FOREWORD

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The Berkeley Technology Law Journal's Annual Review provides a summary of many of the year's most important developments at the intersection of law and technology. Our goal is to provide a valuable resource for students, professors, practitioners, judges, and policymakers. This year, we are excited to publish twelve student Notes and, for the first time since 2020, short summaries of additional recent developments in technology law not covered by our longer format Notes.

The Notes and summaries continue the Annual Review's tradition of covering a wide range of topics. This year, our Notes and summaries cover developments in patent, copyright, trademark, trade secret, antitrust, technology regulation, and healthcare law.

I. PATENT LAW

The first Note provides recommendations to the Federal Trade Commission (FTC), United States Patent and Trademark Office, and the Food and Drug Administration (FDA) for strategically policing patent listings in the FDA's Orange Book, a publication listing all approved drugs in the United States with relevant information, including any patents covering the drugs.[1] The Note covers the overlapping administrative regimes covering patents, medical devices and drugs, and antitrust enforcement. Then, the Note explores current problems with antitrust enforcement of improper Orange Book listings and provides recommendations to relevant agencies.

The second Note discusses the topic of parallel proceedings in front of federal district courts and the Patent Trial and Appeal Board (PTAB), and it explores the quandary of a district court and the PTAB reaching different conclusions about a patent's validity.[2] In *United Therapeutics Corporation v. Liquidia Technologies, Inc.*, the Federal Circuit held that PTAB decisions lack

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1. Monica Jeung, Note, *Antitrust and the Orange Book: An Analysis of Efforts to Reduce Improper Listings*, 40 BERKELEY TECH. L.J. 525 (2025).

2. Jesse Wang, Note, *Collateral Estoppel of PTAB Decisions in the Wake of United Therapeutics Corp. v. Liquidia Tech., Inc.*, 40 BERKELEY TECH. L.J. 573 (2025).

collateral estoppel effect until affirmed on appeal, which led to a scenario in which a company was liable for infringing an invalid patent.[3] The Note proposes several reforms to improve the efficiency of the patent system and prevent further confusing results.

The third Note analyzes the complex interactions between the different mechanisms by which the patent office may lengthen or shorten the standard twenty-year patent term.[4] Specifically, the Note analyzes the interaction between obviousness-type double patenting (ODP), in which a second patent's term in a patent family is shortened to the same term as that of the first patent, and patent term adjustment, in which a patent's term is extended due to delays at the patent office. The Note concludes by suggesting a new framework for ODP analysis.

The fourth patent Note covers recent developments in using extraterritorial conduct to inform patent damages.[5] In *Brumfield v. IBG LLC*, the Federal Circuit found that foreign conduct can be used to increase a reasonable-royalty award, so long as it has the "the needed causal relationship" to making the accused products in the United States.[6] The Note examines various examples of how foreign conduct might be used in damages calculations, but suggests that foreign conduct should only be used as a measure of damages, not a cause of legal injury.[7]

The final patent Note examines new developments in obviousness analysis for design patents.[8] In *LKQ Corporation v. GM Global Technology Operations LLC*, the Federal Circuit determined that design patents should be evaluated for obviousness under the same flexible framework the Supreme Court laid out for utility patents.[9] This Note explores the implications of the Federal Circuit's ruling, examines recent proceedings in front of the PTAB, and proposes additional considerations to prevent functional elements of designs from receiving design patent protection.

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3. United Therapeutics Corp. v. Liquidia Techs., Inc., 74 F.4th 1360, 1363 (Fed. Cir. 2023).

4. Han K. D. Le, Note, *The Interaction of Obviousness-Type Double Patenting and Patent Term Adjustment*, 40 BERKELEY TECH. L.J. 607 (2025).

5. William R. Clark, Note*, Foreign Conduct as a Measure of Patent Damages After Brumfield v. IBG*, 40 BERKELEY TECH. L.J. 657 (2025).

6. Brumfield v. IBG LLC, 97 F.4th 854 (Fed. Cir. 2024).

7. *Id.* at 877.

8. Tyler Kotchman, Note, *Designing Around Obviousness: The Implications of LKQ v. GM Global*, 40 BERKELEY TECH. L.J. 689 (2025).

9. *See* LKQ Corp. v. GM Glob. Tech. Operations LLC, 102 F.4th 1280, 1295 (Fed. Cir. 2024).

II. TECHNOLOGY REGULATION AND INTERNET PLATFORMS

The first Note[10] discusses the timely topic of whether apps offering a blend of technology, content, and services can be considered a product for the purposes of product liability law. In the recent decision *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, the court tried to condense the varying approaches to handling this timely issue by looking at functionality within an app separately rather than analyzing an app as a single entity.[11] This Note argues for extending the *In re Social Media* approach to classify an app as a product based on when the app has a user experience or user interface intended for consumer use.

The second Note[12] examines how courts have typically handled §230 of the Communications Decency Act.[13] Section 230 has long served as a protective law to internet platforms, providing a broad shield from liability for the content posted on these platforms. Courts have trended towards treating platforms, algorithms, and other technologies under § 230 as a monolith. Thus, this Note proposes a new approach that considers the differences within and among platforms and algorithms through a fact-specific, sliding scale approach of these technologies within the § 230 context.

