

Bill Is Key To Protecting US Economy From Patent Piracy

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In July, a bipartisan group of lawmakers in the House and Senate introduced a bill that would nullify one of the most misguided [U.S. Supreme Court](#) decisions of the modern era. It's critical for Congress to pass this bill without delay.



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The RESTORE Patent Rights Act, introduced by Sens. Chris Coons, D-Del., and Tom Cotton, R-Ark., and Reps. Nathaniel Moran, R-Texas, and Madeleine Dean, D-Pa., would protect U.S. inventors from intellectual property theft by restoring court-ordered injunctions as the default legal remedy in cases of patent infringement.

Over the last two decades, judicial decisions have made it harder for inventors to keep patent-infringing goods off the market. Intellectual property theft costs the U.S. economy as much as \$600 billion annually, indirectly aiding geopolitical competitors like China, which is the primary IP infringer.

The origins of the problem go back almost two decades. For most of U.S. history, inventors who proved that a competitor had infringed their patent could obtain binding court orders — called injunctions — which compelled the infringer to stop.

This practice was in line with the text and spirit of the U.S. Constitution. Article I, Section 8, grants Congress the power to secure "for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

This "exclusive right" is just that — exclusive. The entire purpose of a patent is to permit an inventor to sell an innovative, original product without direct competition for a short period of time.

This built-in market advantage is what keeps the engine of innovation running in the first place. Inventors sink their time and financial resources into novel discoveries because they know that if their idea succeeds, they will be able to generate a worthwhile return for their efforts. Injunctions bolster confidence in this system by assuring inventors that their rights will be not just recognized, but enforced.

Yet in a 2006 case called [eBay Inc. v. MercExchange LLC](#), the Supreme Court abandoned this long-standing precedent and decided that inventors were no longer presumptively entitled to injunctions in cases of patent theft.

This decision has made it practically impossible for small inventors to get the justice they deserve. While a check from an infringer is better than nothing, what inventors want most of all is a chance to produce and sell their own innovations free of unfair competition from copycats. Money damages rarely approximate the revenue inventors could have generated if they had been able to sell their products exclusively until their patents expire.

Even worse, the absence of injunctive relief has allowed patent infringers — who often manufacture their products overseas — to continue dumping infringing products onto U.S. markets. In addition to siphoning billions of dollars from U.S. innovators and the economy, this repeated IP theft exposes consumers to counterfeit goods — including fake cosmetic or health products — that can pose serious safety risks.

Fortunately, a little-known government agency known as the [U.S. International Trade Commission](#) is stepping in where courts have fallen short. In recent years, the ITC has issued exclusion orders that keep products made overseas — but based on stolen U.S.-developed technologies — off of U.S. markets.

In addition to giving inventors the justice they deserve, the ITC helps keep the U.S. competitive. If China or other rivals could simply swoop in and pilfer U.S. technologies without consequence, many firms in IP-intensive industries like telecommunications, biotech and robotics would hesitate to invest the millions — or even billions — of dollars required to design, develop and test new products.

IP theft is a major reason China already leads the U.S. in the majority of critical fields, and the ITC may be the only thing keeping China's lead from growing even larger.

Sadly, despite the ITC's crucial role in supporting U.S. innovators, consumers and jobs, some officials are suggesting that the agency may have overstepped its mandate. In a recent hearing on the ITC, one lawmaker, Rep. Darrell Issa, R-Calif., even parroted claims that "the ITC is being misused for purposes other than its intent."

Not true. In the absence of injunctive relief, the ITC is often the only recourse inventors have to protect their ideas and the U.S. market. Efforts to weaken the agency play right into Beijing's hands and are, as Rep. Thomas Massie, R-Ky., recently said, akin to "trying to divvy up the goods of the American inventor."

As law professor Michael Doane testified to Congress in July, efforts to rein in the ITC's powers could backfire since the agency "is one of the most effective mechanisms for defending U.S. IP rights from imported infringing products, particularly from China."

They're right. Still, as important as the ITC is, it isn't a cure-all. In cases of patent infringement, the agency can only block foreign-manufactured goods from entering the U.S., meaning infringing products made on U.S. soil are beyond its scope. But domestic IP theft is a major problem, too. Well-resourced U.S. corporations routinely steal technology from their smaller competitors, who typically can't afford to engage in lengthy and expensive court battles.

That's why it's critical for Congress to fully remedy the court's mistake in eBay by restoring injunctive relief as the default response to patent infringement. Thankfully, the recently introduced RESTORE Patent Rights Act would do just that. The legislation would effectively overrule the Supreme Court's decision in eBay so that injunctions can once again be presumed in cases where a court finds infringement.

Why is passing the RESTORE Patent Rights Act so relevant now? China is currently outcompeting the U.S. in as many as 37 of 44 key technology areas. The race for primacy in cutting-edge fields like artificial intelligence, machine learning and quantum computing will help determine the geopolitical landscape for the 21st century — and beyond.

But as long as major powers at home and abroad can skirt patent protections with impunity, U.S. innovation will suffer, and our rivals around the world will feel emboldened. Protecting — and even strengthening — the ITC and passing the RESTORE Patent Rights Act would

help ensure inventors get the justice they deserve.

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