




Media Portrayals of the United States Patent System

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Project Inspirations

- Increased prevalence, prominence of media coverage
 - e.g.,
 - *"Patent Lunacy"*
 - *"Patent Protection a Threat to Innovation"*
 - *"U.S. Patent System Has Run Aground"*
 - *"Supreme Court Tackles US Patent Pandemic"*
 - *"Court Eases Patent 'Doomsday'"*
- Commentator, practitioner anecdotes
- Institute for the Study of the Judiciary, Politics, and the Media at Syracuse University



Study Goals/Questions

- What are members of the public (and policy-makers) learning about the U.S. patent system via the media?
- Do the media portray the patent system in need of reform? What reform(s)?
- Which issues and disputes receive the most media attention?
- Does/how does coverage of the patent system vary from newspaper to newspaper?



Study Design

- Content analysis methodology
- Major newspaper news and editorial items:
 - *New York Times*
 - *Washington Post*
 - *Wall Street Journal*
 - *Los Angeles Times*
 - *Financial Times*



Study Design

- Study period: 1/1/2005 – 12/31/2008
 - 8 Supreme Court decisions in patent cases (+ 3-Justice dissent from post-argument dismissal of cert. in a 9th case, and another case now pending):
 - Experimental use as infringement exception
 - Patentable subject matter
 - Availability of injunctive relief
 - Standing to challenge a patent
 - Extraterritorial reach
 - Obviousness standard



Study Design

- Study period: 1/1/2005 – 12/31/2008
 - Various comprehensive House and Senate patent system overhaul bills proposed, debated, and/or amended (one passed 9/7/07)
 - First to file
 - Venue limitations
 - Limitation on damages
 - Post-grant opposition



Study Design

- Sample Definition:
 - News and editorial items discussing patents in the hands of patent policy-making institutions:
 - Congress
 - Supreme Court
 - Federal Circuit
 - USPTO



Study Design

- 793 item-dataset:
 - *Wall Street Journal*: 268
 - *New York Times*: 180
 - *Washington Post*: 146
 - *Los Angeles Times*: 121
 - *Financial Times*: 78
- Breakdown:
 - 81% News
 - 18% Editorial (all types)
 - 1% "Other"



Coding

- Bibliographic information (including author, date, publication, news vs. editorial)
- Case/dispute coverage
- Two coders:
 - Headline/body “portrayals” (“would it be likely to make an average person view the patent system more favorably, less favorably, or neither?”)
 - Positive and negative “messages”
 - “Speaker” of each positive and negative message

*With gratitude to Blaine T. Bettinger, Ph.D.,
my research assistant and co-author



Reliability Measures

- “Bottom-up” development and refinement of list of positive and negative messages
- Analysis based on 100% agreement on subjective aspects
 - Where no consensus, headlines and bodies counted as “neutral”



Representative "Positive Messages"

- The patent system is important for U.S. economic vitality.
- The patent system is necessary to spur innovation.
- The patent system is not in need of significant reform.
- The patent system benefits consumers.
- The patent system appropriately balances the interests of patent owners and users.
- Institutional actors are taking steps to improve the patent system.
- The Federal Circuit has brought needed stability, consistency to patent law.
- There is not too much patent litigation.



For Example (Positive Messages):

- "The patent system is necessary to spur innovation."
 - *"By granting innovators an exclusive right to their writings and discoveries, Congress provided a strong incentive to engage in innovation. As Abraham Lincoln put it, the patent system added 'the fuel of interest to the fire of genius.'"*
Hal R. Varian, Op-Ed., *Why the Hoodie Your Son Wears Isn't Trademarked*, N.Y. TIMES, Apr. 5, 2007, at C3
- "Institutional actors are taking steps to improve the patent system."
 - *"The US Supreme Court yesterday attacked America's glut of poor-quality patents by writing new rules that would make it harder to obtain and defend patents."*
Patti Waldmeir, *Supreme Court Sets Higher Threshold for Patents*, FIN. TIMES (LONDON), May 1, 2007, at 10



Representative “Negative Messages”

- The patent system needs reform.
- Poor patent quality.
- The definition of what can be patented is too broad.
- The USPTO is overtaxed/underfunded.
- The patent system is a source of unworkable complexity/uncertainty.
- The patent system is skewed in favor of patent owners.
- The patent system permits extortion/litigation abuse.
- A patent on single invention can result in an out-of-proportion injunction/damage award.
- The patent system stifles innovation.
- Patents shouldn't be enforceable by those who don't practice the invention.
- The patent system lags behind science and technology development.



