The Role of IP in Economic Growth—Looking Back, Looking Forward

10 Year Anniversary of Policy Alternatives Research Institute of Tokyo University

*Intellectual Property Right and Innovation Unit, Past Achievement and Future Perspective – From IP Strategy Consisting of Patent and Standard to New Era of Smart Strategy Using AI and Data*

David J. Kappos
Looking Back: IP System Perceived as Too Strong

- News from Pittsburgh Post-Gazette, July 26, 2007

• The patent system is broken: Reform is needed to stimulate U.S. innovation

  ° Bill McDermott
Looking Back: Patent Trolls

• “Enter the patent troll, a creature of opportunity.”

• “The patent troll provides no value to the patent system, other than to line its own pockets. Rather, it stifles innovation and increases frivolous litigation. Patent troll litigation is on the rise, and it is time for targeted defendants to fight back.”
Looking Back: Patent Troll Narrative Persists


  - Make Patent Trolls Pay in Court

    - Randall R. Rader, Colleen V. Chien and David Hricik
“One company threatened to sue 8,000 coffee shops, hotels and retailers for patent infringement because they had set up Wi-Fi networks for their customers. Another claimed that hundreds of small businesses were violating its patents by attaching a document scanner to an office computer system. One claimed rights to royalties from anyone producing a podcast.”

“Th[e] surge [in patent troll litigation] can be traced partly to the very law that was supposed to stamp out some of the trouble[:] The America Invents Act, signed in 2011[.]”
The America Invents Act patent reform law, which passed last year, contains a little-known feature that will soon give companies a lot more ammunition for shooting down patent troll lawsuits.

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Looking Back: The America Invents Act

• “The America Invents Act will . . . improve the quality of patents that are issued; and it will provide more certainty in litigation . . . . Patents of low quality and dubious validity . . . enable patent trolls who extort unreasonable licensing fees from legitimate businesses, and constitute a drag on innovation.”

  ° Senator Patrick Leahy, Feb. 28, 2011
“In the smartphone industry alone, according to a Stanford University analysis, as much as $20 billion was spent on patent litigation and patent purchases in the last two years — an amount equal to eight Mars rover missions. Last year, for the first time, spending by Apple and Google on patent lawsuits and unusually big-dollar patent purchases exceeded spending on research and development of new products, according to public filings.”
Today’s IP System: Plagued by Efficient Infringement

• “In this environment, it becomes economically viable for a large company to simply copy what it can from available technologies it hasn’t developed instead of actually licensing that technology.”
Today’s IP System: Diminished Patent Strength, Increased Trade Secret Strength

District Court Patent Determinations

- Infringed
- Not invalid
- Not unenforceable
- Not infringed
- Unenforceable
- Invalid

2014 14.9%
2015 27.1%
INVALID

2014 22.6%
2015 14.4%
INFRINGEMENT

2014 11.5%
2015 5.4%
ENFORCEABILITY (COMBINED)
Today’s IP System: A “System in Decline”

- Headline News from IPWatchdog, April 26, 2017

• The Top 3 Reasons the U.S. Patent System in Decline

  ° Gene Quinn

2017 Patents, Related Rights, and Limitations Scores

Category 1: Patents, Related Rights, and Limitations

In 2017, in the patent rights category, the U.S. has fallen to 10th place.
Today’s IP System: Is it “Overcorrected”? 

“A better U.S. patent system will spur innovation.”
(R. Foroohar, Financial Times, Sep. 3, 2017.)

- “A variety of American investors, entrepreneurs, academics, lobbyists and lawyers . . . believe that the US patent system has swung radically in the wrong direction.”

- “[I]f you are a researcher in the US, you may very well not get a patent for your game changing discovery, because recent shifts in the system mean that your invention is no longer protected.

- “[M]any investors say they are considering moving money away from the US, towards Europe and Asia.”
  
  ° “Suppliers and talent begin moving there too.”

- “According to one study, the shifts in patent regulation have cost the US economy $1tn. Venture capital money into biotech is sharply down from 2015 to 2016.”
Looking Forward: The Fourth Industrial Revolution

From Industry 1.0 to Industry 4.0

**First Industrial Revolution**
through the introduction of mechanical production facilities with the help of water and steam power

- **First mechanical loom, 1784**
- **1800**

**Second Industrial Revolution**
through the introduction of a division of labor and mass production with the help of electrical energy

- **First assembly line, Cincinnati slaughterhouses, 1870**
- **1900**

**Third Industrial Revolution**
through the use of electronic and IT systems that further automate production

- **First programmable logic controller (PLC), Modicon 084, 1969**
- **2000**

**Fourth Industrial Revolution**
through the use of cyber-physical systems

- **Today**

Source: DFKI (2011)
Looking Forward: Favor IP Over Antitrust
Looking Forward: A Return to Strong IP

“The administration, Congress, and the courts need to take steps to reverse the declining protection of patents and the anti-patent rhetoric that has infected government at all levels.”

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The Honorable Becky Norton Dunlop
The Honorable J. Kenneth Blackwell
The Honorable Bob McEwen
Adam Brandon
David Bozell
The Honorable Colin A. Hanna
Cleta Mitchell, Esq.
Diana Banister
William L. Walton
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Looking Forward: Be Cautious With Further Reform
Looking Forward: Rely on Evidence, Not Theory
Looking Forward: Expand the Set of Patentable Subject Matter
Are humanity’s best days ahead of us, or behind us?
Looking Forward: Protect Standards-Deployed Innovation Business Models
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