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A Stitch in Time: The Rise and Fall of the Sewing Machine Patent Thicket

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ABSTRACT:

Scholarly interest in how anticommons theory applies to patents has skyrocketed since Professor Michael Heller first proposed a decade ago that excessively fragmented interests in land can frustrate its commercial development. There is now a vigorous debate on whether anticommons exist in patent law, and, if so, whether these "patent thickets" impede innovation in patented products. As Professor Heller writes in his recently published book, *The Gridlock Economy*, "the empirical studies that prove -- or disprove -- our theory remain inconclusive."

This article contributes to this debate by analyzing the rise and fall of the first patent thicket in American history: the "Sewing Machine War" of the 1850s. The invention of the sewing machine in the antebellum era represents many firsts in the American legal system -- the first patent thicket, the first "patent troll," and the first patent pool. Significantly, this case study verifies that patent thickets exist and that they can frustrate commercial development of new products. But it also challenges widely held assumptions in the patent thicket literature. Many scholars believe that this is largely a modern problem arising from a host of allegedly new issues in the patent system, such as incremental high-tech innovation,

excessive litigation, and the rise of "patent trolls." Yet the sewing machine patent thicket exhibited all of these phenomena, revealing that patent thickets have long existed within the historically successful American patent system. The denouement of the sewing machine patent thicket in the Sewing Machine Combination of 1856, the first privately formed patent pool, further challenges the widely held belief that patent thickets are best solved through new statutes, regulations or court decisions that limit property rights in patents. To the contrary, the Sewing Machine Combination was formed against the backdrop of the strong protection of patent rights in the antebellum era. Thus, the story of the invention of the sewing machine is a striking account of early American technological, commercial and legal ingenuity, which heralds important empirical lessons for how patent thicket theory is understood and applied today.

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