

How Can and How Should Economics Inform Patent Policy?

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BU School of Law

EPIP 2008



PATENT

FAILURE

**HOW JUDGES,
BUREAUCRATS,
AND LAWYERS
PUT INNOVATORS AT RISK**

JAMES BESSEN & MICHAEL J. MEURER

Property

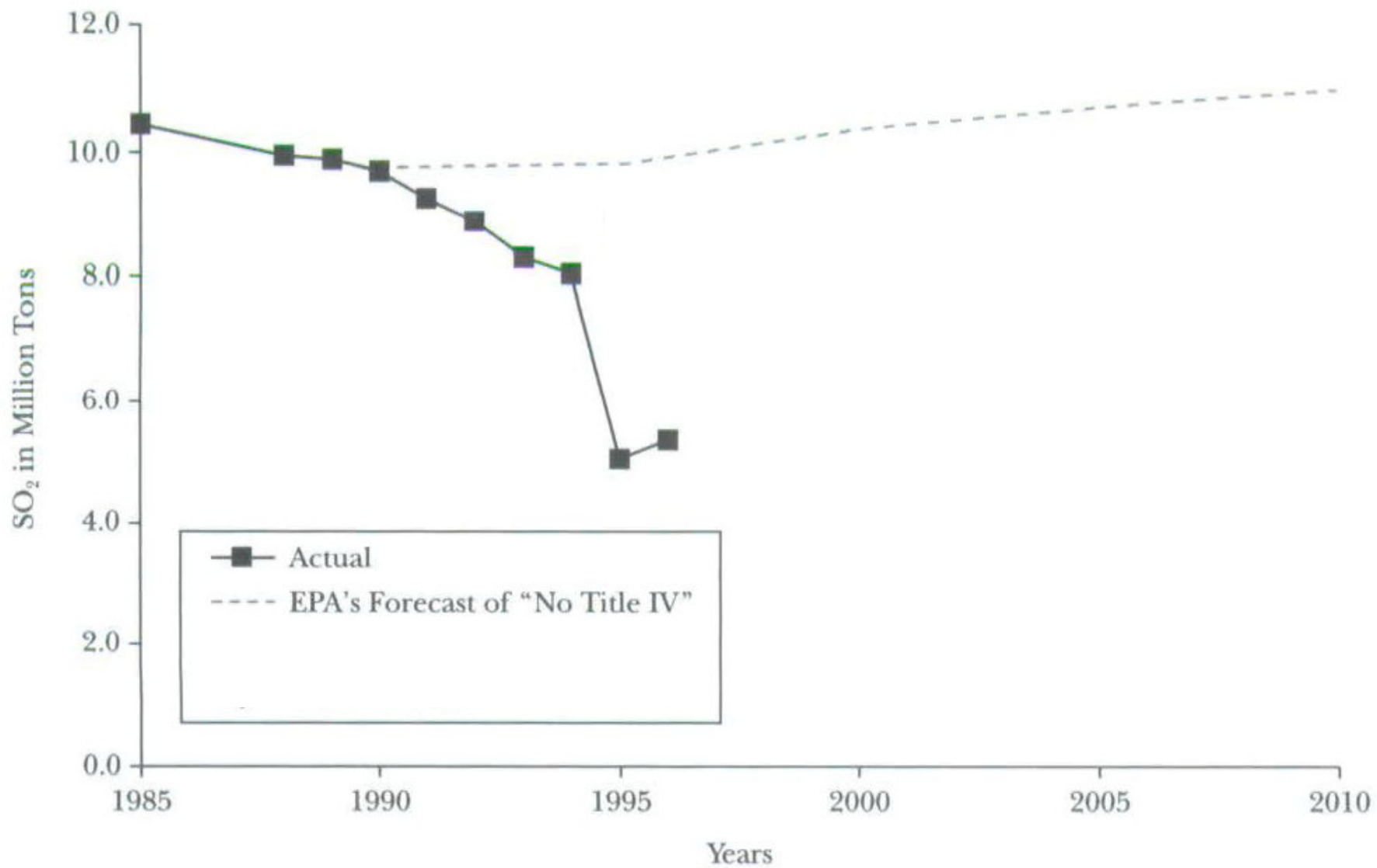
Success

How do we know?

Success

Empirical evaluation

SO₂ Emissions, Caps and Forecasts for Phase I Units



Success

Empirical evaluation

Institutional refinement

Why not for...

Why not, indeed?

Success

Empirical evaluation

Institutional refinement

Tom Tietenberg,
“The Tradable Permits Approach to
Protecting the Commons:
What Have We Learned?”

