

# Extraterritoriality in U.S. Patent Law

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**Abstract:**

Globalization has created increasing pressure on, and erosion of, traditional territorial limits on intellectual property laws. This trend was first seen in trademark and copyright law, but recent decisions have shown the change in patent law as well. Indeed, the Supreme Court is set to review the extraterritorial scope of U.S. law in the case *AT&T v. Microsoft*. The Federal Circuit's approach to these issues, however, has been inconsistent and lacks a consistent theoretical underpinning.

In this paper, I reject both a strict territorial and a broad, effects-based approach to the extraterritorial application of U.S. patent law. Instead, I articulate a balanced approach that would consider not only whether the patent would be infringed under U.S. law but also whether the acts would constitute infringement in the relevant foreign countries. This balanced approach would require courts to transparently address potential conflicts of law and comity concerns, which is currently absent in the Federal Circuit's approach to these issues.

The method presented in the Article is a step-by-step process that provides courts with a structured methodology to address and weigh these difficult questions.