Hilco Global
Asset Smarter

SMARTER PERSPECTIVE: INTELLECTUAL PROPERTY

Unlocking IP Value Amid Policy Shifts and Market Complexity

By Michael Friedman

May 2025 As geopolitical tensions reshape global trade, intellectual property (IP) is emerging as a critical lever of strategic and economic influence. While traditional tariffs target physical goods, recent policy shifts suggest that cross-border IP licensing, once seen as immune to trade disputes, may soon face indirect disruption. This article explores how tariff strategies, retaliatory measures, and structural legal reforms are reshaping the global IP landscape. It also outlines why these developments present both risks and opportunities for IP investors, particularly as pro-patent initiatives gain traction in the US and Europe.

Traditional tariffs cannot be applied to patent licenses, as they are intangible assets. However, international IP flows may still be influenced through tax policy, sanctions, or export controls—a direction the current US administration appears to be pursuing. In addition, tariffs may impact global IP licensing in the following ways:

Disruption of Licensing Agreements
Tariffs may make cross-border licensing agreements more complex and less economically viable. Increased costs and market volatility may lead to the renegotiation or suspension of existing licensing deals, particularly in sectors like technology and pharmaceuticals, where royalty structures are sensitive to pricing shifts. If such developments materialize, they would likely be addressed under established contract law precedents outside of the IP framework.

Retaliatory Measres Targeting IP
In response to US tariffs, countries such as China may initiate retaliatory actions that directly affect US IP holders. For instance, China has launched antitrust investigations into US companies with a significant IP presence in China, though these began before the tariffs. These measures are seen as strategic efforts to challenge US firms' IP rights and restrict market access.

Broader Implications for US IP Leadership
The cumulative effect of tariffs may threaten the US's longstanding leadership in global IP. The aggressive tariff strategy has not only strained international trade relations but also exposed US companies to increased scrutiny and challenges abroad. This trend could undermine the global IP framework that has traditionally supported US innovation and economic leadership.

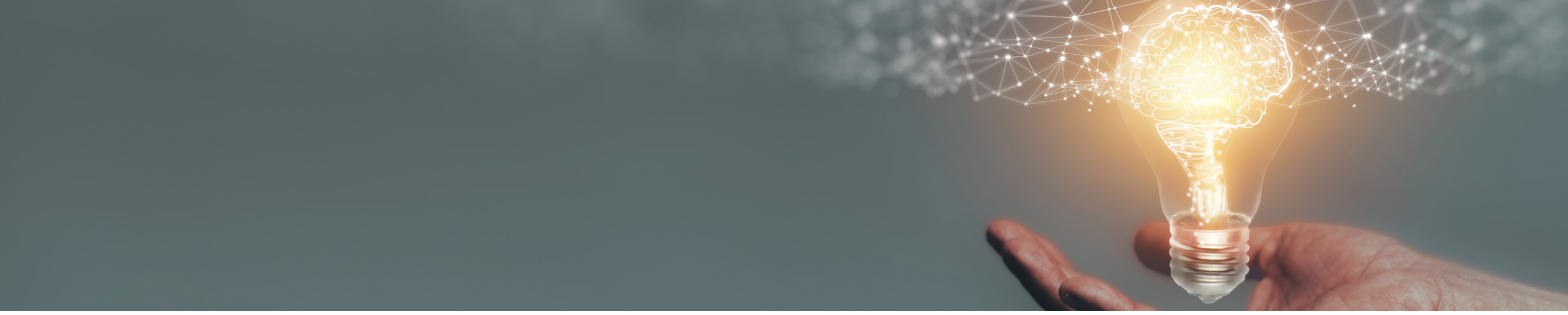
While these challenges introduce uncertainty for IP-driven businesses, they also coincide with emerging trends that may present new opportunities for proactive investors and innovators.

Notwithstanding the above, three larger pro-patent trends are likely to have more consequential and lasting effects than the current tariff controversy.