Evaluating Property Systems

1. Do the institutions do their jobs?

Evaluating Property Systems

1. Do the institutions do their jobs?
 - property *can* fail

Evaluating Property Systems

1. Do the institutions do their jobs?
2. Are resources improved?

Evaluating Property Systems

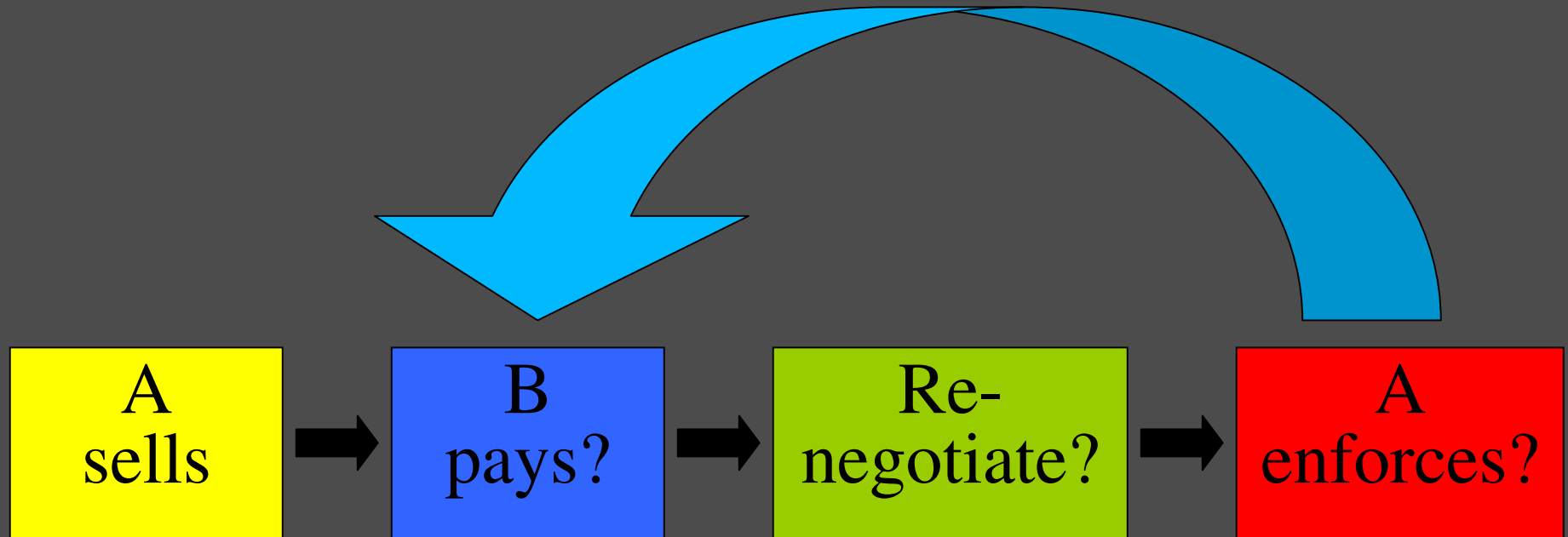
1. Do the institutions do their jobs?
2. Are resources improved?
3. Are economic benefits positive?

Evaluating Patents

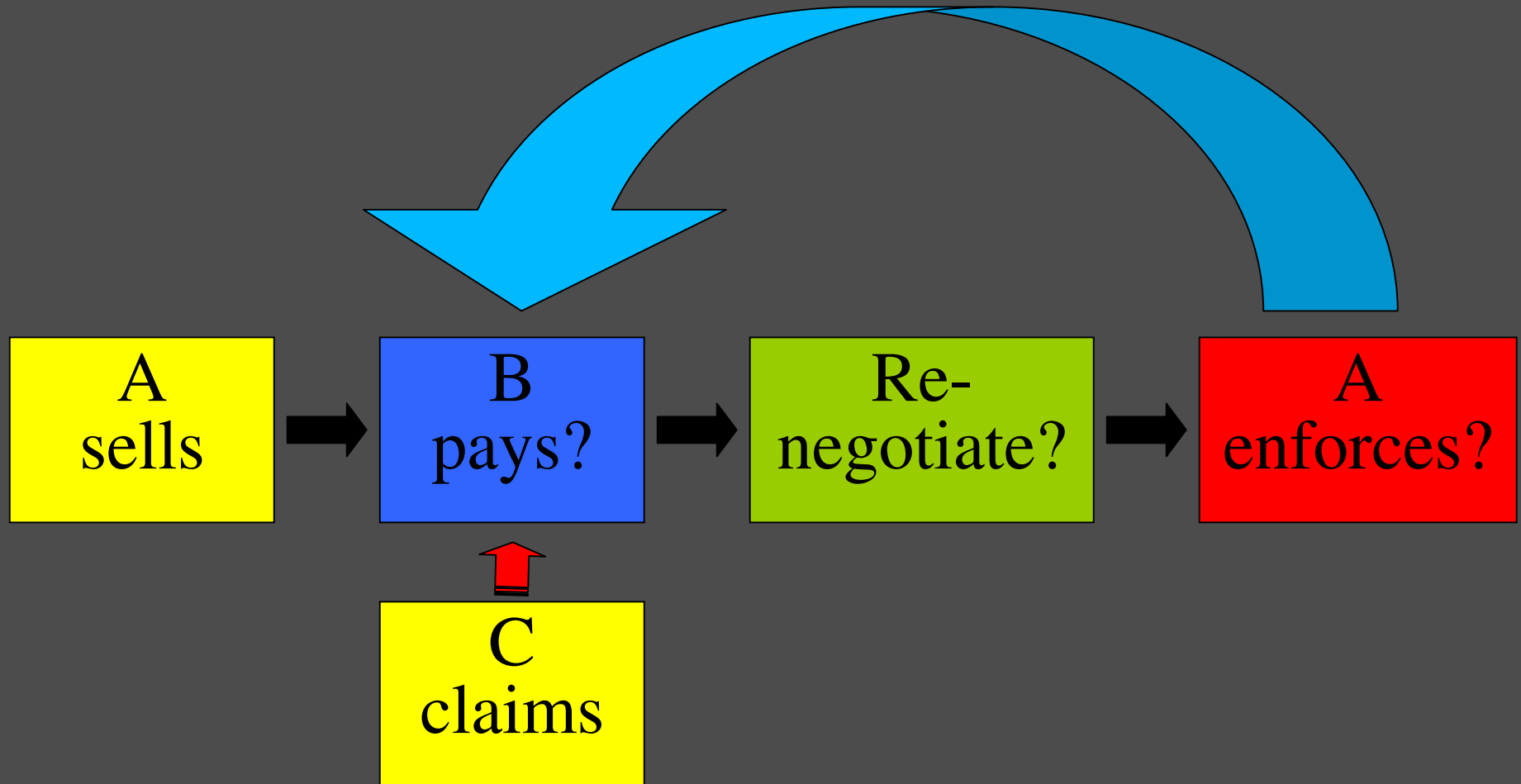
1. Do the institutions do their jobs?
2. Are resources improved?
3. Are economic benefits positive?

