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RESEARCH ARTICLE

FEMINISTIC APPROACH OF PATENTS

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Abstract

In this Article, I am interested in how one might begin to formulate a feminist analysis of intellectual property law that addresses indigenous women's interests and gendered social relations both discursively and materially. Given the tenuous relationship between indigenous women and feminism, we may not even want to call it a "feminist" analysis. Liberal feminist ideals of autonomy, freedom, and choice often run counter to indigenous feminist politics and organizing that produce valuable critiques of these notions. Furthermore, as will be discussed, strategies against (or even in support of) intellectual property law are radically different among various individuals and groups of indigenous women, and in solidarity with indigenous men.

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Introduction

Intellectual property studies address the gendered dimensions of patent law or its implications for women and women's rights. Indigenous women have begun to address patent law from a gender-based perspective. The 1995 Beijing Declaration of Indigenous Women and 2004 Manukan Declaration of the Indigenous Women's Biodiversity Network explicitly argue that intellectual property rights threaten indigenous women's lives.

1. The Indigenous Peoples' Permanent Forum also highlights patent law as an issue of concern for indigenous women.
2. Local women in India have taken up the issue through with the Diverse Women for Diversity Campaign in connection with Vandana Shiva.
3. Patent law as a gender-based issue therefore emerges within some international forums, and may also circulate at the local level such as with Diverse Women.

Feminism and Patent law:

Patent law aims at assisting in the advancement of science, industry and technology, as a goal agreed upon by public opinion, the state, male and female inventors and by employers and by the

employees. However, observing this rationale through feminist lenses reveals the severe phenomenon of the exclusion of women from the patent-field. Upon superficial, it would appear that the patent law seems objective and neutral. The reality, however, is different. The exclusion phenomenon in patent law is obtuse, and has not yet been explicitly discussed. The study draws a two-stage model which illuminates the gender bias. At the first stage the definition of "invention" in patent laws, in most countries the definition of "invention" is based on an industrial technological test. This definition currently favors men. This definition does not reflect the contribution of women to human welfare. Therefore, the definition of "invention" does not adequately address equal treatment to feminine life experience. At the second stage legal norm which grants the employer the patents rights to the employee's inventions, known as "service invention". This legal paradigm discriminates against women that work mainly as employees, in research and development teams. Even if women penetrate patent-rich fields, they do not gain ownership over their inventions.

The development of a feminist scholarship of patent law has proven slower to emerge, although the conversation has begun by suggesting a set of connections between feminist critiques of powerful socio cultural dualisms—mind/body and

nature/culture—and the reliance on these dualisms in both patent and copyright law. It is also noted the fruitful links between feminist epistemologies and the constant struggle within intellectual property law to define knowledge.

Feminist scholars and Patent law:

Feminist scholars noted that this perception had pervaded not only popular notions but also the historiography of science and technology. Using the feminist insight that knowledge itself can be gendered, a feminist critique has since emerged, arguing that science and technology themselves are gendered, not just in the ways in which they are performed differently by men and women—and are most often performed by men—but also in the knowledge and objects created by these performances. Feminist historians of technology have analyzed mundane aspects of women's lives as part of the history of technology, combining consideration of gender roles within the factories of the industrializing United States with consideration of traditionally feminine technologies like irons and sewing implements and the technologies used in daily household tasks. This is a resource for the development of a feminist analysis of patent law.

Indigenous women elsewhere, however, have begun to address patent law from a gender-based perspective. On the other hand, as with the Khomani San, discourses of indigenous rights around patent law are seemingly framed in gender-neutral terms. Or are they? San struggles related to the patenting of Hoodia may appear gender-neutral as read through the narrow registers of liberal feminism. Yet, as will be further discussed, the masculinized discourses and gendered social relations at work within political struggles related to Hoodia become visible when scrutinized through a lens of transnational, indigenous, African feminisms. Addressing the complex gender relations that shape and are shaped by patent ownership is a complex task. It requires careful consideration of the interactions, relationalities, and hierarchies within social relations of gender, indigeneity, ethnicity, race, and histories of colonialism. Legacies of liberal, western feminism must also be confronted and continually interrogated. Yet, studies of patent law struggles and complex gendered relations can help push the boundaries of critical intellectual property scholarship and feminist legal scholarship, by asking new questions and defining the fields in new ways. They may also lead to more robust practices of law and science that re-imagine conceptions of ownership and knowledge in ways that benefit less powerful groups.ⁱ

Intellectual property scholarship and feminist epistemologies have proceeded upon parallel but unconnected tracks. Feminist scholars rarely, if ever, mention the words copyright, patent, or intellectual property; intellectual property scholars rarely, if ever, appeal to feminist interpretations to better understand the law.ⁱⁱ However, while the words copyright and patent do not appear in the feminist literature, the ideas underlying these legal regimes are evident when feminists talk about the production of culture as male dominated, about how women have been excluded from creative work or have had their work appropriated by men, and about a feminist epistemology.ⁱⁱⁱ Thus, by investigating the ways feminists theorize about the construction of knowledge, new insights into how intellectual property law has been developed upon gendered assumptions may become apparent.