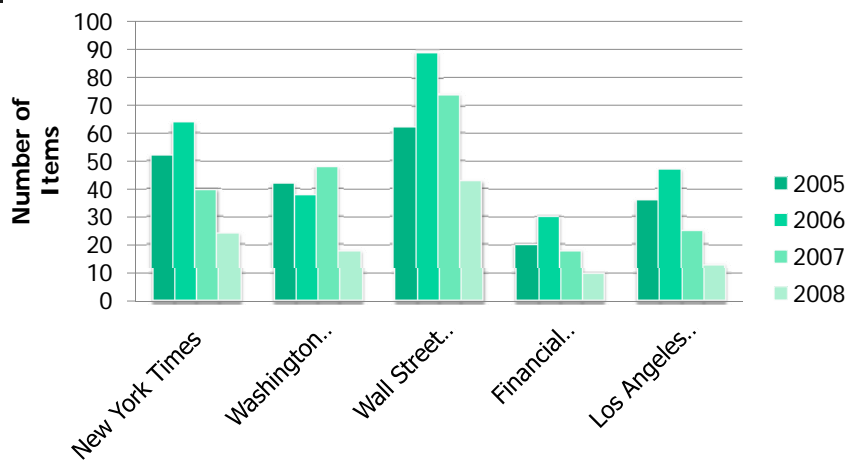
For Example (Negative Messages):

