

Understanding IP Matters: Policy Won't Save U.S. Innovation; Respect for Property Rights Can



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On this [episode](#) of *Understanding IP Matters* (UIPM), Professor Adam Mossoff discusses how private property rights in inventions promote a growing innovation economy and a flourishing society. As the strength of patent rights in the United States has been effectively weakened over the past decade, or so, Mossoff discusses the current state of U.S. patent law and the positive impact bills before the current Congress could have.

Mossoff is a Professor of Law at Antonin Scalia Law School, George Mason University, where he teaches a wide range of IP courses. He is also a member of the Board of Directors of the Center for IP Understanding. Mossoff's influential research has been relied on by the Supreme Court, the U.S. Court of Appeals for the Federal Circuit, and by federal agencies.

In this episode, Mossoff and host Bruce Berman discuss:

– Why infringement of patent rights by tech companies should be considered “predatory” infringement, not “efficient” infringement.

-The impact of the pending congressional patent bills, which attempt to abrogate the Supreme Court decisions referred to by Mossoff as “the four horsemen of the innovation apocalypse,” (*Bilski v. Kappos*, 561 U.S. 593 (2010), *Mayo v. Prometheus*, 566 U.S. 66 (2012), *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013), *Alice Corp. v. CLS Bank International*, 573 U.S. 208 (2014)) decisions that have undermined and destabilized the patent system as the driver the U. S. Innovation economy.

– How the United States was the first to include intellectual property in its foundational document, and that intellectual property was recognized as part and parcel of the system of protecting the rights of life, liberty and property.

IP is foundational in the United States and its strength and importance must be protected. Mossoff explains that it was a key insight of our founders to recognize that patents were part of that “moral principle” that they were invoking. “This isn’t economic policy, why we have patents and copyrights,” he says. “This is part of the moral claim that one has to one’s life, one’s liberty, one’s property—and property includes your intellectual property.”

Key Responses

Do you think there is a push to support a specific agenda with regard to IP rights?

Adam Mossoff: “Undoubtedly.” “The patent system has been undermined through lobbying for new laws written by Congress, has been undermined through what we call strategic litigation; very explicit directed litigation—lawsuits filed and defenses argued by parties who are coordinating it to achieve certain results through the courts and also through lobbying. And it’s been very successful lobbying of regulatory officials, especially in the antitrust agencies,

the Federal Trade Commission and the Antitrust Division of the Department of Justice, to attack and undermine and eviscerate this kind of property rights foundation of our innovation economy.”

The bills presently in the House and Senate aim to correct course on patent policy. How significant are they?

Adam Mossoff: “All the bills are bipartisan, and all of them are in the House and in the Senate. So, it shows you that there’s significant concern about our patent system right now that we have three indisputably important patent reform bills that address these foundational, fundamental weaknesses that have been created in our patent system in the past 15 to 20 years.”

The Biden Administration has threatened to assert march-in rights on products protected under U.S. patents. Are there weaknesses in this logic?

Adam Mossoff: “There are several. First and most obvious is the laws don’t actually allow the government to impose price controls. That’s not in the Bayh Dole Act. It’s not even in the language of the statute. So, it’s a huge convoluted legal argument about why people are trying to manipulate, twist and warp this law into a law that serves this policy goal of reducing prices of drugs and other types of products and services in the marketplace.

So, as a preliminary matter, what they’re arguing is not authorized by the law. That should end it. But it’s also just a bad policy. Price controls are no different than the government picking winners and losers in basic R& D. In fact, economists widely recognize that price controls are incredibly destructive of markets.”

Destroying the System

Mossoff says that predatory infringement practiced by Big Tech is “destroying the patent system” and “destroying innovation and the ability of our economy to succeed, and the ability of [even Big Tech] at some point to succeed”.

Listen to the entire episode to learn why:

- The PTAB ideally shouldn't exist. Patents that were mistakenly issued should be required to be challenged through the court process.
- “The United States was the first country that becomes largely created through innovation, the innovation made possible by the property rights protections of the patent system.”
- The times when the United States has had reliable and effective property rights were the times that it drove the radical revolutions and innovation that have fundamentally [positively] altered our lives, from the computer revolution to the biotech revolution.