

## INTELLECTUAL PROPERTY & *Life Sciences*

### Federal Government Is Taking Steps To Protect IP

Fostering innovation through protection, and spreading the message around the globe

By Natalie S. Richer

As the world turns, technology is continually advancing at a rapid rate. New developments in medicine are saving lives, new developments in computers are providing access to information at super-fast speeds, new developments in industry are helping to conserve resources and protect the environment, and new developments in fashion are lighting up the runways. Along with these advances, it is important to protect the intellectual property surrounding this technology. Fortunately, as a whole, the world is increasingly sensitive to intellectual-property concerns and continues to be

*Richer is an associate at Lerner David Littenberg Krumholz & Mentlik LLP in Westfield, where her practice is focused on intellectual property.*

more so each day. The U.S. government, in particular, recognizes the value of IP, and is working toward increasing its value by stepping up enforcement of intellectual property rights at home and abroad.

In addition to the traditional approaches to protecting intellectual property, the U.S. government has established the Intellectual Property Enforcement Committee (IPEC) to concentrate on this task. The coordinator of this committee, Victoria A. Espinel, has noted that an important part of helping the U.S. to remain a global leader in innovation is to protect the ideas and creativity of the American people. She further emphasized that infringement of intellectual property has been damaging to the U.S. economy by undermining jobs, reducing markets overseas and limiting the ability to export products. Additionally, counterfeit products pose a significant threat to the health and safety of U.S. citizens.

In June 2010, IPEC unveiled a Joint Strategic Plan to increase enforcement of IP rights. The overarching goal of the plan was to boost the economy, for example, by encouraging innovation and shutting down

illegal (infringing) enterprises. Some of the main action items addressed in the plan included leading by example (e.g., ensuring that the government and its contractors do not purchase counterfeit goods), coordinating law enforcement efforts in the U.S. and abroad (e.g., to work with state and local agencies and to avoid duplication of efforts), and securing the U.S. supply chain. Another key action item was enforcing intellectual-property rights internationally. Strategies set forth included working closely with foreign law-enforcement agencies to pursue foreign intellectual-property infringers and promote awareness of intellectual-property rights. The strategies also included enforcing IP rights through trade agreements, such as the Anti-Counterfeiting Trade Agreement and the Trans-Pacific Partnership, or through the World Trade Organization dispute settlement process, and combating foreign-based and foreign-controlled websites that infringe U.S. intellectual property rights.

Since inception of the Joint Strategic Plan, IPEC has reported a number of successes, particularly with respect to securing the U.S. supply chain. For example, the government has reported numerous convictions of counterfeiters in the U.S. and abroad, including shutting down a foreign-based online pharmacy that sold \$1.4 million worth of counterfeit and misbranded drugs, and seizures of nearly

\$200 million worth of infringing merchandise worldwide. It further reported convictions for theft of trade secrets and computer code. With respect to coordinating law enforcement efforts, IPEC has reported that many of the convictions were made possible by the efforts of particular federal, state and local law enforcement agencies working together.

IPEC's reported successes are encouraging, and represent a significant step toward increasing the value of intellectual property in the U.S. Even more encouraging, it appears that further successes are on the horizon. A year after launching the Joint Strategic Plan, IPEC issued a report that it is continuing its mission to protect intellectual-property rights, and is focusing on increased enforcement overseas. While IPEC reports that it has seen increased cooperation from some foreign governments, it is pressing foreign governments to do more to protect American rights holders. In a continued effort to increase protection of the rights of U.S. citizens, IPEC is reaching out to foreign countries and encouraging a concern for IP rights similar to its own.

One of the countries on which IPEC is primarily focused is China. China was formerly notorious for its deficiencies in IP laws and enforcement. In fact, the IP related problems in China have even discouraged U.S. innovation to some degree. For example, many innovators have been disinclined to invent, design or develop goods, because of the notion that such goods will merely be ripped off by Chinese manufacturers. Similarly, feeling that IP protection is meaningless in places like China, these innovators have been disinclined to expend the resources to pursue IP protection. China has recently made significant improvements to its IP system, but still appears to pose major problems for the U.S. In particular, the International

Trade Commission estimated that in 2009, China's intellectual-property infringements cost the U.S. economy \$48.2 billion.

However, China is continuing to make great strides toward improving its IP system. With encouragement from the U.S. government, China has committed to strengthen its efforts to protect intellectual-property rights. China has also launched a nationwide "Special Campaign Against Piracy and Counterfeiting," and pledged to build upon this campaign to improve its high-level, long-term intellectual-property rights protection and enforcement mechanism. IPEC is working to assess the impact of these efforts and press China to do more. From its efforts thus far, it appears that even China — potentially the most problematic jurisdiction in terms of protecting intellectual property — is coming to appreciate the value of IP.

The progress in China is merely one example of the increased sensitivity to IP rights around the globe. The U.S. is putting forth a significant effort to spur this increased sensitivity. For example, the U.S. is working closely with France and other European allies, the Group of Eight, to take effective action against IP violations. In May 2011, the Group of Eight released a final declaration highlighting the importance of enforcement in order to incentivize innovation and protect innovation once developed. The declaration also included a joint commitment to protect intellectual-property rights.

As IPEC works to cure the deficiencies of foreign IP enforcement, what may have been a justifiable excuse for stifling innovation or pursuit of intellectual-property protection in the past may no longer be valid. Moreover, investigating potential IP infringement in foreign countries is likely to be a more worthwhile experience than it has been in the past. For example, while investigating a counterfeiting claim

in China may have previously been a futile exercise, it may now produce more meaningful results in view of China's pledged cooperation.

While the government's main goal in creating IPEC may have been to bolster the economy, its efforts are also likely to increase the value of intellectual property worldwide. IPEC is continuing to educate foreign jurisdictions on the importance of IP and enforcement of IP rights. The cooperation of these foreign jurisdictions is a sign that they appreciate the importance and value of intellectual property. In view of this increased global awareness, and the advances being made with respect to IP protection, innovators should be careful to protect their own IP rights not only in the U.S., but abroad as well. Because of the international nature of commerce, foreign intellectual-property protection should not be dismissed. While the laws in each country may be different, these differences do not necessarily equate to insufficiencies. The differences, however, can be critical, and therefore it is wise to engage counsel familiar with the practice of IP laws in jurisdictions other than the U.S.

It is comforting to know that the government recognizes the importance of IP and the impact that it has on the U.S. It is further comforting to know that the government is making notable progress toward enhancing global IP sensitivity and improving international enforcement. While there is still a lot to be done to protect intellectual-property rights and encourage innovation in the U.S., it appears that the wheels are in motion. The near future may hold solid international IP protection regimes and increased global IP value. This should instill in innovators and others a greater sense of confidence, and encourage continued pursuit of IP protection. As the world of technology turns, the world of protection is turning with it. ■