

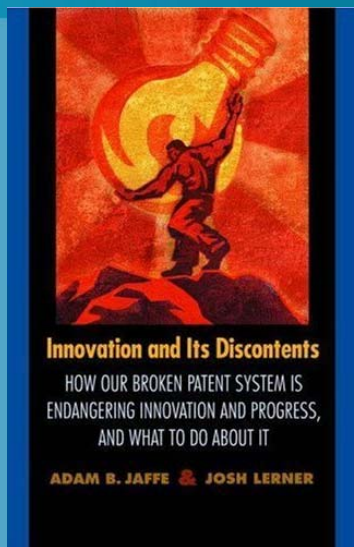
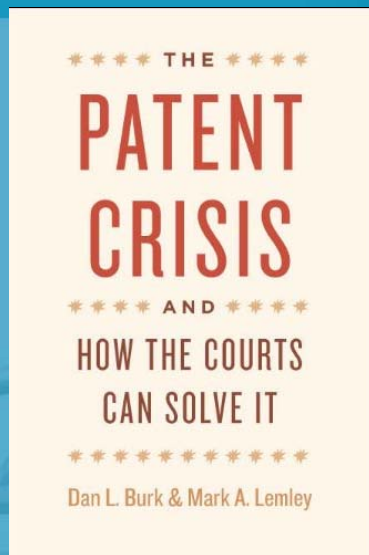
12th EIPIN Congress 2011
 CONSTRUCTING EUROPEAN IP: ACHIEVEMENTS AND NEW PERSPECTIVES
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Constructing an efficient and balanced European patent system

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Understanding the Mutual Shaping of Regulation, Technology and Normative Outlooks

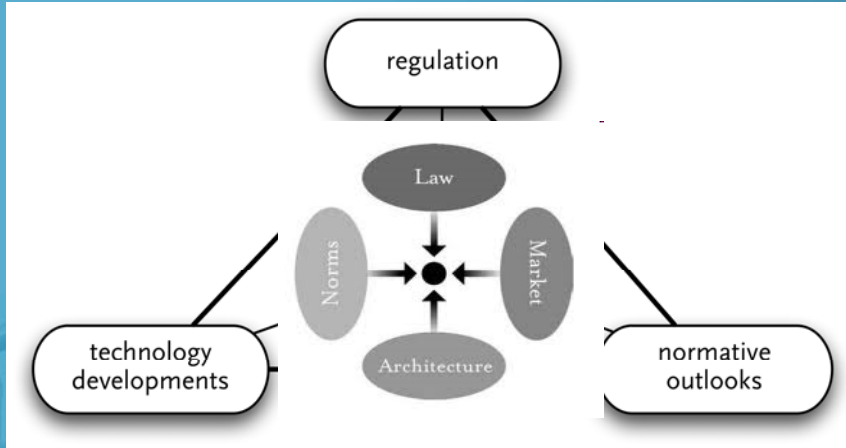


Figure 1. The interplay between regulation, technology, and normative outlooks

Regulation	Technologies	Normative outlooks and notions
regulatory goals, e.g., innovation legal protection legal certainty	ICT biotechnology nanotechnologies neurotechnologies robotics converging technologies	utilitarianism individual/public interests efficiency risk
regulatory means law – patent law market social norms architecture		human rights autonomy self-development identity human dignity equality and non-discrimination freedom of expression privacy and data protection
regulatory content substantive procedural regulatory institutions		communitarianism common good solidarity democracy and rule of law legitimacy transparency and accountability
		various development sustainability

