

Patent Policy in the Age of Nationalism

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The political climate of the past several years has brought about a world-wide resurgence in nationalism, with various countries reshaping their national identities and remaking policies to advance them. With regard to intellectual property (IP), the U.S. government has promoted a national identity of being an innovative country, and has shaped IP law to reinforce this. This has included actions that are very damaging for others, such as forcing U.S.-style IP rights on developing countries through treaties and through threat of sanctions. It has also included implementing laws that harm U.S. residents, such as creating de facto subsidies for pharmaceutical companies through strong domestic patent protection of drugs and through the creation of new exclusivities. This past innovation identity, however, is coming into conflict with President Donald Trump's embrace of nativism and culturally traditionalist nationalism. We are now seeing a new approach, in which foreign infringers are painted as an enemy and the World Trade Organization eschewed in favor of unilateral action under U.S. trade law. This Article considers how shifting national identity impacts U.S. patent law and, in turn, the global community. It explores the rise of trade liberalization after World War II, followed by the rise of U.S. economic nationalism. It then considers how innovation identity took hold in the 1970s, leading to aggressive negotiation tactics in the 1980s with countries that lacked strong IP rights. This Article then examines how the Trump administration's strain of nationalism impacts patent policy and discusses the effect that this has on other countries.