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Intellectual Property and Gender: Reflections on Accomplishments and Methodology

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INTELLECTUAL PROPERTY AND GENDER: REFLECTIONS ON ACCOMPLISHMENTS AND METHODOLOGY

KARA W. SWANSON*

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I. INTRODUCTION

This essay answers the invitation of the organizers of the annual Intellectual Property/Gender Symposium at American University

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Washington College of Law, after ten years of symposia, to consider how the next ten years of scholarship in the area of intellectual property (IP) “might open up new insights regarding the production of knowledge, commodification, definition and valuation of women’s work, and other areas of feminist and queer inquiry.”¹ I do so by thinking retrospectively, using two investigative axes, both infused by a feminist frame.

The first axis is a literature review, less frequently seen as an end in itself in law than in other disciplines, perhaps to our loss.² Examining the scholarship of IP and gender produced over the past ten years, I document what has been accomplished in terms of quantity and publication venues as evidence of shifting conversations and community building. Turning to the content of this work, I argue that with respect to traditional IP, that is, copyright, patent and trademark,³ considering gender and IP has yielded results in three areas: identifying gender disparity in participation in IP systems and its causes, identifying disparity in the application of IP doctrines to subject matter that involves gender and sexuality, and revealing the gendered nature of facially gender-neutral IP doctrines.

The second axis draws upon my personal experiences writing and publishing in the area of gender and IP to consider the methodologies of this project. As an interdisciplinary scholar using history to investigate law, I am frequently forced to confront issues of translation, transcendence and transmittal that I argue are relevant to all scholars interested in what the organizers describe as “creating intellectual property law that fosters social justice.”⁴ How do we translate the insights of feminist and queer theory into IP and information law, areas where gender has remained remarkably invisible?⁵ How do we transcend subject matter boundaries to create new

1. 2015 IP/Gender Call for Papers, PROGRAM ON INFO. JUSTICE & INTELLECTUAL PROP., <http://www.pijip.org/2015-ipgender-call/> (last visited Sept. 7, 2015) (noting these symposia have been organized jointly by the Women and the Law Program, the Program on Information Justice and Intellectual Property, and the *Journal of Gender, Law, and Social Policy*).

2. Jane Webster & Richard T. Watson, *Analyzing the Past to Prepare for the Future: Writing a Literature Review*, 26 MIS Q. xiii, (2002) (arguing that progress in any field is impeded without published literature reviews).

3. Note that these symposia have intentionally reached beyond these forms of IP grounded in federal statutes to explore the subject area more broadly. See list of past symposia topics at <http://www.pijip.org/ip-gender/>.

4. PROGRAM ON INFO. JUSTICE & INTELLECTUAL PROP., *supra* note 1.

5. While this article does not attempt to collect or review publications on information law/cyberlaw and gender, there is growing body of such literature, including issues such as gender and cyberspace and the right of publicity (sometimes included as a form of common law intellectual property). See, e.g., Ann Bartow, *Our Data, Ourselves: Privacy, Propertization, and Gender*, 34 U.S.F. L. REV. 633 (2000); Rosemary J. Coombe, *Authorizing the Celebrity: Publicity Rights, Postmodern Politics*,

insights? And perhaps most challenging of all, how do we transfer those insights to scholars who do not write or think about gender, to students in classrooms, and to those who write and pass laws so that we shape IP law to promote gender equality? I use the feminist approach of finding the political in the personal to integrate these two axes and identify the key challenges and opportunities for all of us who wish to contribute to the endeavor begun by these symposia.

II. ACCOMPLISHMENTS

In science, the literature review article is an established genre, considered an important professional service in its gathering and sorting of key scholarship, thus creating a launch pad for the next generation of research. In the law review literature, we have an ambivalent relationship to literature review. We require some version of it in every article, but we do not particularly value it, and confine it to footnotes.⁶ I offer this brief literature review in the hopes that it will be of use, as a scientific version might be, but also as a form of feminist scholarship, naming and claiming the past in order that it might be celebrated and valued, as well as used.

A. *Generating Scholarship and Creating Connections*

I want to start with the overall conclusion of this literature review: the IP/Gender Symposia that the American University Washington College of Law Program on Information Justice and Intellectual Property, the Woman and the Law Program and the *Journal of Gender, Social Policy & the Law* have jointly sponsored have been a rousing success. To quote Charles Dickens, “this must be distinctly understood, or nothing wonderful can come of the story I am going to relate.”⁷ This success is evidenced both in the volume of work produced, and in the scholarly community created, a community that can be traced in the academic literature.⁸

and Unauthorized Genders, 10 CARDOZO ARTS & ENT. L.J. 365 (1992); Rosemary J. Coombe, *Publicity Rights and Political Aspiration: Mass Culture, Gender Identity, and Democracy*, 26 NEW ENG. L. REV. 1221 (1992), and Margaret Chon, *Erasing Race?: A Critical Race Feminist View of Internet Identity-Shifting*, 3 J. GENDER RACE & JUST. 439 (2000).

6. I am referring of course to the practice of including lengthy string cites in the first footnotes of a legal article. See I. Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445, 450 (1986) (“Your footnotes . . . should reflect that you have taken into account every significant idea, book, or article that is out there”).

7. CHARLES DICKENS, *A CHRISTMAS CAROL 2* (London: Chapman & Hall, 1843).

8. While not the subject of this essay, it worth noting that that there has been a gendered aspect to the scholarly community within the legal academy devoted to intellectual property law. To a notable extent, and at a time in the twentieth century when female law professors were uncommon, women developed the foundational

The project of creating a bibliography of intellectual property and gender scholarship is, in the best possible way, endless. A complete bibliography would encompass research from many disciplines and many countries, a breadth that these symposia have often acknowledged and facilitated in their speaker lists.⁹ My efforts have been helped by an earlier bibliography compiled by symposia participants in 2006, and Dan Burk's recent efforts in a similar direction.¹⁰ In this literature review, I focus on one bounded portion of this bibliography: United States and Canadian legal literature.¹¹ Not only are articles in these venues readily identifiable and countable through on-line databases, but they also share a common language, English, and a common readership.¹² Through its offers of publication to

scholarship in this area of law. These scholars include Rebecca Eisenberg, Jane Ginsburg, Wendy Gordon, Jessica Litman, Margaret Jane Radin, and Pamela Samuelson.

9. Past programs are available here: <http://www.pijip.org/ip-gender/>. By inviting non-US scholars and non-legal scholars to publish symposium contributions, the *Journal of Gender, Social Policy & the Law* has succeeded in bringing these viewpoints into the North American law review literature. See, e.g., Bernadita Andrae, *Scientific Productivity and Gender Performance Under Open and Proprietary Science Systems: The Case of Chile in Recent Years*, 19 AM. U. J. GENDER SOC. POL'Y & L. 799, 799 (2011); Boatema Boatang, *Walking the Tradition-Modernity Tightrope: Gender Contradictions in Textile Production and Intellectual Property Law in Ghana*, 15 AM. U. J. GENDER SOC. POL'Y & L. 341, 341 (2007); Annette I. Kahler, *Examining Exclusion in Woman-Inventor Patenting: A Comparison of Educational Trends and Patent Data in the Era of Computer Engineer Barbie*, 19 AM. U. J. GENDER SOC. POL'Y & L., 773, 773 (2011).