In reality, there have always been women who applied their common sense and natural abilities to contribute to their world through scientific and technical innovations. A few have been well-known for many generations, to be trotted out and displayed as examples of the rare and exceptional -- and depending on who's speaking, maybe even the aberrant -- female scientists or inventors. But more thorough research, most often by women, is revealing a much larger heritage of women active in technology than was previously realized.

One area in which recent scholarship shows women to be prolific is invention. It is ironic that the concept of women as inventors has been belittled -- or ignored -- by so many of Western history's male scholars, since it is women, by male definitions, who are seen as intuitive, and invention often reflects an intuitive leap to discover a solution to a problem. But, in a culture in which most women -- especially married women -- lacked the economic power or legal right to produce or market an invention in their own name, many products and processes developed by women were publicly credited to a husband, a father, a brother, or a male partner, making women's successes invisible.

Likewise, social pressure against independent thought or action and against personal publicity forced many women to give away their ideas, thereby losing all credit for them. The public nature of filing for a patent, which requires that the name of the inventor be disclosed, made many women reluctant to expose their identities and, therefore, their inventions. And, until fairly recently, married women in many Western countries could not own or profit from their own inventions because these were legally the property of their husbands, even if they were patented or licensed in the woman's name.

None of this, however, means that our female ancestors were not prolific inventors. Considering the social, educational, and legal limitations faced by Western women, the record of women's inventions is outstanding. Patents provide one means of measuring this -- although it's an inadequate and biased one. However, the patent process is a relatively recent reflection of human activity: it was instituted, in most countries, in the seventeenth or eighteenth century. The original U.S. patent law was passed in 1790. We must recognize that many significant things and processes were invented well before recorded history began.^{iv}

“Women of mettle”:

Inventors change the way we live. All around us are the products of human creativity. The hinges of doors, the plastic of picture frames, the machines that weave rugs, the space vehicles that circle the earth: all are the product of human ingenuity. Inventions are normally protected as “intellectual property” by different kinds of patents. Utility patents are granted for “new, useful and not obvious processes, machines, compositions of matter and articles of manufacture.” They protect the inventor for 20 years.

The United States has been granting patents since 1790. Since then women have not been equal partners in the patenting process. Women have not been granted more patents for a diversity of reasons.

Women from the seventeenth, eighteenth, and nineteenth centuries, regard as not only “women of metal,” but “women of mettle.”^v

Women patented:

Women have not been granted more patents for a diversity of reasons some of which are easily identified.

- Patents are property, like real estate, which can be sold and leased. There were times and places in the history of the United States when women could not own property. Consequently, if they created a good idea they might give it to their father, brother, or husband who would then apply for the patent in his own name.
- Even if women were permitted to own property, society often had unwritten norms that suggested that women should be invisible in the worlds of technology and business. Again, women with a new idea might ask a man to apply for the patent.
- New ideas are really improvements on existing technology. Consequently, the inventor must know the prior technology. Until recently women have not had equal access to education,

especially in science and technology, and therefore were not familiar with the information they needed in order to be inventors.

- Women have not always had equal access to the tools used to make the models of inventions. Such models were necessary to test whether or not new ideas worked.
- Bringing a new idea to market requires access to money. Because women have historically not had equal access to money, they often did not bother to apply for patents.

And yet women patented! The women who overcame all the financial and social obstacles are worthy of taking their seats next to the Edisons, Bells, and Watts who changed the way we live. While woman inventors of earlier times left records of their inventiveness in the form of detailed patents, they left little in the way of personal records. Consequently we know little about their personal circumstances. Often we do not even know their exact dates of birth and death. We know enough, however, that we can celebrate their work and identify them as models for future generations.

Some of the women inventors are Marie Curie was the first lady scientist who has achieved the rare honor of receiving two Nobel prizes for her contributions to the field of radioactivity. A woman of Polish roots, she worked in collaboration with her husband Pierre Curie and together they discovered two new elements namely radium and polonium. The x-rays which were being generated from these two elements were studied carefully and they discovered that these x-rays had the capacity to destroy tumors which was very useful information for doctors in the field of medical science. But this invention of hers has never been patented and she derived greater satisfaction from sharing her Nobel Prize with her husband. Women inventors and inventions proved too hot to handle.

