

# *The Effect of Judicial Ideology in Intellectual Property Cases*

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There is a rich literature demonstrating the significance of ideology in judicial decision making in both the U.S. Supreme Court and in the Federal Courts of Appeal. At its most basic, the "attitudinal model" of court decision making predicts that conservative judges will vote in favor of conservative outcomes and that liberal judges will vote in favor of liberal outcomes. Against a significant body of evidence that political ideology plays a role in higher court decision making, there is a widely held view amongst those practicing and studying intellectual property that the traditional ideological divide between "liberals" and "conservatives" is of little or no relevance in their specialized field. Those in the IP trenches appear to regard judges as either impartial or indifferent on questions of intellectual property. Those who consider the issue of ideology usually conclude either that the political labels of "liberal" and "conservative" are inapplicable in the context of IP or that to the extent party alignment has any salience, it is in the opposite direction to that which is ordinarily assumed. This Article assesses whether there is relationship between the ideology of Supreme Court justices and their support for Intellectual Property rights. We use various measures of ideology taken from the Political Science literature and to analyze data drawn from intellectual property cases decided in the 1953-2006 terms of the U.S. Supreme Court to determine whether and to what extent right-of-center justices are more likely to support the claims of copyright, patent, trademark and trade secret owners against third parties (and vice-versa for left-of-center justices).