

Intellectual Property: A Tool for Innovation and Change: How Do We Maximize Its Effectiveness?

by Michael Dewing

The road to innovation can be a collaborative ideal, sharing insights, open access, research in vital areas and includes an economic generator that identifies foundational principles, constitutional ideals, ethics, and a system of management that embraces principles of democracy. Freedom of innovation promotes ideas, generates commerce, and enables the development of share values. How can we best protect our emerging ideas and business investment opportunities to plan for a future where principles are supported by an international body, and where our judicial, legislative, and executive procedures that help citizens regenerate our middleclass value system? American public policy will be challenged to define a new business landscape for intellectual property in the 21st century.

Statesmen have an ethical duty to preserve our ideals, founding principles, and economic stability so that our country can compete as champions of innovation, thereby instilling a sense of hope and promise in our shared democracy. The desire to exploit our creative ideas is complex, it is affected by heavy regulation and is both a statement of our intrinsic values identified early in the intellectual property system development to seek reward for our efforts, and a construct of oppressive behaviors indicating a preference toward corporate needs, consumerism, and the apocalyptic political war machine encroaching on the very rights it endeavors to protect.

Our system needs an overhaul, a tune up, a realignment of foundational principles and the balance of power. The economic generator of growth potential in this country starts with, "We the People." Our system needs to be reviewed in light of economics, enabling innovations, and foundational principles of fairness and justice. Above all things, the system should be reviewed to eliminate bias and preference.

Like any issue, we must view both sides of any argument concerning the public policy efforts to enhance our innovation system, and consider possible

results in relation to surrounding issues that have and will affect people. Law is an ocean; fluid and changing, serving as a challenge to our competing moral values through the creation of the rule of law. In order to promote fair and equitable competition in our capitalistic society, the rule of law must consider both the future economic benefit of issues like investment, taxation and prevention of monopolies, and public policies that hopefully, will address a vision for the greater good of mankind, not only in this country but with our global partners as well.

That is the challenge of all three branches of our government, to find the balance among competing values, to promote justice, fairness, and at the same time, enable innovation. An effective strategy to accomplish those objectives has been to promote access to knowledge, employ a system that allows innovators to profit from their efforts, and to offer protection for those established property rights. The system itself has experienced multiple changes in process and procedure to identify innovations and innovators, and then those innovations are promoted through a shared global infrastructure on social platforms, which then engineers and inspires additional growth in creativity.

The impact of an enabling framework that produces innovative trends that can accelerate well beyond what any regulatory body contemplates will also affect access to the public domain, property rights and most importantly, the intellectual curiosity and courage to innovate. The federal government may be somewhat handicapped by its ties to vested interest groups and lobbyists, and appears to be stifling the process. The imagery used to promote a system of intellectual property is attributed to promoting the growth of technology with greater global economic outcomes, but could it be that the reality is a class of people holding power with unrelenting force and political maneuvering?

America Invents Act

Thomas Jefferson, U.S. President, was quoted as saying, “He who receives an idea from me, receives instruction himself without lessening mine; as he who

lights his taper at mine, receives light without darkening me.”¹ Innovation, like the light Jefferson referenced, is a managed resource. It flourishes or dies in a system that can be manipulated to control and profit from ideas created by the human mind. The America Invents Act² represents an effort to achieve patent reforms. However, included in the reforms is a change in a fundamental right and standard; a change for innovators from the first to invent to the first to file. Since inventors must have a working model of their invention, it seems obvious that someone with more resources could make a model first and beat the true inventor to the patent office. Keeping the playing field level so that all inventors could have access to the patent system appears to have been a key component in the U.S. innovation cycle. Today, in 2017, it seems that people have been diverted intellectually, by a theory of leadership that holds stock in the value of a corporate model. Yielding to the needs of and showing preferences for corporate ideology, which has effectively presented independent inventors with additional barriers to entry of the Patent system.

Innovation and Motive

An argument for reasons why intellectual property rights may need to be viewed in a more positive light include insights from the U.S. Chamber of Commerce, “Intellectual property (IP) contributes enormously to our national and state economies. (Many) industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products.”³ It’s an argument that makes good sense. Intellectual property rights contribute

¹ Miranda Dobson, *Oxford University Press’s Academic Insights for the Thinking World*, Nov. 11, 2014 ; <https://blog.oup.com/2014/11/intellectual-property-law-cases/>, (last visited March 14, 2017).

² America Invents Act, September 2011; https://www.uspto.gov/aia_implementation/bills-112hr1249enr.pdf; (last visited March 26, 2017).

