

The Role of IP in Economic Growth— Looking Back, Looking Forward

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NOVEMBER 6, 2017
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**10 Year Anniversary of Policy Alternatives
Research Institute of Tokyo University**

*Intellectual Property Right and Innovation Unit, Past
Achievement and Future Perspective – From IP Strategy
Consisting of Patent and Standard to New Era of Smart
Strategy Using AI and Data*

David J. Kappos

Looking Back: IP System Perceived as Too Strong

■ News from Pittsburgh Post-Gazette, July 26, 2007

- The patent system is broken: Reform is needed to stimulate U.S. innovation

◦ *Bill McDermott*



Looking Back: Patent Trolls

Intellectual Property & Technology Law Journal

formerly Journal of Proprietary Rights

Edited by the Technology and Proprietary Rights Group of Weil, Gotshal & Manges LLP

VOLUME 18 • NUMBER 5 • MAY 2006

No Longer a Myth, the Emergence of the Patent Troll: Stifling Innovation, Increasing Litigation, and Extorting Billions

By John F. Luman III and Christopher L. Dodson

- “Enter the patent troll, a creature of opportunity.”
- “The patent troll provides no value to the patent system, other than to line its own pockets. Rather, it stifles innovation and increases frivolous litigation. Patent troll litigation is on the rise, and it is time for targeted defendants to fight back.”

Looking Back: Patent Troll Narrative Persists

■ News from The New York Times, June 5, 2013

- Make Patent Trolls Pay in Court

- *Randall R. Rader, Colleen V. Chien and David Hricik*



Looking Back: Patent Troll Narrative Persists

The New York Times |

BUSINESS DAY

Obama Orders Regulators to Root Out 'Patent Trolls'

By EDWARD WYATT JUNE 4, 2013

- “One company threatened to sue 8,000 coffee shops, hotels and retailers for patent infringement because they had set up Wi-Fi networks for their customers. Another claimed that hundreds of small businesses were violating its patents by attaching a document scanner to an office computer system. One claimed rights to royalties from anyone producing a podcast.”
- “Th[e] surge [in patent troll litigation] can be traced partly to the very law that was supposed to stamp out some of the trouble[:] The America Invents Act, signed in 2011[.]”

Looking Back: The America Invents Act

The Forbes logo, consisting of three horizontal lines to the left of the word "Forbes" in a bold, serif font, all contained within a black rectangular box.

Forbes / Leadership

NOV 15, 2012

A Powerful New Weapon Against Patent Trolls

Forbes Leadership Forum, CONTRIBUTOR

This article is by Cheryl Milone, the founder and chief executive of Article One Partners, a venture-funded patent prior art research community.

- “The America Invents Act patent reform law, which passed last year, contains a little-known feature that will soon give companies a lot more ammunition for shooting down patent troll lawsuits.”

Looking Back: The America Invents Act



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, FIRST SESSION

Vol. 157

WASHINGTON, MONDAY, FEBRUARY 28, 2011

No. 28

- “The America Invents Act will . . . improve the quality of patents that are issued; and it will provide more certainty in litigation Patents of low quality and dubious validity . . . enable patent trolls who extort unreasonable licensing fees from legitimate businesses, and constitute a drag on innovation.”
 - *Senator Patrick Leahy, Feb. 28, 2011*

Looking Back: Patent Wars

The New York Times |

The Patent, Used as a Sword

By CHARLES DUHIGG and STEVE LOHR OCT. 7, 2012

- “In the smartphone industry alone, according to a Stanford University analysis, as much as \$20 billion was spent on patent litigation and patent purchases in the last two years — an amount equal to eight Mars rover missions. Last year, for the first time, spending by Apple and Google on patent lawsuits and unusually big-dollar patent purchases exceeded spending on research and development of new products, according to public filings.”

