

METI JPO-RIETI国際シンポジウム
標準必須特許を巡る紛争解決に向けて
プレゼンテーション資料

デビッド・カツポス David KAPPOS

元米国特許商標庁 (USPTO) 長官
Former Director, United States Patent and Trademark Office

March 13, 2018

The Standards Innovation Ecosystem: Past, Present and Future

*** Where Innovation Matters Most ***

MARCH 13, 2018

Japan Patent Office

Licensing 5G SEPs

David J. Kappos

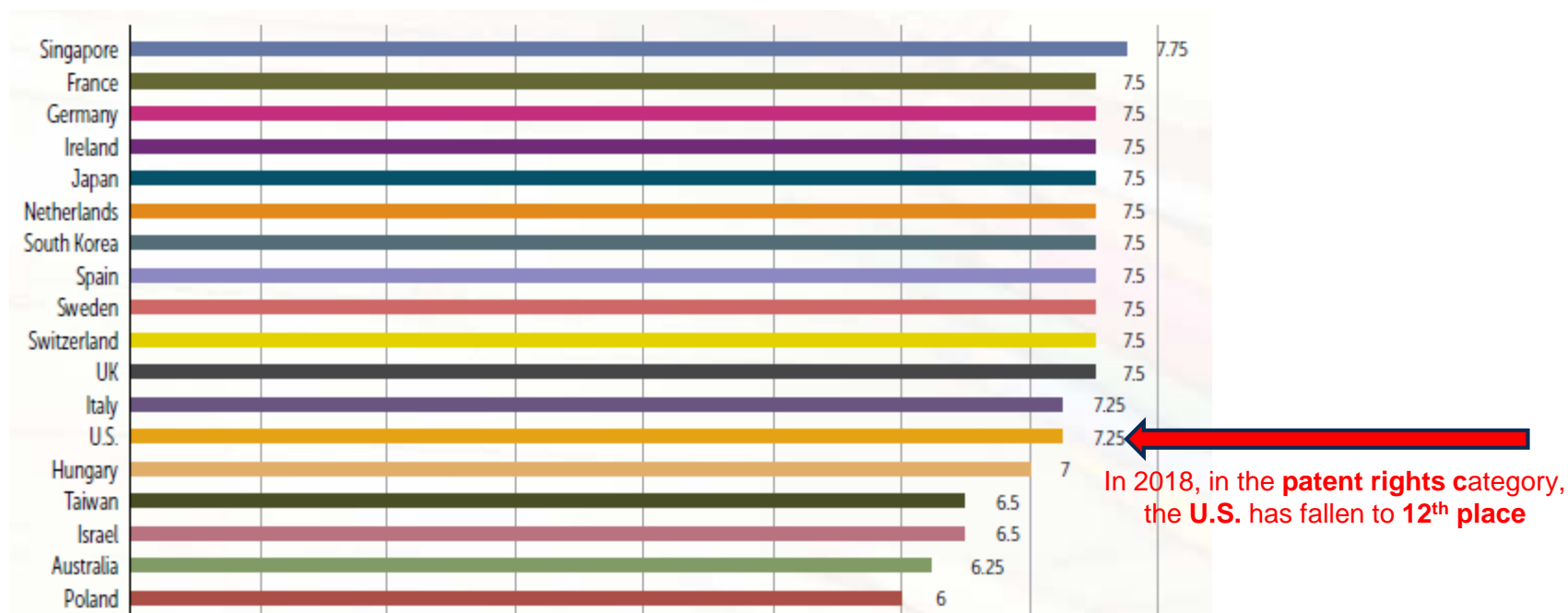
CRAVATH, SWAINE & MOORE LLP

The U.S. IP System: A “System in Decline”

■ Headline News from IPWatchdog, April 26, 2017

- The Top 3 Reasons the U.S. Patent System in Decline
 - *Gene Quinn*

■ 2018 Patents, Related Rights, and Limitations Scores (GIPC IP Index)



