



December 15th, 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, DC 20580

Dear Commissioners:

The Market Institute appreciates the opportunity to submit comments to the Federal Trade Commission (the “Commission”) concerning innovation and intellectual property (IP) policy, in connection with the Commission’s hearings on October 23rd and 24th regarding Innovation and Intellectual Property Policy, Project P181201, Docket No. FTC-2018-0055.

The Market Institute works with small business owners, individuals, elected officials and their staff to support, defend, and grow the innovation economy. The Market Institute works with more than 13,000 inventors across the country, providing them resources, education, and a public policy voice. We appreciate the Commission’s time and energy on this very important issue. At the Market Institute we believe that IP policy is a key component in fostering economic growth – and providing an avenue for economic growth in the future.

However, over the last decade our IP system has been eroded through legislation, the courts, and probably worst of all public statements lowering the perception of the value of IP. These attacks have all had their effect, and the US now ranks 12th in the defense of IP.¹

1. Is there a role for the government in advancing or supporting innovation?

Patents. Patents are what give the small inventor, the innovator in his garage, the guts to take the next step. Patents are a promise from the government to take the entrepreneurial leap that is often necessary to take an idea to the next level. They help provide inventors the assurance that if they risk their life savings – they can also protect that investment.

In order to make an investment in an idea, an inventor needs a profit motive.² While larger companies that invent often make larger investments and therefore have a larger financial

¹ http://www.theglobalipcenter.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf#page=45

² https://www.amazon.com/Profit-Motive-What-Drives-Things/dp/1590794443/ref=sr_1_1?s=books&ie=UTF8&qid=1518552655&sr=1-1&keywords=charles+sauer

incentive to have stronger patent rights, the small inventor doesn't have the same team of lawyers that large corporations have, which makes a strong patent even more valuable to the small inventor.

Without patents, if a small inventor has their innovation stolen, there is little that they could do to fight it. However, with a patent – and strong laws defending that patent – innovations are protected. Innovations are less likely to be used without licensing. Therefore, inventors are more likely to benefit from their inventions.

But the help that patents provide doesn't stop with inventors. Patents provide investors the assurance that their investment can be protected. Patents provide a public disclosure of an idea, so that after the term of the patent has expired the idea can be owned by anyone. Patents help our society progress both economically and technologically.

We have members from myriad industries, and members large and small have been forced to defend their patents. We have members who have spent millions defending their patents against nasty infringers. We have members who have been able to resolve infringement issues with a self-written letter. And, we have members who are just starting the enforcement journey.

These inventors all have several things in common. First, they all had ideas that were good enough to copy. Nobody sets out to invent something, invest in something, or even just spend time on an invention that isn't interesting enough or valuable enough to copy. The goal of all serious inventors is to have an idea so good that everyone *wants* to copy it. Second, these inventors were confident in their decisions to develop their innovation because of their intellectual property. Third, they are confident in enforcing their IP because of the strength of patents (at least at the time of enforcement).

2. What is the importance of intellectual property in advancing, protecting, and supporting innovation?

From above, IP is what gives inventors and entrepreneurs the assurance that they can invest in their ideas and defend that investment, but it is also much more than that. Our society has greatly benefited by inventors disclosing their ideas.

In recent years, we have seen an explosion in home 3D printers.³ This is in part because some of the first patents on 3D printers are now more than 20 years old.⁴ The 3D printing revolution is happening now because inventors invested in it in the past. And, their innovations aren't something that just sat in a box for 20 years. We, as a society, have already benefitted from their inventions through a growth in rapid prototyping, shortened idea-to-market times, and some of the patents used in 3D printing have even helped medical professionals.

³ <https://3dprintingindustry.com/news/half-million-3d-printers-sold-2017-track-100m-sold-2030-131642/>

⁴ <https://techcrunch.com/2016/05/15/how-expiring-patents-are-ushering-in-the-next-generation-of-3d-printing/>

And, now that the inventors have had their time to benefit and profit from their ideas the technology is rapidly spreading. And, the wide availability of 3D printers is likely to help spawn yet another generation of ideas. This innovation cycle has helped make the US the economic superpower that we are today.

Additionally, IP can be bought and sold. That means that while someone might invent something, they don't necessarily have to figure out how to manufacture, distribute, and market it. It means that an inventor like Nikola Tesla can sell his innovations to Westinghouse who could help build a business around Tesla's innovations. That licensing deal is why we have easily accessible electricity today.

And, while the use of IP varies from business to business, the support IP protections provide market to market is largely uniform. For instance, while an app developer might not have a patent strategy, the deployment of their application often requires piggybacking on the use of products that are patented.

3. How does economic analysis and empirical literature view the relationship between intellectual property and innovation, and the role of government in advancing and supporting innovation?

China is now filing more patents than the US, yet when Ronald Reagan moved into the White House the Chinese patent office had only existed for two years.⁵ This growth in innovation and patent filing has helped fuel economic growth in China.⁶ Furthermore, while China has been accelerating its rate of filing, China has also been doing more to defend innovators. In fact, we have member inventors who have been forced to defend their IP in China because they were unable to defend it in the US.

That isn't the direction that we want the economy to go. Patents have been found to help economies grow,⁷ and often mean that innovative and even life saving products are more available.⁸

We need to protect the patent system. We need to protect inventors. We need to understand that a company that is rewarded a patent today is a gift to us all.

4. Should the current status of patent law and current business practices influence the FTC's enforcement and policy agenda?

⁵ <https://www.washingtontimes.com/news/2015/apr/28/innovation-act-inventors-perspective-a-less-innova/>

⁶ <https://www.bloomberg.com/graphics/2016-us-vs-china-economy/>

⁷ <http://www.georgemasonlawreview.org/wp-content/uploads/Haber-FINAL.pdf>

⁸ http://georgemasonlawreview.org/wp-content/uploads/2017/11/24_4_Lybecker.pdf

The only thing that should influence the FTC is an understanding of the importance of intellectual property.

Business practices come and go. Technology advances at different rates in different industries. And policy agendas are normally backward looking. Innovation will continue as long as patent rights are protected.

5. Conclusion

The Market Institute urges the FTC to defend IP rights. If we want to win the global economic race, we need to lead the global innovation race. The only way to do that is by supporting intellectual property. We now have a Director at the USPTO who is leading us in the right direction. It would be great if the FTC could do the same.

Again, thank you for the opportunity to submit comments.

Sincerely,

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