The final Note[14] analyzes the Export Control Reform Act (ECRA)[15] as it applies to artificial intelligence (AI). The Note explains how AI's dual-use nature, benefiting both civilian and military sections, makes export control regulation particularly complex. The Note applies ECRA's three-prong test to argue that some current controls may harm U.S. innovation and market strength, which is even more important with increasing U.S.-China competition. The Note concludes with recommending narrowly tailored, sector-specific controls and urges a balance between national security and global competitiveness.

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10. Karina A. Sanchez, Note, *Are Apps Products?: Consumer Software and Products Liability*, 40 BERKELEY TECH. L.J. 723 (2025).

11. *In re* Soc. Media Adolescent Addiction/Pers. Inj. Prod. Liab. Litig., 702 F. Supp. 3d 809, 849 (N.D. Cal. 2023).

12. Andra Cernavskis, Note, *Immunizing the Algorithm Only as Much as It Needs: Rethinking How Courts Analyze Algorithms Under Section 230*, 40 BERKELEY TECH. L.J. 765 (2025).

13. 47 U.S.C. § 230.

14. Siwen D. Cremean, Note, *Are Export Controls for Artificial Intelligence a Safeguard or a Straitjacket?*, 40 BERKELEY TECH. L.J. 809 (2025).

15. 50 U.S.C. §§ 4801–4852.

III. TRADE SECRET LAW

The first Trade Secret Note examines the extraterritoriality limits of the Defend Trade Secrets Act (DTSA).[16] In *Motorola Solutions, Inc. v. Hytera Communications Corporation Ltd.*, the Seventh Circuit held that the DTSA "does not require a completed act of misappropriation, nor does it impose a specific causation requirement" for extraterritorial liability.[17] The Note argues that courts should interpret the DTSA with a significantly more limited extraterritorial application than the Seventh Circuit's holding in *Hytera*.

The second Note explores the unjust enrichment remedy in trade secret cases.[18] In *Syntel Sterling Best Shores Mauritus Ltd. v. The TriZetto Group, Inc.*, the Second Circuit vacated an approximately $285 million unjust enrichment award, finding that TriZetto was not entitled to unjust enrichment damages because an injunction had already prevented potential future harms to TriZetto.[19] This Note explores the implications of the *Syntel* decision and suggests different damages schemes that will fairly compensate trade secret owners while discouraging would-be trade secret misappropriators.

IV. ANTITRUST AND GOVERNMENT REGULATION

The first Note[20] in this Section explores the regulatory challenges of sponsored genetic testing programs, particularly at the intersection of the FDA's oversight of test safety and the Office of Inspector General (OIG)'s enforcement of the Anti-Kickback Statute.[21] Through case studies like favorable OIG advisory opinions and the *Ultragenyx* settlement,[22] the Note highlights inconsistencies in current enforcement and issues of compliance uncertainty facing pharmaceutical sponsors. The Note ultimately calls for a unified FDA-OIG framework with risk-based guidance to ensure both innovation and regulatory integrity in federal healthcare programs.

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16. Ben Clifner, Note, Hyter-*ritoriality: The Proper Extraterritorial Scope of the Defend Trade Secrets Act*, 40 BERKELEY TECH. L.J 865 (2025).

17. Motorola Sols., Inc. v. Hytera Commc'n Corp. Ltd., 108 F.4th 458 (7th Cir. 2024), *reh'g dismissed*, No. 22-2370, 2024 WL 4416886 (7th Cir. 2024).

18. Duane H. Yoo, Note, *Syntel v. TriZetto: Balancing Compensation and Deterrence in Trade Secret Remedies*, 40 BERKELEY TECH. L.J. 907 (2025).

19. Syntel Sterling Best Shores Mauritus Ltd. v. The TriZetto Grp., Inc., 68 F.4th 792, 797 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 352 (2023).

20. Yasameen Joulaee, Note, *Developing Anti-Kickback Compliance Guidance at the Intersection of "Sponsored" and "Genetic Testing" Programs*, 40 BERKELEY TECH. L.J. 957 (2025).

21. 42 U.S.C. § 1320a-7b(b).

22. *See generally* United States *ex rel.* Ruggiero v. Ultragenyx Pharm. Inc., No. 1:21-cv-11176 (D. Mass. Dec. 19, 2023).

The second Note[23] considers how the FTC's updated Health Breach Notification Rule[24] relates to privacy violations in health information technologies not currently regulated under the Health Insurance Portability and Accountability Act.[25] The FTC's update to outdated definitions is beneficial, but significant issues remain related to inconsistent enforcement and increased procedural scrutiny. Thus, this Note advocates for further clarity and increased administrative efficiency in enforcing the updated definitions.

23. Alexis Tatum, Note, *Ring the Alarm: An Analysis of the FTC's Health Breach Notification Breach Rule*, 40 BERKELEY TECH. L.J. 1009 (2025).

24. Health Breach Notification Rule, 16 C.F.R. § 318 (2024).

25. Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§ 1320d–d-9.