and Martin-Sachez (2022), at global level, there is no sufficiently robust empirical data to suggest that patent trading has increased.
16 On June 13, 2013, in Association for molecular pathology et al. v. Myriad genetics, inc. the Supreme Court ruled in favor of the ACLU, and in a unanimous decision concluded that certain Myriad Genetics patents relating to the isolation of naturally produced genes were invalid.
5 Conclusions

We have shown not only the plurality of the conventions for patent valorization but also their articulation over the course of history which finally led to the expansion of the patent saga in which lawyers and IPCs played a predominant role. In recent times, new profit opportunities have emerged leading to more strategic uses of patents and their systematic capitalization, as illustrated by the growth of NPEs.

But this financialization has not led to the construction of a patent market, which today exists only in embryonic form, while the market for licensing patented technologies is relatively more developed. As Benassi and Martin-Sanchez (2022) remind us, the patent market is largely imperfect and inefficient, due to the small number of traders, limited information, unknown price and uncertainty of value, as well as high transaction costs. Furthermore, patent or license auctions have not achieved the results expected, even though digital platforms and AI techniques are making progress in the design of these secondary markets. This can be seen as the failure of contemporary finance to turn IPRs into a new class of liquid assets. On the other hand, these property rights are intangible assets on which investors easily speculate, being informed of a certain predictability of returns. An author like McClure (2015) nevertheless puts forward the idea that the speculative activities of NPEs would constitute the beginnings of a pure patent market. However, the latter could remain limited and enable certain players to reap substantial profits by playing on its lack of transparency (Hautcoeur & Riva, 2013).

The institutional environment for NPEs is no longer as favorable as it once was, since the American public authorities have gradually come to realize that their activities are not always in line with the objectives of the patent system. Generally speaking, NPEs pursue private goals that do not contribute to the collective interest of advancing and disseminating knowledge. While they contribute to the fluidity of the patent market, patent trolls are at odds with the patent system’s objective of encouraging innovation. After all, the legal uncertainty that they generate can destabilize firms accused of infringement in bad faith. Econometric studies show that the adoption of “anti-troll” laws by certain US states has a positive impact on the growth of start-ups and their propensity to recruit new employees and to file patents, particularly in NICTs, as well as raising new venture capital funds (Appel et al., 2019).

The lively debates surrounding patent trolls should make it possible to reflect on the consequences of a European policy aimed at tightening IPR policy along the lines of the North American model, by strengthening patent examination procedures and, above all, creating a specialized jurisdiction, in order to secure the market for these property titles. Faced with the growth of patent trolls in Europe and France, numerous complaints denouncing the development of these new
intermediaries have been addressed by firms to European authorities (Benassi & Martin-Sanchez, 2022).

In general, this European policy risks making the use of patents more costly, thus penalizing SMEs and raising the question of an exceptional court’s legitimacy in relation to sectoral arbitration procedures. These points of reform, addressed in France at the time of the drafting of the 2019 Pacte law, have divided the profession of industrial property attorneys, some of whom, albeit a minority, opposed the strengthening of control of the from the Patent Office (Pierre, 2019). But this minority was not successful. The interactions of these experts with finance professionals, to optimize patent portfolios, led them to work to the limit of their ethical rules; which raises the question of the regulation of the activities of lawyers and patent attorneys.

Finally, it is important to emphasize that the creeping financialization of patents given rise to new forms of expropriation of the wealth produced, in particular to the detriment of the employees (or small independents) of innovation whose contributions are made invisible (Bessy, 2022). The valorization conventions carried by the new IPR intermediaries have transformed the agreements for allocating the fruits of innovation further upstream by reducing the co-ownership of intellectual assets. The development of the start-up model based on the capitalization of patents provides a good illustration of this, leading to a concentration of power within companies to the benefit of their founders-creators and to the detriment of innovation workers.

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18 On this point, see the 2019 report of the European Court of Auditors.


