

JOHN FITZGERALD DUFFY

Professional Experience

University of Virginia School of Law **Charlottesville, VA**
8/10 - *Samuel H. McCoy II Professor of Law* (8/12 - present); *Elizabeth D. and Richard A. Merrill Professor of Law* (8/16 – 8/19); *Armistead M. Dobie Professor of Law* (8/11 – 8/14); *Visiting Professor of Law* (8/10 - 12/10). Courses taught include administrative law, the law and economics of intellectual property, torts, patent law and advanced patent law.

George Washington University Law School **Washington, DC**
8/03 - 7/11 *Oswald Symister Colclough Research Professor of Law* (6/06 - 7/11); *Professor of Law* (8/03 - 6/06). Courses taught included administrative law, patent law, statutory interpretation, torts and international patent law.

New York University School of Law **New York, NY**
1/05 - 5/05 *Visiting Professor of Law*. Taught course on statutory interpretation, administrative law and regulatory theory.

William & Mary Law School **Williamsburg, VA**
8/99 - 8/03 *Professor of Law* (9/02 - 8/03); *Associate Professor of Law* (7/00-8/02); *Visiting Assistant Professor of Law* (8/99 - 12/99). Courses taught included administrative law, patent law, torts and telecommunications.

The University of Chicago Law School **Chicago, IL**
1/03 - 5/03 *Visiting Associate Professor of Law and Olin Fellow in Law and Economics*. Taught international intellectual property and supervised a seminar in law and economics.

Benjamin N. Cardozo School of Law **New York, NY**
8/96 - 6/00 *Associate Professor of Law* (8/99-6/00); *Assistant Professor of Law* (8/96-8/99). Courses taught included administrative law, patent law, torts and constitutional law.

Covington & Burling **Washington, DC**
10/93 - 6/96 *Associate*. Areas of practice included appellate litigation, administrative law, communications regulation and intellectual property.

United States Supreme Court **Washington, DC**
7/92 - 7/93 *Law Clerk to the Honorable Antonin Scalia*.

U.S. Department of Justice, Office of Legal Counsel **Washington, DC**
9/90 - 6/92 *Attorney-Advisor*. Areas of practice included separation of powers, First Amendment, government ethics, immigration and administrative law.

U.S. Court of Appeals for the District of Columbia Circuit **Washington, DC**
8/89 - 8/90 *Law Clerk to the Honorable Stephen F. Williams*.

AT&T Bell Laboratories**Holmdel, NJ**

7/85 - 9/86 *Senior Technical Advisor.* Conducted experiments on optical computing. Received Extraordinary Contribution Award. Technical publications included *Pulsed Optical Logic in GaAs Etalons*, *Optical Bistability III: Proceedings of the Topical Meeting 32* (1985) (with J.L. Jewell and Y.H. Lee); *Parallel Operation and Crosstalk Measurements in GaAs Etalon Optical Logic Devices*, 48 *Applied Physics Letters* 1342 (1986) (with J.L. Jewell and Y.H. Lee).

Education**University of Chicago Law School****Chicago, IL**

9/86 - 6/89 *J.D. with Honors.* Law Review, Articles Editor. Honors and Awards: Order of the Coif, Olin Fellowship in Law and Economics, Isaiah S. Dorfman Prize for Outstanding Work in Labor Law, and John M. Olin Prize to the Outstanding Graduate in Law and Economics.

Harvard College**Cambridge, MA**

9/81 - 6/85 *A.B. in physics, cum laude.* Student Tutor Supervisor, Harvard Bureau of Study Counsel. John Harvard Scholarship.