Today's IP System: Plagued by Efficient Infringement



How tech's ruling class stifles innovation
with efficient infringement

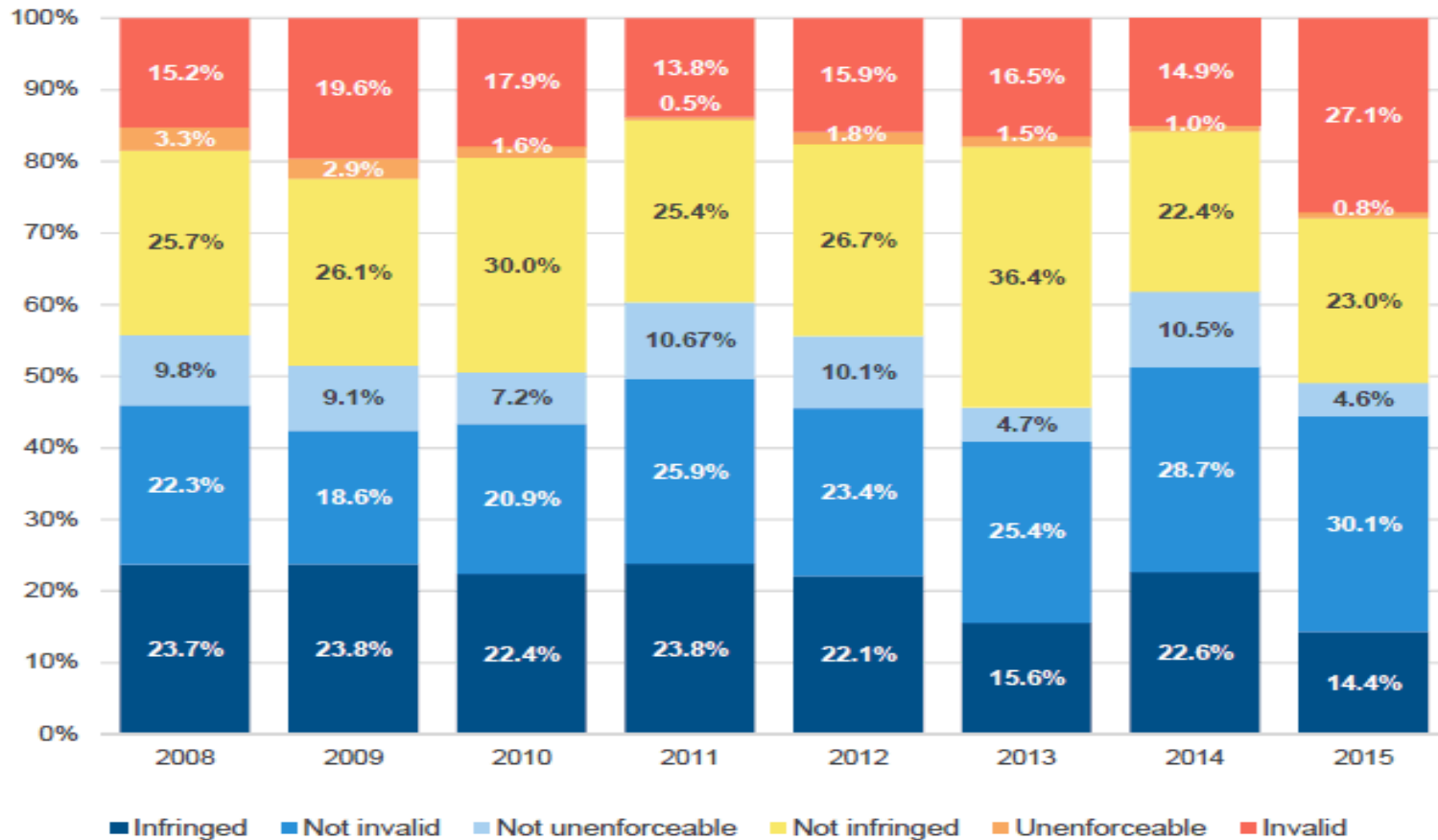
By **Steve Brachmann**

March 17, 2017

- “In this environment, it becomes economically viable for a large company to simply copy what it can from available technologies it hasn't developed instead of actually licensing that technology.”

