

US innovation policy: time for a makeover

America's confused response to increased global competition and IP uncertainty is threatening its innovation leadership

By Bruce Berman

Ever wonder why nations in Europe and Asia and many developing countries have an innovation policy and the United States does not? You should.

The United States is without a clearly defined, centrally managed innovation policy – in part because it is still not convinced that it needs one. This has left businesses and rights holders at the mercy of lawmakers and the courts, while giving a leg up to infringers, both foreign and domestic.

In the 1970s, modernised Japan (so-called 'Japan, Inc') challenged US industrial leadership in automobiles and electronics. While the government eventually responded with moves that led to new businesses and created massive numbers of jobs, some key industries were never quite the same. The United States has a tendency to repeat past mistakes. It is currently contending with countries such as China, which has about 10 times the population of Japan and has quadrupled its investment in technology. With limitless government support, Chinese companies are filing patents and trademarks aggressively in Europe and in the United States, where China is now the second leading applicant, as well as locally, where outsiders are struggling to keep up.

The United States was until recently so far ahead of other nations in innovation and IP system reliability, it did not think much about the need for a policy. The nation, while industry-agnostic by nature, may no longer have this luxury – the world has caught up and US innovation leadership is no longer assured.

From what I can gather, innovation policy in the United States is mostly a series of suggested strategies and directives from several government agencies and industry organisations primarily designed to address foreign IP infringement (ie, theft). As far as a proactive national strategy to nurture ideas, incentivise vital industries and educate audiences, policy has been something of an afterthought.

Threat of competition

In response to the Japanese threat in the last century, the United States initiated a series of steps designed to encourage innovation. This included the Bayh-Dole Act, which stimulated university technology transfer and patent licensing, R&D tax incentives and the Court of Appeals for the Federal Circuit, which added meaning to patents and fairness to litigation. These developments led to perhaps the greatest expansion of technology output in history and spawned countless jobs.

Despite these initiatives, the US auto industry has never fully recovered. This once great sector experienced competitive burnout spawned by size and hubris. Now the Chinese are targeting dominant US industries, as well as new ones (eg, cloud computing and artificial intelligence). It is unclear whether the US response

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this time around will provide a long-term strategy that supports big tech while providing opportunities for individuals and the small and medium-sized enterprises that were once the hallmark of US commerce. Recent data shows that start-ups are continuing to decline.

China is fast shedding its reputation as a copycat nation. It has made this switch not because it is more ethical or is trying to enhance its popularity, but because the timing is right for a more reliable system that will help China to attain revenue and margins quicker, making it the global innovation leader. Competing nations know that US markets and courts can no longer be relied upon for discerning IP value, especially for patents.

"In a free market," Alan Marco, former USPTO chief economist and now professor of public policy at Georgia Tech, told this author, "there is a less heavy-handed legal and political framework that allows intellectual property to work better. In the United States and other Western nations there are complementary institutions like the DOC [Department of Commerce], DOJ [Department of Justice] and FTC [Federal Trade Commission] working towards a similar goal, at least in theory. They refrain from favouring industries except possibly in a trade war when the nation is forced to step up."

Marco was part of a Center for IP Understanding and Global Innovation Policy Center panel on "Innovation Policy and Intellectual Property" at the Chamber of Commerce in Washington in May.

Balancing act

Better innovation policy not only helps established industries to compete, it facilitates success for the next generation of inventors, authors, designers and software developers. It also provides context for a confused and wary public susceptible to false media narratives – intellectual property is not the enemy, nor are rights holders and lawyers. The innovation cycle needs to be respected from childhood and reinforced by parents, schools and government, and it must strike a balance between containing big tech and encouraging potentially disruptive innovation.

"The government should be doubly cautious," writes Robert D Atkinson, president of the Information Technology and Innovation Foundation, in a letter responding to a *New York Times* article about whether tech giants violate antitrust laws. "[P]ast interventions against the likes of AT&T, IBM, Kodak, RCA and Xerox severely weakened America's tech leadership, opening the door for Japanese companies to seize market share and jobs. Today, China is waiting in the wings."

Trump's anger about China IP violations, justified or not, does not constitute an innovation policy. Innovation policy is not just about enforcement or supporting the science, technology and engineering curriculum for the next generation of inventors. It must be equally concerned with how to apply government directives wisely and ensure there are reliable, enforceable rights that businesses can respect and the public can support. US innovation needs to take place because of the system and its policies – not in spite of them. **iam**