The futuristic illusion transmitter was invented by an American woman named **Valerie Thomas** and she also secured a patent for this invention in the year 1980. It was an classic example of women inventors and inventions. This illusion transmitter was used to provide better quality to the existing images on television and an illusion would be created where the person would feel that the images are present inside the room in live form. Initially this technology was used only in movies and slowly it would make its gateway in the world of television also.

Valerie Thomas was a mathematical data analyst by profession and she has also been the project manager for many well known projects which have been conducted in NASA. An optical system which could detect any kinds of defects or

imperfections in a repetitive pattern was designed and invented by *Ellen Ochoa* who had taken a PhD in electrical engineering from Stanford University. This invention has proved to be very useful during quality control procedures and the smaller delicate parts have been created in a manufacturing unit. Another patent which was secured by Ochoa was for an optical system which was used in order to make things in a robotic manner or it could also be used as a guidance system for robotic activities. Dr Ochoa is an astronaut apart from being a scientist in NASA and she has managed to spend a total of 719 man hours in space. She went on a ten day mission on board the space shuttle discovery during the year 1999.

A duo comprising a mother and daughter named *Betty Rozier and Lisa Vallino* had invented an intravenous shield for catheters which would make the process of using an IV a lot easier. The main purpose behind the creation of such an invention was to prevent the needle of the IV from getting dislodged or dislocated and to prevent any form of tampering with the IV. A patent was secured for this invention during the year 1993. A new gas heating furnace has been invented by *Alice Parker* of New Jersey and this new system had the capacity to provide better quality of heating when compared to the systems which had been in use from the year 1919.

The first computer hologram with complete color reflection was invented by *Krisztina Holly* during the year 1991. Another invention which she created in collaboration with other scientists namely Michael Cassidy and John Barrus is the stylus which allowed any customer to place an order for goods using a bar code scanner.

Traditional Knowledge, Intellectual Property and Gender Dynamics:

Women in India and in most of the developing world lag behind both in resource ownership (capital, land) as well as in educational attainments. On the other hand, they are often the most affected by the rise in prices and lack of availability of products, medicines and healthcare. Starting with the WTO, the IP regime has become increasingly stronger under bilateral trade agreements. Even products, systems and technologies which are imperative for basic sustenance such as traditional knowledge and medicines, seed and food, cultivation systems and bio diversity are all increasingly controlled by this regime. These affect women much more compared to men, because women, not being so much integrated into the mainstream economic structure, sustain themselves and their families off such basic systems.

In India, access to treatment and healthcare has a clear gender differential. In addition, women incur lower expenses on medicines and hospitalisation facilities compared to their male counterparts. So the moment there is an increase in the price of medicines and a fall in availability, women tend to reduce treatment. This is also apparent from the case studies of couples living with HIV, where, if the supply of medicines is hampered, the woman tends to give up treatment, allowing the man to continue treatment. The effect of patents on prices of medicines is already being felt by women living with cancer. Trastuzumab, a key medicine for breast cancer has been patented in India and is available at the price of Rs. 124,000 per month per person. Therefore, an average Indian would not even dare to imagine the cost of treatment for the required 52 weeks.⁶

The role of women in the practice and preservation of TK is well documented in many areas such as seed preservation, bio mass related activities, traditional agriculture, and the practice as well as use of traditional medicines, especially for gynecology related treatment. Traditional knowledge is recognized as a 'gendered science'.

Due to various political, economic, and historical reasons women and men are differently placed on the development trajectories. Though, the trade policies are supposed to be gender neutral, in practice, the present policies are grossly gender biased. The proliferation of Free Trade Agreements and WTO-plus instruments in the field of IP would completely undermine whatever little progress we have achieved on gender-related development indicators. As these policies have a direct impact on the entitlements of women and the other marginalized sections, government should carry out comprehensive impact assessments in order to study the social and economic costs inflicted on the vulnerable sections of the Indian population. The government should regain as well as retain its domestic policy space in order to safeguard the interests of weaker constituencies. It should also make sure that the gender component is addressed and incorporated into the policy decisions after having consultations with gender experts.⁷

Conclusion:

Women inventors give us both pride in our heritage and ammunition to fight prejudice as we strive for real equity and opportunity. Women's innovations and inventions have been instrumental in the development of society and industry. Many of the women struggled against prejudice and indifference, and created their ideas and products in their own homes, without the benefits of a technical education,

laboratories or workshops, proper equipment, assistants, or federal or corporate funding and support. But they succeeded nonetheless, and are finally being recognized for their work.

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