1. Institutions

Contract, private or public



Expropriation



Exclusionary, publicly-enforced property rights

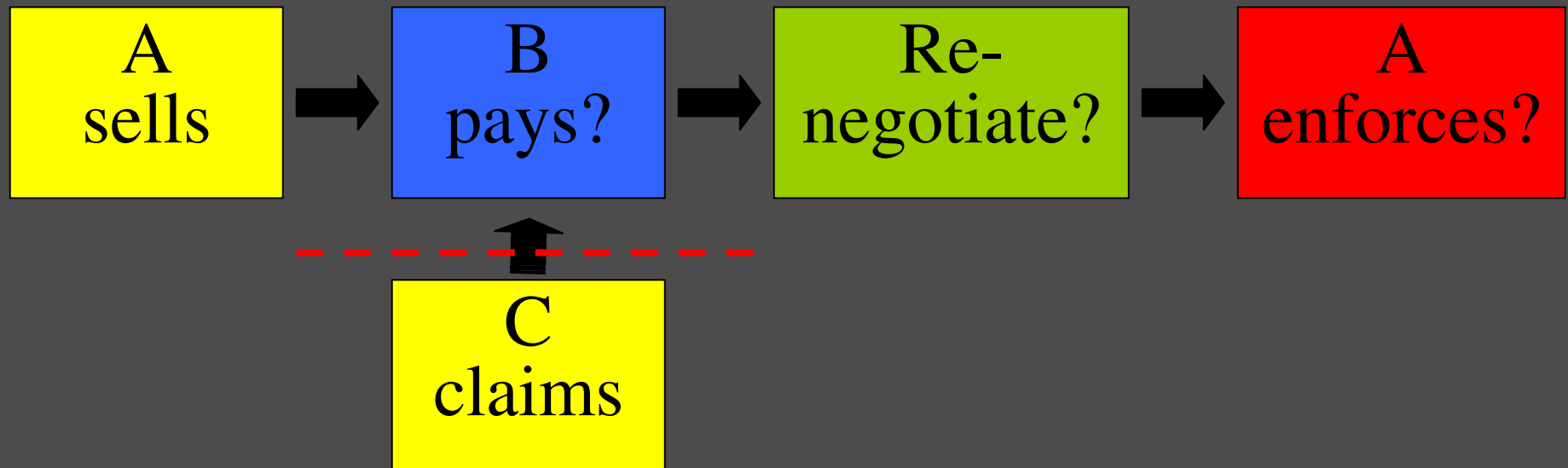
1. Specify

3. Transact

4. Monitor

5. Enforce

2. Search

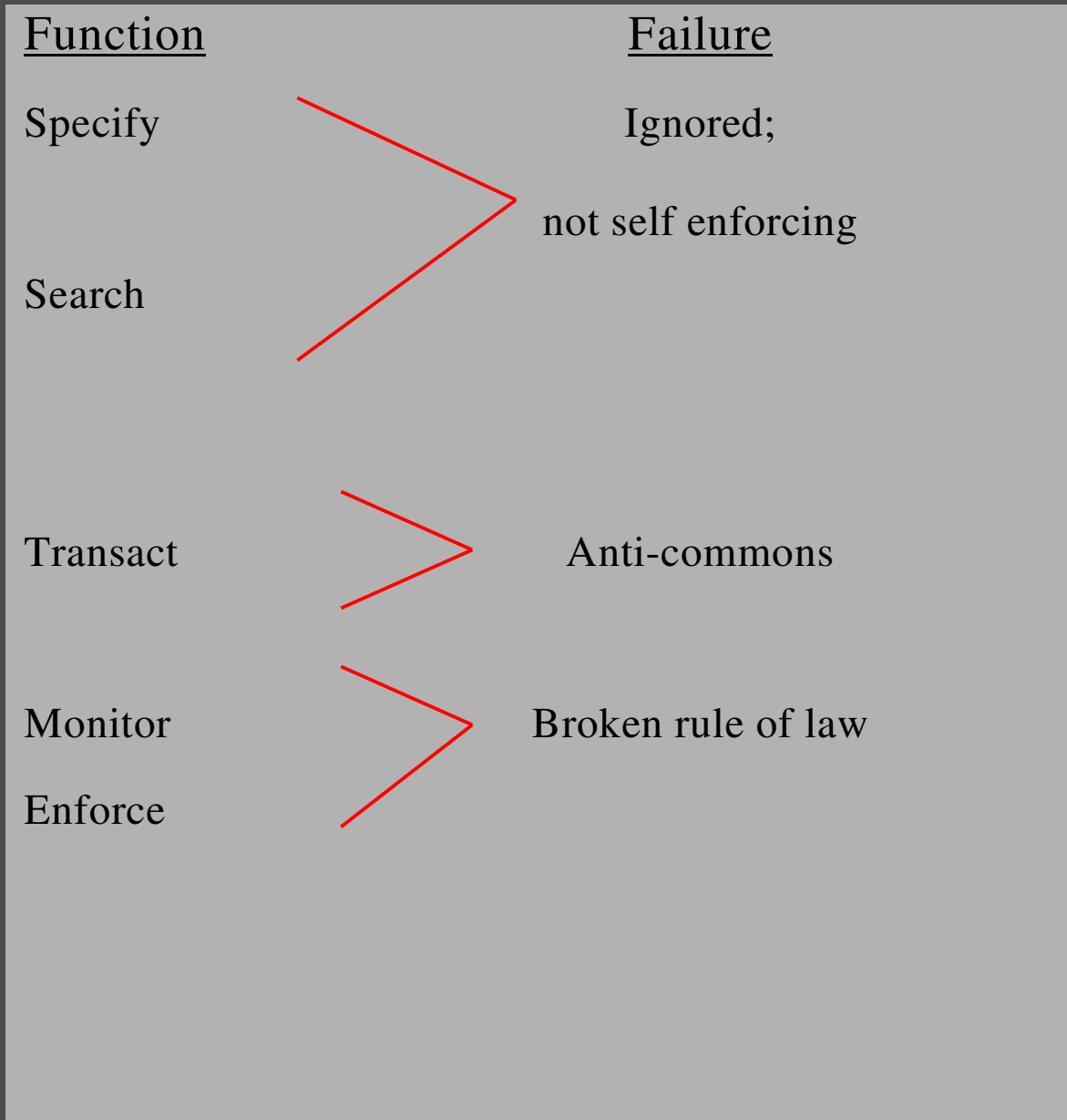


Institutions

<u>Function</u>	<u>Criteria</u>	<u>Institution (Land)</u>
Specify	Publicly available /low cost? Predictable?	Deed office Surveyors
Search	Low cost? Reliable? Thoroughly practiced?	Title insurance
Transact	Efficient? Entry deterred?	Straw purchasers, eminent domain
Monitor	Unmonitored use?	
Enforce	Predictable? Fair (v. corrupt, political)? Effective?	Court

Failure?

Institutional Failure



US Patent Institutions

<u>Function</u>	<u>Criteria</u>	<u>Institution (US Patents)</u>
Specify	Publicly available /low cost?	Yes, but continuations...
	Predictable?	Opinion letters; reversal rates
Search	Low cost?	
	Reliable?	
	Thoroughly practiced?	
Transact	Efficient?	
	Entry deterred?	
Monitor	Unmonitored use?	
Enforce	Predictable?	
	Fair (v. corrupt, political)?	
	Effective?	

US Patent Institutions

<u>Function</u>	<u>Criteria</u>	<u>Institution (US Patents)</u>
Specify	Publicly available /low cost?	Yes, but continuations...
	Predictable?	Opinion letters; reversal rates
Search	Low cost?	High in ICT
	Reliable?	No defense insurance
	Thoroughly practiced?	No (survey)
Transact	Efficient?	
	Entry deterred?	
Monitor	Unmonitored use?	
Enforce	Predictable?	
	Fair (v. corrupt, political)?	
	Effective?	

US Patent Institutions

<u>Function</u>	<u>Criteria</u>	<u>Institution (US Patents)</u>
Specify	Publicly available /low cost?	Yes, but continuations...
	Predictable?	Opinion letters; reversal rates
Search	Low cost?	High in ICT
	Reliable?	No defense insurance
	Thoroughly practiced?	No (survey)
Transact	Efficient?	?? Patent pools ?
	Entry deterred?	??
Monitor	Unmonitored use?	
Enforce	Predictable?	Court / strong penalties
	Fair (v. corrupt, political)?	
	Effective?	High cost

