

## *Preface*

This project has been more than a decade in the making. It began with a discussion we had in the Cayman Islands about the different ways courts were treating DNA and software cases. That discussion led to two articles—“Is Patent Law Technology-Specific?” in the *Berkeley Technology Law Journal* and “Biotechnology’s Uncertainty Principle” in the *Case Western Law Review*—that discussed the differences in judicial treatment of patents in different industries. It also led to a broader discussion about industry-specific differences in the patent system, including differences in the economics of innovation and differences in how theorists conceive of the patent system. That broader conversation led to a third article, “Policy Levers in Patent Law,” that appeared in the *Virginia Law Review*. This book has grown out of that third article and represents our effort to present the basic idea to an audience beyond law professors and tie it to the current fight over patent reform. We also hope to flesh out the economic analysis, discuss the rapid changes that have occurred since 2003, and respond to skeptics.

We thank the University of Toronto Faculty of Law Distinguished Visitor Program and the Centre for Innovation Law and Policy for their generous support of prior versions of this work. Kristen Dahling, Laura Quilter, Colleen Chien, and Bhanu Sadasivan provided research assistance. We are grateful to the following people, all of whom provided comments and advice on an earlier draft of this book or a related paper: John Allison, Bob Armitage, Michael Carroll, Rochelle Dreyfuss, Rebecca Eisenberg, Richard Epstein, Dan Farber, Brett Frischmann, Nancy Gallini, Wendy Gordon, Tom Grey, Rose Hagan, Bruce Hayden, David Hyman, Mark Janis, Brian Kahin, Dennis Karjala, Orin Kerr, Dan Lang, Clarisa Long, David McGowan, Rob Merges, Craig Nard, Judge Randy Rader, Arti Rai, Pam Samuelson, Herb

Schwartz, Polk Wagner, and participants at the Telecommunications Policy Research Conference, the Washington University Conference on the Human Genome, the Case Western Reserve Law and the Arts symposium, the University of Toronto Conference on Competition and Innovation, and faculty workshops at Stanford Law School, Boalt Hall School of Law at the University of California at Berkeley, and the University of Minnesota Law School. Our very special thanks go to our editor, David Pervin, who adopted our project and saw it through to completion. And, as always, we are eternally grateful to Laurie and Rose for their patience and support.



*A Note on Usage.* We refer to intellectual property rights collectively as “IP” rights throughout the book. There is considerable debate over whether IP rights are in fact “property” in any meaningful sense. We don’t intend to engage in that debate here, but neither do we want to perpetuate the controversial assumption that they are by using the term.