Other Professional and Academic Activities

Public Member, Administrative Conference of the United States (12/2018 –)

Of Counsel, Hughes, Hubbard & Reed (1/2015 –)

Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP (2006 – 10/2014)

American Bar Association, Section of Intellectual Property Law, Member of the Task Force on Patent Reform (2007 - 2011)

Advisory Board Member, The Peer to Patent Project: Community Patent Review (2006 - 2010)

Advisory Board Member, Creative and Innovative Economy Center (2006 - 2011)

Amicus Brief (principal author and lead counsel for a group of 12 academics) in *Nuijten v. Dudas* (S. Ct. 2008)

Co-counsel for the Amicus RDC in *In re Bilski* (Fed. Cir. 2008) (en banc); granted time by the court to present oral argument as an amicus

Amicus Brief (principal author and lead counsel for a group of 10 academics) in *Microsoft v. AT&T* (S. Ct. 2007)

Co-counsel for the Petitioner in *KSR v. Teleflex*, 127 S. Ct. 1727 (2007)

Co-Chair, Institutional Reform Working Group of the Digital Age Communications Act Project, Progress and Freedom Foundation (2005 - 2006)

Chair, 2004 Fall Conference on Administrative Law, ABA Section on Administrative Law and Regulatory Practice (October 21-22, 2004)

Munich Intellectual Property Law Center (joint program with the Max Planck Institute for Intellectual Property) (2004 – taught international patent law; 2008 - 2015 – taught the law and economics of intellectual property)

Vice Chair, Intellectual Property Committee, ABA Section on Administrative Law and Regulatory Practice (2000 - 2011)

Expert Witness for the U.S. Federal Trade Commission, *In the Matter of Union Oil Company of California*, No. 9305 (2003-2004)

Section Council Member, ABA Section on Administrative Law and Regulatory Practice (2001 - 2004)

Assistant Chief Reporter, Project on the Administrative Procedure Act, ABA Section on Administrative Law and Regulatory Practice (1999 - 2005)

Teaching Fellow, University of Washington, Center for Advanced Study and Research on Intellectual Property (July, 1999). Taught class on patent law to a group of international students as part of a summer seminar

Member of Faculty for Summer Program: Media Law and New Communications Technologies, Programme in Comparative Media Law and Policy at Oxford University (July - August, 1998; taught seminar on communications technology and regulatory policy).

Academic Publications

Casebook:

PATENT LAW AND POLICY (7th ed. Lexis 2017) (with Robert Patrick Merges)

PATENT LAW AND POLICY (6th ed. Lexis 2013) (with Robert Patrick Merges)

PATENT LAW AND POLICY (5th ed. Lexis 2011) (with Robert Patrick Merges)

PATENT LAW AND POLICY (4th ed. Lexis 2007) (with Robert Patrick Merges)

PATENT LAW AND POLICY (3rd ed. Lexis 2002) (with Robert Patrick Merges)

Articles and Chapters:

Intellectual Property as an Emergent Inducement for Legal Innovation (with Michael Abramowicz) (contribution to Spring 2018 conference on “Legal Innovation” sponsored by the European Center of Law and Economics of ESSEC Business School)

John F. Duffy, *Reasoned Decisionmaking vs. Rational Ignorance at the Patent Office*, 104 Iowa L. Rev. 2351 (2019)

Common Law vs. Statutory Bases of Patent Exhaustion, 103 Va. L. Rev. Online 1 (2017) (with Richard M. Hynes)

Statutory Domain and the Commercial Law of Intellectual Property, 102 Va. L. Rev. 1 (2016) (with Richard Hynes)

Counterproductive Notice in Literalistic versus Peripheral Claiming, 96 B.U. L. Rev. 1197 (2016)

Standing to Challenge Patents, Enforcement Risk, and Separation of Powers, 83 Geo. Wash. L. Rev. 628 (2015)

Reviving the Paper Patent Doctrine, 98 Cornell L. Rev. 1359 (2013)

The Inequities of Inequitable Conduct: A Case Study of Judicial Control of Administrative Process, 51 Hous. L. Rev. 417 (2013)

Jury Review of Administrative Action, 22 Wm. & Mary Bill Rts. J. 281 (2013)

