

# US IP Stakeholders Seek To Strengthen Public Support For IP, Ensure Future US Competitiveness

04/12/2018 BY [DAVID BRANIGAN](#) FOR INTELLECTUAL PROPERTY WATCH — [LEAVE A COMMENT](#)

NEW YORK — United States intellectual property stakeholders from academic, business and legal backgrounds gathered recently to discuss how to increase public support to strengthen the intellectual property rights system in the US, in light of China's steady rise in numbers of patent and trademark filings. US IP stakeholders argued that developing public awareness and understanding of IP is key to building this support, with some holding diverging views on how to go about this.



**Panel at IPAS discusses IP literacy and the China threat. (l-r: Conley, Frank, Lowery, Krasnikov)**

The Center for Intellectual Property Understanding (CIPU) gathered for their second annual IP Awareness Summit on 29 November at Columbia University in New York. At the summit, speakers and participants discussed the importance of IP literacy, what the public needs to know about IP, the current state of IP awareness around the world, and how to shift the public narrative on IP away from negative “myths,” and toward a more positive understanding of the role of IP in innovation and development.

The full agenda from the summit is available [here](#) [pdf].

CIPU is an “independent, non-profit organization dedicated to increasing awareness of the impact of intellectual property on peoples' lives. It tracks attitudes towards patents, trademarks and copyrights, and seeks to dispel misinformation and facilitate good IP behavior,” while providing “a framework for understanding how IP rights promote competition and create jobs,” according to the organisation's [website](#).

### **As China Rises on IP, US IP Stakeholders Call for Coordination, Integration**

Just yesterday, the World Intellectual Property Organization (WIPO) released its *World Intellectual Property Indicators – 2018*, showing China far ahead of the US on amounts of

patent and trademark filings (*IPW*, WIPO, 3 December 2018).

The awareness that China is advancing rapidly in innovation and accumulation of intellectual property formed an overarching theme at this year's IP Awareness Summit, and according to a number of participants, this has raised the bar on what is needed for the US IP system to maintain global competitive advantage on IP.

Many participants expressed concern that without coordinated action to strengthen the US IP system by increasing innovation and building respect for IP, the US could possibly lose ground to China and other Asian economies that are actively taking these very steps.

Universities in the US teach IP as a subset of law, engineering or business management, but not as an integrated field of study, James Conley, faculty at the Kellogg School of Management, noted at the summit.

China, on the other hand, has not just programs but entire schools dedicated to teaching IP, and Singapore has offered significant patent incentives for blockchain technologies, drawing innovators to the country, he explained.

The US has not been coordinated in the same way, he said, observing, "What we are missing is integration. We are all good musicians, but we are missing the conductor."

Andrei Iancu, undersecretary the United States Department of Commerce, and director of the United States Patent and Trademark Office (USPTO), said in his presentation that "the battle for 5G is not likely to be limited to giant American companies but is international and being waged by the smallest and biggest countries; from Singapore, for example, to China."

"We live in a different world," he said. "For the United States to maintain its competitive leadership it is critically important that we have an IP system and innovation and entrepreneurship ecosystem that encourages innovation; that provides stability and predictability, so folks can invest here in the US confidently."



**USPTO Director Andrei Iancu**

"I think we are still the leaders," he said, "but we cannot take our eye off the ball. We have huge competition."

The full audio of Iancu's presentation is available [here](#).

## **Education is Key to Building Support for IP**

Building public support for IP faces significant challenges, which include the non-intuitive complexity of IP innovation systems and the strength of the anti-IP movement in the US. This movement against strong IP rights, presenters explained, is organised and has gained traction among the general public with simple and powerful messages.

Bo Heiden, co-director of the Center for Intellectual Property (CIP) in Sweden, said at the summit that "drug patents kill" fits neatly on a hat, while the phrase "we need drug patents to incentivize investment for the development of new drugs," does not.

Scott Frank, president & CEO of AT&T Intellectual Property, lamented that "there is a significant negative impact on IP by the people who don't know about it."

CIPU has identified that education will be key to changing this narrative. According to its website, "IP rights create opportunity. But to most people, what they achieve is unclear."

Joyce Ward, director of outreach at the USPTO, works to make IP more tangible and clear, and emphasised at the summit the importance of educating young people in a way that intellectual property becomes "personally meaningful to them," and not just an abstract concept.

Ward works with young inventors who are actively incorporating IP into their innovation process, and even patenting their inventions as teenagers. She argued that this is the critical age to develop an understanding of IP, so that young people understand it and can make use of IP as a tool for innovation.

She said that when working with young people it is important "to speak to the positive aspects of protecting IP," in order to dispel negative perceptions.



David Lowery, lead singer of the rock band “Cracker” and copyright advocate and educator at the University of Georgia, said at the summit that “IP literacy begins with the notion of ownership.”

Many of his music students hold negative perceptions of IP, he said, but they not even aware that they are IP rights holders. Copyright, he explained, is “innate and immediate” upon creation of an artistic work. When his students come to realise that they in fact own the rights to their work, their negative perceptions of IP begin to change, he said.

