2020? A New Canvas For IP Antitrust?
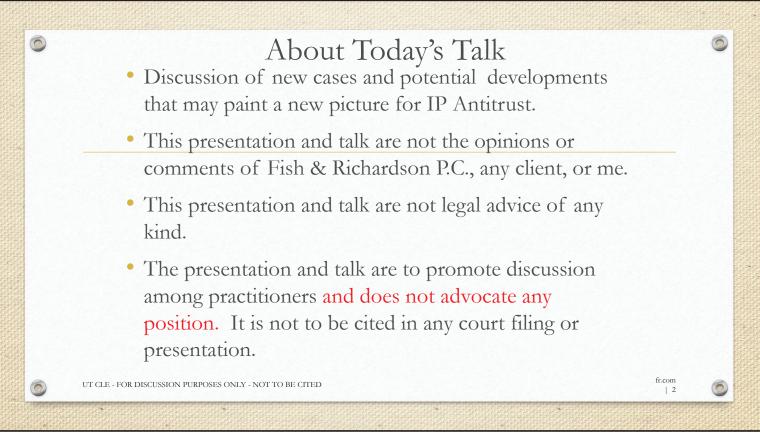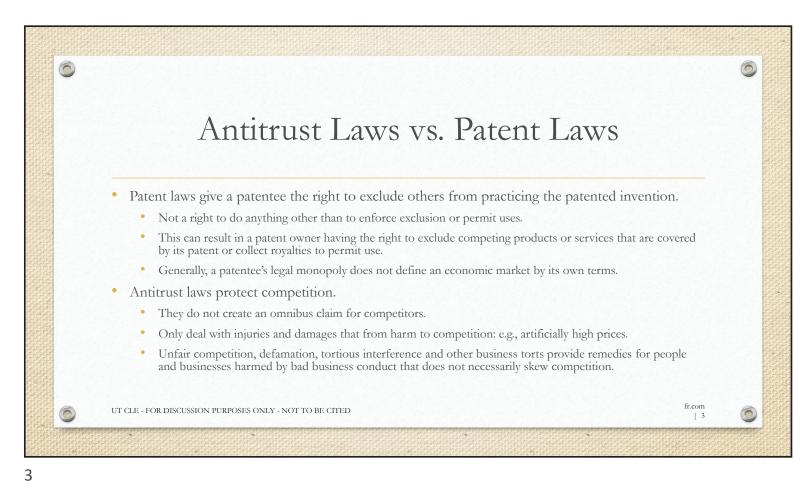
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About Today's Talk

- Discussion of new cases and potential developments that may paint a new picture for IP Antitrust.

- This presentation and talk are not the opinions or comments of Fish & Richardson P.C., any client, or me.

- This presentation and talk are not legal advice of any kind.

- The presentation and talk are to promote discussion among practitioners and does not advocate any position. It is not to be cited in any court filing or presentation.

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Antitrust Laws vs. Patent Laws

- Patent laws give a patentee the right to exclude others from practicing the patented invention.
  - Not a right to do anything other than to enforce exclusion or permit uses.
  - This can result in a patent owner having the right to exclude competing products or services that are covered by its patent or collect royalties to permit use.
  - Generally, a patentee's legal monopoly does not define an economic market by its own terms.
- Antitrust laws protect competition.
  - They do not create an omnibus claim for competitors.
  - Only deal with injuries and damages that from harm to competition: e.g., artificially high prices.
  - Unfair competition, defamation, tortious interference and other business torts provide remedies for people and businesses harmed by bad business conduct that does not necessarily skew competition.

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Antitrust As A Solution?

- When caught in a "patent thicket"?

- When patentees seek above-market royalties?

- When a patentee is accused of failing to comply with FRAND obligations to license an SEP patent?
  - Or an implementer stonewalls?

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Watch List

- *FTC v. Qualcomm*, 19-16122 (9th Circuit), argued, pending decision
- *HTC v. Ericsson,* 19-40566 (5th Circuit), argued, pending decision
- *IBM v. Fortress,* Motion to Dismiss, 3:19-cv-07651-EMC (N.D. Cal.)
- *In Re: Humira (Adalimumab)*, Motion to Dismiss, 1:19-cv-01873 (E.D. Ill.)
- *Continental v. Avanci*, Motion to Dismiss, 3:19-cv-02933-M (ND. Tex.)
- *Lenovo v. InterDigital,* filed April 9, 2020, 1:20-cv-00493-LPS (D. Del.)
- *TCL v. Ericsson*, 943 F.3d 1360 (Fed. Cir. 2019), cert. pending
- *Impax v. FTC,* 19-60394, (5th Circuit), June 9, 2020, oral Argument set
- *Unwired Planet v. Huawei,* UK Supreme Court, argued, pending decision
- *Sisvel v. Haier*, German Sct., Decided May 7, 2020, written opinion pending
- Request by automakers to European Comm. To Investigate Avanci, pending
- EU/EC revisions to block exemption rules and other pronouncements re SEPs/FRAND, public comment period completed

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Part 1:
"Can you have too many patents?"

Title search: 2020? A New Canvas For IP Antitrust?

Also available as part of the eCourse
[Antitrust 2020: Disruption in Antitrust and Competition Law](#)

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33rd Annual Technology Law Conference session
"Antitrust 2020: Changing Politics, Technology, and Problems have caused Upheaval! A Real-Time Presentation of Disruption in Antitrust and Competition Law"