Individuals who decline to join cooperative groups—outsiders—raise concerns in many areas of law and policy. From trade policy to climate agreements to class action procedures, the fundamental concern is the same: a single member of the group who drops out could weaken the remaining union. This article analyzes the outsider problem as it affects patents.

The study reveals a characteristic of patent pools that has gone unappreciated until now: they subtly but powerfully influence bargains that take place “poolside”—i.e., deals between patent holders and licensees that take place “in the shadow” of the pool. This spillover effect can beneficially limit the power that theorists have assumed outsiders have.

Drawing upon this study, antitrust regulators who must evaluate patent pools can assemble a clearer and more complete understanding of their overall costs and benefits. This study may also be helpful beyond patent law.

Michael Mattioli is a professor of law at the IU Maurer School of Law in Bloomington. His research focuses on technology, public policy, and ethnography. His work canvases a variety of topics, including the structure, governance, and antitrust implications of patent pools, and how data pooling and the disclosure of metadata can advance machine learning. Mattioli’s scholarship and commentary has been published in leading academic journals, books, and periodicals. He co-edited *Big Data Is Not a Monolith*, published by the MIT Press in 2016.