Unified Patent Court (UPC)
The UPC, launched on June 1, 2023, is an international court system that provides a centralized venue for litigation of European patents, including the new Unitary Patent. It streamlines patent enforcement and reduces costs by allowing patent holders to obtain and defend a single patent across 18 EU member states in one legal action. It handles disputes related to infringement and validity of European and Unitary Patents, but participation is optional for holders of traditional European patents during a transitional period. Since its inception, the UPC has proven to be patentee-friendly, liberally granting injunctions for patent infringement. Given the EU, in aggregate, is the world's second-largest economy, UPC injunctions carry significant enforcement power.

US Legislative Initiatives
Several US legislative initiatives are progressing through Congress to reassert the primacy of US patent law and make it more favorable for patent holders. This legislation was announced under the previous administration to combat Chinese IP theft and abuse. When combined with the scale of the US economy, these efforts suggest a continued shift toward stronger patent owners' protections.

The most important initiative is the bipartisan RESTORE Patent Rights Act of 2024, introduced in the last Congress to repeal the US Supreme Court's decision in *eBay v. MercExchange*. The Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive (RESTORE) Patent Rights Act aims to reinstate the presumption of injunctive



relief for patent holders upon a finding of infringement, effectively reversing the *eBay* decision's requirement for a four-factor equitable test. The RESTORE Act was introduced by Senators Chris Coons (D-DE) and Tom Cotton (R-AR), with a companion bill in the House sponsored by Representatives Nathaniel Moran (R-TX) and Madeleine Dean (D-PA). Supporters argue that the *eBay* decision weakened US patent rights, making it harder for inventors to protect their innovations, especially against large corporations. Critics, however, express concern that reinstating automatic injunctions could empower non-practicing entities (often referred to as "patent trolls") to extract excessive settlements.

US Secretary of Commerce

Howard Lutnick, the current US Secretary of Commerce, is a strong advocate for patent rights and has extensive experience as the named inventor on over 400 US patents. In his role, Lutnick oversees the US Patent and Trademark Office (USPTO), positioning him to influence patent policy and operations. His direct experience with the patent system informs his policymaking and is expected to enhance the efficiency and effectiveness of the US patent system.

New Investment Opportunities

If tariffs on goods remain elevated, manufacturing will likely be reshored. IP-owning product companies that wish to avoid the capital expenditure and time-value-of-money implications of building domestic factories may instead license their IP to local producers.

Additionally, as tariffs constrain product revenues, companies are likely to place a greater emphasis on monetizing patents to offset the impact.

Given our insights into these trends, Hilco IP Merchant Banking can position IP licensing investments as a hedge against elevated tariffs, deploying principal capital to provide liquidity for companies that prefer not to transition themselves into full-time licensing entities.

Key Strategic Takeaways for IP Holders

As the IP landscape becomes more complex, companies that act decisively can gain a competitive advantage. Based on the trends outlined above, IP holders and investors should consider the following strategies:

- **License strategically to manage risk**: Where possible, license IP to domestic producers as a hedge against long-term reshoring costs and trade unpredictability.
- **Monitor evolving legal frameworks**: Track developments like the RESTORE Act and UPC decisions to understand where enforcement strength may increase or shift.
- **Stress-test your IP portfolio**: Assess geographic exposure and identify potential risks to licensing revenue in countries that may respond with retaliatory IP measures.
- **Engage with pro-patent advocacy**: Participate in policy discussions or coalitions supporting stronger IP protections that align with your business interests.
- **Leverage merchant banking partners**: Collaborate with firms that understand how to unlock IP value through licensing, enforcement, and strategic capital deployment.

These tactics can help mitigate short-term disruption while positioning IP as a long-term value driver in an uncertain policy environment.

These dynamics suggest that IP licensing may play a more central role in corporate strategy, particularly as companies navigate trade-related uncertainty. As the policy environment continues to evolve, adaptable IP approaches may help mitigate risk and maintain long-term value in a changing global economy.

MICHAEL FRIEDMAN IS CHIEF EXECUTIVE OFFICER AND FOUNDER AT HILCO IP MERCHANT BANKING

Hilco IP Merchant Banking is an integrated provider of intellectual property advisory and monetization services, and principal investor in IP-related transactions. Under his direction, the company acquires and monetizes the highest quality IP to provide liquidity and risk transfer to leading technology businesses.
For further information, please contact Michael at 312.982.8159 or mfriedman@hilcoglobal.com.