Today's IP System: Diminished Patent Strength, Increased Trade Secret Strength

District Court Patent Determinations



▲ 2014 14.9%
2015 27.1%
INVALID

▼ 2014 22.6%
2015 14.4%
INFRINGEMENT

▼ 2014 11.5%
2015 5.4%
ENFORCEABILITY
(COMBINED)

Today's IP System: A "System in Decline"

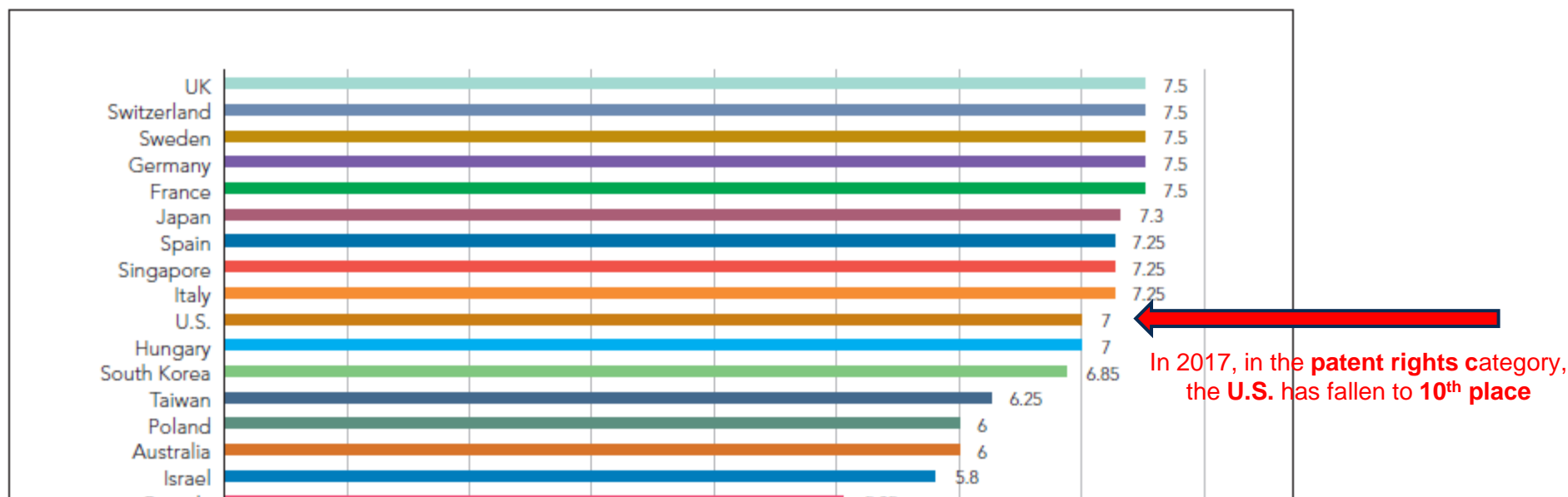
▪ Headline News from IPWatchdog, April 26, 2017

