Developments for the EU IP system?

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Perspectives for the IP systems in a globalized world
CEIPi’s 50th Anniversary, November 2014

Key messages: Developments

1. Significant differences for TM, UM, Copyrights, Patents
2. Complex systems: variety of influential stakeholders, tensions between EU vs national vs European vs... stakeholders
3. Lack of policy leverage for EU industrial policy
4. Case study: European patent system development
rights in the European Union

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Paradigm: No EU Industrial policy:

- weak/absent for international negotiations
- local policies compete with EU policy
- Important financial flows (Ohim, EPO), **which can’t drop** ...
- EPO is not an EU policy leverage (like other patent offices)...

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**Figure 1:** A simplified picture of the European patent system

Firm Z creates a new invention...

Commercial exploitation?

- Yes
- Keep secret?

- No
- Yes

NPO grants

...and decides to file a patent...

...then at the EPO

NPO

NPO 1

NPO 2

NPO...

NPO...

NP035

...if granted it must be validated, translated and renewed in the relevant member states
Cost of patenting in major economies, €s

- Renewal fees (up to 10th)
- Translation cost
- Procedural cost


Win-Win with the current system of renewal fees

- Germany: > 100M (*2)
- UK, France: > 45M
- NPO

>> NPO budget

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Prohibitively expensive, for wrong reasons

Uncertainty, Parallel processes

Incongruous

Who resists the beast?

Potential developments of the EU patent system?
1. Do not expect much from the new ‘UP’ (a key first step, but only ‘first’)

Select an ‘acceptable’ renewal fee structure??

\[ VCOM(x) = \text{sum of } x \text{ countries} \]
\[ VCOM(200) = 600; 800; 1000; 1200 \]

Source: J. Danguy and B. van Pottelsberghe, 2009
Figure 3: Relative patent costs
(cumulated cost per million capita, €s)

- Renewal fees (up to 10th)
- Translation cost
- Procedural cost

* EPO-13 (6) stands for a European patent validated in 13 (6) countries


Complexity: the UP adds a third layer...
Where are we Fixing the SYSTEM?

- Affordability (high absolute and relative costs): 😞
- Low quality: NPOs grant patents independently of the EPO, inducing heterogeneous quality standards 😞
- Complexity 😞
- Uncertainty: parallel litigations with divergent outcomes 😞
- Lack of coherence: ‘parallel imports’ and ‘time paradoxes’ 😞
- No coordination at EU level 😞
- Weakness in global negotiations: PPHs 😞

Who resists the UP (million Euro)?

- Business sector: +236 = no, but...
- National Patent offices: +78 = no, but...
  - But would loose control...
- EPO: +43 = no, but...
- Attorneys & translators: -256 = yes
- Lawyers: -121 = yes
Resistance to change: How to split the « ‘NPO’ revenue » ?
... Natural pressure for high renewal fees
Are we ‘really’ looking at what European innovators need?

A new deal will not (yet) bring further innovation... therefore let us get ‘creative’

- Suppress two of the three layers (National GRANTING of patents and European patents) must be considered

- Radically change the governance of the system (IMF?, EU)

- Need affordable UP renewal fees!! Rely instead on EP fees?

- If INNOVATION in Europe is the main issue, don’t ask too much to current stakeholders, we need political courage
Thank You For Your Attention

References: (cfr. also RePEc website)


