

DAVID S. OLSON  
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#### ACADEMIC APPOINTMENTS

Boston College Law School, Newton, MA

*Assistant Professor*

2007 – Present

Research: Patent, Copyright, Intellectual Property

Courses: Intellectual Property, Patent, Antitrust

Business & Law Society Faculty Award for Achievement in Business & Law, 2011

Professor Emil Slizewski Award for Faculty Excellence, 2012

Stanford Law School

*Affiliate Scholar*

2010 – Present

*Non-Resident Fellow*, Center for Internet and Society

2007 – 2010

*Resident Fellow*, Center for Internet and Society

2005 – 2007

Research, Consulting & Litigation: As Affiliate Scholar, research copyright issues and consult on cases litigated by Stanford Law School's Fair Use Project. As Resident Fellow, spent half of my time litigating copyright fair use cases.

#### EDUCATION

**HARVARD LAW SCHOOL**, J.D., *cum laude*, 2000

*Teaching Fellow*, Intellectual Property in Cyberspace, offered by Berkman Center for Internet & Society

*Teaching Fellow*, Sophomore Economics Tutorial at Harvard College

*Research Assistant*, Professor Louis Kaplow

*Executive Editor*, Harvard Journal of Law & Public Policy

**UNIVERSITY OF KANSAS**, B.A. in Economics, *with distinction*, 1997

Kansas State Scholar

*Recipient*, Economics Department Scholarship

#### JUDICIAL CLERKSHIP

Judge Jerry E. Smith, U. S. Court Of Appeals, 5th Circuit, Houston  
Law Clerk

2000 – 2001

#### SCHOLARSHIP

- *Removing the Troll from the Thicket: The Case for Enhancing Patent Maintenance Fees in Relation to the Size of a Patent Owner's Non-Practiced Patent Portfolio* (submitted). Addressing the problems of decreased innovation due to large patent portfolios held by

practicing and non-practicing entities, suggesting changes to the patent maintenance fee structure so as to make patent thickets more costly.

- *Empirical Study of Dissemination of Information via the Patent System* (in progress). Analyzing data from Federal Circuit anticipation and interference cases to test theses on how, and how well, the patent system disseminates information about invention.
- *Rules versus Standards: Competing Notions of Inconsistency Robustness in Patent Law* (with Stefania Fusco) (forthcoming 2012, ALABAMA LAW REVIEW). Applying a new paradigm from the field of computer science—Inconsistency Robustness Theory (IRT)—in order to analyze the competing ways in which the Supreme Court and Federal Circuit craft patent law standards and rules.
- *A Legitimate Interest in Promoting the Progress of Science: Constitutional Constraints on Copyright Laws*, 64 VAND. L. REV. EN BANC 185 (2011); selected to be republished in the INTELLECTUAL PROPERTY LAW REVIEW (Thomson Reuters 2012) as one of the best IP law review articles of 2011.  
Examining constitutional constraints on copyright laws arising from the patent and copyright clause.
- *First Amendment Based Copyright Misuse*, 52 WM. & MARY L. REV. 537 (2010). Advocating that the defense of copyright misuse should be shifted to a basis in First Amendment interests to protect speech interests that are inadequately protected by copyright law and the fair use doctrine.
- *First Amendment Interests and Copyright Accommodations*, 50 B.C. L. REV. 1393 (2009).  
Examining the use of First Amendment arguments to restrict copyright laws.
- *Taking the Utilitarian Basis of Patent Law Seriously: The Case for Restricting Patentable Subject Matter*, 82 TEMP. L. REV. 181 (2009).  
Arguing that the public good is better served if particular classes of invention remain unpatentable and urges that the subject matter gatekeeper role either be taken up again by the courts or delegated to an administrative agency by Congress (cited in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010) (Stevens, J., concurring)).

#### PAPER PRESENTATIONS

- *From Federal Common Law to Textualism: The Evolving Interpretation of Patent Cases*, Intellectual Property Scholars Conference, Stanford Law School (August 9-10, 2012). [Program Website](#).
- *From Federal Common Law to Textualism: The Evolving Interpretation of Patent Cases*, PatCon 2, Boston College Law School (May 11-12, 2012). [Program Website](#).
- *Against the Prospect Theory of Patents: How the Costs of Communicating Technical Information Interact with the Prospect Feature of Patent Law to Decrease Commercialization of Innovation*, Works in Progress Intellectual Property Colloquium 2012, University of Houston Law Center (February 10-11, 2012). [Program Website](#).
- *Rules versus Standards: Competing Notions of Inconsistency Robustness in the Supreme Court and Federal Circuit*, at Franklin Pierce Center for Intellectual Property Academic Conference, University of New Hampshire School of Law, Concord, NH. (September 30, 2011) (Invited speaker.)