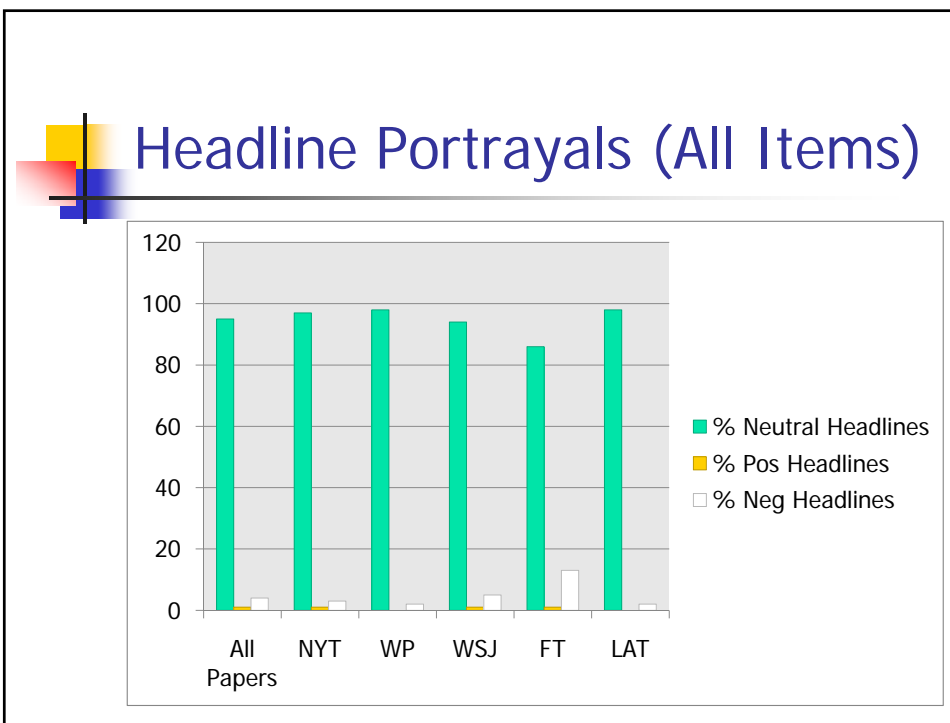
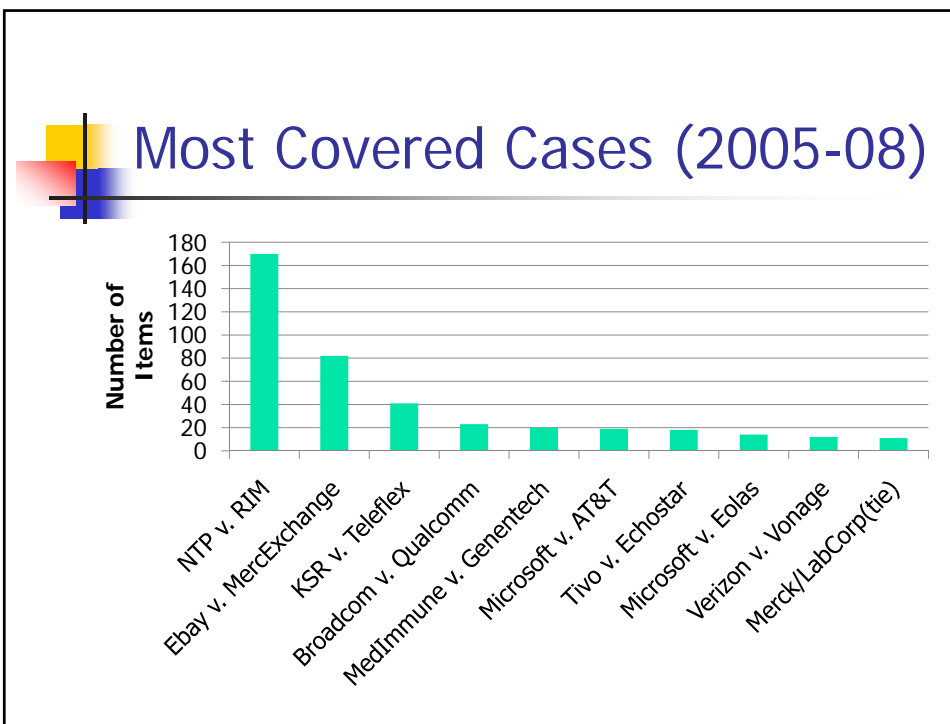
- “The USPTO is overtaxed/underfunded.”
 - *“Patent examiners are overwhelmed, and are waving on patent applications – especially in technology areas – that would be called head-scratching if one were being polite.”*
Jonathan Krim, *Evaluating a Patent System Gone Awry*, WASH. POST, May 5, 2005, at E1
- “Poor patent quality.”
 - *“Everybody knows there are a lot of weak patents out there,” she said.*
Jess Bravin & Marilyn Chase, *Politics & Economics: High Court Eases Way for Patent Challenges*, WALL ST. J., Jan. 10, 2007, at A8