The Inducement Standard of Patentability, 120 Yale L. J. 1590 (2011) (co-authored with Michael Abramowicz)

Why Business Method Patents?, 63 Stan. L. Rev. 1247 (2011)

Ending the Patenting Monopoly, 157 U. Pa. L. Rev. 1541 (2009) (co-authored with Michael Abramowicz)

Rules and Standards on the Forefront of Patentability, 51 Wm. & Mary L. Rev. 609 (2009) (invited symposium article)

The Federal Circuit in the Shadow of the Solicitor General, 78 G.W. L. Rev. 518 (2010) (symposium contribution)

Innovation and Recovery, 14 Marquette Intell. Prop. L. Rev. 237 (2010) (invited endowed lecture, The Thirteenth Annual Honorable Helen Wilson Nies Memorial Lecture in Intellectual Property Law)

Are Administrative Patent Judges Unconstitutional?, 77 G.W. L. Rev. 904 (2009)

Intellectual Property for Market Experimentation, 83 N.Y.U. L. Rev. 337 (2008) (with Michael Abramowicz)

A Timing Approach to Patentability, 12 Lewis & Clark L. Rev. 343 (2008) (invited symposium article)

Inventing Invention: A Case Study of Legal Innovation, 88 Tex. L. Rev. 1 (2007)

Rethinking Patent Law's Uniformity Principle, 101 Nw. U. L. Rev. 1619 (2007) (with Craig Allen Nard)

KSR v. Teleflex: Predictable Reform of Patent Substance and Procedure in the Judiciary, 106 Mich. L. Rev. First Impressions 34 (2007) (invited essay for symposium on "The Supreme Court, the Federal Circuit, and Patent Law"), available at <http://www.michiganlawreview.org/firstimpressions/vol106/duffy.htm>

Obviousness and the Graham Case (with Robert Patrick Merges) (book chapter in INTELLECTUAL PROPERTY STORIES (Ginsburg and Dreyfuss, eds.) (2005))

Intellectual Property Isolationism and the Average Cost Thesis, 83 Tex. L. Rev. 1077 (2005) (invited response)

Rethinking the Prospect Theory of Patents, 71 U. Chi. L. Rev. 439 (2004)

The Marginal Cost Controversy in Intellectual Property, 71 U. Chi. L. Rev. 37 (2004)

Experiments After the Federal Circuit, 54 Case W. Res. L. Rev. 803 (2004) (symposium comment)

The Festo Decision and the Return of the Supreme Court to the Bar of Patents, 2002 S. Ct. Rev. 273 (2003)

Harmony and Diversity in Global Patent Law, 17 BERKELEY TECH. L. J. 685 (2002)

The FCC and the Patent System: Progressive Ambitions, Jacksonian Realism, and the Technology of Regulation, 71 U. Colo. L. Rev. 1071 (2000)

On Improving the Legal Process of Claim Interpretation: Administrative Possibilities, 2 J. L. & Pol'y 109 (2000)

Dickinson v. Zurko: An Amicus Brief, 4 Marq. Intell. Prop. L. Rev. 49 (2000) (with Thomas G. Field, Jr., and Craig Allen Nard)

Administrative Common Law in Judicial Review, 77 Tex. L. Rev. 113 (1998)

Symposium: Early Patent Publication: A Boon or Bane?, 16 *Cardozo Arts & Ent. L.J.* 601 (1998) (panel introduction)

Technological Change and Doctrinal Persistence: Telecommunications Reform in Congress and the Court, 97 *Colum. L. Rev.* 976 (1997) (with Monroe E. Price)

Comment, *Sovereign Immunity, the Officer Suit Fiction and Entitlement Benefits*, 56 *U. Chi. L. Rev.* 295 (1989).