10. See *IP Gender Bibliography*, AM. U. WASH. C. OF L., <https://www.wcl.american.edu/pijip/ipgbibliography.cfm> (last updated Mar. 23, 2006). Dan Burk graciously shared with me the selected bibliography he prepared for a presentation at the World Intellectual Property Organization in the fall of 2014 on the topic. Copy on file with the author. I attach the portion of my bibliography discussed herein as Appendix A. I warmly invite additions, and thank the Program on Information Justice and Intellectual Property for incorporating Appendix A into their IP Gender Bibliography.

11. See *infra* Appendix A. By legal literature, I mean law reviews, both student edited and peer-reviewed, as well as edited volumes. In setting these limits, I am admitting my inability to develop a complete bibliography across all nations and disciplines, and knowingly neglecting many works published in other venues. See, e.g., Waverly W. Ding, Fiona Murray, & Toby E. Stuart, *Gender Differences in Patenting in the Academic Life Sciences*, 313 SCIENCE 665 (2006); Kjersten Bunker Whittington & Laurel Smith-Doerr, *Women Inventors in Context: Disparities in Patenting across Academia and Industry*, 22 GENDER & SOC'Y 194-218 (2008), as well as the *IP Gender Bibliography*, *supra* note 10.

12. The contours and extent of that readership admittedly have been contested for almost a century. See, e.g., Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936); John E. Nowak, *Woe Unto You, Law Reviews!* 27 ARIZ. L. REV. 317, 317

symposium presenters, the *Journal of Gender, Social Policy & the Law* has had an outsized influence on the scholarship in this area, regularly publishing articles on IP and gender. The *Journal's* efforts have also had an indirect influence on the legal literature as the articles it published have then been cited by other legal scholars publishing in other law reviews. I have collected forty-one articles, all but three published since 2004, the date of the first symposia. The pieces that predate the symposia demonstrate a similar range of subject matter, from gender disparity in participation in the IP system,¹³ to the application of IP doctrines to subject matter that involves gender and sexuality,¹⁴ to the application of feminist analysis to facially gender-neutral IP doctrines.¹⁵

Once the symposia began, the rate of publication in this area jumped from one piece about every 5 years to several pieces per year.¹⁶ The first articles published since the symposia began, in 2004 and 2005, are both by Ann Bartow. The first is a lengthy piece on likelihood of confusion in trademark law, a stealth IP and gender article in that it does not indicate in its title that it addresses gender, nor does Bartow concentrate exclusively on that topic.¹⁷ I include it, however, because in the text one can find Bartow's already established attention to questions of gender and sex equality, a theme that she has carried through her work over the next decade. The second is Bartow's analysis of "women in the web of secondary copyright liability."¹⁸ I suspect that these pieces are not so much the result of the IP/Gender symposia as the impetus for them, as Bartow has been an early and frequent presenter at the symposium. Indeed, the second annual symposium had only two presenters, Bartow and Sonya Katyal.¹⁹ The result was the first symposia pieces to be published in the

(1985); Max Stier et al., *Law Review Usages and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1467 (1992); Richard A. Wise, et al., *Do Law Reviews Need Reform? A Survey of Law Professors, Students Editors, Attorneys, and Judges*, 59 LOY. L. REV. 1, 1 (2013).

13. Kara Hagen, *An Essay on Women and Intellectual Property Law: The Challenges Faces by Female Attorneys Pursuing Careers in Intellectual Property*, 15 SANTA CLARA COMPUTER & HIGH TECH. L.J. 139, 140 (1999).

14. Madhavi Sunder, *Intellectual Property and Identity Politics: Playing With Fire*, 4 J. GENDER RACE & JUST. 69, 71 (2000).

15. Shelley Wright, *A Feminist Exploration of the Legal Protection of Art*, 7 CANADIAN J. WOMEN & L. 59, 61 (1994).

16. See *infra* Appendix A. For example, in 2011, seven pieces were published in the law review literature on IP and gender.

17. Ann Bartow, *Likelihood of Confusion*, 41 SAN DIEGO L. REV. 721, 722 (2004).

18. Ann Bartow, *Women In The Web of Secondary Copyright Liability and Internet Filtering*, 32 N. KY. L. REV. 449, 449 (2005).

19. *Past Symposia*, AM. U. WASH. C. OF L.,

Journal of Gender, Social Policy & the Law, both in 2006.²⁰ And here we begin to see the influence of these symposia. About half of all law review scholarship on intellectual property and gender that I have been able to find published in 2006 and later has been published in the *Journal of Gender, Social Policy & the Law*, directly as a result of this symposia.²¹ Other pieces, like my own, may have been first presented at a symposium, and then later published elsewhere.²² Looking at the bibliography, I can discern several scholars, who, having first published in this area as a result of participating in a symposium, have gone on to publish more on the topic.²³ Some scholars, like Dan Burk, have come repeatedly to this symposia, and published repeatedly in the *Journal*.²⁴

The first symposium was subtitled “unmapped connections,” acknowledging the near-absence of acknowledgement that IP and gender had any interaction.²⁵ It is clear that as a result of the attention these symposia brought to this area, we have transitioned from intellectual property and gender being an unimagined area of research, or one, as in Bartow’s first piece, that dared not speak its name, to a lively area of research within the legal academy that is beginning to spill over into the larger conversation about intellectual property. For example, Irene Calboli and Srividhya Ragavan’s edited volume, *Diversity in Intellectual Property: Identities, Interests, and Intersections* (2015), includes an entire Part on

<https://www.wcl.american.edu/pijip/ipg2005symposium.cfm> (last visited Sept. 8, 2015).

20. Ann Bartow, *Fair Use and the Fairer Sex: Gender, Feminism and Copyright Law*, 14 AM. U. J. GENDER SOC. POL’Y & L. 551 (2006); Sonia Katyal, *Performance, Property, and Slashing of Gender in Fan Fiction*, 14 AM. U. J. GENDER SOC. POL’Y & LAW 461, 461 (2006).

21. See *infra* Appendix A (17/34).

22. Kara W. Swanson, *Getting a Grip on the Corset: Gender, Sexuality and Patent Law*, 23 YALE J. L. & FEMINISM 57 (2011), first presented at 7th Annual Symposium.

23. See, e.g., Carys Craig, *Reconstructing the Author-Self: Some Feminist Lessons for Copyright Law*, 15 AM. U. J. OF GENDER SOC. POL’Y & L. 207, 207 (2007); Carys Craig, *Feminist Aesthetics*, in IRENE CALBOLI & SRIVIDHYA RAGAVAN, EDs., *DIVERSITY IN INTELLECTUAL PROPERTY: IDENTITIES, INTERESTS, AND INTERSECTIONS* 273 (2015); Boatema Boatang, *Walking the Tradition-Modernity Tightrope: Gender Contradictions in Textile Production and Intellectual Property Law in Ghana*, 15 AM. U. J. GENDER SOC. POL’Y & L. 341 (2007); Boatema Boatang, *Authoring Cloth*, in MEDIA AUTHORSHIP 87 (Cynthia Chris & David A. Gerstner eds., 2013).