• The Top 3 Reasons the U.S. Patent System in Decline

◦ *Gene Quinn*

2017 Patents, Related Rights, and Limitations Scores

Category 1: Patents, Related Rights, and Limitations

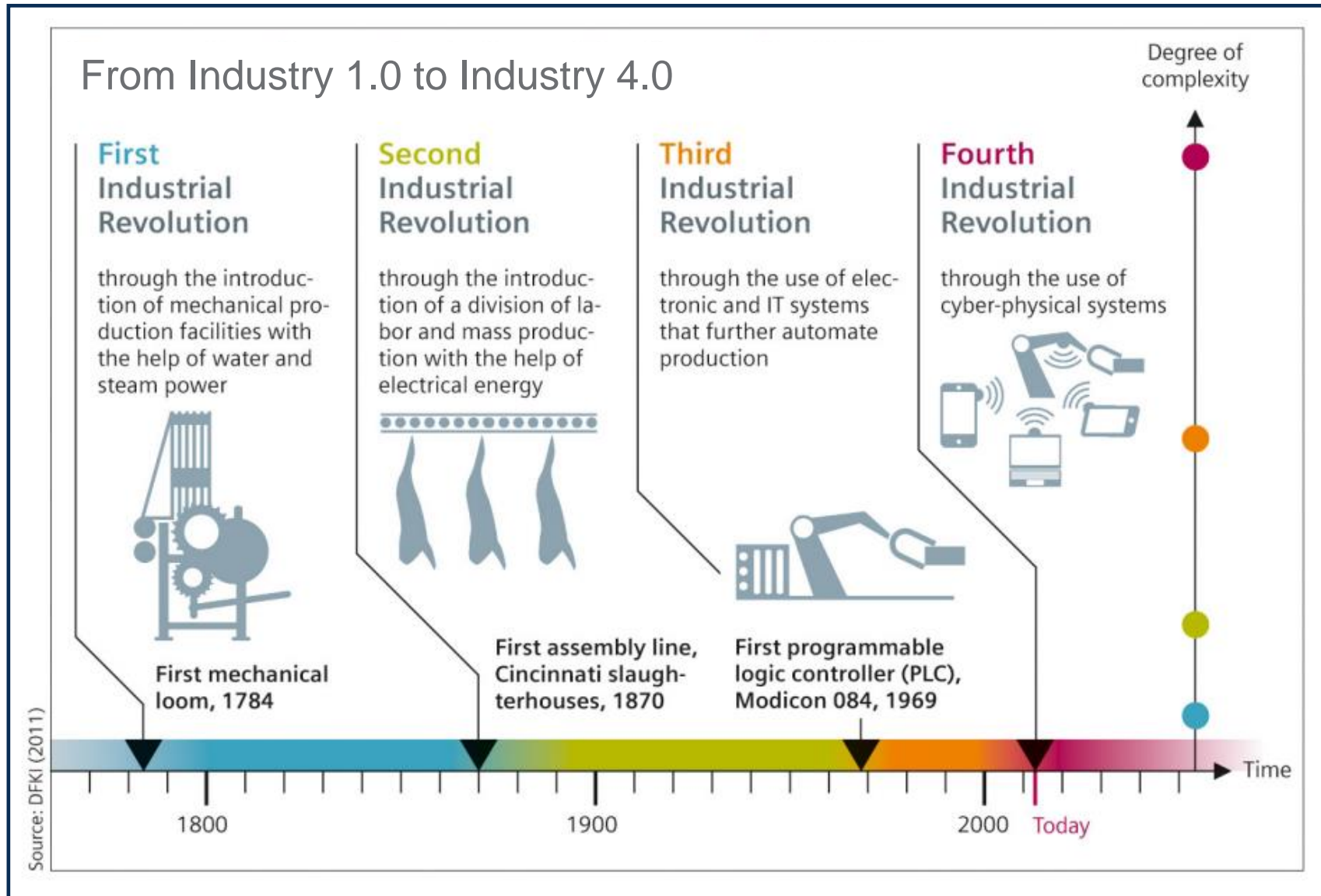


Today's IP System: Is it "Overcorrected"?

