

EPO-OECD-BMWA
Conference on Intellectual Property as an Economic Asset: Key Issues in Valuation and Exploitation

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Opening remarks
by

Mr. Herwig SCHLÖGL

OECD Deputy Secretary General

Welcome and introduction

Mr. Schlauch, M. Pompidou, and distinguished guests, it is my great pleasure to join you here in Berlin for this International Conference on Intellectual Property as an Economic Asset.

I would like to thank our co-organisers from the German Federal Ministry of Economics and Labour and the European Patent Office for their invaluable efforts in hosting and convening this event, which focuses on topics of clear interest to those interested in innovation and economic growth.

The topic of intellectual property receives considerable attention these days. Much of this attention relates to questions about the patentability of certain types of inventions – software in Europe, business methods in the United States – and about maintaining quality in the patent system. Much of this debate centres around the role of patents in driving innovation and economic performance. Do stronger patents provide incentives to innovate, or do they stand in the way of innovation by making knowledge more difficult to access.

This was, in fact, the focus of a large conference organized almost 2 years ago by the OECD on “IPR, Innovation and Economic Performance” that did much to accelerate economic interests – and the interests of economists – in intellectual property issues.

This event takes a next step in considering the effects of patents on innovation and economic performance. It asks how patents can best be exploited to contribute to firm performance and economic growth. It recognizes that innovation is not a matter of invention alone – nor of

generating more patents. Rather it is a matter of exploiting and putting into practice inventions, many of which are protected by patents.

OECD work on IPR and innovation

For the OECD, this event is part of a broader effort to improve policy making related to intellectual property rights and innovation. This work extends back to a conference organized here in Berlin in late 2000 that examined industry-science relationships. It led to an OECD study of intellectual property management in universities and other public research organizations that was published in 2003. OECD IPR work subsequently examined the links between IPR, innovation and economic performance, with a focus on business use of patents. It included the organization of major conferences in Paris and Beijing and resulted in a report to Science and Technology Ministers in early 2004.

OECD work continues along two related themes that will both draw heavily on the discussions at this conference:

1. IPR, innovation and diffusion of knowledge. This work aims to identify ways in which governments can ensure that patents fulfill their dual roles of stimulating innovation and fostering the disseminating knowledge. Licensing, as will be discussed today, is a key channel for such diffusion.

2. Work on Intellectual Assets and Value Creation. In today's knowledge-based economy, patents, intellectual property and other types of intellectual assets – including human resources, software and organizational capabilities – play a growing role in business and economic performance. An increasing share of firm value appears to derive from intellectual assets. Identifying policies that can better enable firms to create value from these intellectual assets is a major focus of work now at the OECD, resulting from the 2004 meeting of the OECD Council at Ministerial level, which is an indication of how this issue has entered into the mainstream economic discourse.

Both of these efforts are expected to produce policy-oriented reports in 2006.

Exploitation of IP

We know that patents are not as fully exploited as they could be for economic benefit. While the number of patents applications submitted to the European, Japanese and US patent offices exceeded 850 000 in 2002, the majority of these patents appear not to be exploited. A survey by the Japan Patent Office indicates that only 30% of Japanese patents are utilized by their inventors, and a recent EPO survey indicates that among inventors based in Europe, Japan and the United States, only 11%, 8%, and 15%, respectively, of their patents were licensed to others.

Part of the reason for such under-utilization is the defensive use of patenting by firms and the pace of technological and business change, which may negate the advantage of an individual patent before it can be commercialised. But it also results from an under-appreciation of the value of patents within firms, from difficulties in identifying suitable partners for inward or outward licensing and difficulties in agreeing on the financial terms of licenses, which itself reflects problems of valuation.

Considerable untapped value lies in these unexploited patents. The question is how best to unlock this value.

Part of the solution will come from firms themselves. Firms *are* making progress in better exploiting their patents. This has resulted partly from better management of their R&D, ensuring that research is done in areas related to current or future business. It is also a result of the *opening* of the innovation processes to take advantage of knowledge and inventions generation elsewhere in the public and private sectors. It is also the result of improved intellectual asset management.

Firms in the United States, Japan and Europe have begun to more actively manage their patent portfolios. They increasingly license to others patents they cannot exploit themselves. They donate unused patents to non-profit organizations in return for tax relief. They form patent pools to simplify the licensing of groups of related patents. Several large multinational firms have turned their IP management departments into revenue-producers and now boast licensing revenues of several hundreds of million euros a year. Public research organizations, too, are

more actively managing their intellectual property in an effort to promote its commercialization, often via licenses to new or established firms.