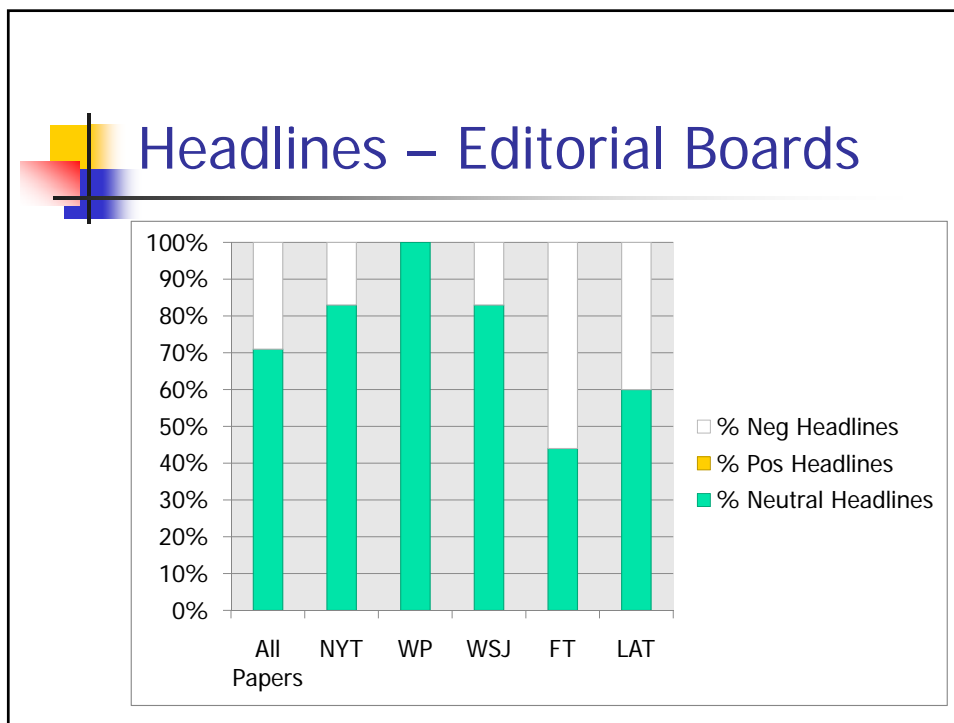
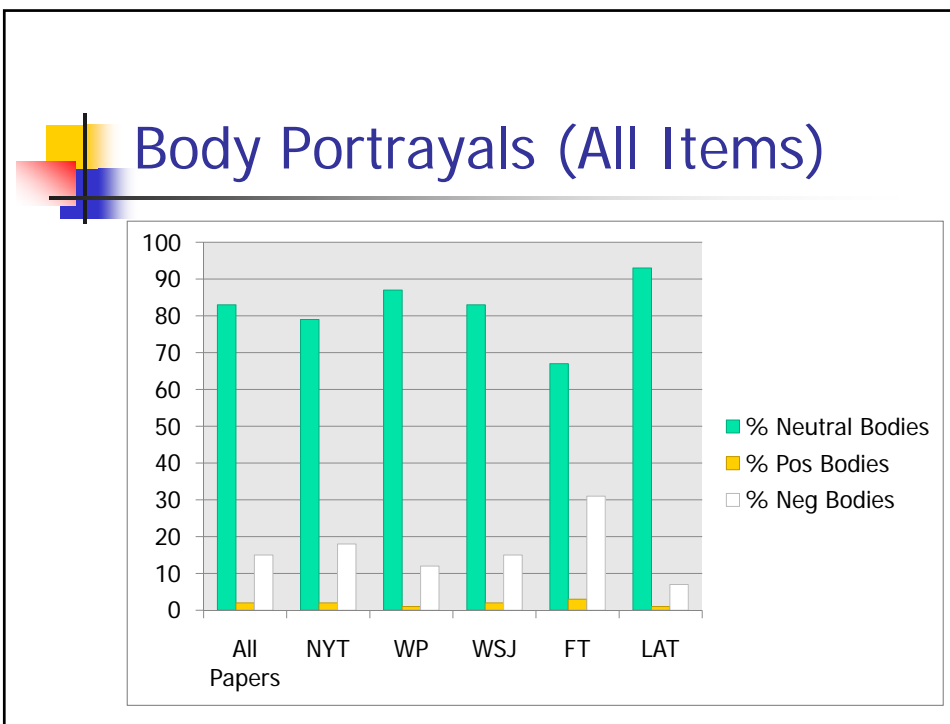
Preliminary Results