Online Commentary (selected)

Is Barney Frank Right about the President's Power to Remove the CFPB Director? *Yale J. on Reg.: Notice & Comment*, <http://yalejreg.com/nc/is-barney-frank-right-about-the-presidents-power-to-remove-the-cfpb-director-by-aditya-bamzai-john-f-duffy/> ((Jan. 10, 2017) (with Aditya Bamzai)

Statutory Interpretation and the Exhaustion Issues in Lexmark v. Impression Products, (published May 12, 2015 on Patently-O Law Blog)

(<http://patentlyo.com/patent/2015/05/interpretation-exhaustion-impression.html>)

In Favor of "Good Property-Defining Institutions" ... and Opposed to Bad "Reforms," (published Sept. 12, 2014 in *Cato Unbound*) (available at <http://www.cato-unbound.org/2014/09/12/john-f-duffy/favor-good-property-defining-institutions-opposed-bad-reforms>)

The Uncertain Expansion of Judge-Made Exceptions to Patentability, (published June 20, 2014, on *Scotusblog*) (available at <http://www.scotusblog.com/2014/06/opinion-analysis-the-uncertain-expansion-of-judge-made-exceptions-to-patentability/>)

The Triumph of the Lanham Act (and of Federal Private Rights of Action), (published June 13, 2014, on *Scotusblog*) (available at <http://www.scotusblog.com/2014/06/opinion-analysis-the-triumph-of-the-lanham-act-and-of-federal-private-rights-of-action/>)

Let's Get Rid of Kludgy Patent Fixes and Define the Non-Obvious (published Nov. 16, 2012 in *Wired Magazine* in conjunction with an academic conference held at Santa Clara University) (available at <http://www.wired.com/opinion/2012/11/lets-get-rid-of-kludgy-patent-fixes-and-define-the-non-obvious/>)

Patent Utility Reduxit (published May 5, 2010 on *Jotwell*) (available at <http://ip.jotwell.com/patent-utility-reduxit/>)

The Death of Google's Patents? (published July 21, 2008 on *Patently-O weblog*) (available at <http://www.patentlyo.com/patent/2008/07/the-death-of-go.html>)

Are Administrative Patent Judges Unconstitutional?, 2007 *Patently-O Patent L.J.* 21 (available at <http://www.patentlyo.com/lawjournal/files/Duffy.BPAI.pdf> (7/2007 version) & at <http://ssrn.com/abstract=1128311> (5/2008 version))

Edited Books

A GUIDE TO JUDICIAL AND POLITICAL REVIEW OF FEDERAL AGENCIES (co-editor, with Michael Herz) (2005).

Awards

Named a Legal “Visionary” by the *Legal Times* (Fall 2009)

1999 Annual Scholarship Award, ABA Section on Administrative Law and Regulatory Practice (for *Administrative Common Law in Judicial Review*)

Grants

Kauffman Foundation, Recipient of Multi-Year Grant for Conferences and Research on “Legal Policies for Directly Promoting Entrepreneurship” (with Michael Abramowicz)

Media Reports on Scholarly Activities

The 25 Most Influential People in IP, *The American Lawyer* (Sept. 2010)

A Scholar-Activist Challenges U.S. Patent Law, *BusinessWeek* (June 22, 2009) (available at http://www.businessweek.com/innovate/content/jun2009/id20090622_878427.htm)

Power, Politics and Passion – This Year’s MIP 50, *Managing Intellectual Property* (identified as one of the 50 most influential people in intellectual property in the world)

Adam Liptak, *In One Flaw, Questions on Validity of 46 Judges* (May 6, 2008) (story about article on *Are Administrative Patents Judges Unconstitutional?*) (available at <http://www.nytimes.com/2008/05/06/washington/06bar.html>)

Marcia Coyle, *Patent Board’s Ruling in Doubt*, *The National Law Journal* (April 28, 2008) (available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1209047603781>)

Bar Admissions

District of Columbia (1994), United States Supreme Court (1995), United States Court of Appeals for the District of Columbia Circuit (1994), United States Court of Appeals for the Federal Circuit (1996), United States Patent and Trademark Office (Registered Patent Attorney, 1996).