STOA report

Policy options for the improvement of the European patent system

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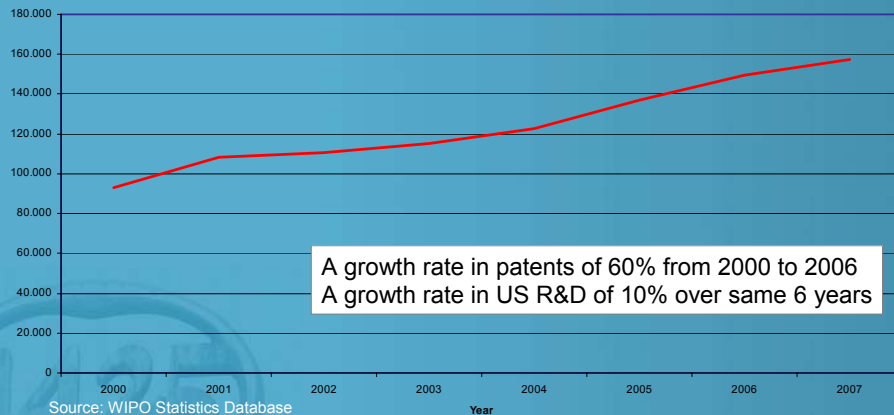
The report

- Report prepared by interdisciplinary working group. Many experts and stakeholders involved
- Central question: Does the patent system fulfil its purpose of enhancing social and economic welfare?
- Trends/problems
- Solutions
- Starting point: A Community Patent does not in itself solve the problem

Trends
Problems

Trends

Number of PCT Filings



Source: WIPO Statistics Database

Trends and problems

- Disproportionate patenting activity
 - No relation between technological progress and patenting
 - at least in certain sectors like semiconductors and telecommunication where excessive patenting has led to patent thickets
 - Companies concentrate more on patenting and less on innovating
- The sheer number of patents is not (anymore) a measure of success in terms of competitiveness and technological progress
- "More patent protection does not necessarily equate with more innovation and greater diffusion of knowledge" (p. 14 in the report)

Policy options for the improvement of the European patent system



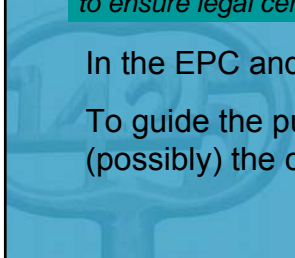
1. Inserting economic mission of the patent system in EPC

Mission statement

The granting of patents serves the purpose of enhancing social and economic welfare by means of encouraging inventions and their diffusion. The protection provided by patents should be sufficient to ensure proper incentives to inventors. This should imply that patents should be granted in a proportionate and transparent manner, so as to ensure legal certainty.

In the EPC and a (future) Community Patent

To guide the public, the (national) legislators and (possibly) the courts in patent discussions



2. Enhancing governance of the European patent system

a. Enhancing “patent awareness” within the *European Parliament*

Internal Parliament Standing Committee on Patents (EP-SCP)

External Advisory Body to the EP-SCP (Experts, Practitioners, Stakeholders)

- Info gathering from EPO
- Reports on trends & issues

- Strengthen role & expertise of EP in patent matters
- Accomodate rise of public concern for patent matters

b. More participatory environment within *EPO*

- Regular communications by EPO Administrative Council on current projects and decisions taken
- Open up the Standing Advisory Committee (SACEPO) to other stakeholders and experts

c. Enhance participatory environment within the *Commission*

- From “ad hoc” to regular consulting with experts and stakeholders, esp. for legislative authorities touched upon by patent matters (e.g. Directorates)

3. Improving patent quality

a. Rigorous application of patentability standards

- (novelty, inventive step, industrial applicability),
- but also clarity, disclosure, relation disclosure and claimed invention

b. Raising the standard for patentability

- *review standard of inventive step*
- definition of person skilled in the art

4. Increasing access to patented inventions Facilitating trading with technology

Huge unrealized potential in a copyright-inspired licensing scheme

A new option: License of right mechanism

- First, will reduce the risk of "patent trolls" that hold up manufacturing companies by threatening with injunctions
- Second, allow companies greater "freedom to operate" (now firms try to secure freedom by increased patenting meant for bargaining)
- Third, will encourage a greater division of labor between firms, especially benefiting weak patent-holders like small firms and universities, allowing for increased specialization and "Silicon Valley economies"