24. Dan L. Burk, *Copyright and Feminism in Digital Media*, 14 AM. U. J. GENDER SOC. POL’Y & L. 519 (2006); Dan L. Burk, *Feminism and Dualism in Intellectual Property*, 15 AM. U. J. GENDER SOC. POL’Y & L. 183 (2007); Dan L. Burk, *Do Patents Have Gender?* 19 AM. U. J. GENDER SOC. POL’Y & L. 881 (2011).

25. American University, Washington College of Law, *IP/Gender: The Unmapped Connections* (2004), <https://www.wcl.american.edu/secle/founders/2004/ipgender.pdf>.

gender and IP, with pieces by past symposia participants Bartow, Carys Craig, Katyal and Rebecca Tushnet.²⁶ Bartow, who began by embedding gender in a larger piece, has continued to publish about IP and gender, with her work analyzing pornography and copyright, using an explicitly feminist frame, published in general and technology law reviews.²⁷ Laura Foster and Eileen Kane have brought traditional knowledge and feminisms into the discussion about breast cancer gene patents, a discussion that has been raging in the courts and in the literature, again building on the literature developed from these symposia.²⁸

When I call these symposia a “rousing success,” these accomplishments are what I am celebrating: the development of scholarship mapping the connections between IP and gender and connections among scholars interested in these connections. The bibliography reveals that over time, more scholars are involved in this area and more scholars are developing a research trajectory in this area. This growing community has built upon personal connections made at the symposia and the intellectual connection of reading each others’ work to develop new scholarship using and citing this scholarship and to further grow the community by, for example, inviting each other to events and to participate in edited volumes. I think there is no question that such connections are crucial to establishing a new area of research, and that the organizers have succeeded in creating and fostering such connections.²⁹ What the bibliography cannot show is the

26. CALBOLI & RAGAVAN, *supra* note 23, at 273-366. Note, too, that one of the editors, Irene Calboli, attended the 11th Annual Symposium and served as a moderator. <http://www.pijip.org/ip-gender/>. Craig, *Feminist Aesthetics*, *supra* note 23, at 273; Ann Bartow, *Copyright Law and the Commoditization of Sex*, in CALBOLI & RAGAVAN, 339; Sonia K. Katyal, *Slash/ing Gender and Intellectual Property: A View from Fan Fiction*, CALBOLI & RAGAVAN, 315; and Rebecca Tushnet, *The Romantic Author and the Romance Writer: Resisting Gendered Concepts of Creativity*, CALBOLI & RAGAVAN, 294.

27. See generally Ann Bartow, *Copyright Law and Pornography*, 91 OR. L. REV. 1, 3-5 (2012); Ann Bartow, *Copyright Law and Pornography: Reconsidering Incentives to Create and Distribute Pornography*, 39 U. BALT. L.F. 75, 75 (2008-09); Ann Bartow, *Pornography, Coercion, and Copyright Law 2.0*, 10 VAND. J. ENT. & TECH. L. 799, 799-800 (2008).

28. Eileen M. Kane, *Molecules and Conflict: Cancer, Patents, and Women’s Health*, 13 AM. U. J. GENDER SOC. POL’Y & L. 305, 328-33 (2007); Laura A. Foster, *Patents, Biopolitics, and Feminisms: Locating Patent Law Struggles Over Breast Cancer Genes and the Hoodia Plant*, 19 INT. J. CULTURAL PROP. 371, 372, 381-87 (2012); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2112-15 (2013).

29. See, e.g., Ann Shalleck, *Institutions and the Development of Legal Theory: The Significance of the Feminism and Legal Theory Project*, 13 AM. U. J. GENDER SOC. POL’Y & L. 7, 7-8 (2005) (detailing an early example of a scholarly community successfully and deliberately created by workshops).

ways in which the published scholarship travels beyond the community of scholars linked through these symposia. Each publication is an opportunity to grow an audience for IP and gender work, and to demonstrate the connections to all law review readers.

B. Scholarly Contributions

To this celebration of the development of IP/gender scholarship and its supporting community, I want to add some analysis of what has been done, with the goal not only of naming and claiming, but of thinking about where to go next, which I see as one of the objects of the 11th symposium.³⁰ Collectively, this work has made the important step of bringing IP into the discussion that critical legal theorists have been having for decades. That is, it has reminded us that there is no such thing as neutral law – that law replicates existing social hierarchies, and we need to look at all bodies of law carefully, to see what power hierarchies they create and what subordination they promote, if we want to promote equality instead.³¹ The absence of scholarship on IP and gender before these symposia underscores how necessary it is that this community state and reiterate the simple truth that intellectual property law is no different than any other area of law in this regard, and that its formal gender neutrality does not mean that there is nothing to be considered with respect to IP and gender.³²

While all the work done since these symposia started is grounded in this important point, I loosely divide it into three areas of accomplishment: (i)

30. In so doing, I recognize the existence of other, useful schema. Victoria Phillips, paraphrasing and amending the Call for Papers for the 5th Symposium, characterized early scholarship arising out of the symposia in six categories: “the impact of intellectual property on gender-related imbalances in wealth, cultural access, political power, and social control; creative production and gender; the effects of stereotyping on intellectual property stakeholders; the gendered development of IP doctrine and the practice of IP; feminist jurisprudential insights about intellectual property law; and female fan cultures and intellectual property.” Victoria Phillips, *Gender and Invention: Mapping the Connections*, 19 AM. U. J. GENDER SOC. POL’Y & L. 767, 768 (2011) (paraphrasing Call for Papers at <http://madisonian.net/conferences/2008/01/30/ipgender-at-american-4/>). Dan Burk, in developing his bibliography, used the categories of Empirical, Legal-Patent, Legal-Copyright, Legal-Traditional Knowledge, and Legal-Jurisprudence.

31. This point has been made in much more nuanced and sophisticated ways by many different scholars. See Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 70-71 (1984); Roberto M. Unger, *The Critical Legal Studies Movement*, in ALLAN C. HUTCHINSON, *CRITICAL LEGAL STUDIES* 323 (1989); RICHARD W. BAUMAN, *CRITICAL LEGAL STUDIES: A GUIDE TO THE LITERATURE* 3-5 (1996).

32. By formal gender neutrality, I mean that the statutes of IP, the Lanham Act, 15 U.S.C. § 1051 (2002), the Copyright Act, 17 U.S.C. § 101 (2010), and the Patent Act, 35 U.S.C. § 1 (2000), do not directly address gender, sex, or sexuality.

analyzing gender disparity in participation in IP systems, (ii) analyzing the application of IP doctrines to subject matter that involves gender and sexuality; and (iii) analyzing the gendered nature of IP doctrines themselves.