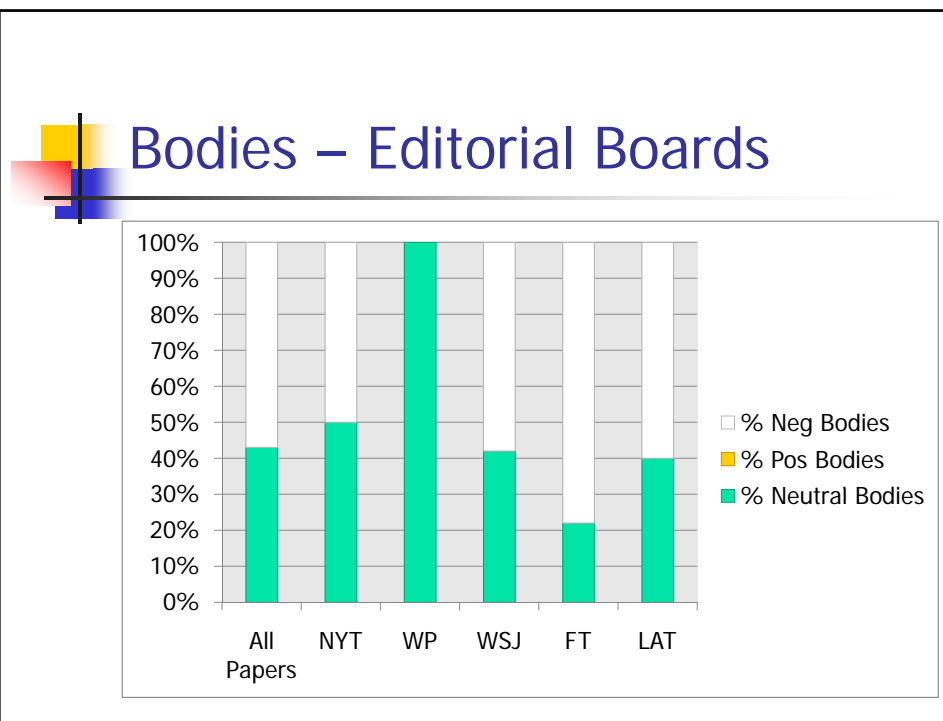
- Inter-coder agreement:
 - Headline portrayals: 94%
 - Body portrayals: 87%

Number of Items Per Newspaper Per Year










- ## Positive and Negative “Messages”
- Items containing a positive and/or negative message:
 - News: 18%
 - Editorials (all categories): 58%



Results: Positive Messages (68 (9% of the) Items)

<i>Institutional actors are taking steps to improve the patent system.</i>	40%
<i>The patent system is necessary to spur innovation.</i>	21%
<i>The patent system is important for U.S. economic vitality.</i>	17%
<i>The patent system is not in need of significant reform.</i>	13%



Results: Positive Messages

- Most prevalent positive message:
 - “Institutions are taking steps to improve the system”
 - Inherently says “the system needs fixing”
 - First or tied for first in each newspaper
- Roughly the same emphasis (quantitatively speaking) on these top four messages, except in WSJ, where you were at least four times more likely to read “not in need of reform” as compared with other papers

Results: Positive Messages from Editorial Boards

- Only three positive messages:
 - *"Institutions are taking steps to improve the system"* (71%)
 - *"The patent system is necessary to spur innovation"* (21%)
 - *"The patent system is important for U.S. economic vitality"* (7%)

Results: Negative Messages (181 (23% of the) Items)

<i>Patents shouldn't be enforceable by those who don't practice the invention.</i>	14%
<i>Poor patent quality.</i>	14%
<i>The patent system stifles innovation.</i>	10%
<i>Patent litigation is too prevalent/costly/slow.</i>	9%
<i>The USPTO is overtaxed/underfunded.</i>	9%
<i>The patent system is broken/needs reform.</i>	8%