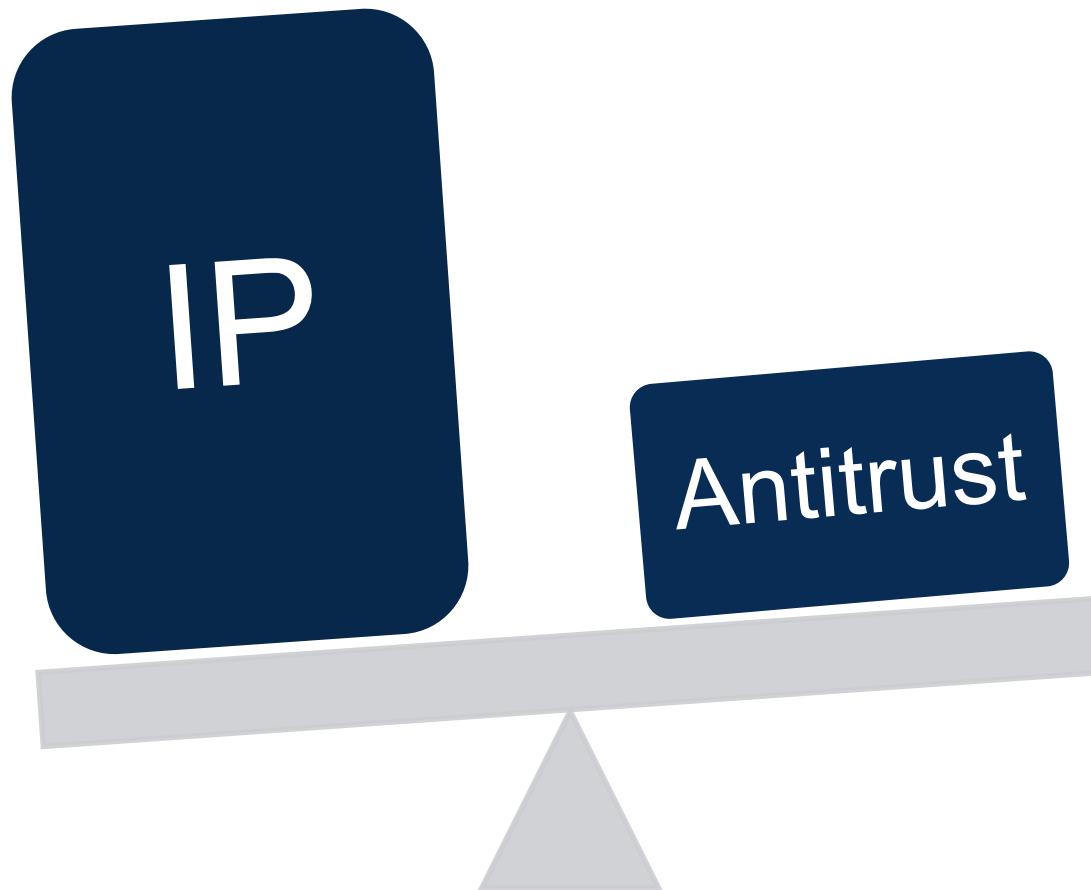


- "A variety of American investors, entrepreneurs, academics, lobbyists and lawyers . . . believe that the US patent system has swung radically in the wrong direction."
- "[I]f you are a researcher in the US, you may very well not get a patent for your game changing discovery, because recent shifts in the system mean that your invention is no longer protected."
- "[M]any investors say they are considering moving money away from the US, towards Europe and Asia."
 - "Suppliers and talent begin moving there too."
- "According to one study, the shifts in patent regulation have cost the US economy \$1tn. Venture capital money into biotech is sharply down from 2015 to 2016."

Looking Forward: The Fourth Industrial Revolution



Looking Forward: Favor IP Over Antitrust



Looking Forward: A Return to Strong IP

CONSERVATIVE ACTION PROJECT

- “The administration, Congress, and the courts need to take steps to reverse the declining protection of patents and the anti-patent rhetoric that has infected government at all levels.”

