

Patent Litigation Waves: 1923–2002

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The U.S. patent system has experienced several large waves of litigation. However, their origins and implications for innovation remain unclear. A particular challenge is the lack of detailed, long-term data.

This paper builds a new database of patent litigation spanning 1923–2002 by using a large language model to digitize decades of Patent Office records and linking them to a patent-level measure of innovation from Kelly et al. (2021) that scores patents based on novelty (over past patents) and influence (on future patents). A unique feature of this data is that it shows the individual patents asserted in litigation (rather than just the total number of suits).

There are two results. First, technological revolutions have played a large role in explaining waves of patent litigation. Top-scoring, revolutionary patents account for a majority of the variation in litigation volume over time. Second, litigation of revolutionary patents in particular is driven by longevity. These patents continue to be heavily litigated even a decade or more after they leave the Patent Office.

These results help to explain why patent “thickets” emerge in particular decades—the accretion of basic patents during major technological waves creates clusters of long-lived rights that cover the next steps in the technology tree. They also suggest that courts should vary the scrutiny given to litigated patents over time.

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