Frank of AT&T IP said that without IP, the knowledge economy would not exist. “Every idea would be free to everyone,” he said. “Without it [IP], there would be no economic value for ideas,” and without economic value, he said, there would not be the investment needed to drive innovation.

Keith Bergelt, CEO of Open Invention Network, resonated Frank's comments saying that “IP is just the maximization of human potential. Ideas have value, and we should not devalue ideas.”

### **Are US Patents Only for the Deep-Pocketed?**

Following Iancu's presentation, which highlighted the strengths of the US IP system, Jay Walker, inventor and founder of Priceline.com, highlighted its weaknesses in his keynote address.

Walker, acknowledging his licence to be controversial, proceeded to explain why he thinks that the US IP system is broken.

IP, he said, has nothing to do with innovation. "People have innovated long before IP, and will continue to innovate without it." He explained that people don't innovate because of IP incentives, they innovate to create solutions to problems.

Meanwhile, "investors just want a return on investment," he said, "and if they get this through patents, so be it."

He then explained that the US patent system is broken, because it does not function the way it should for average inventors. "Unless you are a deep-pocketed owner, the patent system will not work for you," he said.

The system is broken because for small companies that cannot afford the litigation process, patents are completely worthless, he said. They provide a "false sense of security," a "false sense of value," and a "false sense of property." They are only valuable to large companies with "deep pockets," he said.

He explained that the patent system is broken because "for the bottom of the pyramid, it's better not to get a patent, but just to move fast and hold trade secrets." This, he said, breaks the covenant made in the US constitution upon which the entire US patent system is based, the agreement that inventors patent their inventions, and disclose their knowledge, in exchange for a limited period of exclusive IP rights.





Walker warned that when inventors start relying more on trade secrets than on patents, they will be inventing in silos, breaking this covenant and inhibiting progress. He said this is a “post-IP” phase, and he suggested that “we’ve already entered it.”

He said that this is not a market failure, but a societal “structural failure,” because patents are government-issued. Fixing it, he said, will require the “equivalent of a constitutional convention.”

In the session following Walker’s self-described “controversial” keynote address, Patrick Kilbride, senior vice president of the Global Innovation Policy Center at the US Chamber of Commerce, disagreed that the system is broken. He said “it will work if we make it work.”

### **Incentivising Invention is the “Wrong Debate;” IP is About Bringing Products to Market**

Challenges in building support for the IP system in the US can be characterized by the salience of the “patent troll” narrative among the general public, presenters explained. In this narrative, patent trolls, or non-practicing entities (NPEs), without any intention of developing products, purchase patents for the purpose of making a return on their investment through litigation on patent infringement.

Presenters explained that this narrative has been damaging toward building public awareness and understanding of IP, and that it is overly simplistic, as universities are included in the category of NPEs.

Gregory Mandel, dean of Temple University Law School, presented at the summit on the findings of a study he conducted on [The Public Perception of Intellectual Property](#) [pdf]. The study, he explained, found that the “majority of Americans associate moral and ethical wrong with copying others’ works,” but that “if you add attribution, people’s opinions of whether or not it is acceptable to copy skyrocket.”

“This misses the point,” he said, because IP is “actually about copying and not about attribution.” He further explained that the study found that the majority of Americans think “the basis of IP law is to prevent plagiarism and not to promote innovation.”

After framing IP around themes of an “incentive system,” around “natural rights,” and around “expression,” Mandel explained that the study found these had no effect on majority perceptions of IP as being morally and ethically okay to copy, as long as there is attribution.

He then explained that when the study framed an explanation for IP around how it can promote innovation in the commons, “this actually led to people thinking that IP rights should be weaker.”

[*Section below corrected*] Adam Mossoff, founder and director of the Center for the Protection of IP, and professor of law at George Mason University, in his closing presentation suggested a new argument for IP that the average person will understand.

Mossoff said that “IP is in everything. It is the foundation of our innovation economy, and it’s what makes it possible for us to have a flourishing economy.” He noted that “there has always been a positive correlation between IP, innovation and economic growth in the US,” but he said that the common argument that IP incentivises “invention” is the wrong one.

“This is the wrong debate,” and with it, “you are already joining the side of the skeptics,” he said, because people will create and invent without IP.



Instead, he argued that the purpose of IP is to bring products from invention to market. "That's innovation," he said, explaining that this is something that everyone will understand and support.

"IP serves the vital function of a legal and commercial mechanism to bring ideas to the market as products," he said. "Patents are the bridge from the lab to the market ... the key to translating invention into real world innovation."

"This is the function of the patent system" he said, "not incentivising invention."

He explained that this is the rhetoric that will help average people understand that "IP clearly is a priority and it should be a priority, and we should protect it."



**Bruce Berman opens the IPAS conference**

Image Credits: David Branigan

*David Branigan may be reached at [info@ip-watch.ch](mailto:info@ip-watch.ch).*



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