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The Intellectual Property Literature Watch

Dhiren Patki, Editor

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IP & TRADE

Growing Foreign Investment and Regulatory/Policy Risks Facing High Technology Innovations

Lawrence A. Kogan

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High technology innovators and investors operating in the life sciences, clean energy and information and communication technology sectors face complex economic and legal uncertainties compounded by regulatory and policy risks during the course of guiding an innovative concept from its research and development through product testing and commercialization stages that will be indicative and determinative of economic value assigned to said technology in a given domestic or foreign marketplace. This assessment of value is directly dependent on local jurisdictions maintaining established rules of law and related standards which recognize and robustly enforce exclusive intellectual property rights without disruptive or excessive limitations and/or restrictions. An increasing number of developing countries aspire to become 21st century knowledge economies by seeking to recharacterize international law in a manner that enables the conversion of high technology patents and trade secrets from private to public goods. These countries have promoted the establishment of regimes to achieve this objective, principally compulsory licensing and interoperability frameworks that express or compel government procurement preferences for nonproprietary and/or royalty-free patented technologies emplaced within regional, national and/or international technology standards. Beyond recourse to public international law remedies, companies and investors may also take private initiatives to mitigate the inherent regulatory and policy risks on company financial performance. Such initiatives include internal structural vigilance, wide external diligence and carefully crafted communications with individuals and organizations, both public and private. This effort is predicated upon astute monitoring and analysis of relevant events in international and national fora discussing these issues. (p.11)

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