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Speech by

Parliamentary State Secretary at the Federal Ministry of Economics and Labour and Federal Government Commissioner for SMEs

Rezzo Schlauch

at the

International Conference
on

**Intellectual property as an economic asset:
key issues in valuation and exploitation**

in Berlin

on 30 June 2005

Text as prepared for delivery!

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Monsieur Pompidou,
Mr. Schlögl,
Ladies and Gentlemen,

On behalf of the Federal Government I would like to welcome you warmly to our conference here in Berlin.

It is my pleasure and my privilege to welcome you in the Federal Ministry of Economics and Labour.

In my capacity as Federal Government Commissioner for SMEs I can only congratulate you on the theme you have chosen for your conference.

Because even though intellectual property rights have been on our agenda for many decades we have only quite recently come to understand that – if actively managed and properly valued – they are an *economic asset* representing a considerable value added.

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It is no secret in the German “patent world“ that in the past two years I have personally taken a keen interest in this topic, in particular as far as the capitalisation of property rights in the context of SME funding is concerned.

Therefore, I think that the conference beginning today has not only great thematic relevance but also that it is high time that our economies give more attention to these issues!

The conference programme for the coming two days will offer you a plethora of interesting presentations – therefore, allow me at this point to highlight a few key issues in this context.

1. The role of intellectual property and patent protection

“Knowledge“ and its translation into marketable products and processes are tomorrow’s raw materials.

The value of a company has long ceased to be driven by the classical tangible assets like real estate, buildings and machinery.

Increasingly, *intangible* assets have become a determinant of a company's earning power, at least as far as innovative companies are concerned.

Today, a leading edge in knowledge achieved through creativity, pioneering spirit and invention and translated into new products and processes means a leading edge in competition.

But only when inventions are *protected* by property rights do they become a commercially exploitable asset with a clear legal definition.

Our objective must be to protect intellectual property through commercial property rights which can be acquired at low cost and can be effectively enforced such as patents, trademarks, utility patents and registered designs.

Therefore, my colleagues from the Federal Ministry of Justice have vigorously worked towards an effective and coherent legal framework for granting and enforcing intellectual property rights at European and international level.

As technology develops, there is continuous need for adjustment. Current examples in this context are the rules concerning biopatents and the heatedly discussed so-called computer-based inventions.

2. Capitalisation of property rights

Patents have long ceased to be simply a protection of inventions against third-party commercial exploitation.

Slowly but surely they are becoming an important asset in business finance.

In saying this I am not only referring to prospects of earning licence royalties.

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Because at the same time patents can make a significant contribution to increasing company value, which in its turn strengthens the company's position in negotiations with equity and loan capital lenders.

The fact is that the "value" of a company, in particular of an innovative, growth-oriented company with a high degree of research and development, is *not anymore* determined only by "classical" fixed assets which can be easily valued by banks.

This may have been the case when the German Commercial Code was introduced in 1879.

However, this kind of business valuation is hardly suitable to take account of the trend toward knowledge-based societies or of the increasing importance of the service sector we have seen in the past few decades.

Today it is not unusual that intangible assets, including patents, exceed the value of tangible assets by far!

But all the same patents have for a long time been largely ignored in company valuations and bank ratings.

Fortunately, a few pioneering banks are now changing this practice.

They are accepting property rights as collateral for business loans, even though for the time being this has been done only in a few individual cases.

This development is particularly important at a time when SMEs are increasingly complaining about problems in raising capital and when funding problems often prove to be obstacles to innovation.

Patents can also contribute to strengthening a company's bargaining position when it comes negotiating the terms of a loan with a bank.

Since 1st April of this year so-called "risk-adjusted interest rates" have been applicable also to the Federal Government's business finance support programme, which means that interest rates under available funding support conditional on the applicant company's credit worthiness and collateral security.

In this context the possibility of using patents as additional collateral can help to reduce the cost of borrowing for companies.

Against this background I welcome the decision of the German Financial Supervisory Authority that patents may on principle be accepted as sole security for bank lending.

This means that a stronger focus on innovation is taken into account in business valuation,

which will be an advantage particularly for SMEs with intensive research activities.

Of course, several questions remain to be resolved in this context, such as, for example, the valuation of patents and building a corresponding market of intermediaries.

These aspects and in particular the problem of valuation will be intensively discussed in the course of this conference.

But also companies themselves must be willing to use their patents and property rights for business finance. Here, too, a lot of convincing will still be needed.

