Geopolitical Patents

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Patents serve as important defensive weapons in geopolitical disputes. By nationalizing foreign technology during wars, countries may gain advantages against their adversaries that extend well beyond wartime, such as when the U.S. government seized German chemical and pharmaceutical patents during World War I and II. Countries may use compulsory licensing to defend against an aggressor country whose industries depend upon patent protection. Such flexibilities are enshrined in international law under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and they can help protect countries against an aggressor. The United States, however, has taken a different approach to dealing with its IP and trade-related dispute with China: holding the global IP and trade system hostage. The World Trade Organization (WTO) administers several agreements, including TRIPS. Both the Trump and Biden administrations deprived the WTO's Appellate Body of a quorum, preventing it from hearing appeals of WTO member state disputes. The Trump administration stopped paying U.S. WTO dues, starving it of 11% of its operating budget for 2024 and 2025. Unlike with national defense and compulsory licensing flexibilities, which are built into TRIPS, holding the WTO hostage poses an existential threat to the international IP system and inflicts significant harm on U.S allies. This Article consequently urges that any future patent-related international agreement contain measures to automatically suspend or expel countries that attempt to break the system.