³ *Why are Intellectual Property Rights Important?*, Global Intellectual Property Center, U.S. Chamber of Commerce, 12/28/2009 , <http://www.theglobalipcenter.com/why-are-intellectual-property-rights-important/>; (last visited Jan. 17, 2017).

value to our economy through the application of knowledge with our ability to innovate.

Who will be making the innovations of the 21st century? What are the focus areas for innovation, in other words, what are the priorities? Recent changes in politics, geographical boundary issues, and fiscal realities have made the questions profound. World population is expanding, resources are not being used efficiently, we have climate change issues, technologies are shifting rapidly, and many conflicts in political issues related to the balance on trade, and world banking are all factors affecting innovations. We can support the framework of innovation by updating our understanding of the effects of rulings, and how they may be impacting the business models generating the overall economy. Our system of government can invest through public policy initiatives in areas geared for helpful research, in medicines, bioengineering, environmental studies, sustainable development and community planning, food sourcing and agricultural issues, fuels science, transportation systems, solar, and more.

These are examples of things that directly affect the quality of life for human beings, now and in the future. To help encourage innovations in these vital areas we use a system of legal protections to generate an economic benefit. Policy makers therefore, must balance an approach to generate a greater market share for innovation, put in failsafe measures, and define the fairness in open source equitable exchange, so that research in principled areas vital to society can be shared, funded, and supported by the regulatory body if so involved.

An Open Access Example: Worldwide Brain-Mapping

The United States is participating in the International Brain Initiative launched by the United Nations' General Assembly in New York City.⁴ U.S. researchers also held a separate, but concurrent, meeting hosted by the US National Science Foundation at Rockefeller University to discuss which aspects of the

⁴ Sara Reardon, *Worldwide Brain-Mapping Project Sparks Excitement--and Concern*, September 22, 2016, <https://www.scientificamerican.com/article/worldwide-brain-mapping-project-sparks-excitement-and-concern/>, (last visited March 14, 2017).

program already in existence could be aligned under the global initiative. Scientists cheered the idea of a virtual, cloud-based data-sharing resource, analogous to the GenBank genomics resource, but raised concerns about the focus of the research and of data collection management issues. Overall, scientists are hopeful that this new global initiative will enable them to take brain mapping to the next level.⁵

The brain mapping project is an excellent example of collaboration and the free-flow of ideas and experimentation. Particularly in some areas, if we do not share information more readily moving forward in the quest for developing our technologies, the alternative might be a stagnation of innovation.

America has been a model of economic growth for the world. But we are experiencing significant changes in our world markets and technologies. There are those that want to keep the status quo and keep populations swimming in ignorance, fussing about protections through legal wrangling. But there are others across the world that are growing their cultures in engineering, technology, agriculture, logistics, monetary applications and so much more. They are working with simple tools and products, increasing their educational knowledge, and performing research, building the GDP of their nations. People from many backgrounds, merging their resources, their energy, and a collective spirit of patriotic ideals with each one immersed in rich cultural tradition, trade, education, commerce and a coherent voice at the United Nations. Ideas, good ones, are meant to be explored, cultivated, and manufactured for the benefit of the public and perhaps generate an economy at the same time.

The Importance of Innovation

From an article published by the Global Intellectual Property Center,⁶ we

⁵ Id.

⁶ *Why are Intellectual Property Rights Important*, Global Intellectual Property Center, U.S. Chamber of Commerce, Dec. 28, 2009; <http://www.theglobalipcenter.com/why-are-intellectual-property-rights-important/>; (last visited Jan. 17, 2017).

have the following facts:

- IP-intensive industries employ over 55 million Americans and hundreds of millions of people worldwide
- America's IP is worth \$5.8 trillion, more than the nominal GDP of any other country in the world
- IP accounts for 74% of all U.S. exports- which amounts to nearly \$1 trillion
- The direct and indirect economic impacts of innovation are overwhelming, accounting for more than 40% of U.S. economic growth and employment
- Nearly all of the 300 products on the World Health Organization's Essential Drug List, which are critical to saving or improving people's lives around the globe, came from the R&D-intensive pharmaceutical industry that depends on patent protections
- Innovative agricultural companies are creating new products to help farmers produce more and better products for the world's hungry while reducing the environmental impact of agriculture
- IP-driven discoveries in alternative energy and green technologies will help improve energy security and address climate change

These facts indicate the important role that intellectual property is playing with the U.S. economy and standard of living, as well as the global community.

