

Current Policy Issues in the Governance of the European Patent System

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As a follow up to the 'Policy options for the improvement of the European Patent system' project, STOA organises a conference with the goal to work towards building systems (forum, standing or working committee etc.) linking Members of the European Parliament (MEPs) form different committees with other stakeholders in order to improve decision making on intellectual property right (IPR) related issues. In fact, the European Parliament (EP) acts as a co-legislator in the field of IPR, e.g. the directive on the legal protection of biotechnological inventions or discussions relating to the directive on the patentability of computer-implemented inventions. Once the Lisbon Treaty becomes effective, the EP will be de jure co-legislator for all legislative initiatives in the field of IPR. In addition, issues related to IPR are of interest for different committees. Therefore, a common forum within the EP should be set up in order to ensure coherent IPR development within the EP, as stated in the policy options for the improvement of the European Patent System. An appropriate structure (e.g. a standing committee or a working committee with links to different committees) should be explored as result of this conference.

General IPR issues which will be on the agenda

The conference will deal with IPR issues which will be in the agenda of the Parliament over the next years. The most important of these topics are:

The backlog issue: Over the last decade, the time for getting a patent, as well as the related backlog of patents has risen considerably. The consequence of this is an increase of legal uncertainty.

Patent enforcement: While European legislators are still negotiating a European Union (EU) Patent Litigation System which should handle disputes relating to both existing European Patents and Future Community Patents, small and medium size enterprises (SMEs) already encounter difficulties in enforcing their rights before national jurisdictions.

Regional dimension of IPR in Europe: The EU's Regional Policy is more and more associated with the achievement of the Lisbon Strategy, which aims at building up Europe as a world leader in the field of the 'Knowledge Based Economy.' Consequently, the funds made available for achieving this goal, which come under the competitiveness programmes, have dramatically increased over the past few years.

Patent and standardisation: In an information and communication technology (ICT) oriented world, standards are a key driver for innovation. However, co-existence with patents raises some questions. What could be the interface between ICT standardisation policy, IPR and competition law? What could be the balance between IPR, inter-operability and competitiveness? How to ensure a correct balance between the interests of licensees and licensors and the transparency of licensing? How to identify relevant IPR in connection with standards?

The use of existing patents: Third Parties have access to relevant information relating to European patent applications via free access websites. However, once the European patent has been granted, it becomes a bundle of national patents governed by national laws.

Patent and competition: In the past few decades, the European Court of Justice has made the legal distinction between the existence and the exercise of IPR. While the first is not challenged per se, the second one has to comply with competition rules.

The discussion of these issues during the conference aims to show how they are interrelated and touch upon the interests of different parliamentary committees. As a result, a concluding round table session will explore the best options for achieving an interaction on IPR issues between MEPs and other stakeholders. It is expected that such interaction in a permanent or regular forum like structure can help to improve the quality of IPR-policies.