The Honorable Edwin Meese III	Alan P. Dye	Ben Case	Melvin Adams
The Honorable Becky Norton Dunlop	The Honorable Morton C. Blackwell	Jerome R. Corsi, Ph.D.	Lee Beaman
The Honorable J. Kenneth Blackwell	Ron Robinson	Mark Bloom	Ann L. Drexel
The Honorable Bob McEwen	Janice Shaw Crouse, Ph.D.	Ole Podner, LLC	Robert K. Fischer
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The Honorable Colin A. Hanna	Bob Adams	William Mills	Kay R. Daly
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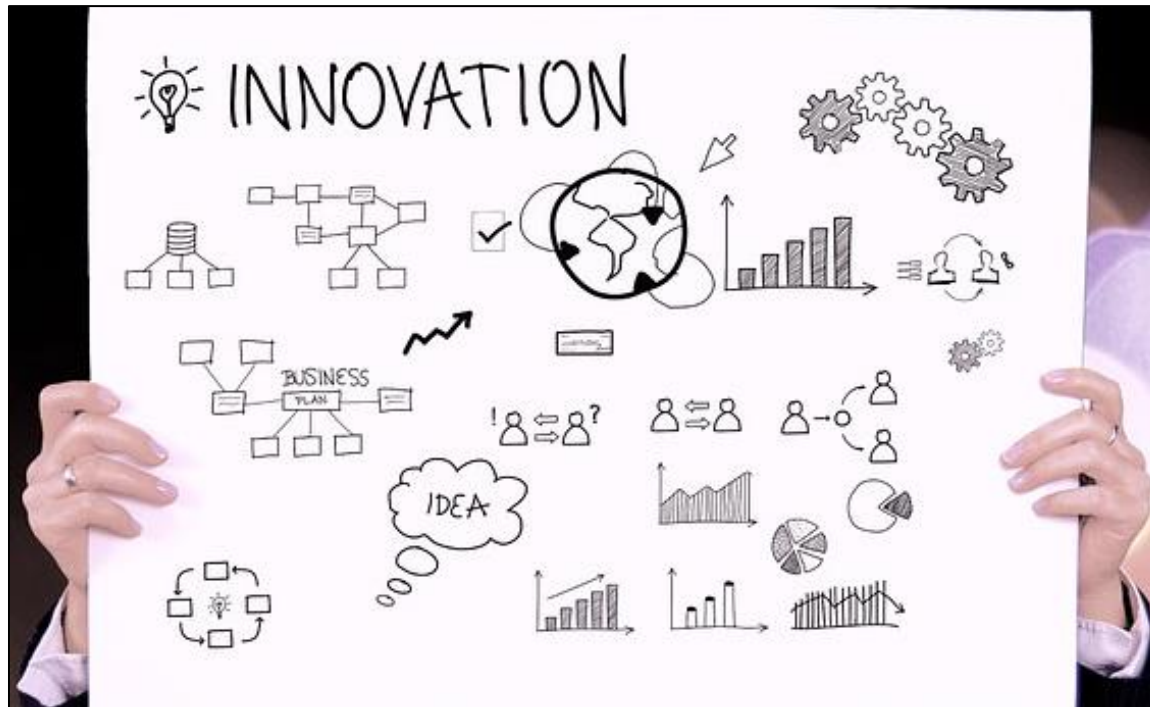
Looking Forward: Be Cautious With Further Reform



