

Intellectual Property at the Firm's Boundary

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The paper examines the role of intellectual property in the context of joint innovation between independent firms. The standard justification for the granting of intellectual property rights is that they provide reward for inventive activity by individuals and firms. Where innovative activity takes place at the boundary of two independent firms, intellectual property protection can stimulate information exchange and open collaboration between the firms if each can be assured that its contribution towards the collaborative effort will be protected from appropriation by the intellectual property regime. Firms, just like individuals, may be fearful of disclosing too much in the course of working with an independent collaborator who could run off and develop an idea on their own or with another firm. If the intellectual property regime can provide assurance against this danger of appropriation, it will also create an enabling environment in which decentralized production and innovation can take place. However, the ultimate conclusion is that even in settings where the aim of collaborating firms is to obtain an invention which is protectable by IP rights, the IP regime does not aid collaborative inventive efforts, because IP rights are conferred *ex post* and because parties would be unlikely to have faith in the mechanisms for independent dispute resolution of the IP regime (patent examiners or courts) to properly sort out their relative contributions towards joint activities *ex post*.

Where the success of an innovation collaboration is *ex ante* far from certain (most are likely to fail), yet where this venture could lead to improvements in intermediate technologies or products that might prove useful or profitable in the future, it is argued that the default rules of the US patenting regime do not provide an ideal response to the allocation problem. In addition, contractual devices observed in such contracts for innovation do not appear to provide an adequate response to aid uninhibited cooperation and information sharing among collaborating partners either. As such, the current intellectual property regime does not encourage seamless cooperation and information exchange between collaborating parties. The patent law of inventorship does not avoid unnecessary disputes among partners to joint innovation, and it may also create additional ones, while at the same time not supplying appropriate mechanisms for *ex post* dispute resolution. This is the case even in settings, such as the pharmaceutical industry, where patents are thought to be an appropriate mechanism for recouping R&D investments and where the risk of standard patent hold up is likely to be fairly low.