



## **8th annual conference of the EPIP association European Policy for Intellectual Property**

**The Frontiers of Intellectual Property  
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### **Executive summary**

The conference was organized around the idea that it is becoming hard to study and talk about intellectual property rights (IPR) as an isolated concept. The conference has explored the frontiers between IPRs and competition policy, IP enforcement and contract law. Geographical frontiers and territoriality are of course important and the conference panel on the unitary patent package illustrates this point. Another issue that deserves special attention is how technologies are transferred between different countries, especially from developed countries to developing countries.

#### **Patents**

Michael Meurer reminded us that there are good IPRs that promote innovations and bad IPRs that increase litigation costs, block innovation and markets. Analyzing the patent system in the US, he warned us of the negative effect of granting low quality patents especially with respect to the novelty requirement and the inventive steps. Bad notice is a source of patent litigation that slows the innovation process. The three main causes of notice failure are related to the difficulty to find the property right, its owner and the boundaries of the patent. Good notice has become a priority for policy makers.

Dietmar Harhoff pointed out that questionable patents can harm competition and innovation. Patent protection is too homogeneous, while competition policy cannot correct failures of the IP system on its own. We also have to pay attention to the design of court systems such as cost allocation, cost of litigation and procedural aspects.

Damien Neven tackled the issue of exclusivity and input foreclosure in patent pools and standard essential patents and the incentive to invest both for the dominant firm and for the outsiders. He is concerned both with hold up problems (excessive royalties with specific investment) and reverse hold up (royalties below the fair, reasonable, and non-discriminatory terms rate). Courts only grant injunctions when the prospective licensee is unwilling to propose a licensing rate. There may be room for improvement in the standard for granting injunctions implemented by the Courts.

Pierre Larouche brought the point of view of a lawyer working on competition policy. Arguments related to innovation often arise such as in the Microsoft case. He argues that the trade-off between competition policy and IP laws depend on the relationship between competition and innovation, as well as on the nature of the innovation, whether it is incremental or disruptive.

Andrew Torrance argued that patent and other IP systems are social contracts that cannot win over other social principles such as morality. He illustrates his point with the evolution of patents in bio-medical research and innovation.

## **Copyright**

Joel Waldfoegel pointed out that a copyright system works when it keeps producing many new high quality produces. He argued that disintermediation and the digitization of music has not only had negative impact on demand for recorded music but also increased both the quality and the variety of new music.

However, Alain Strowel highlighted the fact that copyright enforcement in the digital era should be fair, proportionate and not excessively costly. He sees a new challenge in digital exhaustion and ownership of digital music as well as marketplaces for second hand digital music.

Copyright contracts can be designed to promote access. Alexander Peukert discussed 3 models of copyright contract law: 1) the classical copyright contract law with identifiable parties; 2) free, open-source, open content licensing terminating with enforcement of classical copyright; 3) implied consent enforced by code. Contract model 3 reduces transaction costs, is more flexible and achieves the same effect as model 2.

## **International Technology transfer**

There is a real effect of IP systems on growth and employment in developing countries. For Keith Maskus, stringing IPR in developing countries attracts FDI and high tech imports. Growth in medium tech manufacturing employment and real wages has been higher in emerging markets than in developed one, but poorest countries lag behind. Increase in IPR protection in developing countries is positively correlated with ITT. Knowledge spillovers and financing constraints challenge the current way of thinking about IPR and ITT. Why should R&D be fragmented and internal, while production and is fragmented and external? What is the role of IPRs here?

Dominique Guellec showed that benefitting from foreign technology requires a number of local conditions such as human capital, universities, incentives. IP is perceived as a barrier to technology transfer. However, a robust IP infrastructure is important for encouraging innovation: to compensate current (often incremental) innovators and to encourage the emergence of a community of more radical inventors. Patents are not the most important type of IP for enhancing innovation in a number of developing countries as they are out of reach of most actors: trademarks, plants varieties protection, GIs, utility models are within reach of much more innovators.

For Karsten Fink, the IP landscape greatly varies for low and medium income countries who file few patents and are involved with discrete technologies (exception: China). Globalization means that more and more often two or more patent offices consider the same applications. There is a need to avoid wasteful duplication of search and examination work but at the same time, granting a patent reflects territorial standards of law.

All IP tools are necessary to promote Technology transfer and to create jobs but they are not sufficient. Henning Grosse Ruse Khan stressed that the thinking about how IPRs facilitate or harm Green Technology (GT) transfers between developed and developing countries has shifted: first perceived as a barrier to transfer and dissemination; next as an incentive for R&D

and Production of GT. Other incentives than IPRS should be investigated as current TRIPS obligations seem to have had little effect on GT transfer.

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