U.S. IP System Perceived as Too Strong

■ News from Pittsburgh Post-Gazette, July 26, 2007

- The patent system is broken: Reform is needed to stimulate U.S. innovation

◦ *Bill McDermott*



Recall the Patent Troll

Intellectual Property & Technology Law Journal

formerly Journal of Proprietary Rights

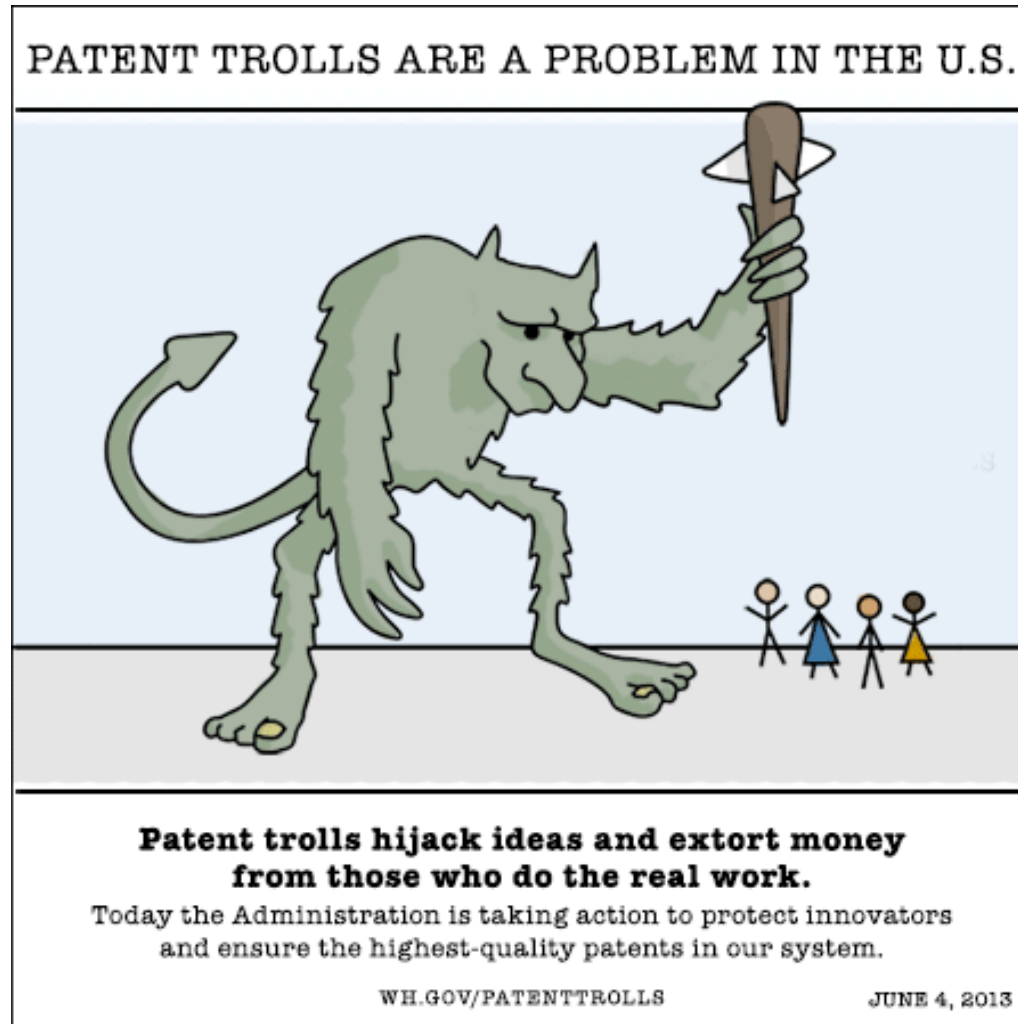
Edited by the Technology and Proprietary Rights Group of Weil, Gotshal & Manges LLP