Institutions
evaluated

Institutions
evaluated
refined

1. Institutions
2. Resources

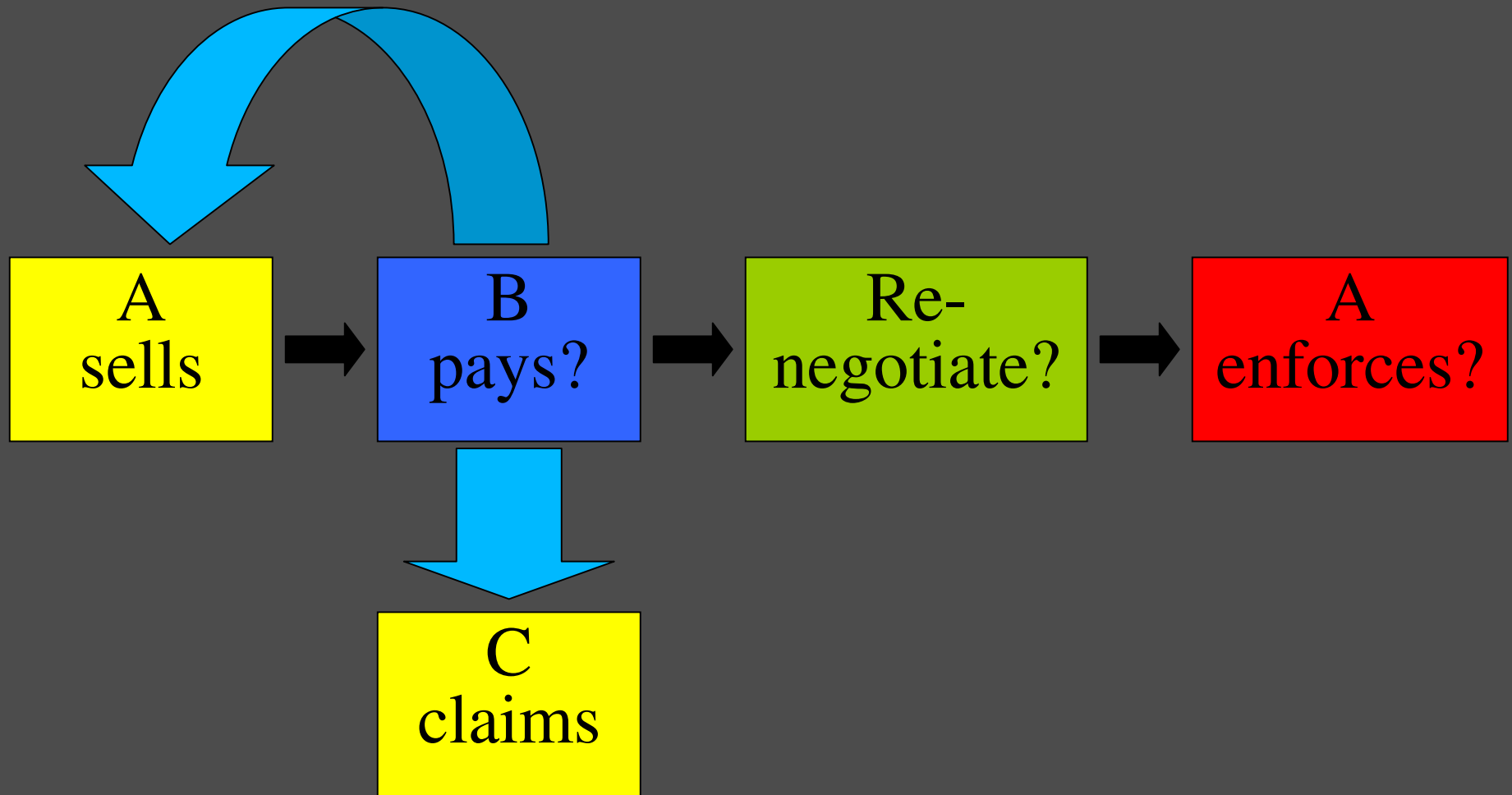
1. Institutions

2. Incentives

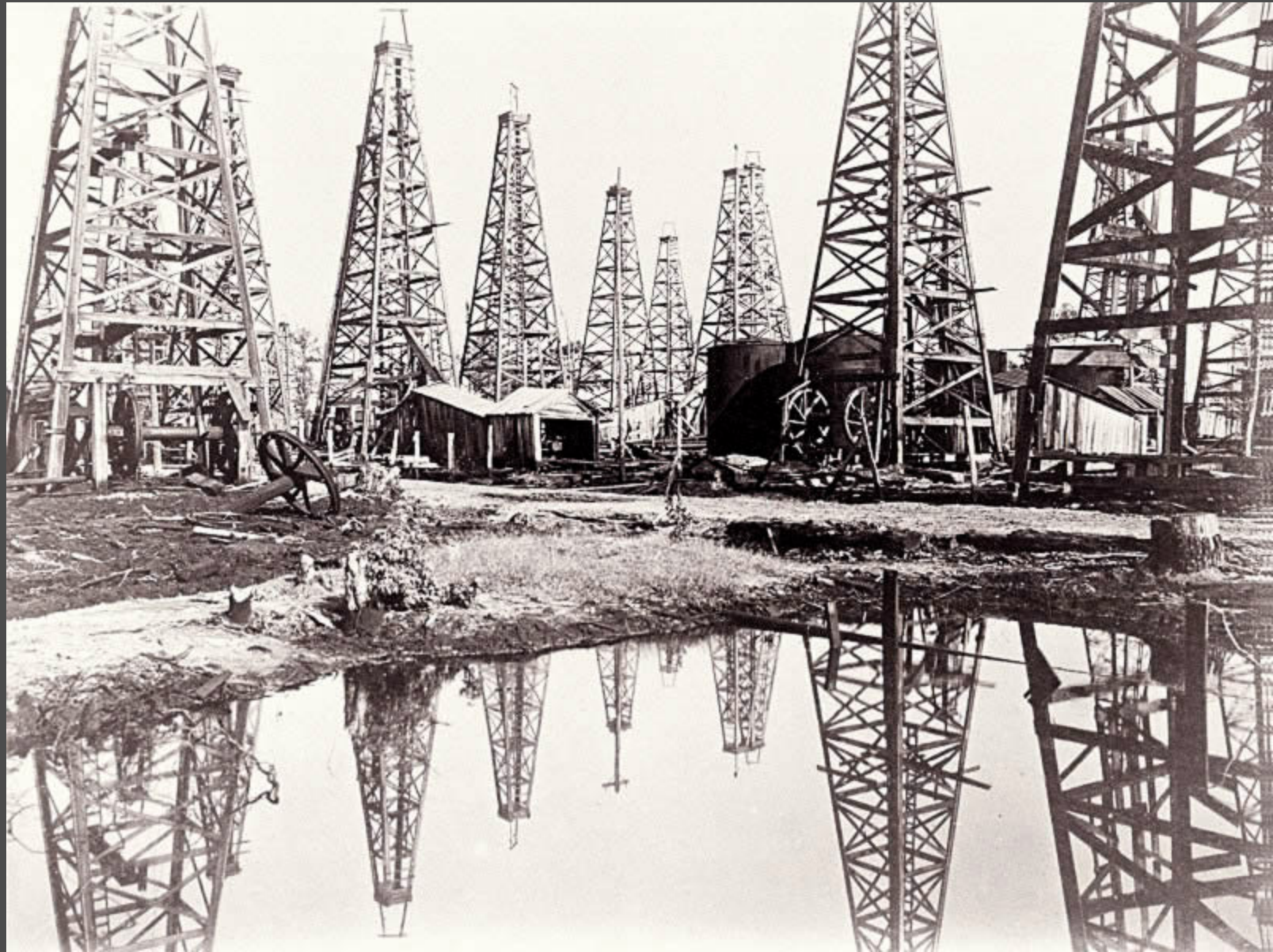
Patent rents

Failure?

