

*IP Legal Ethics After Qualcomm: A New Era or
(Monkey) Business as Usual?—A Skeptical
Perspective*

William T. Gallagher J.D., Ph.D.
Associate Professor of Law, Co-Director IP Law Program
Golden Gate University School of Law
San Francisco, CA

Visiting Scholar
Center for the Study of Law and Society
University of California, Berkeley
School of Law

My research-in-progress is an analysis of legal ethics issues in patent litigation. Focusing on case studies of several recent high-profile patent cases where the courts have sanctioned lawyers and their clients for unethical and abusive tactics, this research explores the limitations of court sanctions to police behavior that is widespread in contemporary complex litigation and which may be particularly acute in large-scale patent lawsuits.

This research is based in part on an ongoing empirical study of patent litigation lawyers. The data from this study derive primarily from semi-structured interviews with experienced patent litigators. The research also draws on the rich socio-legal studies literature on the legal profession, including empirical studies of lawyers in a variety of practice settings. My preliminary conclusion in this research are that large patent infringement cases are particularly prone to ethical misconduct by attorneys and that such misconduct is highly unlikely to be deterred by the occasional—albeit high-profile--sanctions meted out by federal district courts. This research thus aims to explain how and why such sanctions are likely to be ineffective and to develop a framework for understanding whether alternative means of policing patent lawyer ethical conduct offer greater promise.