1. *Analyzing Gender Disparity*

As a historian of women, technology, and science, I have sometimes made the mistake of thinking of gender disparity in participation in IP systems as old news, noticed and discussed for over a century.³³ But what is important and significant, and explored in past symposia, is the extent to which such disparate participation is not merely the stuff of history, but rather current reality. In the early twenty-first century, women are receiving fewer than 11% of patents issued in the United States.³⁴ That is not just a disparity, it is a chasm. Further, research shows that female scientists patent less often than male scientists, even in areas of science where there is near-gender parity in personnel (bioscience) and when researchers attempt to control for other possible causative variables, such as age and institutional affiliation.³⁵ As Dan Burk has been considering, this situation cries out for rectification. Is there something within the patent system itself, in addition to the well-known barriers to women's participation in science, engineering, and technology that is limiting women's participation? Burk is exploring possible "levers" within the patent system that might be pulled to improve female participation.³⁶

What also becomes apparent when one considers the data about women and patenting is that we lack such data, historical or present-day, for

33. For the "old news," see DENISE E. PILATO, THE RETRIEVAL OF A LEGACY: NINETEENTH CENTURY AMERICAN WOMAN INVENTORS (2000); B. Zorina Khan, 'Not for Ornament': *Patenting Activity by Nineteenth-Century Women Inventors*, 31 J. INTERDISCIPLINARY HIST. 159, 165 (2000) (noting that only 77 patents issued to women between 1790 and 1860); Deborah J. Merritt, *Hypatia in the Patent Office: Women Inventors and the Law, 1865-1900*, 35 AM. J. LEGAL HIST. 235 (1991).

34. Data on the gender identity of inventors is difficult to access. Kahler, *supra* note 9, at 775-76, 778, 782 n.52 (these numbers include design and plant patents; women were named inventors on only 7% of utility patents between 1977 and 2002).

35. Ding et al., *supra* note 11, at 665-66; see also Kahler, *supra* note 9, at 782-84; G. Steven McMillan, *Gender Differences in Patenting Activity: An Examination of the US Biotechnology Industry*, 80 SCIENTOMETRICS 685, 686-87 (2009); Kjersten Bunker Whittington & Laurel Smith-Doerr, *Gender and Commercial Science: Women's Patenting in the Life Sciences*, 30 J. TECH. TRANSFER, 355, 360 (2005); Kjersten Bunker Whittington & Laurel Smith-Doerr, *Women Inventors in Context: Disparities in Patenting across Academia and Industry*, 22 GENDER & SOC'Y 1, 3, 8 (2008). Note that Kahler and Smith-Doerr are past participants in this symposium.

36. Dan Burk, *Diversity Levers*, 23 DUKE J. GENDER L. & POL'Y, forthcoming (2015).

women and the copyright system or the trademark system. We know something about the percentage of women executives in copyright-intensive industries,³⁷ and we know, thanks to participants in this symposia and those who built on their work, something about how copyright tends to exclude traditionally female forms of knowledge and creativity,³⁸ but what can we say about copyright registration, copyright infringement claims, and the rate of trademark registration by women-owned businesses?³⁹ This is not old news, but news yet to be gathered.

2. *Analyzing the Application of IP Doctrines to Gendered and Sexualized Subject Matter*

These symposia have also highlighted the extent to which intellectual property laws are applied in unusual ways when the subject matter involves sex, sexuality, and/or gender. Past participants have identified the legal oddities that occur when courts decide cases involving IP claims and sexuality. Tushnet has tracked the application of the fair use doctrine to sexualizing reuses or derivative works.⁴⁰ Katyal has looked further, to track differences in decisions when that sexualization is heteronormative or transgressive.⁴¹ In a similar vein, Leigh Hansmann has used this perspective to consider the doctrine of tarnishing in trademark law,

37. ERIKA FALK & ERIN GRIZARD, ANNENBERG PUB. POL'Y CTR., THE GLASS CEILING PERSISTS: 3D. ANNUAL APPC REPORT ON WOMEN LEADERS IN COMMUNICATION COMPANIES (Dec. 2003), http://cdn.annenbergpublicpolicycenter.org/wp-content/uploads/20031222_glass-ceiling_report2.pdf.

38. Debora Halbert, *Feminist Interpretations of Intellectual Property*, 14 AM. U. J. GENDER SOC. POL'Y & L. 431, 438-44 (2006); Emily Chaloner, *A Story of Her Own: A Feminist Critique of Copyright Law*, 6 I/S: J. L. & POL'Y FOR INFO. SOC'Y, 221, 224, 226 (2010); Bartow, *Fair Use and the Fairer Sex*, *supra* note 20, at 554-55, 557, 562; Burk, *Copyright and Feminism*, *supra* note 24, at 546, 549; Terra L. Gearhart-Serna, *Women's Work, Women's Knowing: Intellectual Property and the Recognition of Women's Traditional Knowledge*, 21 YALE J. L. & FEM. 372, 374, 380 (2010); Victoria F. Phillips, *Commodification, Intellectual Property and the Quilters of Gee's Bend*, 15 AM. U. J. GENDER SOC. POL'Y & L. 359, 360 (2007); Malla Pollack, *Towards a Feminist Theory of the Public Domain, or Rejecting the Gendered Scope of United States Copyrightable and Patentable Subject Matter*, 12 WM & MARY J. WOMEN & L. 603, 607-09 (2006); Rebecca Tushnet, *My Fair Ladies: Sex, Gender, and Fair Use in Copyright*, 15 AM. U. J. GENDER SOC. POL'Y & L. 273, 275, 303-04 (2007).

39. One intriguing past work in this area is Melissa L. Tatum et al., *Does Gender Influence Attitudes Toward Copyright in the Filk Community?*, 18 AM. U. GENDER SOC. POL'Y & L. 219, 244, 254-55 (2010).

40. Tushnet, *My Fair Ladies*, *supra* note 38, at 278-85; *see also* Bartow, *Fair Use and the Fairer Sex*, *supra* note 20, at 559-64.

41. Katyal, *Performance*, *supra* note 20, at 463, 467-68.

considering when sexualization is actionable trademark dilution.⁴² In my own work, first presented at this symposium, I have analyzed the result when the public use doctrine in patent law was applied to the corset as a stand-in for female sexuality.⁴³ As these IP doctrines are constantly in play, both in court decisions and in policy discussions about law reform, keeping this work up-to-date and in the public eye seems crucially important. This area of research seems like one ripe for further work in feminist and queer inquiry.

3. *Analyzing IP Doctrines as Gendered*

Perhaps the most fundamental work that these symposia have begun is to bring a critical lens to intellectual property as a legal system, mapping not just the connections between IP and gender, but also the ways in which IP perpetuates power hierarchies based on gender and heteronormativity in ways that are so opaque to much of the legal community that simply naming the problem raises anger and requires careful persuasion.⁴⁴ As more than one participant in these symposia has noted, when it comes to women's ways of creating or knowing – food or fashion in copyright, or tending sick cats as the basis for invention in patents – the expansive doctrines of intellectual property subject matter suddenly narrow, and the definition of authorship and invention are revealed to assume masculinity.⁴⁵ Facially neutral IP law is not neutral, but imbued with the assumptions of those who wrote it and interpret it, including assumptions about sexual orientation and gender identity. Identifying this problem is a first step toward addressing the problem..

