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The unheralded agency protecting America's innovation edge

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

Post



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)

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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, <u>eBay v. MercExchange</u>, 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. decision unintentionally made it nearly impossible for legitimate innovators to stop infringement, often leaving them with the sole option of pursuing lengthy legal battles for financial compensation.

Enter the ITC. This body wields the power to swiftly bar infringing foreign-manufactured products from the U.S. market entirely. For a government body, the ITC moves fast, <u>typically</u> resolving cases in 12 to 18 months, compared to the years-long slog of district court litigation.

Its administrative law judges are experts in complex patent issues and can grant exclusion orders now mostly unavailable in federal courts. This combination of speed, expertise and decisive action makes the ITC an increasingly important venue for companies seeking to protect their innovations from copycats.

Established in 1916 as the U.S. Tariff Commission, the ITC has evolved alongside the American economy as we transitioned from a manufacturing powerhouse to an innovationdriven economy. While the dumping of subsidized foreign goods at cut-rate prices retains an important place on the ITC's docket, equally important are proceedings against patent infringers that manufacture products abroad for export to the domestic U.S. market.

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This evolved role was on full display in a recent high-profile case. When medical device maker Masimo accused the Apple Watch of infringing its blood oxygen monitoring patents, it turned to the ITC. The result? An import ban on infringing Apple Watch models that held

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 <u>health</u>, 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.