A Flexible Model

A capitalistic society needs a variety of intellectual assets and viewpoints to pioneer a future of prosperity in human capital. A more equitable and shared process of those values with our world partners may well improve relations and commerce, and in that way, our efforts to lead in a world on the frontier of discovery, could open up a new dimension in generations young and old, merging the intangible ideals of peace and prosperity perhaps? We need flexibility in our ideas, much like our ideals and laws to enforce them. Flexibility is key and is absolutely necessary for shifting the paradigm of entrepreneurial success.

The moment law makers catch on that a whole new innovative way of drafting and implementing a flexible legal theory can help ease tensions between the way we did things and the demands of a new world order, they can actually move to a mutually beneficial outcome, thereby successfully implementing an innovative growth period in our entire process. There would be no more wasted resources, just a simple disciplined approach to evaluating conflicts and solving issues. We're wasting time, valuable resources, taxpayer dollars, and innovation has been squandered or lost completely while bureaucrats, investment tycoons, politicians and lobbyist are profiting at the expense of American society.

For instance, filing for a patent with the aid of an attorney, can cost from \$19,930.00 to \$22,880 depending upon its complexity.⁷ This does not include the costs of producing a working model which is required by the application process. Time is also a factor; it is not uncommon for a patent application to be pending for three years.

The result is the obesity of big box theory capitalism and a shift away from the middle class. The middle class has historically been attributed as being our innovators, some of our greatest innovations have been developed in the innovator's garage.⁸ Most of our great innovations came from the innovator's perception of a problem and an informal effort to solve the problem. These did not occur in research and development labs of large corporations. We can estimate that some form of training or trade skill was present and was leveraged by the intellectual property system to extract value from their efforts and to contribute to the innovation cycle and our economy. More input equals more resources for greater benefit, prioritizing the needs of citizens, not corporate expansion which represents a system of collapse under the weight of finite resources. People are what matter. They perceive the problems and can be enabled to solve the problems.

⁷ Gene Quinn, *The Cost of Obtaining a Patent in the U.S.*, IP Watchdog. April 4, 2015; <http://www.ipwatchdog.com/2015/04/04/the-cost-of-obtaining-a-patent-in-the-us/id=56485/>; (last visited March 26, 2017).

⁸ Jennie Cohen, *Great American Garage Entrepreneurs*, (2011), <http://www.history.com/news/great-american-garage-entrepreneurs>; (last visited March 26, 2017).

Building that model to strengthen the rationale of innovative policy may be the most important aspiration we can hope for in our leadership. Our society, our trade partners, and our planet are all depending on the rationale of a middleclass value system to generate an economic solution to a salvation of resources, sustainable growth, and progressive contribution. Threats to the U.S. innovation cycle includes separating individuals from their rights by giving those rights to employers, increasing the number of monopolies, competition from international sources, challenges to the rule of law, and complexities facing the global population.

The Innovation Initiative

Innovation is our future. The concepts of intellectual property and its protections come from many viewpoints. One idea can help and promote societal benefit, or be corralled into isolation and disseminated incrementally for profit. Hopefully, one day promoting societal benefit becomes a trend in the way ideas are encouraged and promoted without the "need" for compensation, but for recognition of our contribution. The tensions exist between the political controls, legal manipulation, business growth and ensuing competition, and with leveraging and insertion strategies into markets both domestic and international. These tensions have invited an opportunity for corruption and mismanagement of legal and ethical mores.

Today, there is much greater competition from the international community, particularly in the quest for resources, labor, land and technology.⁹ Threats to the U.S. innovation cycle include separating individuals from their rights by giving those rights to employers, increasing the number of monopolies, competition from international sources, challenges to the rule of law, and complexities facing the global population.

The conceptual gifts and imagination of human beings is remarkable, astounding, prolific, and endearing, but we are flawed, imperfect, easily influenced, and controlled by our sense of need and the level of our own

⁹ *Our Common Future, Chapter 11: Peace, Security, Development and the Environment*, U.N. Documents on Gathering a Body of Global Agreements, undated, <http://www.un-documents.net/ocf-11.htm>, (last visited March 26, 2017).

programming. People are complicated and easily confused, and there is an exploitation of that confusion, whereby the insatiable quest for power is equated with the reward of assets, be that in cash, cash equivalents, or from intangible rights. The current reality is a self-rewarding system of hopeless greed and we are all being ruled by that measure. We the people, the innovators, need a system to keep our greed in check.