- *Rules versus Standards: Competing Notions of Inconsistency Robustness in the Supreme Court and Federal Circuit*, at Inconsistency Robustness 2011, Stanford University August 16-18, 2011. (Paper selected for presentation by peer review.) [Program Website](#).
- *The Common Law of Patentable Subject Matter*, at The Patent Conference (PatCon), University of Kansas School of Law (April 8, 2011).
- *The Common Law of Patentable Subject Matter*, at New England Junior Scholars Conference, Boston College Law School (March 18, 2011).
- *Empirical Study of Dissemination of Information via the Patent System*, at the Fifth Annual Conference on Empirical Legal Studies at Yale Law School, November 5-6, 2010. (Paper selected for presentation by peer review.) [Program Website](#).
- *Empirical Study of Dissemination of Information via the Patent System*, at the Edward D. Manzo Scholars in Patent Law Seminar, hosted by DePaul University College of Law, September 29, 2010. (Invited speaker.) [Program Website](#).
- *Empirical Study of Dissemination of Information via the Patent System*, at the 10th Annual Intellectual Property Scholars Conference, hosted by Berkeley Law School, August 12-13, 2010. [Program Website](#).
- *Empirical Study of Dissemination of Information via the Patent System*, at New England Junior Law Faculty Conference, hosted by Suffolk Law School, July 22, 2010.
- *Empirical Study of Concurrent Invention by Industry*, to the faculty of Villanova Law School as part of a faculty exchange, October 16, 2009.
- *Empirical Study of Concurrent Invention by Industry*, to Works-in-Progress Intellectual Property Colloquium 2008, hosted by Seton Hall Law School, October 2-3, 2009.
- *First Amendment Interests and Copyright Accommodations*, Boston College Law Review Symposium: Intellectual Property and the First Amendment, April 3, 2009.
- *Toward a First Amendment Based Copyright Misuse* to Faculty of University of Cincinnati Law School, February 6, 2009.
- *First Amendment Challenges to Copyright* at Works-in-Progress Intellectual Property Colloquium 2008, hosted by Tulane Law School, October 3-4, 2008.
- *Taking the Utilitarian Basis for Patent Law Seriously: The Case for Restricting Patentable Subject Matter* as part of the Washington and Lee University College of Law 2008-2009 Faculty Speaker Series, September 29, 2008.
- *First Amendment Challenges to Copyright* at the 8th Annual Intellectual Property Scholars Conference, hosted by Stanford Law School, August 7-8, 2008. [Program Website](#).
- *Towards a First Amendment Foundation for Copyright Misuse* at Works-in-Progress Intellectual Property Colloquium 2007, hosted by American University Washington College of Law, Sept. 28-29, 2007. [Program website](#).
- *Towards a First Amendment Foundation for Copyright Misuse* at the 7th Annual Intellectual Property Scholars Conference, hosted by DePaul University College of Law, August 9-10, 2007. [Program website](#).

#### OTHER PRESENTATIONS

- Panelist, Patentable Subject Matter: 35 U.S.C. § 101 Conference, George Washington University Law School, September 20, 2010. (Invited speaker.) [Program Website](#).

- Presented: Some Effects of Earnings Statements, Advertising, Insurance and Patent Law on Drug Development and Marketing, hosted by Boston College Law School Intellectual Property Technology Forum. January 29, 2009.
- Panelist, Patent Law Double Feature: Declaratory Judgments in Patent Cases after *MedImmune* and New Local Rule 16.6, Social Law Library, John Adams Courthouse, Boston. Sponsored by The Social Law Library, Boston Patent Law Association, and Massachusetts Lawyers Weekly. January 27, 2009. [Program Website](#).
- Panel Participant for Boston Patent Law Association Corporate Practice Committee Presentation: Does Your Intellectual Property Need Protecting After *Quanta v. LG Electronics*? December 16, 2008. [Program Website](#).
- Presented: Intellectual Property Issues in Health Care, hosted by Massachusetts College of Pharmacy and Health Sciences, Boston, Massachusetts. December 4, 2008.
- Invited Speaker, The 2007 North American James Joyce Conference, The University of Texas at Austin, June 13-17, 2007 (Presented *Shloss v. Joyce and the Case for Expanded Copyright Misuse*). [Program website](#).
- Invited Commentator, Workshop on Commons Theory for Young Scholars, Sponsored by the Max Planck Institute for Research on Collective Goods and the Center for Internet and Society, Stanford Law School, Bonn, Germany, May 7-9, 2007. [Program website](#).
- Presented: *Patentable Subject Matter: The Problem of the Absent Gatekeeper* in State of Play Academy, There.com, October 10, 2006. [Program website](#).

