

# Are Universities Patent Trolls?

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## ABSTRACT

Hold-up is a primary component of patent litigation and patent licensing today. Universities are engaged in an unprecedented surge in patenting. At the confluence of these seemingly unrelated developments is a growing frustration on the part of industry with the role of universities as patent owners. Time and again, when I talk to people in a variety of industries, their view is that universities are the new patent trolls.

In this article, I argue that universities should take a broader view of their role in technology transfer. University technology transfer ought to have as its goal maximizing the social impact of technology, not merely maximizing the university's licensing revenue. Sometimes those goals will coincide with the university's short-term financial interests. Sometimes universities will maximize the impact of an invention on society by granting exclusive licenses for substantial revenue to a company that will

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\* © 2008 Mark A. Lemley, William H. Neukom Professor of Law, Stanford Law School; of counsel, Kecker & Van Nest LLP. I am particularly grateful to a large number of people who read this and gave me comments, even though simply asking the question is anathema to many of them. In particular, thanks are due to David Adelman, Ann Arvin, Robert Barr, Linda Chao, Maggie Chon, Michael Cleare, Peter Detkin, Rochelle Dreyfuss, Brett Frischmann, Carl Gulbrandsen, Rose Hagan, Joel Kirschbaum, Kathy Ku, Gary Loeb, Mike Mireles, Lita Nelsen, Alan Paau, Arti Rai, David Simon, and Janna Tom, and to participants in conferences at Washington University School of Law and the Licensing Executives Society/Association of University Technology Managers joint meeting for comments on this topic. Not only don't they necessarily agree with what I've said, in many cases I'm sure they don't. This is an edited transcript of a speech, and reads like it.