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The Most Important 21st Century Intellectual Property Issue

By

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Globalization of intellectual property (“IP”) rights will be one of the most important IP legal issues of the twenty-first century. The changing business methods and models best demonstrates this concept. Before 1990, many companies conducted business through face-to-face meetings, which required employees to travel around the country and the world. The decrease in cost of the telephone allowed some phone-conferencing, but face-to-face meetings were still the preferred method. One of the biggest advances came with the invention of the overnight package. UPS, Federal Express, and others allowed corporations to send documents around the world overnight. This increased collaboration, negotiations, and overall productivity. In the years since, there have been many advances. A document can be transmitted around the world in a matter of seconds. Companies can videoconference with their international divisions to determine a global marketing strategy. People can order just about anything from anywhere without spending the money for an overseas phone call. Technology and the Internet are the primary reasons for this economic globalization. Many might say that the expanding field of technology is one of the most important issues facing IP law. Technology, however, is merely a tool used in an increasingly competitive marketplace. While important as the backbone of the twenty-first century economy, technology is just a means to the end of market globalization, including IP rights.

At the beginning of the twentieth century, many countries were either isolated or at war with each other. A patent, trademark, or copyright could not, conceivably or feasibly, protect company rights across country boundaries. However, following World War II, due to an

increased global marketplace presence, the U.S. formed new country alliances. Previously content to isolationism, the U.S. took on the role of superpower. American businesses followed suit and branched out to countries all over the world. As they did, their IP rights needed protection in these other countries. At the same time, many individuals and companies realized the need to expand in a similar fashion to stay competitive. The problem was that the IP standards were inconsistent between countries. Thus, a common set of international rights for a particular idea or product was nearly impossible to achieve.

The start to globalization caused two things to happen during the latter portion of the twentieth century. First, many international IP standards and protocols appeared, such as the Trade-Related Aspects of IP (TRIPS) agreement, the Patent Cooperation Treaty (PCT), and the Madrid Protocol. At the same time that these agreements appeared, new organizations started operations to foster international cooperation, such as the International IP Alliance and the World IP Organization (WIPO). Second, “continent-nations”, where an entire continent acts as a single unit, appeared in the world political arena. The European Union (“EU”) formed and has been slowly integrating many of its policies. It is foreseeable that the EU will integrate the various nation-state IP rules, and possibly create one set of IP laws across all the member countries, much like the single set of patent laws across the United States. The North American Free Trade Agreement (“NAFTA”) was passed to help break down trade boundaries across North America and could possibly lead to integrated IP rights across this continent. It is possible that, one day, the Asian countries will join together in an effort to compete with the EU and the Americas. This decrease in the number of trade boundaries, the new global IP standards, the important status given to prompt, accurate information, and the almost instantaneous transmission of this information means that IP rights can no longer be thought of on a national basis, even for those

holding or seeking rights in the United States. When a United States entity wants to get a patent, copyright, or trademark in this country, they must also consider what other countries they should file to protect their rights before it is too late.

The current problem is that inter-country rights are not standardized. The U.S. “first to invent” patent system versus the typical “first to file” patent system is an example of this problem. Many questions must be answered before global standards will be established. How will the new standards effect entities already given rights? Who will determine the new standards and how will they be adapted in the future? How will entities enforce their rights over multi-country jurisdictions? Since the international flow of information will not slow down, these issues must be resolved soon. Otherwise, we risk having conflicting sets of IP rights across countries, resulting in a confused international-oriented public, the very public that IP rights are designed to protect.

The world is rapidly changing. Companies need to quickly implement change to keep pace. Technology is the tool to allow this to happen. Global economies, global corporations, and global ways of thinking have been the result. However, IP developed in this global arena is not subject to global protection, only country-by-country protection. Changing the system has begun through various protocols, agreements, and treaties, such as the PCT, TRIPS, and the Madrid Protocol, but these are still one-stop shopping for global IP rights. Also, there are still many IP rights that are not uniform around the world. Therefore, one of the most important IP legal issues of the twenty-first century is to standardize global IP rights.