

Patent privateering with endogenous litigation: evidence from Europe

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We study theoretically and empirically the conditions under which patent privateering occurs when the inventor wants to monetize her patent. Patent privateering involves the delegation by an inventor of the legal ownership of her patent to a patent privateer, who then licenses it in a Nash bargaining under endogenous litigation. We model and compare two legal frameworks in which the litigation is handled: a Fee-based regime and an Injunctive regime. Patent privateering is more likely to occur on low quality technologies, for which the validity of the patent is more likely to be challenged in court. We further show that when the opportunity cost of being countersued is high enough, the patent privateer negotiates a greater license fee than the innovator and patent privateering is more likely to occur. The predictions of the model are tested on infringement actions filed in Europe in 2010-2020. Specific care is taken to identify patent privateering cases.