This final category of scholarly contribution brings me to my second axis

42. Leigh A. Hansmann, *Sex, Selling Power, & Salacious Commentary: Applying the Copyright Fair Use Doctrine in the Trademark Context*, 2008 MICH. ST. L. REV. 843, 859-60, 864 (2008); see also Jennifer E. Rothman, *Sex Exceptionalism in Intellectual Property*, 23 STAN. L. & POL'Y REV. 119, 127-28, 132-36 (2012) (considering trademark and copyright doctrines applied to sex).

43. Swanson, *Corset*, *supra* note 22, at 60, 69-70, 115.

44. Based on personal experience.

45. Tushnet, *My Fair Ladies*, *supra* note 38, at 303-04; Bartow, *Fair Use and Fairer Sex*, *supra* note 20, at 569-70; Burk, *Do Patents Have Gender?*, *supra* note 24, at 910-11 (discussing gendered aspects of feline HIV patent inventorship dispute). See also Burk, *Feminism and Dualism*, *supra* note 24, at 185; Craig, *Reconstructing the Author-Self*, *supra* note 23, at 208-09; Charles E. Colman, *Design and Deviance: Patent as Symbol, Rhetoric as Metric*, 56 JURIMETRICS J. (forthcoming Summer 2015) (presented as work-in-progress at 11th Annual Symposium); Laura A. Foster, *Situating Feminisms, Patent Law, and the Public Domain*, 20 COLUM. J. GENDER & L., 261, 281-82 (2011); Shlomit Yavinsky-Ravid, *Eligible Subject Matter – Gender Analysis of Patent Law: International and Comparative Perspectives*, 19 AM. U. J. GENDER SOC. POL'Y & L. 851, 866-70 (2011); Swanson, *Corset*, *supra* note 22, at 64-65, 115.

of analysis, via the classic feminist insight, the personal is political. I want to reflect on my own experience writing, speaking and teaching about IP and gender in order to consider our project for the next ten years, not just in suggested research topics, but also in terms of assessing the value of the scholarship generated thus far in illuminating and communicating the connections between IP and gender to others who use and craft IP doctrines. The audiences created by IP/gender scholarship in law reviews are important, but the scholarly community created by these symposia has and can continue to create more opportunities to foster social justice by reaching other audiences as well.

III. BEYOND ACCOMPLISHMENTS

No participant in these workshops would disagree, I suspect, with the proposition that there has been resistance to the idea that there are connections between IP and gender. These symposia came out of the realization that effort would be needed to bring the insights that had been applied to other areas of law to IP.⁴⁶ Over the years, organizers and participants have pushed to expand the conversation to other power dynamics exposed by critical legal studies movements, considering not just gender, but also race, sexual orientation, and intersectionality.⁴⁷ Given this resistance, getting to the second part of the goal the organizers have set for us, developing intellectual property that promotes social justice, requires more than mapping the connections. It requires persuasion, breaking down resistance, and shifting conversations. Therefore, I want to add to a feminist celebration of naming and claiming past accomplishments the more uncomfortable task of examining the ways in which this project has not yet succeeded. I do so by examining my own work and experiences teaching, writing, and speaking about IP and gender.

I was recruited to this project of thinking about IP and gender in my first year of teaching when I was invited to submit a paper proposal to the seventh annual symposium on gender and invention. I remain grateful to the organizers for reaching out, not just to brand-new teachers of law, but across disciplines and across national boundaries. At that symposium I met historians, economists, social scientists, and scholars from Chile and

46. Peter Jaszi, *Opening Remarks*, 15 AM. U. J. GENDER SOC. POL'Y & L. 177, 177-78 (2007). For much earlier work in other legal areas, see, e.g., Mary Jo Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065, 1074-75 (1985).

47. See K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U. J. GENDER SOC. POL'Y & L. 365, 378-81 (2008), a product of this symposium, and Chon, *supra* note 5, at 459-62 (Chon was a participant at the first IP/Gender symposium and at others since).

Israel.⁴⁸ I was ripe for recruitment into this community, because I was finishing a doctorate in history of science, and during those studies, I had explored feminist history of technology, feminist science studies, and questions of women's roles and gender dynamics in American history more broadly. As I was teaching patent law for the first time, I saw gender issues popping up everywhere, and I was excited to find a community within which I could discuss them.

My experience as a scholar is unquestionably colored by my interdisciplinarity, as I have chosen to use history to examine law.⁴⁹ There is a thriving community of scholars taking interdisciplinary approaches to IP,⁵⁰ and the IP/Gender project has always welcomed interdisciplinarity and the use of analytical tools developed outside the law; for example, our organizers encouraged us this year to think about "feminist and queer inquiry."⁵¹ There are useful synergies between the goal of generating IP/gender scholarship using any methodology that has the effect of promoting social justice, and the general goals of interdisciplinary methodologies. In order to overcome resistance to thinking about IP and gender and to inform the project of crafting IP in ways that promote social justice, boundaries need to be crossed and audiences made receptive to new ideas, tasks essential to interdisciplinary scholarship. In this section, I therefore analyze the steps that I have come to believe are necessary for my own work as a source of methodological suggestions for the project of these symposia. I then consider where others and I have faltered, in the hopes of suggesting ways that many of us engaged in this project can better achieve these goals.

A. Translation, Transcendence, and Transmittal

I think about interdisciplinary scholarship as involving three steps: *translation, transcendence, and transmittal*.

48. 2010 IP/Gender: *Gender and Invention*, PROGRAM ON INFO. JUSTICE & INTELLECTUAL PROP., <http://www.pijip.org/events/2010ipg/>.

49. See, e.g., *Food and Drug Law as Intellectual Property Law: Historical Reflections*, 2011 WISC. L. REV. 331 (2011); Kara W. Swanson, *Patents, Politics and Abortion*, INTELLECTUAL PROPERTY LAW IN CONTEXT: LAW AND SOCIETY PERSPECTIVES ON IP (William T. Gallagher & Debora J. Halbert, eds., forthcoming); Swanson, *Corset*, *supra* note 22.

50. See, e.g., LAURA J. MURRAY, S. TINA PIPER, & KIRSTY ROBERTSON, PUTTING INTELLECTUAL PROPERTY IN ITS PLACE: RIGHTS DISCOURSES, CREATIVE LABOR, AND THE EVERYDAY (2014); INTELLECTUAL PROPERTY LAW IN CONTEXT: LAW AND SOCIETY PERSPECTIVES ON IP (William T. Gallagher & Debora J. Halbert, eds., forthcoming); the International Society for the History and Theory of Intellectual Property, <http://www.ishtip.org> (last viewed Oct. 4, 2015).

51. PROGRAM ON INFO. JUSTICE & INTELLECTUAL PROP., *supra* note 1.

Translation: Translation is one of our core competencies as legal scholars (and as lawyers) – taking knowledge and frameworks and translating them for a new audience. Lawyers perform this task in oral and written advocacy. In our project, that might mean crossing disciplines, for example, by using cognitive science to reveal the heteronormativity of design patents,⁵² or simply crossing audiences, for example, by bringing feminist legal theory to IP scholars or to IP students who have had no prior exposure to it.

In the context of IP and gender, I know I am preaching to the choir by advocating translation. The organizers have always deliberately fostered interdisciplinary connections. However, I want to suggest that we can practice and thereby improve our ability to translate. It is possible to stumble, although it often takes a multidisciplinary community, like this one, to recognize failures of translation. As someone who moves between communities of legal scholars and historians, I have occasionally witnessed such stumbles.