Looking Forward: Rely on Evidence, Not Theory

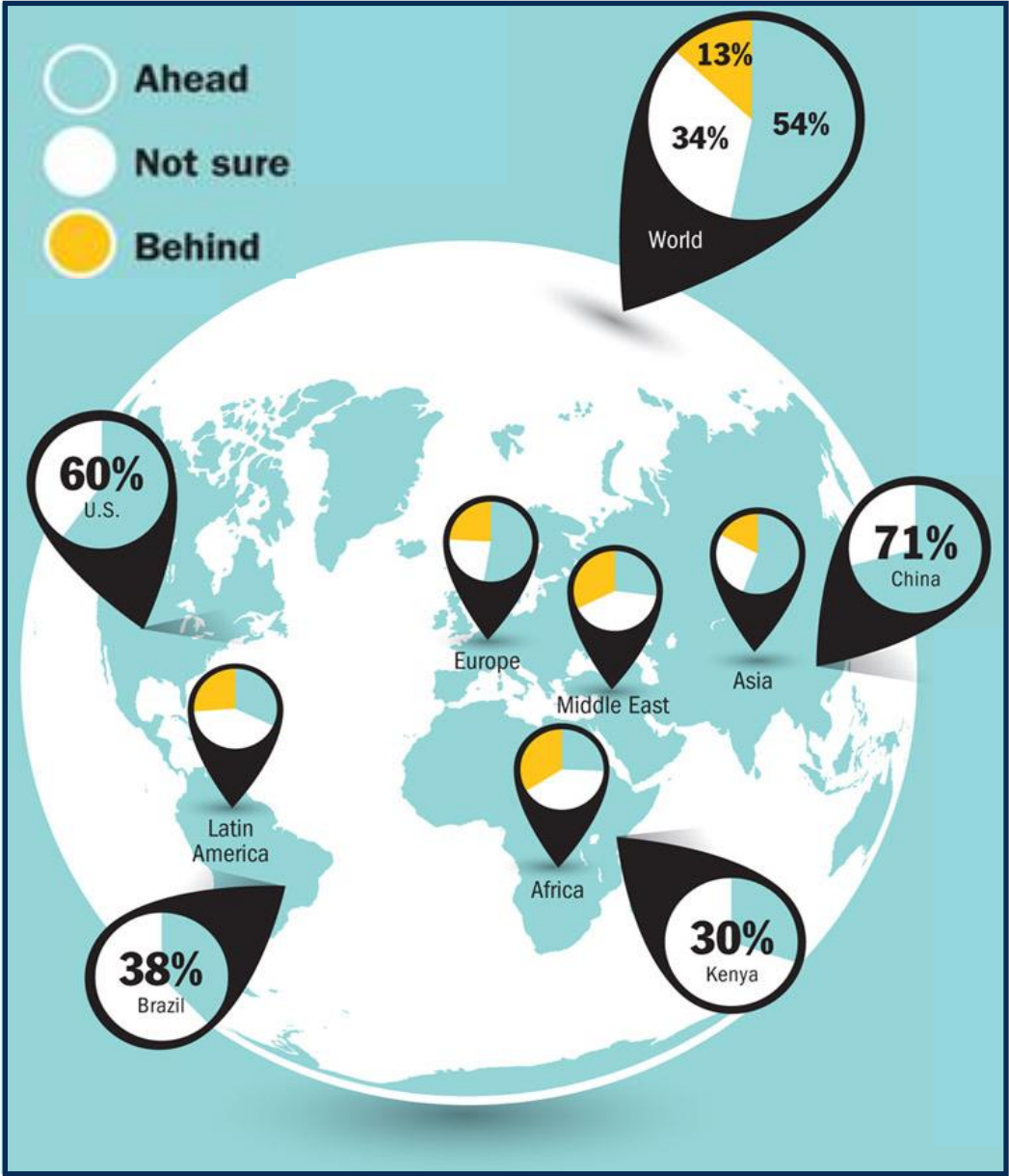


Looking Forward: Expand the Set of Patentable Subject Matter



Looking Forward: IP is Key to Innovation

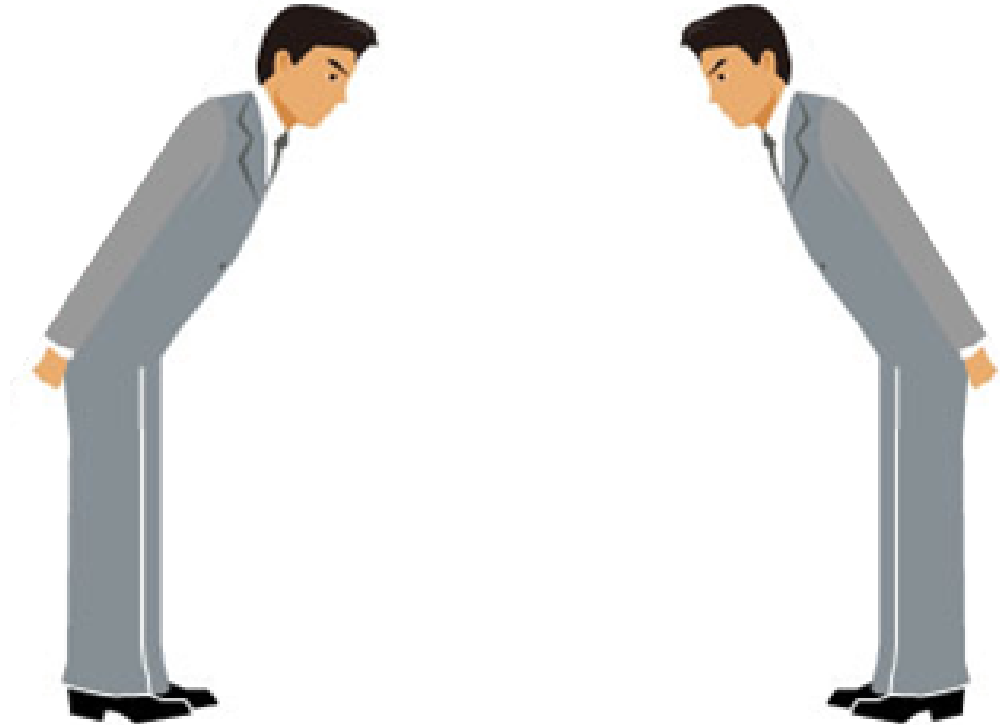
Are humanity's best days ahead of us, or behind us?



Looking Forward: Protect Standards-Deployed Innovation Business Models



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