

Improving the global innovation ecosystem

David Kappos calls on the EU to seize the opportunity created by the US's biggest reform of patent law in nearly 200 years

This is an exciting time in the patent world. With a potential agreement to create a unitary patent in Europe, and with the passage of the Leahy-Smith America Invents Act in the US, we are close to reaching an important milestone that would allow us to move forward in establishing a more effective international patent system. The US and the EU need to provide global leadership in this critical area to boost the success of our innovative economies across the world.

As the US under-secretary of commerce for intellectual property, I have visited several European countries over the past two months to explain

how the US has modernised its patent laws, through the America Invents Act.

In short, the act, which US President Barack Obama signed last September, is the most significant reform to US patent law in almost 200 years. Because the development of technologies increasingly cuts across borders, it is imperative that intellectual-property systems provide consistent, cost-effective avenues to obtain reliable patent rights in multiple jurisdictions. In passing this act, the US seeks to make such a patent system a reality.

One of the most fundamental changes is the adoption of the 'first-to-file' standard, which brings US practice in line with the rest of the world. This dramatic modification creates more certainty for innovators, while reducing costs associated with prosecuting patents by avoiding disputes over who was the first to come up with a claimed invention.

The act also provides a fundamental principle for fostering innovation: a 12-month grace period to protect inventors who disclose their invention prior to filing for a patent. This is

especially critical to protecting small businesses, universities and research institutions.

These changes are a significant leap forward towards achieving a standardised global patent system that spurs job creation and market growth. By adopting international norms and aligning US patent laws with those of our major trading partners – including those in Europe – we are now ready to restart substantive patent harmonisation discussions with patent offices throughout the world.

I am already working with the heads of intellectual-property offices from Denmark, France, Germany, the UK, the European Patent Office and Japan – in the so-called 'Tegernsee Group' – to examine important areas of patent law that can be substantively aligned to promote growth.

Increased harmonisation between the US and EU patent systems would enable enterprises to protect and distribute their technologies in the global marketplace on a more level playing-field. An agreement within Europe on a unitary patent would bolster this effort.

While European leaders consider the adoption of the unitary patent, they should also realise that there is now an unprecedented opportunity for substantive patent-law harmonisation that would support their university labs, their small and medium-sized enterprises, and their most booming industries – an opportunity that could be seized by adopting pro-growth policies such as the 12-month grace period.

Meanwhile, our global leadership on patents would also advance opportunities for additional work-sharing among patent offices (both in developing and developed nations), thus reducing global patent backlogs by eliminating redundant efforts and preventing the loss of billions of dollars annually in 'forgone innovation'. The time is ripe for all of us to commit ourselves to making the global patent system simpler, more certain and user-friendly for all innovators.

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