Once, I listened to a historian discuss the use of trademarks in a particular historical context in front of an audience of historians. The historical research of the speaker could not be faulted, but their understanding of trademark law appeared faulty, leading the historian to what I thought were erroneous conclusions from their research.⁵³ As I struggled to formulate a respectful question that would uncover whether the speaker had a misconception of core legal doctrines, I realized that no one else in the room shared my concerns. The historians in the audience were very interested. What I witnessed was a failure of *translation*.

The speaker was taking knowledge and frameworks from another discipline, law, and translating them for historical purposes. Lacking training in the area, though, the scholar got it a bit wrong. Furthermore, rather than pointing out the errors, this audience reinforced them by its receptivity to the talk. Translation failure is well recognized in law, as legal scholars frequently borrow from other disciplines. We are trained as lawyers to teach ourselves new areas, to rely on experts, and to translate complicated facts to judges and juries. We have the skills to do translation, but this experience has been a reminder to me that translation takes extra work and benefits from forming alliances across disciplinary boundaries. If the speaker had shared the work with a legal scholar, the lawyer could have pointed out a trademark treatise that would have helped this historian, a smart person used to reading texts carefully, to correct their mistakes.

52. Colman, *supra* note 45.

53. Note to readers: I am using “they” as a gender-neutral singular pronoun to avoid unnecessary gender assignments.

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Also, if the speaker were to bring their work-in-progress to a multidisciplinary conference on IP, or to a legal history conference, they could receive corrective feedback that an audience of non-legal historians could not provide.⁵⁴

Even legal scholars who are mindful of translation problems can take similar steps to minimize them, by taking their scholarship to fora outside their comfort zones. In the context of IP and gender, those might include IP conferences that have been dominated by law and economics approaches, feminist legal theory conferences where the primary topics under discussion are family law and reproductive rights, or conferences that attract few or no lawyers. Practicing translation across areas of law and into other scholarly domains would improve our scholarship by providing us with corrective feedback. It would also advance our goal of making gender visible in legal areas where it still seems invisible.

Transcendence: Translation is a worthy endeavor, and when done accurately can be an end in itself, introducing a new audience to unfamiliar ideas. But my goal for much of my scholarship is to be more than additive, that is, to do more than share an insight accurately translated from some other domain. Ideally, I want *transcendence* of boundaries, by which I mean scholarship that is interesting to more than one discipline or community, and/or achieves something that could not be accomplished otherwise. To place transcendence in the context of the history of this symposium, I would suggest that the task of mapping the connections between IP and gender has been a necessary and important task of *translation* performed not in the context of two disciplines but rather between two bodies of legal scholarship. However, I think that the organizers are also seeking *transcendence* when they urge us to consider recrafting intellectual property, rather than simply describing it. How can we transcend boundaries to create new insights?

When I think of why I seek transcendence in my scholarship, I think of another example, not so much a stumble as a missed opportunity. I once attended a colloquium in a non-law setting on patents and biotechnology. I keenly anticipated the presentation by a scholar from outside law whom I knew to be learned and insightful. As the talk progressed, I became more and more disappointed. The speaker was accurately explaining the details of patent law, knowledge they had gained from painstaking work in the legal literature. They told me nothing that would not have been found in the most basic patent law treatise, however, and as a former practicing patent attorney, I had expected something more. Everyone else in the

54. For example, the International Society for the History and Theory of Intellectual Property (<http://www.ishtip.org/>) or the American Society for Legal History (<http://aslh.net/>).

room, again, seemed very interested.

I find this memory sobering. The speaker was a careful researcher outside their discipline, and succeeded in translation; however, from my perspective, they had accomplished nothing. After great effort, they had brought the content of about three pages of a legal treatise to an audience of non-lawyers. Although that audience was interested, and learned something about patent law, I suspect that the audience members had not come to learn patent law. Rather, they wanted to understand the political economy of biotechnology, as part of understanding western science and society. The speaker took their deep knowledge from within their own discipline and their painfully acquired legal knowledge, added them together and got no more than the sum of the parts. There was no *transcendence*. I remain confident that the scholar was capable of analyzing patents and patent law in ways that would be of great interest to those that knew the law as well as those who did not, and also that they could generate insights unrealized by those taking a strictly legal view, and perhaps did so at a later stage in their project. Transcendence is a step beyond translation and sometimes translation is so arduous that we, like that speaker, stop there; however, if we do not seek to transcend boundaries, we have not achieved the full pay-off of translation. In the context of this project, the next step beyond making gender visible in the area of IP is the challenge of recrafting IP in light of what we learned by our boundary crossings.

Transmittal: The final step is *transmittal*. It is in this third step that I want to critique myself, and through considering my own failures, suggest another area for thoughtful and deliberate attention in the next ten years of IP and gender scholarship. I think that careful translation and even transcendence are not enough if we want to get to intellectual property law that promotes social justice. How can transcendent insights be conveyed to the multiple groups that might benefit, in ways that persuade, break down resistance, and shift conversations? This final question is a matter not just of translation, moving a set body of knowledge from one literature to another, or even transcendence, coming up with a new understanding of the IP/gender nexus, but of *transmittal*, broadcasting the resulting scholarship to all those that might benefit, audiences divided by methodological and epistemological commitments, in ways that these audiences can appreciate and use. I am thinking particularly of the three groups I named at the beginning of this essay: scholars who do not write or think about gender, students in the classroom, i.e., future lawyers, and legislatures.

B. Personal Reflections on Transmittal

As I think about my work in the area of IP and gender, I have identified

this last step of transmittal as my own missed opportunity. If my work is simply a tree falling in the forest, unheard, or heard only by those of us in the same forest, I do not think I am promoting social justice, or much of anything. In part, my failures of transmittal have been failures of attention. I have not thought about this step in the right ways, at the right time, or even at all.

I want to use the paper I presented at the seventh symposium as an example. The paper was an historical investigation into a canonical case of patent law, *Egbert v. Lippman*, a Supreme Court case decided in 1881.⁵⁵ The case is almost unique among commonly taught decisions in having a female patent-holder as plaintiff, Frances Egbert, and it is completely unique in having as its subject matter a very feminine, intimate technology – the corset. This project came out of my experience teaching the case. It provoked giggles and blushes from students who considered the corset tinged with the erotic. The invention, an improvement to strengthen a corset, also seemed silly and trivial alongside the invention of the light bulb and the airplane, famous inventions by men that my students and I had analyzed while construing other patent opinions from the same time period.⁵⁶ The judge who authored the majority opinion, ruling against Ms. Egbert, declared that the original male inventor had “slept on his rights” too long.⁵⁷ Judging from how this case is remembered by practicing attorneys, generations of law students have considered this reference to the equitable doctrine of laches as a double entendre, given that Egbert was described as an “intimate friend” of the inventor, and later his wife.⁵⁸

To me, the case reeked of gender and sexuality, and its position in the canon of patent law teaching seemed ripe for a feminist analysis.⁵⁹ Using this rich example, in which the very contours of the female body were the object of invention, I wanted to convince readers that the doctrines of patent law themselves were gendered. After first presenting the work-in-progress at this symposium, I presented it to a range of scholarly audiences, from the largest general law conference, the American Association of Law Schools (AALS) annual meeting, to a small IP workshop, to legal historians, and historians of science and technology. Admittedly without conscious planning, I was thus able to test my work in a variety of settings for problems of translation and transcendence. As a beginning law

55. *Egbert v. Lippmann*, 104 U.S. 333, 333 (1881).

