

Transatlantic Workshop with the European Commission: 'How Patent Markets can Create Growth', March 3, 2016

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On March 3, 2016, *A transatlantic workshop* with around 15 top industry and EU+US policy representatives was co-organized with the European Commission and VINNOVA. The aim was twofold: (i) *to identify current and emerging issues in the patent market that (ii) could merit further research efforts, and which might be funded by public institutions and agencies promoting innovation.*

(i) Three main conclusions – surprisingly basic in nature – may be drawn:

- There appears to have been a shift in balance towards managing *systemic risk* that may have reduced incentives for *individual risk taking* by firms in the area of inventions. A showstopper for a more efficient patent market might therefore be inadequate *mechanisms* to manage risks in transactions and related areas in intellectual property and inventions. Recent regulations to reduce systemic financial risk and increase shareholder protection may have overreached in the sense that in addition to reducing these more systemic risks they have created a *disincentive for individual risk taking* by firms – the essential element in developing new technologies. The “yoke” that allows firms to pull the plow deeper together may have been replaced by a “snare” hindering firms in efficient risk management in the economy.
This conclusion of a risk adverse policy needs further investigation and it appears that the risk balance may have been shifted away from *encouraging* the type of risk taking inherent to markets in patents, calling for better mechanisms – institutional and taxation – to facilitate transactions.
- There is an *under-appreciation about the patent system and value of patent assets* in society at large and an educational or information campaign is needed to inform variously other policy makers and regulators in the EU, US and their main trading partners, the public at large and SMEs. This conclusion goes hand-in-hand with the potential lack of focus on risk management issues.
- The *need for a continued dialogue* on the issue of facilitating transactions was unanimous among participating firms. Future agenda items could be promoting an understanding of the patent as an asset and suitable institutional and taxation policies changing the incentives toward risk taking and development of risk management strategies and tools.

See [link](#) for official sum-up.

(ii) Proposals – some ideas

A number of proposals can be made, as a matter of discussion, after the first workshop, including, but not limited to:

1. Create an overview of the extent to which risk taking may be discouraged by higher firm risk and costs and by current rules when it comes to transactions in patents. This may include corporate rules, contract types, etc. based on the mechanisms use for transacting patents, i.e. the exchange mechanisms would be at the heart of trying to explain incentives to take on risk – and manage them – through risk bearing rules (incentives), systems (information) and people (knowledge). Such a study could benefit from research on strategies used by firms exchanging patents (see Hoover IP2, Stanford WP No. 15016 <http://hooverip2.org/wp-content/uploads/ip2-wp15016-paper.pdf>) and focusing on SMEs to better understand how a broader bearing of invention risks in the economic system as a whole.
2. A book or special applied brochure in common language easily accessible to SMEs, policy makers, and the public at large on the relationship between invention, innovation and growth and the role of the patent system the economic system. Given that sustained economic growth comes through sustained development of productivity enhancing technology such information may be central to awareness building. This could be extended to short web-based interviews and discussions, including the risk-taking proposition.
3. Future workshop. A follow-up workshop is being discussed with some of the firms at the transatlantic workshop, this time in the US. Possible focus could be the SME's perspective. Interest from firms – large or SMEs – , policy makers or patent offices in such a workshop is welcome!

The funding of these ideas may come from grant of firms interested in the further development of more efficient markets in patents.

Commentary: Economic risk and patent markets

These results may indicate that the rules and regulations surrounding the use of patented technology may not be incentive compatible, but instead, unintentionally, reducing social gains from investments in new technology and patents.

To adjust for such inefficiencies, a different balance may need to be stricken between encouraging *private risk taking* and discouraging financial and economic *systemic risks*. By managing risk in transactions, firms actually reduce the risk in investments in new technology investments by offering an “exit” or “customers” for technology they themselves may not be able to get a sufficient return from. A focus on patent markets may therefore be a positive way to reduce overall economic risks, of which some may be systemic in nature.

The creative corporation

A proposal in this note, also presented at the workshop event, is to create a new kind of firm. Think of it as a bank for ideas. Ideas are “bought”, or in-licensed, created, in the form of patents and then “lent”, or out-licensed for a fee. This firm would be exempt from any profit tax, reducing the cost and risk in the early stages of new technology development in exchange for a high capitalization demand and limiting its activity to only technology development, i.e. no manufacturing. The revenues would come only from transactions of patents, know-how, etc. An *alternative* to investing in a typical inventor-innovator firm – start-up, SME or large – would be created, where investors invested only in patented technology. You can think of it as a special “high-risk” firm, creating an incentive for (some) funds to move from innovation to invention. This goes beyond current tax break regimes for investment in innovation, seen in some countries. (See www.tradeinideas.com , p. 153 proposition 2.)

“Proposition 2 *The inventive company* whose risk is lowered also depends on the willingness to invent. The results indicate that this is a matter of institutional design but it is also likely a matter of willingness to take on risk. The proposal is here to create a new type of legal entity, the creative company, which is exempted from any tax (on profits) but for this privilege, is asked to have a (much) higher capitalization than the traditionally hierarchically integrated firm. The tax is instead taken out at the consumer end (VAT) or intermediary end (Innovator) of the system where the risks are lower.”...

The proposal may thus shift some funds towards more private risk taking – as the risks are managed by the special entity’s construct – potentially increasing the dynamism of the economic system.

TTIP – A principled discussion on merits from trade in ideas

In current transatlantic trade discussion, one important patent issue has been raised: the priority year. This is opposed by all EU members and proposed by the US. One way to address this issue is instead to focus on *transactions*, i.e. the use of the patents granted and validated in EU+US jurisdictions. As there may be similar gains from exchange and specialization in intellectual property like patents as in products and services markets, a focus on the economic dimension of the patent may be a way forward for a fruitful economic growth rather than sticking to certain legal traditions. This transaction focus instead of harmonization focus may create economic gains, the ultimate goal of the trade agreement.

These gains should, in my view, not focus only in economies of scale or “scale-up” but on invention and “start-up” to create a more competitive economic system with more room for SMEs at equal access to the patent market.

A policy dialogue along these lines may prove useful in creating a better transatlantic exchange in patented technology and sustained growth.

North-South trade in ideas – policy response

Since a few years the South has become the dominant buyer in North-South trade, creating a change in the flow of products and services from South → North to North → South. This North → South product and service flow ought to be followed by North-South *technology* flows. A study of such exchange in patents may be useful for development of more efficient policies.

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