Brighter Days Ahead

As a great society where people are enabled to be innovative, a system that represents the values of fairness, justice, and a level competitive playing field is needed. We think, we dream, we inspire, and we grow. This can be our American ideal in the future of innovation, our legacy and our reality, a functional and relevant world where people work together to achieve common goals. That's true innovation. To achieve that objective, we may need to draft new legislation, administrative rules, and craft new strategies to enable innovation. In order to achieve the maximum benefit, the emphasis must be on enabling all Americans to be innovators which means we may have to make adjustments to our current system that gets in the way of the public polices of enabling the masses.

As one example of a needed adjustment, we may have to replace the lobby mechanisms that have corrupted the growth of our democracy. Encouragement is key and promoting innovative ideas from people is the future, we need everybody onboard. The system needs to be a collaboration for societal contribution, business development, and social justice with impact investment possibilities and the long reaching implications for building and strengthening our international relations, while at the same time we eliminate the need for excessive transaction costs.

Consider one aspect for innovation of the immediate future: a change in the rule of law, creating contracts and agreements between people of all nations that may simplify a now overwhelmingly complicated process of intellectual property laws, application processes, enforcement challenges, and contract realities. A significant level of expertise is required to navigate the complexity in regulatory requirements.

Terms of Use

When we speak in terms of how to approach the issues from a legal perspective, we need to consider the historical events leading up to the identification of intellectual property rights and the public policy purpose for creating those rights. In an article published by the National Paralegal College, we have this account:

“When the colonies secured independence from England, each colony (except Delaware) passed its own copyright law. Further, prior to the enacting of the United States Constitution, each of the 13 original colonies had its own distinct body of patent law. This, of course, led to a severe degradation in the value of copyrights and patents. What good would a New Jersey patent be, for example, if it would be unenforceable in neighboring New York? In order to rectify this problem, to reward innovation and to greatly facilitate commerce among the states, the drafters of the Constitution felt that intellectual property law should be within the province of the federal (national) government, not the state governments. Therefore, the framers of the Constitution included the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries," U.S. Const. Art. I, Sec. 8." ¹⁰

It is also important to remember that intellectual property rights were understood to be a personal property right. As expressed in the article entitled “History and Sources of Intellectual Property Law,”

"The utility and labor desert theories remain the two most prominent in the Anglo-American tradition.... the meaning of the labor desert theory and conclude that this theory has merit and that a copyright or patent is a vindication of the intimate connection between an

¹⁰ *History and Sources of Intellectual Property Law*, National Juris University, 2006-2017;

http://nationalparalegal.edu/public_documents/courseware_asp_files/patents/IntroIP/History.asp; (last visited Jan. 17, 2017).

individual and the fruits of her labor. The worker deserves credit and a fitting reward for her creative project and the most fitting reward is assignment of a property right so long as that assignment does not impair the intellectual commons for future creators. As a result, a 'copyright' is a natural right, predicated on something far more secure than the norm of social efficiency. This natural rights perspective should not be discounted when intellectual property rights policy is being formulated in order to ensure fairness. Also shown that a 'natural' property right is by no means absolute since it must be balanced against other rights such as the right to an unimpaired common. According to this prescient judgment in *Wheaton v. Peters* (1834), that every man is entitled to the fruits of his own labor must be admitted; but he can enjoy them only under the rules of property which regulate society, and which defines the rights of things in general."¹¹

So from the very beginning of U.S. history, the rights to the creative, innovative efforts of the individual were intended to be property rights of that creative, innovative individual. This is a foundational principle and one that is seriously challenged by the "shop right" and "work-mad-for-hire" legal doctrines that permeate our current system where the rights of the individual creator are ignored and given instead to their employer.

Balance the System

When we define rights, or anything for purposeful use for our societal growth and maturity, we may have to look back on the foundations of equality to best understand the distributive effect. How we balance the future of innovation with doctrines, policies, and regulations will define a shared rights platform. We have a limited view using statistical analysis of the effects of access and exclusion. But with enabling legislation, courts can be encouraged to think of innovation as a human right which can be confirmed by looking at public

¹¹ Richard Spinello, *The future of intellectual property, Ethics and Information Technology*, Kluwer Academic Publishers, 2003; richard.spinello@bc.edu, (last visited Jan. 20, 2017).

interest within the context of our justice system. We need to incentivize people as innovators, reward them and give them fair rights for creative ideas.

These principles are foundational to great leadership and necessary for consistency with our moral principles. Our human nature will demand that we act in our own best self-interest. That is a survival skill and it emerges in our dealings and negotiations to acquire needs or the perception of satisfaction. Our expanding world view requires us to expand our understanding of systems to a broader community, especially our sense of ethical values, of shared values with other cultures, which can be a conduit to multiple forms of trade, and also our mutual understanding of how we might share intellectual property for profit and benefit of the people we are trying to serve. Intellectualism and "enlightenment" should have a place at the table so that monopolistic dreams of power and wealth do not dominate.