56. *Consol. Elec. Light Co. v. McKeesport Light Co.*, 159 U.S. 465, 465 (1895); *Wright Co. v. Paulhan*, 177 F. 261, 261 (C.C.S.D.N.Y. 1910).

57. *Egbert*, 104 U.S. at 336, 337 (Egbert was the testatrix of the inventor and patentee, Samuel Barnes).

58. *Id.* at 335. Personal conversations with patent attorneys.

59. For its canonical position, Swanson, *Corset*, *supra* note 22, at 60 n.11.

professor, however, I was thinking about only one aspect of transmittal, that is, getting the best law review placement possible, as judged by the criteria of law faculties. When I submitted the article to student edited law reviews, I got no interest from general law reviews, modest interest from technology/IP journals, and most interest from gender and sexuality journals, and I placed it in a feminist law journal.⁶⁰ Since the article appeared in 2011, I have gotten some feedback from professors in both gender and IP that they read it.⁶¹ Again, without any planning on my part, the article was written up on a few blogs, one IP, one legal history and one feminist.⁶² It has been cited three times in the law review literature, and once in an edited volume of legal scholarship.⁶³

From the purpose of my tenure portfolio, the article was successful.⁶⁴ In retrospect, however, I realize that I began with broader goals that I did not achieve. First, as a scholar, I wanted to communicate my insights to the multiple scholarly communities I relied upon to write the article: gender and sexuality theorists, feminist legal theory, patent law, and feminist history of technology.⁶⁵ Publishing in a law review is a poor way to reach

60. See generally Swanson, *Corset*, *supra* note 22.

61. I want to take this opportunity to thank each of those faculty members who wrote me an email telling me that they enjoyed the article. Each, no matter how brief, was wonderfully heartening.

62. Allison Tait, *Kara Swanson: Feminism, Corsets, and IP*, Written Description (May 5, 2011, 9:51 AM) <http://writtendescription.blogspot.com/2011/05/kara-swanson-feminism-corsets-and-ip.html>; Sonia Lawrence, *Swanson, Getting a Grip on the Corset: A Feminist Analysis of Patent Law*, Inst. for Feminist Legal Studies at Osgood (Mar. 4, 2011), <http://ifls.osgoode.yorku.ca/swanson-getting-a-grip-on-the-corset-a-feminist-analysis-of-patent-law/>; Mary L. Dudziak, *Swanson, Getting a Grip on the Corset: A Feminist Analysis of Patent Law*, Legal History Blog (Feb. 14, 2011, 11:42 AM), <http://legalhistoryblog.blogspot.com/2011/02/swanson-getting-grip-on-corset-feminist.html>. And more thanks to those who undertake the task of screening new articles, republishing abstracts, and publishing thoughtful précis and critiques on-line. Both heartening (when one's own work is discussed) and useful (in ways related to the usefulness of the literature review).

63. Mark A. Lemley, *The Myth of the Sole Inventor*, 110 MICH. L. REV. 709, 732 n.138 (2012); Lea Shaver, *Illuminating Innovation: From Patent Racing to Patent War*, 69 WASH. & LEE L. REV. 1891, 1905 n.38 (2012); Kali Murray, *Constitutional Patent Law: Principles and Institutions*, 93 NEB. L. REV. 910, 910 n.33 (2014); Dan L. Burk, *Dynamic Claim Interpretation*, in SHYAM BALGANESH, ED., INTELLECTUAL PROPERTY AND THE COMMON LAW (2012).

64. I do not mean to underplay that measure of success for untenured faculty. Different career stages allow for different ways of thinking about transmittal.

65. It is difficult to gauge the relative uptake of the article in the peer-reviewed scholarly world, which tends to move more slowly than the student-edited law review world. I will note that the article has been cited in the *Journal of Gender Studies*. Ralph Turner, *Taymor's Tempests: Sea Change, or Seeing Little Change in Responses*

scholars outside of law. The length and style of law review articles, and their absence from commonly used on-line databases such as JSTOR and Project Muse render them hard to find, puzzlingly inaccessible in their first pages, and off-puttingly long. Second, in terms of contributing to the conversation about what intellectual property is and should be, it was most crucial to communicate to the patent law community. Thinking back upon my experiences with the draft paper, I realized that it generated the most enthusiasm among law professors outside of IP. While I found pockets of enthusiasm within the IP scholarly community, beginning at this symposium,⁶⁶ to many patent scholars, a piece on the history of corset patents was marginal to the dominant scholarly discussions. Just like the case itself was an oddity within the patent canon, a fun break in the serious cases, my research was also an oddity, perceived as being without broad theoretical implications, too specific and detailed in its history to have any relevance, except as a bit of background color to the “corset case.” To scholars steeped in a law and economics approach to patents, and unaccustomed to the inferential work of historians, my work was fundamentally unpersuasive in its claim to find gender in patent law. My historical methodology, I think, actively diminished my chances of transferring my argument to other patent law scholars.⁶⁷ Immersed in my commitments to participating in conversations in other scholarly communities, such as feminist theory and history of technology, I failed to connect my work to conversations in that potentially core audience of patent scholars. My experiences with oral presentations of my research were echoed in my publication experience; most IP law reviews were uninterested in the article.

In focusing on scholarship and the publishing norms of the legal academy, I also lost sight of the project’s origins. I had been and remain disturbed by the way the case is portrayed in the casebooks, and by the atmosphere it provoked in the classroom. I wanted it to be taught differently to future patent practitioners, to convince the bar that gender matters even within patent doctrine. To my knowledge, the article has not been picked up in any casebook notes. To my dismay, while I do not know how the course is taught in the 200+ U.S. law schools, even in my own

to *Gender and Leadership?*, 22 J. GENDER STUD. 1, 5-6 (2014).

66. And continuing at the New England IP Symposium.

67. I am not arguing that this is necessarily always the case, simply that I failed to recognize the barrier and consciously work to make more work more accessible. For an excellent counter-example, see Christopher Beauchamp, *Patenting Nature: A Problem of History*, 16 STAN. TECH. L. REV. 257, 257 (2013). And note that to the extent that the article has been cited in the law review literature, it has been cited by IP scholars writing about patent law. See sources cited *supra*, note 63.

classroom, I find myself struggling to bring my insights to my students. Emphasizing the gender and sexuality in this case seems to heighten its oddity, to further trivialize Ms. Egbert and her invention, rather than to reposition the entire conversation about patent law.