Institutional failure => Overlapping claims



Overlapping claims I

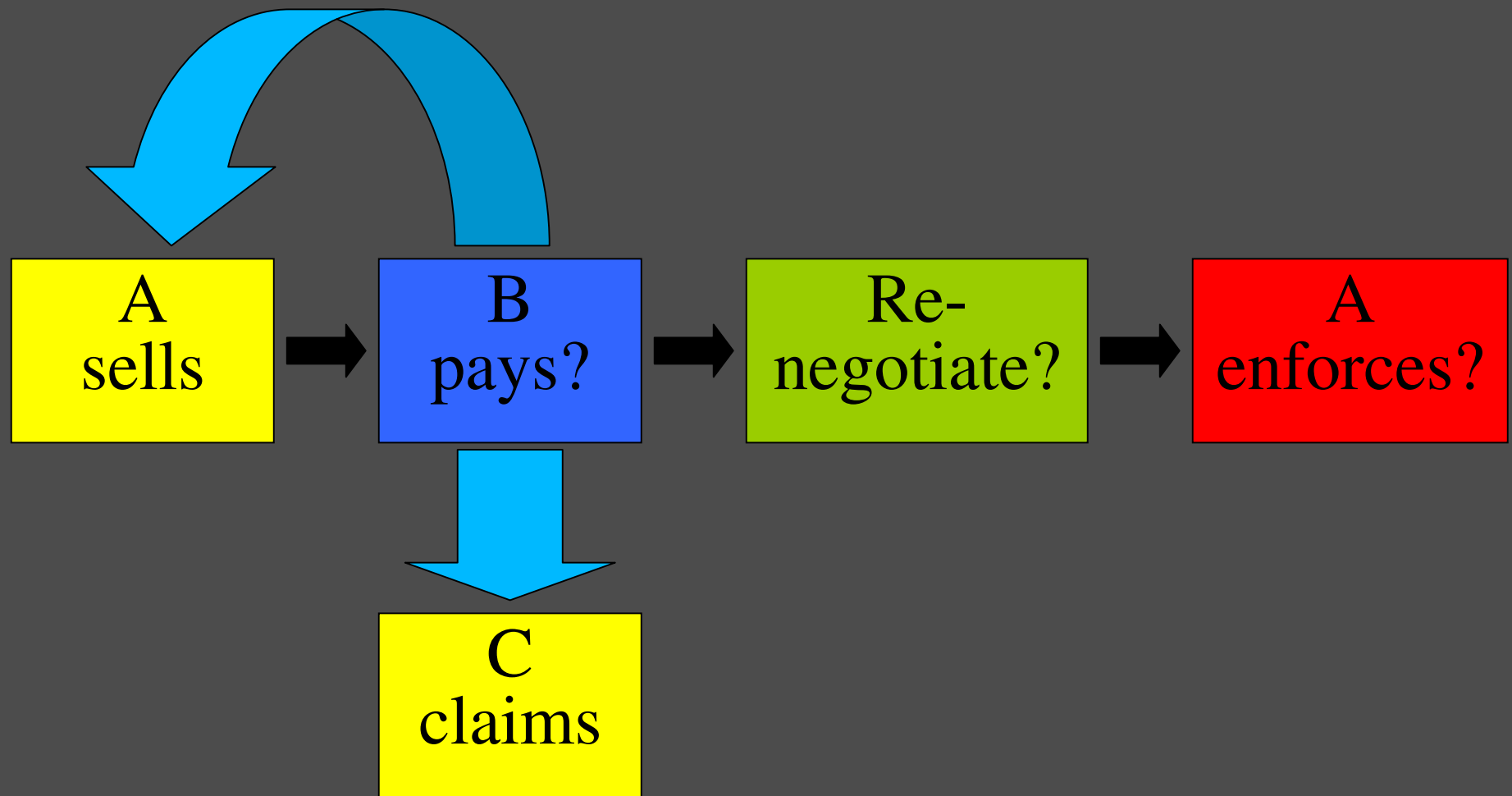


Overlapping claims II



“fuzzy” boundaries

Incentives = Patent rents – Dispute costs



Linked data

Patent rents

Renewal payments

Re-assignment

Int'l filings

Firm market value

Surveys

Case study benchmarks

Patent rents

Renewal payments

Re-assignment

Int'l filings

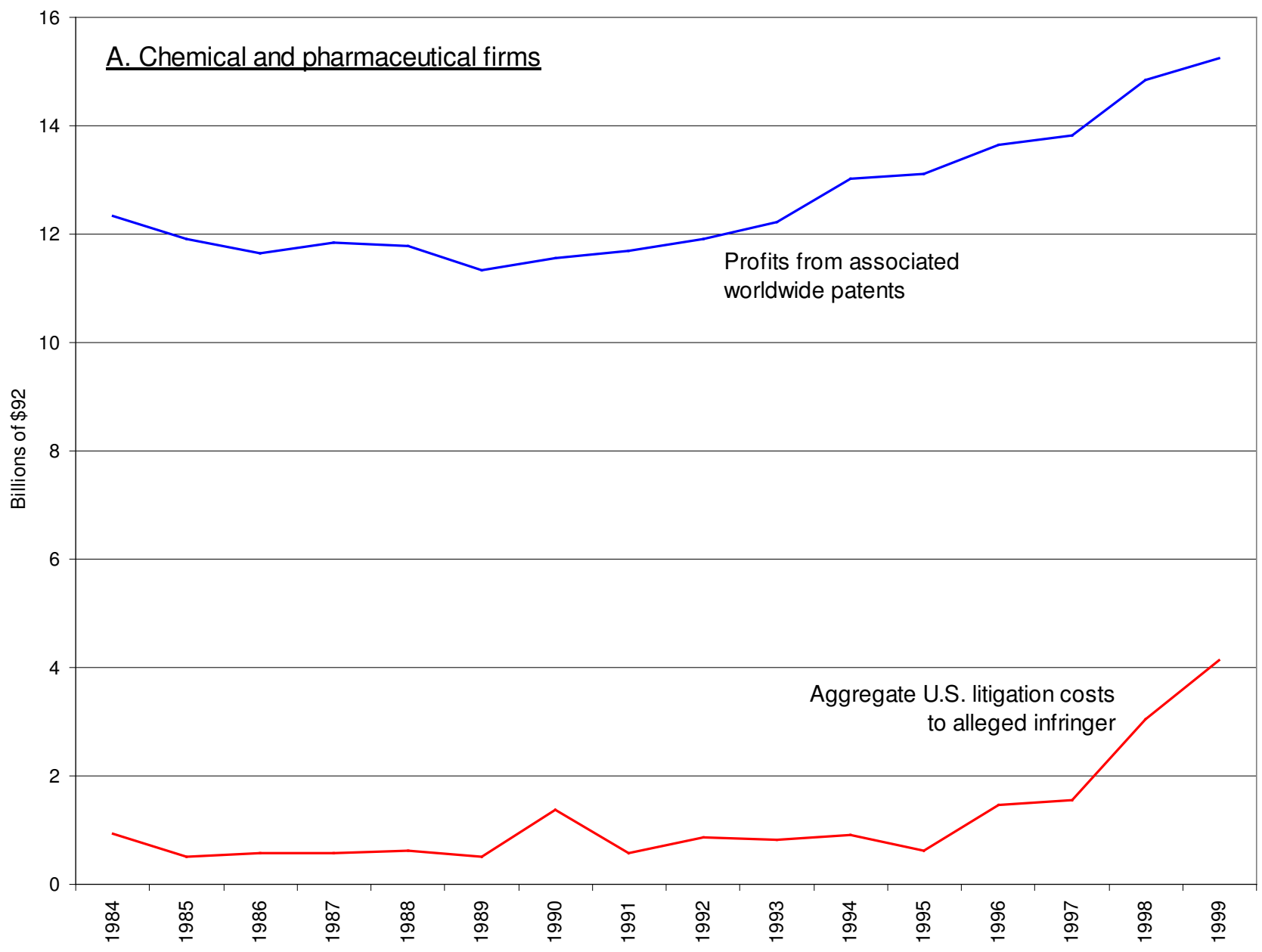
Firm market value (upper bound)

