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# THE NEED FOR INTERNATIONAL THINKING IN INTELLECTUAL PROPERTY LAW

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In the late 1930's, Senator Arthur Vandenberg of Michigan was one of the leading isolationists in the U.S. Senate. But toward the end of the decade, as events in Europe were beginning to overtake us, he made a sudden conversion and became an internationalist. Because Senator Vandenberg was highly respected in foreign policy, I naively thought that this marked the end of isolationism. I was obviously a little premature, however, because even today we continue to hear proponents of isolationism, including a recent candidate for President of the United States.

My focus here, however, is intellectual property, not politics. Intellectual property specialists from long before Senator Vandenberg have had to practice in the international field, making it essential for them to understand the laws and practices of many countries. But in those days, intellectual property specialists were what I would call "multinational" lawyers rather than international lawyers due to the lack of congruency between the laws of the different countries.

In the 1970's, a strong trend toward globalization of markets began. This trend was stimulated not only by advances in telecommunications, but also by the desires of

suppliers to seek additional sources of revenue beyond their borders. Others found it necessary to counterattack by entering the home markets of these new foreign competitors. Simultaneously, the sometimes significant differences around the world in intellectual property protection began colliding with each other as

**[*182]** companies formed business ventures across national lines. It then became important to see whether these friction points could be reduced.

AIPPI n1 has fostered discussions of intellectual property matters on an international scale for nearly 100 years. Importantly, AIPPI has managed over the years to keep these discussions nonpolitical, even during the cold war period. Although touches of nationalism occasionally creep in, politics rarely intrude and an international consensus is often obtained in a remarkably short time.

Without question, the U.S. members of AIPPI think first of what is good for the United States. However, they recognize that in international law, as well as in trade, there has to be a win-win situation. Everybody has to come out a winner, and that usually requires compromise. There are, of course, some people in this country who think that U.S. law is sacrosanct and any attempt to change it is a sellout. They refuse to recognize that not all good ideas n2 are home grown and that we have to make accommodations to reach a consensus.

Further, it is market forces, not intellectual property lawyers, which have globalized the practice, and it is up to us as practitioners to make globalization work for our clients. With a focus on our clients, we must work to reduce some of the friction points by working for beneficial changes in conflicting laws and by becoming sufficiently knowledgeable of the laws and practices of other countries.

Some of these changes are being accomplished multilaterally through harmonization negotiations which attempt to bring the laws to a common base. Another type of multilateral effort is the recent GATT (General Agreement on Tariffs and Trade) revision which includes a significant chapter on setting minimum standards for protecting and enforcing intellectual property rights. This chapter, known as TRIPS n3 , promises to be as significant in its time as was the Paris Convention being the very first step in internationalizing intellectual property. Beneficial change is also being accomplished bilaterally on a country by country basis. These various efforts have led to many new treaties in the last dozen or so years as well as to modifications of existing treaties with more globalizing efforts in the works.

**[*183]** Like many U.S. companies, my company, AT&T, had a domestic patent attorney group which focused on the United States and a foreign group to deal with other countries. However, it was during the period since the 1970's that I became aware of the globalization trend. I was also convinced that in order to represent client interests adequately, it was no longer sufficient for lawyers working in the United States to think of themselves solely as U.S. practitioners. So I announced a new paradigm for AT&T: henceforth, there would be no such dichotomy; every lawyer would be a global lawyer and have to become sufficiently knowledgeable to deal with the patent laws of all countries in which the corporation was interested.

This new paradigm meant worldwide patent prosecution responsibility. Also, when helping clients develop intellectual property strategies, the new global lawyer would do so from a worldwide perspective. Although I felt I was announcing a "sea of change," it met with little resistance. It had become obvious that we could no longer live on our own little island of U.S. law and claim to be providing adequate client representation. We simply had to know what was happening throughout the world.

Much of AT&T's globalization was driven by joint venture activity. Like many other companies, AT&T found that the only way to enter certain foreign markets was through joint ventures with local firms. If you have ever negotiated or looked at a joint venture agreement, you know that a major component is often the intellectual property piece which usually covers patents, trademarks, copyrights, software, and technical information. Quite often, a joint venture agreement has rights flowing to and from many countries. It takes a lot of creativity to reach agreement and usually involves negotiations by lawyers and businesspeople from several countries.

The intellectual property lawyers almost inevitably get involved in the business aspects of the deal since the allocation of rights often depends on the structuring of the work agreement and vice versa. Significantly, these negotiations are truly negotiations and are quite different from those of previous decades when a U.S. company could simply dictate the terms. All of this has not only been instructive, but also very helpful in broadening the perspectives of practitioners accustomed to thinking only of U.S. law.

Some of our U.S. colleagues continue to feel that to think internationally or to talk about compromise and change in U.S. law is to somehow put the United States in second place. My view is very clearly the opposite. Thinking internationally does not put the U.S. in second place. Rather, you have to think internationally to put the United States and your company or client in first place.

**[*184]** Certainly, all aspects of intellectual property now have a global dimension. Fortunately, we have been able to harmonize some of the more serious differences in copyright law as well as trademark law, and to some extent, patent law. These harmonization efforts, taken with the GATT TRIPs agreement, should make it even more natural to think of intellectual property in international terms. Lawyers who do not think in these terms simply are not fulfilling their duties to their clients.

In a global market place there is little room for isolationism, and it is clear that our clients are thinking in international terms. We, as intellectual property lawyers, must have the same frame of reference as our clients to adequately and ethically support them.

n1 AIPPI was formed in 1887. One of its objectives is to study and compare existing laws and propose new laws, with a view to taking steps to perfect and harmonize them. AIPPI has over 7,000 members organized into over 50 national and regional groups.

n2 E.g. the basic patent, trademark, and copyright laws.

n3 *Agreement on Trade-Related Aspects of Intellectual Property Rights, Sept. 27, 1994, 1994 WL 761796.*