## SERVICE

### External Service

- Program Committee Member, Inconsistency Robustness, 2014.
- Co-Founder and Organizing Member of “The Patent Conference” (“PatCon”), an annual conference for scholars writing about Patents, 2010 – present.
- Organizing Member of New England Law Schools Junior Faculty Group. 2009 – 2011.

### University Service

- Served as BC representative to Eastern Conversations Conference at Saint Joseph University, June 16-17, 2010. [Program Website](#).

### Law School Service

#### Committees

- Clerkship Committee, 2008-Present
- Admissions Committee, 2007-08

### Faculty Advising

- Boston College Law Review (2011-Present)
- Boston College Law School Veterans Association (2008-Present)
- BC Law Intellectual Property & Technology Forum (Informal) (2007-Present)

### Supervision of Independent Research

- Michael Shinall (patent law), Spring 2012
- Rohit Dewan (patent law), Spring 2012
- Judith Kuntz (patent law), Spring 2012
- Alice Wang (patent law), Spring 2011
- Juliet DeFrancisco (patent law), Spring 2011
- Stephen Altieri (patent law), Spring 2011
- Jenny Shum (patent law), Spring 2010
- Julia Grazer (antitrust), Spring 2009
- Michael Saji (copyright), Spring 2009
- Tzung-Ping Wei (copyright), Spring 2009
- Chang-Sik Min (patent law), Spring 2008
- Deidre Deegan (patent law), Spring 2008

### Other Advising/Mentoring

- Sidebar Retreat Faculty Mentor, February 3-5, 2012.
- Advised BC's Negotiations Team on patent law issues, Spring 2011.
- Mooted BC's Trademark Law Moot Court Team, Spring 2011.
- Mooted BC's First Amendment Law Moot Court Team, Spring 2011.
- Mooted BC's Constitutional Law Moot Court Team, February 3, 2010.
- Mooted BC's Saul Lefkowitz Memorial IP Moot Court Team, 2010.
- Mooted BC's Saul Lefkowitz Memorial IP Moot Court Team, 2009.
- Mooted BC's Saul Lefkowitz Memorial IP Moot Court Team, 2008.
- Sidebar Retreat Faculty Mentor, October 23-25, 2009.
- Informal patent law advisor for Professor Yen's Advising the Business Planner class.

### CONSULTING

- Consultant for patent issues underlying authorship questions in the "Pollock Matters" exhibition at the McMullen Museum (2007 – 2008).
- Consultant for Amazon.com, Inc. regarding patent law and functionality of Amazon.com's website in *IPXL Holdings, LLC v. Amazon.com, Inc.*, CV-04-70 (LMB) (E.D. Va.) (2005).
- Expert witness regarding functionality and usage of Internet forums on behalf of defendant in *United States v. Dera Marie Jones*, CR-05-0254 (CRB) (N.D. Cal. 2005).

### PRIVATE PRACTICE

**KIRKLAND & ELLIS LLP**, New York & San Francisco Summer 1999, 2001 – 2005  
*Associate* and *Summer Associate*, Intellectual Property Litigation Department (Patents)

- Litigated primarily patent law cases including mechanical, biotech, and silicon chip patents.
- Worked on all aspects of pre-litigation investigations, fact and expert discovery, trial court and appellate briefing, and trial preparation.
- Litigation victories included summary judgment of non-infringement and invalidity of a software/ business methods patent and preliminary injunctions obtained in patent infringement cases.

**CRAVATH, SWAINE & MOORE**, New York Summer 2000  
*Summer Associate*, Litigation Department (received offer of full-time employment)

**BRYAN CAVE, LLP**, Kansas City Summer 1998  
*Summer Associate*, Litigation Department (received offer of full-time employment)

#### BAR ADMISSIONS

New York; California (inactive); Court of Appeals for the Federal Circuit; Court of Appeals for the Ninth Circuit; various federal district courts.

#### PROFESSIONAL MEMBERSHIPS

Boston Patent Law Association, Member  
Society of Empirical Legal Studies, Member  
American Law and Economics Association, Member