

Event

McGill University's Centre for Intellectual Property Policy (CIPP) funded through PACEOMICS has created a comprehensive and detailed database, comprising all Canadian patent law cases decided between 2000 and 2015. The primary goals of this resource are to allow researchers to test core assumptions regarding the Canadian patent system, and to assist policy-makers in basing their decisions regarding intellectual property (IP) policy on empirical evidence specific to Canada.

Significance

Canada ranks a disappointing 16th in WIPO's latest Global Innovation Index¹. If Canada wants to rise in those rankings, it must stop basing its IP policies on general presumptions about patent law and industrial interests, and on international treaties that often are not aimed specifically at problems that arise in local business and innovation¹. Instead, Canadian policy-makers should use empirical evidence and tools to tailor-make policy decisions². Unfortunately, few such tools exist, and fewer still are specific to the Canadian context. The CIPP patent litigation database addresses this knowledge gap by collating and indexing all patent litigation cases decided in Canada over the last 15 years.

Analysis

The CIPP database includes all infringement, impeachment, and Patented Medicines (Notice Of Compliance) (PM(NOC)) patent cases that dealt with a substantive legal issue, from every level of the Canadian courts between 2000 and 2015 (including the lower court decisions that led to final decisions issued in that period). Because each level of decision on each patent at issue has an individual entry indexed by the patent number in question, single cases contesting multiple patents have several database entries. In total, 483 relevant cases are included in the database. We coded each case to capture key aspects, including outcomes on points of substantive law and biographical information including the patentees, litigators and justices involved, to allow for identification of patterns in judgments. In constructing the database, we took care to avoid both random and systemic errors in our analysis, through the use of standard coding reliability practices. For full details and methodology see: <http://www.cippmcgill.ca/news/2016/07/28/patent-litigation-putting-assumptions-to-the-empirical-test/>

A key advantage of the database is the ability to fact-check claims about patent law and litigation in Canada. A preliminary analysis has already demonstrated that some commonly held assumptions about Canadian patent law are wrong. Analyses undertaken examine the influence of factors like the identity of the patentee or the judge writing the decision on litigation outcomes. Other topics of interest include gender imbalances in the patent bar, and unsubstantiated claims made by various parties to patent litigation. While not always coming to a conclusive answer about such complex questions, the CIPP database offers an empirical window through which to analyze these types of issues more substantively.

Conclusion

Policy-makers are plainly in need of empirical evidence to ground their decisions about Canadian IP policy, and to foster the 'ideas economy' in this country. As such, the CIPP database provides a valuable tool for stakeholders. We will continue to probe this database to offer unique insights and open new research avenues across the patent law and policy field.

1. Dutta S, Lanvin B, Wunsch-Vincent S, eds. World Intellectual Property Organization. (2015). The Global Innovation Index 2015. Available: <https://www.globalinnovationindex.org/userfiles/file/reportpdf/GII-2015-v5.pdf>.
2. Moore AD. (2003). Intellectual property: Theory, privilege, and pragmatism. *Canadian Journal of Law and Jurisprudence*, 16, 191; Vaver D. (2004). Canada's intellectual property framework: A comparative overview. *Intellectual Property Journal*, 17, 125.
3. Bubela T, Gold ER, Morin J-F. (2011). Wicked issues for Canada at the intersection of intellectual property and public health: Mechanisms for policy coherence. *McGill Journal of Law and Health*. 4, 3-39.