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Global IP, Invention, Innovation And Benefit: What Would Thomas Jefferson Say?

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It seems that big data has invaded every aspect of everything. My 10x oscilloscope probe has an ROI associated with it and should it not meet or exceed that metric, it is discarded by a cadre of "blackbelts" in this or that fashionable trend armed with tablet computers and urgency. Try taking measurements without it—but that's not the point or the theme of the transitory invasion. This is all done in the name of continuous improvement with the end goal of austerity. Save more and make more....and Wall Street goes wild.

So how then does this tie to IP and matters patentable? The underlying, controlling question that needs to be asked is how all of this austerity and lean operation ties to matters of law. For example, in Germany, where things run surely as lean, perhaps moreso, most employees work under labor contracts. These labor contracts are a matter of German law and they are enforceable. In this German law there is something called the Act on Employees Inventions (often abbreviated and discussed as AEI).

This act gives the inventor a clear path for a reward system for invention and intellectual property. Patents are rewarded not only with a large sum for filing and then issue, but with royalties over the lifetime of the invention and clear legal metrics on how these are calculated, applied and paid. This is done as a matter of law. The employer can't forego or obfuscate this without facing serious sanctions regardless of austerity measures, business metrics or improvement vectors.

In the U.S., inventors are afforded no such benefits. Our system of patents and prosecution is quite marvelous, and it reflects the true genius of Thomas Jefferson and the systems in his homeland that he had hoped to right or otherwise improve as one of our founding fathers. It is indeed a great system, whether under pre or post AIA (America Invents Act). Our Manual of Patent Examining Procedure (MPEP) is more comprehensive than anything I've seen outside the U.S.

But within the U.S. system there is no mandatory reward that goes to the inventor as a matter of law. If it's not required, why do it? Generosity like that doesn't flow down from the boardrooms. Most employers immediately grab up the assignment as a signed contractual matter (condition of employment) and leave the employee as the inventor. The benefits from ownership, transfer, license and sale go to the employer (assignee) and explicitly not the employee (inventor).

Again we got here in the name of austerity and continuous improvement; the long bus ride down the hill. It didn't used to be this way. For example, I recall Robert Adler, a Zenith engineer and executive famous for his invention of the wireless remote control, kept a lot of his assignments. But in the U.S., you might be initially bedazzled with an enticing sum of "one thousand dollars," but after taxes, fees, vigs, etc., you might see \$500 or \$600. Anything beyond this stopped when the accountants came in.

Take this argument one step forward. What happens in the case of a global technology company that has engineers working both in the U.S. and abroad? Does this not create an imbalance in innovation? For example, if you are in the U.S. and you invent the next big thing, you get enough money to buy a couple tires. If you are in Germany and come up with same, you will be able to buy a couple of nice homes in a few years' time from the royalties alone. If you are in the U.S. and of sound mind, and innovative stock, it seems as though the best invention mode is then that of silence.

Why tell anyone? To hand off your work and get a few bucks? You won't see as much as a walnut placard. Under the same austerity measures and laws that don't pay for invention, there are no laws or metrics that require inventions to be put forward. Big data and metrics can't impact this, although those mired in "the system" will dispute that.

And in most any forward looking, innovative, cutting edge team, this sets up a huge inequality. If you are in Germany looking to the west, you look at your non-contractual, at-will peers as inferior, stupid, lazy. "They don't invent anything." If you are in the U.S., perhaps looking east toward Munich, where you see labor contracts, rewards, royalties, are you likely to be more or less motivated to invent? Collaborate? And then to combine? If a U.S. team collaborates with a German team, can there truly be equality? One team is heavily rewarded, the other heavily stifled.

Looking even further beyond, is it possible that there are other countries with no laws on IP at all? Perhaps from their viewpoint, it's simple and justifiable to raid published IP, steal, pilfer, cut, paste. This again, in the name of austerity. If you don't have to spend money on a licensing agreement, why do it? And would this marginalize most any intellectual property, inventorship and assignment?

My simple mind extrapolates: If I were having this conversation with Thomas Jefferson, what would he say? Perhaps he would suggest a meeting with the folks in the boardroom. His hope would be that this would spawn that "AHA!" moment where benefits for IP are levied equally regardless of where the inventor lives. Or perhaps that meeting never takes place or there is no such result? Should innovators and inventors in the U.S. then unite and demand similar contracts? Perhaps a union or brotherhood of people capable of doing the impossible and getting stuff done?

This situation is clearly no Triangle Shirtwaist Factory fire, but perhaps a little representation is needed? The playing field is not level. But then does the whole thing become a larger mess with corruption and aggrandizement within the union? How to govern? How to define? And I believe Mr. Jefferson would consider and answer each and every one of these questions, just as we should.