VOLUME 18 • NUMBER 5 • MAY 2006

No Longer a Myth, the Emergence of the Patent
Troll: Stifling Innovation, Increasing Litigation,
and Extorting Billions

By John F. Luman III and Christopher L. Dodson

Patent Troll Narrative Dominated U.S. Policy-Making



U.S. Supreme Court Scales Back Patent Strength



- 2006: *eBay v. MercExchange*
- 2007: *KSR v. Teleflex*
- 2014: *Nautilus, Inc. v. Biosig Instruments, Inc.*
- 2014: *Octane Fitness LLC v. Icon Health & Fitness Inc.*
- 2014: *Highmark Inc. v. Allcare Health Management Systems Inc.*
- 2017: *Impressions Prods. Inc. v. Lexmark Int'l, Inc.*

U.S. Legislative Action: The America Invents Act



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, FIRST SESSION

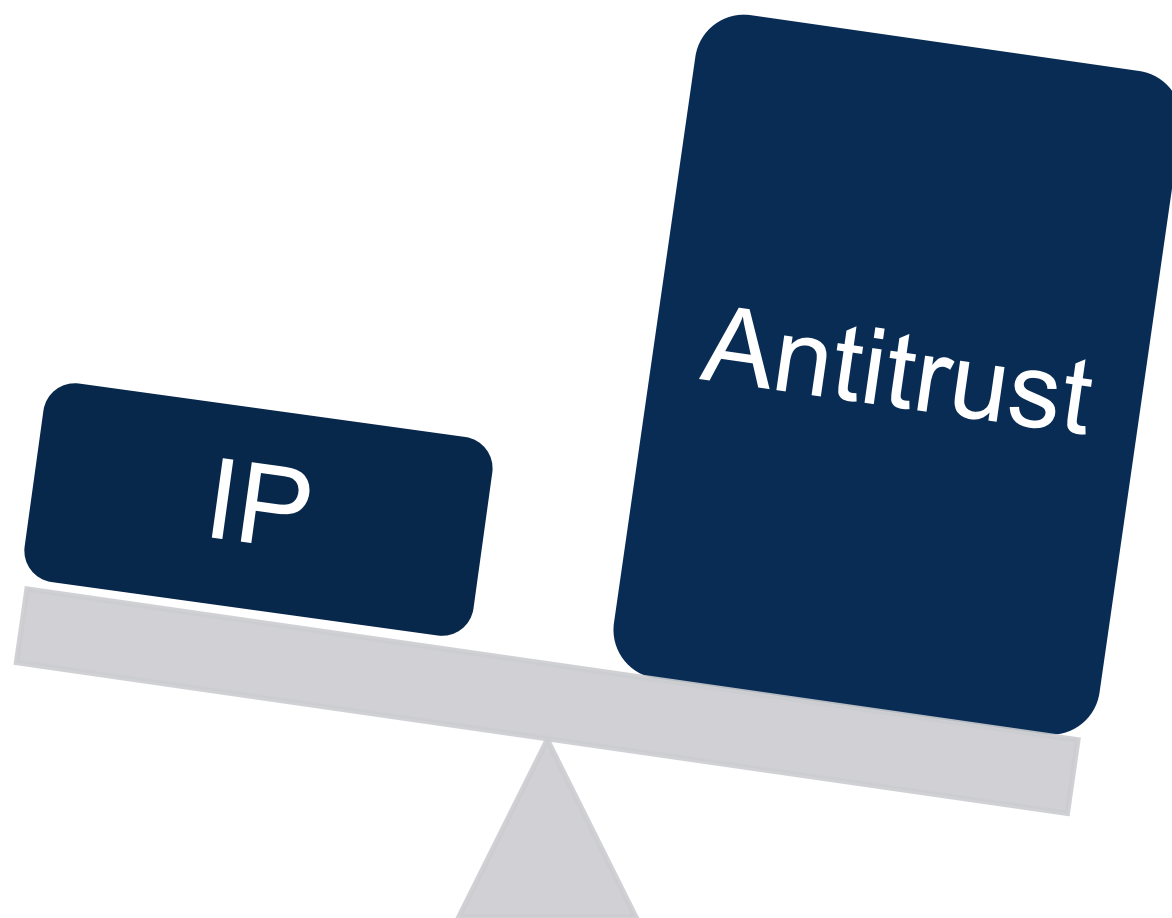
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WASHINGTON, MONDAY, FEBRUARY 28, 2011