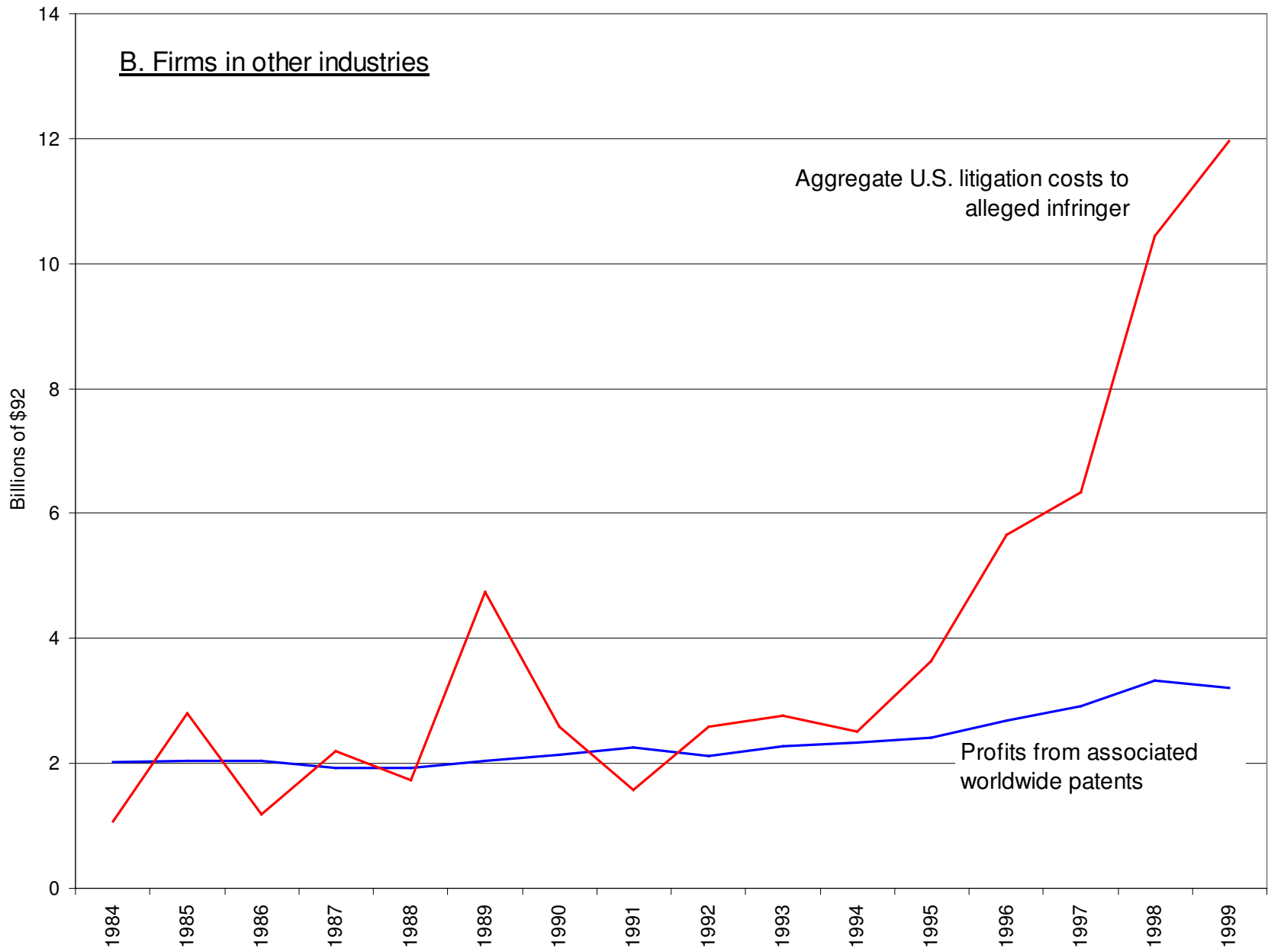
Surveys

Case study benchmarks

Dispute costs

Litigation events (lower bound)





Incentives
evaluated

Incentives
evaluated
refined

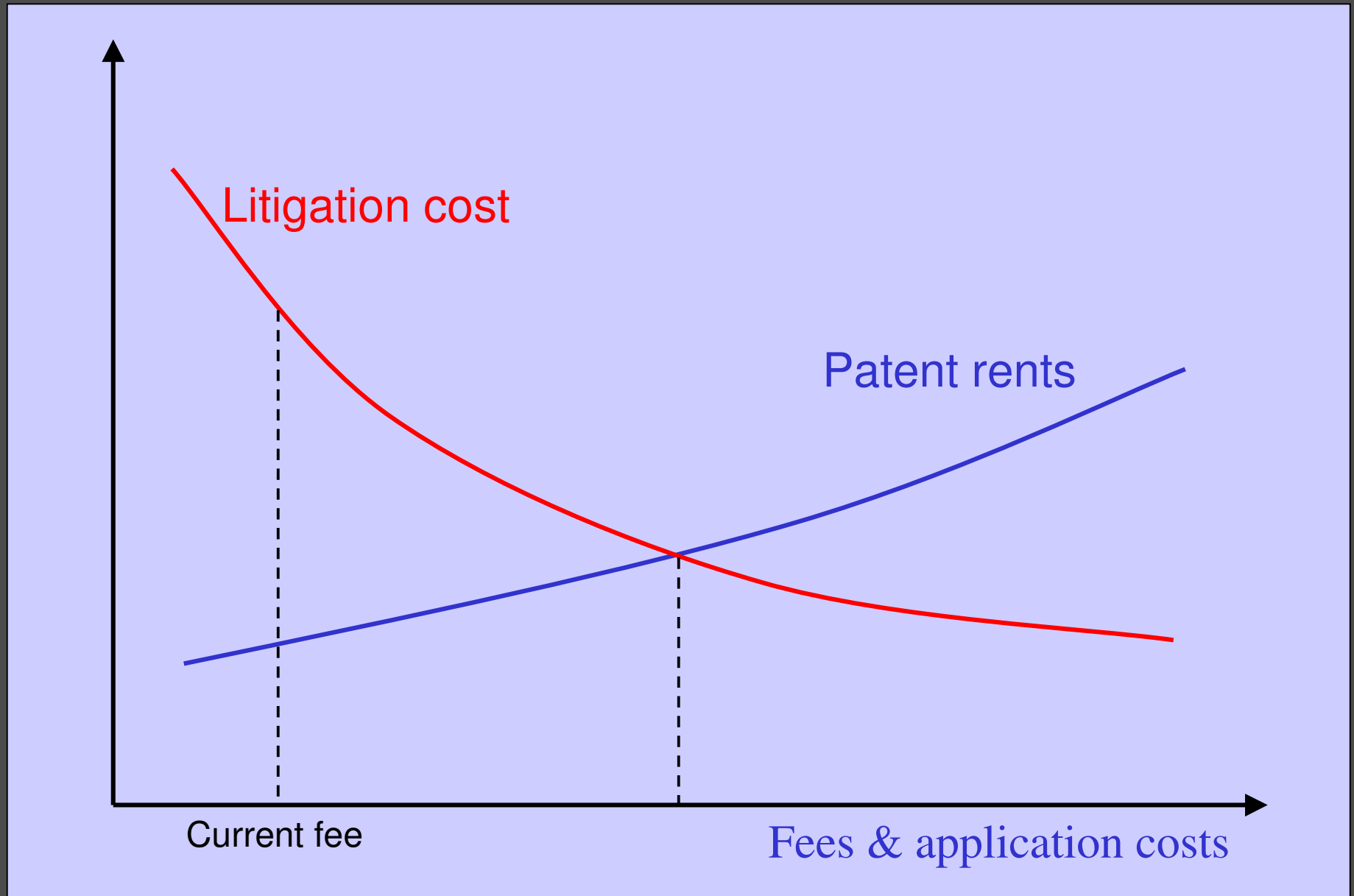
Fees

Fees such that
patent rents = litigation costs ?

Assume:

litigation cost \propto no. of patents
patent quality constant

Patent rents v. Litigation costs



Issues:

iterative

global

Evaluating Patents

1. Do the institutions do their jobs?
2. incentives?
3. Are economic benefits positive?