Other relevant factors include education, politics, belief systems, morals, and career choices. Education is the top choice, because this demonstrates the access to knowledge or the perceptions of how society will disseminate information. In recent years, the U.S. function in the world as a producer of tangible goods has been delegated. We are losing market share through a lack of growth in the technology sector related to manufacturing because we have delegated this function to other parts of the globe. According to a recent CNN Report, the U.S. has lost 5 million manufacturing jobs since 2000.¹² Other countries are producing engineers, people that actually work directly with products, resources, and ideas. They are emerging on the global landscape with their innovations, and the progressive identification of best processes has been lost to us because of this transfer of function.

So how do we resolve the problem of American participation in a global economic system? We have to address the issues related to the transfer of manufacturing functions to other countries. It may be because of the issue of costs; costs to acquire copyrights/patents or production costs that affect

¹² Heather Long, *U.S. has lost 5 million manufacturing jobs since 2000*, CNN Money, March 29, 2016; <http://money.cnn.com/2016/03/29/news/economy/us-manufacturing-jobs/>, (last visited March 26, 2017).

operating expenses and/or consumer products? We need an open dialogue and cooperation among competing industries in order to identify problems and solutions.

Another area of innovation needing immediate attention is public transportation and particularly resolving the issue of how we will incorporate functionality in the efficient transport of mass populations in and around our urban cores. This area of intellectual property can be equated directly to the public policy of benefits for citizens. For instance, consider new technology that creates a system of public transport which lowers our carbon footprint in the world. Of course, in order to embrace possible solutions, the innovator would have to overcome the objections of powerful oil companies who may experience decreased market prices in the future.

Every step we have taken as Americans, from the conception of our country until now, has lead us on a path of discovery that has impacted present and future realities both here and around the world. We have created our innovation systems with a sense of duty, honor, and commitment to those who enjoy life and work, and who contribute and create with a sense of cooperation. Our system supported community values and contributed to continuing education. It operated in such a way that people were inspired to learn and contribute to the general good. These innovations and the attendant intellectual curiosity will encourage generations to come. Our task is to perpetuate a system that produces fair and just outcomes, that enables creative exploration of possibilities that reward individuals for their bravery and commitment to finding better solutions.

Soul of Innovation

People have ideas about all kinds of things. Will we share them openly? Perhaps someday in the future we can call it a universal behavior. The current focus seems to be on commercializing those innovations, focused solely on the bottom line. Like other species on the planet, when confronted with survival situations, or when faced with the eminent death of our choices or decisions, we instinctively draw on a skill set for protection and view our innovations from a protected perspective or withhold them from public disclosure. It's intrinsic; our sense of natural law that demonstrate a series of patterns in the

way we conceptualize a vast pool of resources, make contributions and seek rewards. Combine that with the chaotic behavior of human nature and we now have a pattern of entitlement on display from every classroom to every courtroom, and in every business transaction in the world.

There are undoubtedly some who seek to control the power of innovation, it is a substantial power and the very essence of democracy. The fairness, justice and balance of power demanded by a democracy can be exploited by those obsessed with the acquisition of power. Democratic systems come at a cost. There are a lot of rules to live by, and balance requires give and take.

When innovation is born, someone will have an epiphany. That knowledge represents power and it is at this point that our systems may be changed. Another attribute of shared knowledge is that it is often the impetus for others to find their own courage to innovate. Ideas today are wrapped in litigation and tied with a pretty bow, to some treasury. We must embrace our civil system and the promise of freedom. Some like to define things, others resolve issues through an ethical balance, each of which is a process of creativity required in the continuation of a rule of law system and the American example of democracy. Innovation would reach an all-time high and that's the most rational future we can have.

Summation

With increased intellectual property registrations, property rights are gaining momentum as monopolies, which is in direct opposition to our societal concept of competition and free market trade. It's counterintuitive! Perhaps we need a new vision and law, applicable to everyone that states;

- The right to protect one's creative innovations for profit or contribution through gifting, is limited to a period of ten years, shall be considered a national contribution to creative market fairness and includes the rights of citizens to improve upon the model at issue.

This concept would give a new allotted time period for innovators to expedite profits, allow for a charitable process, and generate new competition in business models for attached gains in economic prosperity. It's simple language for intelligent people trying to do the right things in generating

ethical business functions and foundations, while addressing a public policy formula which solves issues related to extracting value and enabling innovation so that the innovator may improve their life, as well as the lives of citizens here and around the world. I rest my case.