Various forms of intermediaries can also assist in creating efficient markets for technology. Both public and private sector patent-holders employ a range of intermediary organizations to facilitate their licensing. Technology licensing offices exist at a range of public research organizations – often with support of government – and number of private sector intermediaries have achieved success in linking buyers and sellers of technology. Considerable experimentation is underway with alternative models of intermediation, and better assessment is needed of their various capabilities.

Improved statistics would also improve management at the firm level and the government level. We don't know how large these licensing markets are on the national or international level because licensing data is not generally reported to public authorities. Various estimates suggest that they are growing and we will learn during this conference of some of the more recent attempts to characterise and quantify licensing markets around the world. One thing that we can be reasonably sure of is that the size of the international market for technology licenses is growing. OECD statistics show that receipts from international patent licenses reached EUR 2.4 billion in Germany in 2003, almost twice their level in 1990, and other countries have seen similar gains.

Valuation of IP

Beyond these steps, a key challenge to improving the exploitation of intellectual property is assessing its value. Valuation becomes increasingly necessary as a more numerous and diverse set of stakeholders develops interests in IPR. Firm managers must value patents when deciding whether or not to file a patent application or renew a patent, when calculating royalties for patent licensing contracts, when estimating the value of a possible merger or acquisition, and when estimating their own corporate value. Tax authorities request valuations of patents that have been donated to non-profit organizations. Lawyers and judges must value patents in the course of patent infringement suits.

Further demand for valuation emerges as patents gain in importance as an instrument for accessing financial markets. It is well-recognized that venture capitalists, for example,

consider patents when assessing firms for investment. Patents signal both technological sophistication and a legal protection of competitive advantage. This can be especially important for start-up firms and other SMEs that often have difficulty accessing financial markets. Moreover, in Japan and Germany, for example, a small number of banks are beginning to offer loans that use intellectual property as collateral. Other financial firms have developed IP-based securities as a way of allowing rights-holders to access financial markets.

Lack of robust, widely accepted valuation methods can impede any of these activities. Many firms report that the greatest challenge they face in negotiating licensing agreements is agreeing on the financial terms of a transaction. Banks report that they are reluctant to use patents as collateral because of uncertainties in the value of a patent or the products and services into which it will be integrated. Despite the desire for improved valuation, a recent survey of European firms found that only 12% of had a patent valuation performed by a third party.

Clearly, improved valuation – and agreement on approaches to valuation – can help accelerate the exploitation of intellectual property via many channels. A variety of qualitative and quantitative approaches to patent valuation have been developed by economists, business managers and licensing intermediaries. We will hear much more about these methods over the course of the next two days—and about the types of valuation that they are best suited for.

The role of government

A key question for those of us at OECD and in other government organizations is “What can governments do?” to encourage improved exploitation of intellectual property. A first step of course is for patent offices to continue their traditional role of processing patent applications and ensuring the quality of patents granted. High quality patents facilitate exploitation and licensing by ensuring all sides in a possible transaction that the patent is valid and protects a novel, useful and non-obvious invention.

Beyond this basic role of patent offices, a number of governments are taking additional steps to encourage valuation and exploitation:

- Creating so-called “licenses-of-right” that offer patent holders reduced renewal fees for patents they agree to license to all those who request them.
- Offering match-making services to better link buyers and sellers of technology.
- Providing information to patent holders about technology transfer programmes and resources.
- Developing tools to help patent holders estimating the value of patents.

Japan, Germany, Denmark and other countries are developing guidelines for assisting companies in reporting information about their intellectual assets, including their patents. They expect that by providing better information about their Intellectual Assets to investors, companies will better signal their technological strengths and be better able to attract capital from financial markets. Such information may also support internal firm management. Although such efforts are relatively new, it is time to begin to examine them to learn what works best and in what circumstances

Role of this conference

These issues of patent valuation and exploitation are important to innovation and value creation. As such, the OECD has a strong interest in them, as do our co-organisers from the German Ministry of Economics and Labour and the EPO.

We hope that through this conference we can gain a better understanding of how firms exploit their intellectual property – that is how they create value from it – by using it themselves, licensing it to others and attracting capital. We also hope to learn more about how intellectual property can be valued. Is there emerging good practice that can be shared more broadly across industries? Finally, what can governments do to promote valuation and exploitation? How effective have been the policies and programmes put in place by national and regional governments? What more could they be doing? What should they avoid.

We therefore anticipate that the results of this conference will inform business practice, government policy and related research. I am sure we will all learn a great deal from the discussions.

Thank you for your attention. I wish you a successful conference.