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OPINION

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The unheralded agency protecting America's innovation edge

BY FRANK CULLEN, OPINION CONTRIBUTOR - 07/22/24 11:30 AM ET

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IRVINE, CALIFORNIA – DECEMBER 27: The Masimo logo is displayed at Masimo headquarters on December 27, 2023 in Irvine, California. The medical technology company is in an ongoing dispute with Apple with a ban restricting imports of impacted Apple Watches into the United States now paused following an appeals court interim order. (Photo by Mario Tama/Getty Images)

A little-known federal agency might be our most powerful asset in the race for global tech leadership. The International Trade Commission (ITC) has the power to deter patent infringement abroad and at home by blocking infringers' access to the huge American market.

The ITC is our best hope to check the mounting global problem of theft of American intellectual property — the cornerstone of our high-tech economy. It's up to policymakers to make sure this asset gets deployed to the full extent of the law.

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Here's the problem: In today's knowledge economy, ideas are the coin of the realm. But America's intellectual property is under constant attack. State-sponsored hackers steal trade secrets. Knockoff merchants flood markets with counterfeits. Foreign rivals copy our most advanced technologies. Even some U.S.-based tech behemoths copy as they please from smaller upstart rivals, knowing the worst that will happen is they'll have to pay damages after a lengthy court battle.

That's because a 2006 Supreme Court decision, [eBay v. MercExchange](#), severely curtailed the rights of IP owners. Previously, patent holders could easily stop infringers with court orders, called injunctions, preventing the sale of knock-off products that illegally incorporated patented technology.

The ITC's role is crucial to preserving America's innovative edge. When a biotech startup pours its resources into a potentially life-saving drug, or when a telecom company invests billions in 5G technology, they need to know their intellectual property will be protected. The ITC's ability to swiftly block infringing products creates a powerful deterrent against IP theft.

Critics of the ITC argue that its powers could potentially be used to stifle competition or harm consumers. But while there's always a delicate balance between protecting innovation and protectionism, the ITC has built-in safeguards, starting with a public-interest requirement to weigh factors like health, safety and competitive conditions into its decisions. It's not a blunt instrument, but a precision tool designed to protect innovation while preserving fair competition.



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As we look to the future, strengthening and modernizing the ITC should be a priority. This could involve increasing its resources to handle a growing caseload, streamlining its procedures, and potentially expanding its authority. We also need to educate our innovators more fully about the ITC as a forum for IP protection.

The future of American technological leadership depends on the choices we are making now — in policy, investment and legal strategy. By embracing and empowering the ITC, we're not just protecting patents; we're safeguarding our edge in a world where competition is growing tougher by the day.