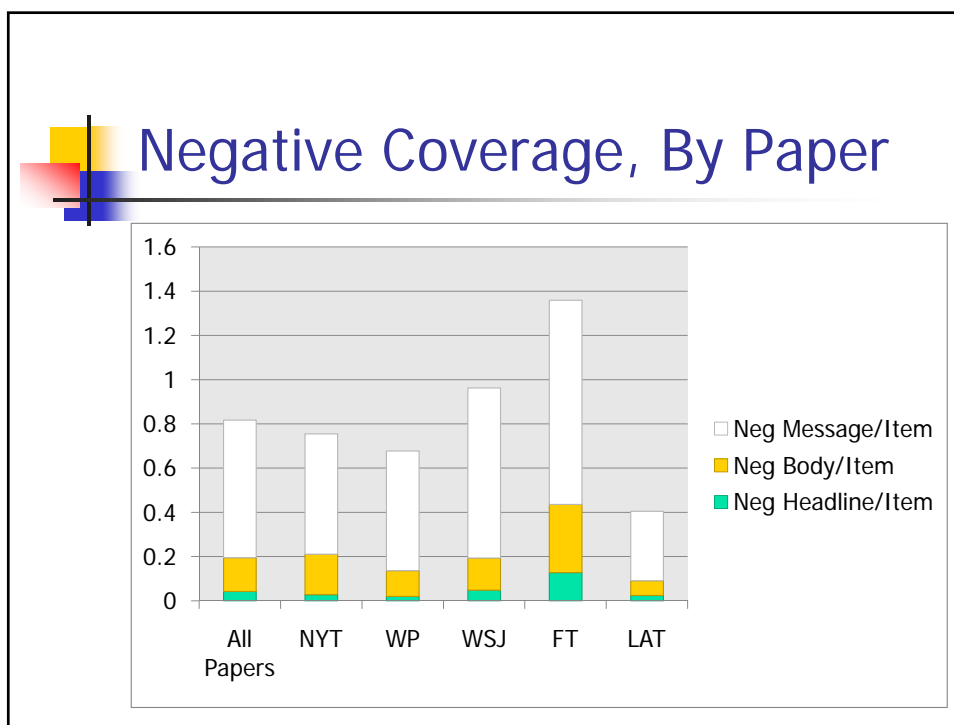
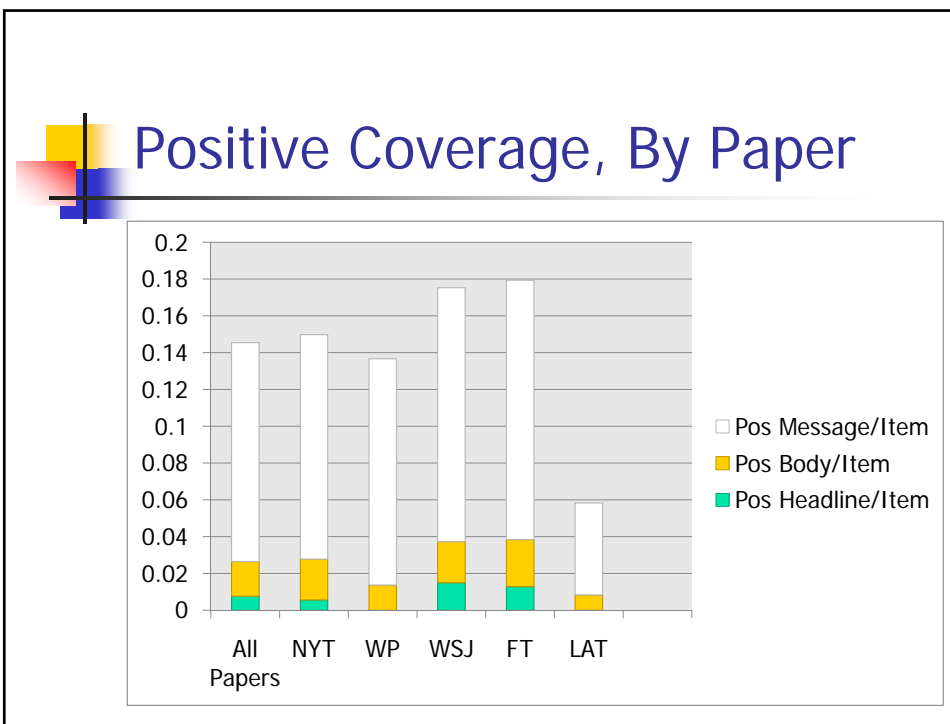
Results: Negative Messages