No. 28

- “The America Invents Act will . . . improve the quality of patents that are issued; and it will provide more certainty in litigation Patents of low quality and dubious validity . . . enable patent trolls who extort unreasonable licensing fees from legitimate businesses, and constitute a drag on innovation.”
 - *Senator Patrick Leahy, Feb. 28, 2011*

Antitrust vs. IP



Antitrust Concerns

Patent Hold-up

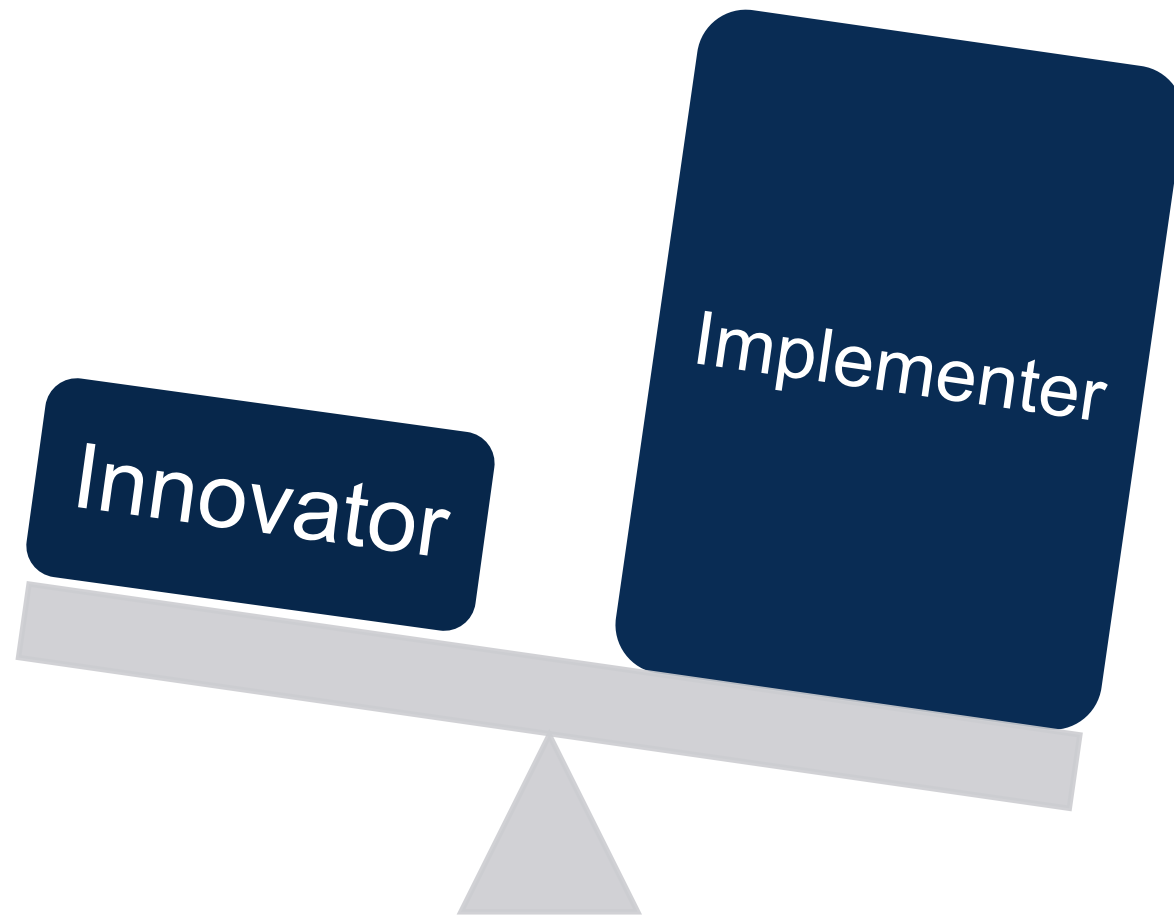
Royalty Stacking



No Evidence

Broken FRAND Norms

Antitrust Law and SEPs: Favoring the Implementer

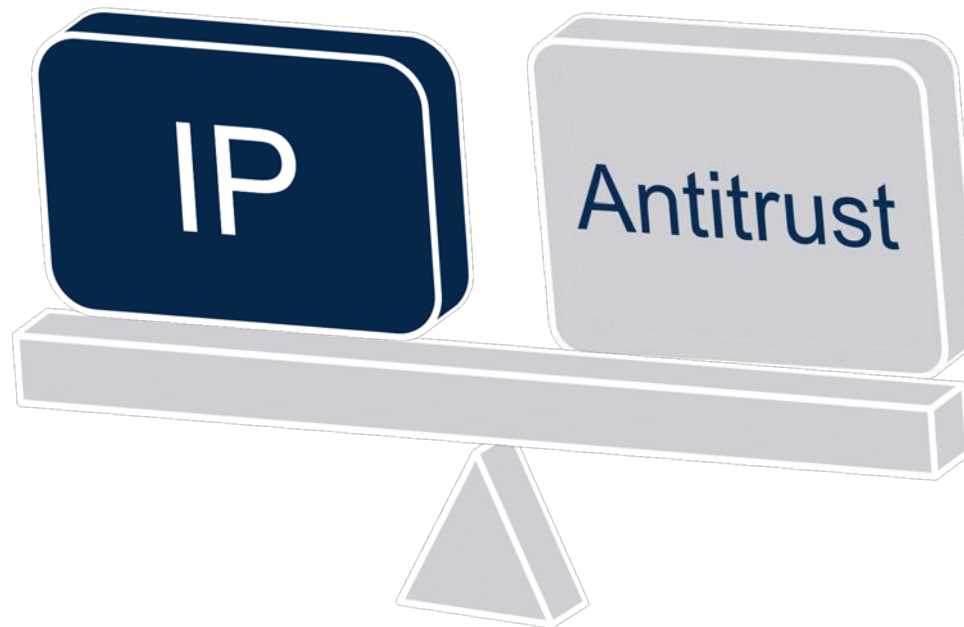


New Direction for Antitrust

JUSTICE NEWS

Assistant Attorney General Makan Delrahim Delivers Remarks at the USC Gould School of Law's Center for Transnational Law and Business Conference

Los Angeles, CA ~ Friday, November 10, 2017



SSPPU Theory Infects SSO Policy



The world's largest technical professional organization for the advancement of technology

- “Determination of Reasonable Rates should include...
 - The value that the functionality of the claimed invention or inventive feature within the Essential Patent Claim contributes to the value of the relevant functionality of the **smallest saleable** Compliant Implementation that practices the Essential Patent Claim.
 - The value that the Essential Patent Claim contributes to the **smallest saleable** Compliant Implementation that practices that claim, in light of the value contributed by all Essential Patent Claims for the same IEEE Standard practiced in that Compliant Implementation...”