Based on my experience, I think that those most resistant to the visibility of gender in the patent system are patent practitioners, and secondarily, patent law scholars. The future patent practitioners are sitting in my classroom, and in other classrooms using patent casebooks, and the patent scholars are having conversations that largely ignore gender in the patent system.⁶⁸ As I tally the successes and failures of my first venture into gender and IP scholarship, I count the successes as the multiple venues where I was able to present the work, the publication of the work itself, and those wonderful bloggers who noticed the title on SSRN and decided to share a bit about the article. The failures are in the limited transmittal to patent law scholars and law students, two communities who in hindsight seem key to the broader goals of these symposia.

All is not lost, of course. Now that I am paying attention, I can practice the fine art of teaching against the casebook, which I know many feminist foremothers have mastered.⁶⁹ And I can also use my opportunities to participate in IP communities that are not considering gender to think consciously and creatively about transmittal – how can I make my work heard as central, rather than marginal? By presenting to such communities, I also can learn how to present my scholarship in ways more attractive to journals aimed at patent scholars. Also, I am slowly learning what many others know very well, that is, that a scholarly publication is only one part of an information campaign, which might involve tweets, blogs, and popular writings, as well as participation in activist communities. There are written fora as well as spoken fora outside my comfort zone that I need to cultivate.⁷⁰ I point out my own missed opportunities and stumbles in the hope that this community can recognize the challenges in boundary-crossing scholarship, and consciously address them.

68. Not completely, of course. See sources cited *supra* notes 21, 25, 26, 31, 34, and 41.

69. In addition to Frug, *supra* note 46, see also Carl Tobias, *Gender Issues and the Prosser, Wade, and Schwartz Torts Casebook*, 18 GOLDEN GATE U. L. REV. 495, 495 (1988).

70. Rebecca Tushnet, a frequent IP/Gender symposia participant since 2004, models this behavior through her blog, REBECCA TUSHNET'S 43(B)LOG, <http://tushnet.blogspot.com/>, and her copyright activism through the Organization for Transformative Works.

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IV. CONCLUSION

As this symposium continues to generate scholarship exploring the connections between IP and gender, I encourage participants to think about each step of scholarly generation and communication, and particularly transmittal. What is the purpose of each publication? What venues might be useful? How can we reach audiences that are inherently the most resistant to our conclusions? Feminism invites us not only to consider the personal as political, as I have just done, but to wed theory to practice, an invitation that we as lawyers are ready to accept. During the next ten years, while continuing the important work of generating scholarship that maps connections and finds new insights, I urge us to consider expanding the audience for those insights.

APPENDIX A

Selected IP/Gender Bibliography - US/Canadian Legal Literature

Bernadita Escobar Andrae, *Scientific Productivity and Gender Performance Under Open and Proprietary Science Systems: The Case of Chile in Recent Years*, 19 AM. U. J. GENDER SOC. POL'Y & L. 799 (2011).

Ann Bartow, *Likelihood of Confusion*, 41 SAN DIEGO L. REV. 721 (2004).

Ann Bartow, *Women In The Web of Secondary Copyright Liability and Internet Filtering*, 32 N. KY. L. REV. 449 (2005).

Ann Bartow, *Fair Use and the Fairer Sex: Gender, Feminism and Copyright Law*, 14 AM. U. J. GENDER SOC. POL'Y & L. 551 (2006).

Ann Bartow, *Pornography, Coercion, and Copyright Law 2.0*, 10 VANDERBILT J. ENT. & TECH. L. 799 (2008).

Ann Bartow, *Copyright Law and Pornography: Reconsidering Incentives to Create and Distribute Pornography*, 39 U. BALT. L. F. 75. (2008-09)

Ann Bartow, *Copyright Law and Pornography*, 91 OREGON L. REV. 1

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(2012).

Ann Bartow, *Copyright Law and the Commodification of Sex*, in IRENE CALBOLI & SRIVIDHYA RAGAVAN, EDS., *DIVERSITY IN INTELLECTUAL PROPERTY: IDENTITIES, INTERESTS, AND INTERSECTIONS* 339 (2015).

Boatema Boatang, *Walking the Tradition-Modernity Tightrope: Gender Contradictions in Textile Production and Intellectual Property Law in Ghana*, 15 AM. U. J. GENDER SOC. POL'Y & L. 341 (2007).

Dan L. Burk, *Copyright and Feminism in Digital Media*, 14 AM. U. J. GENDER SOC. POL'Y & L. 519 (2006).

Dan L. Burk, *Feminism and Dualism in Intellectual Property*, 13 AM. U. J. GENDER SOC. POL'Y & L. 183 (2007).

Dan L. Burk, *Do Patents Have Gender?*, 19 AM. U. J. GENDER SOC. POL'Y & L. 881 (2011).

Dan L. Burk, *Diversity Levers*, 23 DUKE J. GENDER L. & POL'Y __ (forthcoming 2015).

Emily Chaloner, *A Story of Her Own*, 6 I/S: J. L. & POL'Y 221 (2010).

Charles E. Colman, *Design and Deviance: Patent as Symbol, Rhetoric as Metric*, 56 JURIMETRICS __ (forthcoming 2015).

Carys J. Craig, *Reconstructing the Author-Self: Some Feminist Lessons for Copyright Law*, 15 AM. U. J. GENDER SOC. POL'Y & L. 207 (2007).

Carys J. Craig, *Feminist Aesthetics*, in IRENE CALBOLI & SRIVIDHYA RAGAVAN, EDS., *DIVERSITY IN INTELLECTUAL PROPERTY: IDENTITIES, INTERESTS, AND INTERSECTIONS* 273 (2015).

Laura A. Foster, *Patents, Biopolitics, and Feminisms: Locating Patent Law Struggles Over Breast Cancer Genes and the Hoodia Plant*, 19 INT. J. CULTURAL PROP. 371 (2012).

Laura A. Foster, *Situating Feminisms, Patent Law, and the Public Domain*, 20 COL. J. GENDER & L. 261 (2011).

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Rayvon Fouché & Sharra Vostral, "Selling" Women: *Lillian Gilbreth, Gender Translation and Intellectual Property*, 19 AM. U. J. GENDER SOC. POL'Y & L. 825 (2011).

Terra Gearhart-Serna, *Women's Work, Women's Knowing*, 21 YALE J. L. & FEMINISM 372 (2010).

K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U. J. GENDER SOC. POL'Y & L. 365 (2008).

Kara Hagen, *An Essay on Women and Intellectual Property Law: The Challenges Faced by Female Attorneys Pursuing Careers in Intellectual Property*, 15 SANTA CLARA COMPUTER & HIGH TECH. L.J. 1 (1999).

Debora Halbert, *Feminist Interpretations of Intellectual Property*, 14 AM. U. J. GENDER SOC. POL'Y & L. 431 (2006).

Leigh A. Hansmann, *Sex, Selling Power, & Salacious Commentary: Applying the Copyright Fair Use Doctrine in the Trademark Context*, 2008 MICH. ST.L. REV. 843 (2008).

Peter Jaszi, *Opening Remarks*, 15 AM. U. J. GENDER SOC. POL'Y & L. 177, 177-78 (2007).

Annette I. Kahler, *Examining Exclusion in Woman-Inventor Patenting: A Comparison of Educational Trends and Patent Data in the Era of Computer Engineer Barbie*, 19 AM. U. J. GENDER SOC. POL'Y & L. 773 (2011).

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