- “Poor patent quality” and the “non-manufacturing patentee problem” were the two most prevalent negative “messages” (or were tied for most prevalent) in 4 of the 5 newspapers
 - Washington Post: “USPTO as overtaxed” most prevalent



Results: (Top 6) Negative Messages from Editorial Boards

Negative Message	All Papers	NYT	WP	WSJ	FT	LAT
<i>The patent system is broken/needs reform.</i>	14%	17%	14%	19%	12%	8%
<i>Poor patent quality.</i>	13%	25%	14%	14%	12%	
<i>Patents shouldn't be enforceable by those who don't practice the invention.</i>	10%	8%		5%	20%	8%
<i>The patent system stifles innovation.</i>	8%	8%		19%	4%	
<i>Patent litigation is too prevalent/costly/slow.</i>	6%		29%	10%		8%
<i>The USPTO is overtaxed/underfunded.</i>	6%	8%	14%		4%	15%





Negative and Positive Message "Speakers"

- Message "speakers" coded as identified in news and editorial items
- Unattributed messages in op-eds, columns, and letters to the editor ascribed to each item's (named) author
- Unattributed statements in news and editorial board (and "other editorial items") coded as "spoken" by the (news or editorial) item author



Positive Messages: Top Speakers

1. Editorial author
2. News item author
3. Tie between
 - Nathan Myhrvold, CEO Intellectual Ventures
 - Jon Dudas, (former) USPTO Director
5. Tie among
 - District Judge Richard J. Leon
 - Drug makers/pharmaceutical companies
 - Arlen L. Olsen (attorney)
 - Stephen Milbrath (attorney)
 - Rembrandt IP Management
 - Richard A. Epstein (professor)
 - Harold Wegner (former professor, attorney)
 - Michael Fitzgerald (writer on business, tech., and culture)
 - Gary Griswold, Pres. & Chief IP Counsel 3M, Chair of the Exec. Comm. of the Coalition for 21st Century Patent Reform



Negative Messages: Top Speakers

1. News item author
2. Editorial author
3. "Critics"
4. Bruce Sewell, Intel Corp. general counsel
5. L. Gordon Crovitz (editorialist)
6. "Proponents" / "supporters" of patent reform
7. Michael Crichton (author), and eBay (or "lawyers for eBay") (*tie*)
9. Adam Jaffe & Josh Lerner (economics and business professors, respectively), and James F. McKeown (attorney) (*tie*)



Patent Reform Coalitions

- Two coalitions:
 - Coalition for Patent Fairness
 - 21st Century Patent Coalition
- Media "voice" of patent reform coalitions: tenor, content of messages



Patent Reform Coalitions: Positive Messages

- Very few positive messages attributed to members/ reps of either coalition:
 - Coalition for Patent Fairness: 3 positive messages; all *"Institutional actors are taking steps to improve the patent system"*
 - 21st Century Patent Coalition: 2 positive messages:
 - *"The patent system is necessary to spur innovation"*
 - *"The patent system is important for U.S. economic vitality"*



Patent Reform Coalitions: Negative Messages

- 21st Century Patent Reform Coalition members/ reps "spoke" only 1 (instance of a) negative message:
 - *"Inequitable conduct doctrine is not beneficial"*
- Of top ten most prevalent negative messages (84% of all negative messages), Coalition for Patent Fairness members/ reps "spoke" 10% of them (40 messages)



Patent Reform Coalitions: Negative Messages

- Most prevalent negative messages from Coalition for Patent Fairness members/ reps:
 - *"Patents shouldn't be enforceable by those who don't practice the invention"*
 - *"The patent system stifles innovation"*
 - *"The patent system is broken/needs reform"*



Future Work

- Further analysis of "speaker" and "case coverage" data
- Data analysis re
 - Media reporting of damage awards/settlements
 - News and editorial item authors