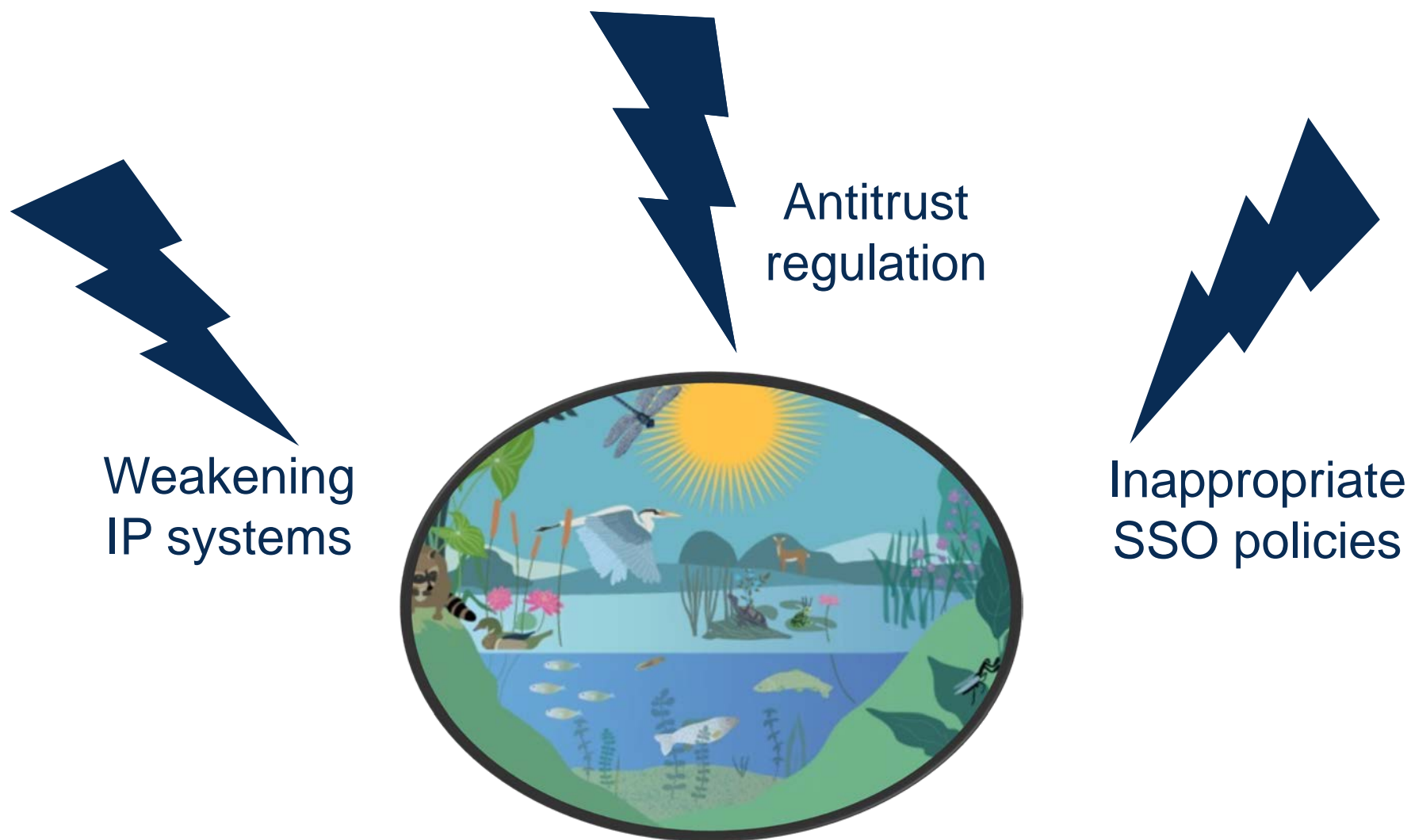
SSPPU Was Designed For Juries Awarding Damages



SSPPU is Not Generally Applicable to SEP Licensing



Innovation Ecosystem is Under Siege



Sustainable Innovation Requires Balance

Innovator

Implementer



Because Innovation Matters Most!

Domo Arigato Gozaimashita



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