

The future of intellectual property in Europe

This round table, opened by Dominique Guellec of the European Patent Office, gathers decision makers from public and private organizations.

Jean-Claude Lehmann, Research Director at Saint-Gobain and President of the Academy of Technologies, presents the point of view of businesses. According to him, research in the United States and research and entrepreneurship in China are the main two challenges that Europe has to face, and they call for a strong political involvement. Mr Lehmann considers patents as stimulating innovation. Europe still needs to improve its speed of action and foster the dynamics of innovation. All innovative enterprises should work together, right from the beginning and all along the production chain. This raises the issues of IP in co-developments.

Besides, three specific questions have to be tackled: the cost of access to patents (big issue for SMEs), the question of time and delays in patent processing and in litigation, and last but not least, the respect of IP in China (the lack of confidence has refrained the delocalization of core technologies and R&D so far).

Regarding patenting by public research institutions, there seems to be a misunderstanding in France when compared with the US and The Bayh-Dole Act. The message to “take more patents” is not compatible with the lack of resources and skills to deal with a portfolio of patents and leads to a misuse and a lack of efficiency in public research organisations. So far, the best strategy is to let the industrial partner take the patent with guaranties for the public partner that it will be rewarded. Co-ownership is too difficult to manage.

Alain Pompidou is President of the European Patent Office (EPO) and former Member of the European Parliament. He reminds us that the examination of patents at the EPO is a pillar of the knowledge based economy, as it is both a knowledge intensive and economically oriented activity.

The first activity of the EPO is to manage flows of knowledge, which are the major factor for sustainable development - not subject to depletion as natural resources are. A major problem is the great variety of perception of the value of knowledge (cf. the differences between developed and developing countries).

Being economically oriented means that the EPO must provide Europe with good patents, really valuable for the economy. The role of the EPO is to add value to the European economy through:

- Quality : through examination, the EPO decides the scope of the patent and aims at rejecting “petty” patent applications (“*brevets de pacotille*”);
- Public access: the EPO manages a 50-million-patents database. This is a very powerful information system, detailing prior art. It is a shared resource, accessible to individuals and other institutions. For instance, it can be used as a tool for economic intelligence, notably for developing countries; they can position themselves in terms of domestic knowledge.
- Transactions: a patent shared is more valuable when it is subject to licences. The EPO has to contribute to knowledge networks which relate inventions to markets, using licenses as vectors.

A last point regards reducing the cost of patents: the cost of national validation of EPO patents is too high, and only three languages should be required for the claim: Implementing the London Protocol would save about 500 million Euros a year to patentees in Europe. The European patent area would also benefit from being unified and the EPO supports the Community Patent. Europe would also gain from having a single European appeal court.

Nobuo Tanaka, Director for Science Technology and Industry (DSTI) at the Organisation for Economic Cooperation and Development (OECD) and was previously member of the Japanese Delegation to the trade negotiation in Doha and Cancun, represents the government view.

The OECD is an organisation that provides economic analysis and recommendations to governments. OECD data show that 50 % of the surge in patents comes from biotechnology and Information and Communication Technology. They denote increased inventiveness as well as the fact that changes in innovation systems enhance the role of patents. The pro-patent strategy of most governments stresses their awareness that patent protection is beneficial to innovation and diffusion of technology.

However, excessive reliance on patents and over emphasis on strong patents can impede the access to technology, as it has been exemplified in several recent cases. A well balanced policy is necessary.

Patent policy must be put in the broader context of policy concerning intangible assets, as technology is such an asset. In that regards, questions about valuation and transactions are on top of the agenda of OECD at the moment.

Questions and comments in the audience raised several issues, such as the impact of translations on the cost of patenting in Europe, the quality of patents - is the notion of quality the same for the applicant and for society? - and more fundamentally on the status of the EPO: as a public body, how to ensure that EPO has democratic legitimacy?