However, as Aristotle said:“ the beginning is half the whole“.

I think the potential of this business finance concept is extremely interesting and I look forward to hearing more about the experience gathered in other countries.

1. Commercialisation of university patents

Allow me to raise another issue, i.e. improved commercialisation of university patents.

The task of universities is not only to provide excellent scientific qualifications but increasingly also to identify and incorporate new knowledge and emerging technologies and to push forward their translation into innovative products and processes in industry.

It is at the interface between academia and industry that patents play a key role on the way to marketable products.

But many scientific institutions in Germany still need to build a portfolio of property rights. Due to insufficient exploitation structures they are a long way from fully utilising their patent potential.

Therefore, in the context of its commercialization campaign the Federal Ministry of Educa-

tion and Research set up 20 patent commercialization agencies.

Their task is to ensure that new developments from universities and smaller research institutes are brought onto the market more rapidly.

There is one example which has recently taken place in Northern Hesse.

A new protective overall for welders was registered as utility patent and has now gone into serial production based on a licence given to a manufacturing company.

This has been possible because of an amendment of the German Employees' Invention Act, stipulating that commercialisation is no longer the privilege of individual university teachers but of the university as a whole, i.e. the employer as in the case of all other inventions.

4. The role of policy-making

And this, Ladies and Gentlemen, brings me to the role of policy-making.

At the political there are two tasks in particular:

First of all we define the legal framework for patenting by legislation.

According to many economic experts German patent law has proved its worth.

And yet, as Government Commissioner for SMEs I think we should be very careful here.

As good as patents are for the patent holder, they naturally provide him with a small monopoly with resulting disadvantages for competitors.

Patents protect innovation and are an incentive for innovative development but in the worst case they may also be an obstacle to innovation elsewhere.

Therefore patents must be described in particularly precise terms.

This may sound rather technical, but it is important in practice in order to clarify the limits of patent rights in the case of litigation.

And of course the invention must really be new and offer some value-added.

Many of you are familiar with the debate under the key word “trivial patents”.

A mere refinement of a product may require a lot of input but often does not constitute a creative achievement.

But this is precisely the critical criteria, if we want to prevent patent rights from getting out of hands.

Here, the work of patent examiners is of particular importance.

The second field of action for governments is patent policy.

In this context it is necessary to sensitize small and medium-sized companies to IP protection.

Whereas 80 per cent of all big companies in Germany have their inventions registered, the corresponding figure for SMEs is only 30 per cent, although we know that they are in fact quite innovative.

This segment of the economy is however particularly dependent on patents.

Surveys have shown that many SMEs do not even know how they can protect their intellectual property. They do not have the necessary contacts and often they lack awareness of their own “treasures”.

Therefore my Ministry offers on its website the possibility for interested companies to check on patents and trademarks.

And also the latest brochure of the Ministry, whose publication today is not a coincidence, is addressing the need for property rights and describes good practice examples in SMEs.

Patent policy is also a topic addressed by the so-called “Impulse Circles“ set up under the Federal Government’s Innovation Initiative.

Representatives from business, academia and government are together working on proposals, e.g. concerning the question of how patents can become a strategic element of corporate policy.

Another topic on which I would like to draw your attention is the so-called “knowledge balance”.

Its objective is to visualize and assess the “intellectual capital“ of a company, like for example the know-how of its employees, its property rights or the quality of its management.

In the framework of a pilot project initiated by the Ministry 14 SMEs have for the first time compiled their own knowledge balance.

Based on their experience a manual was developed with the support of the working group “Knowledge Balance”. The manual is a valuable guideline for interested companies which would like to get acquainted with this topic.

By the way – this is another issue showing how useful an international exchange of experience can be!

Conclusion

Ladies and Gentlemen,

This brings me to the end of my presentation. Property rights are an area where international co-operation has a long tradition:

As early as 1883, eleven States concluded the so-called Paris Convention, which can be considered the first patent agreement.

Today, both, the European Patent Office as organizer and the World Intellectual Property Organisation, are represented among the participants.

And the OECD with its economic focus is rounding off the perspective of institutions addressing this important future issue and supporting the debate with their know-how.

As the Greek philosopher Plato once said: "If you have an apple and I have an apple and we exchange apples then you and I will still each have one apple. But if you have an *idea* and I have an idea and we exchange ideas we will both in the end have two ideas".

With this in mind I wish you a successful conference with interesting and stimulating discus-

sions. I would now like to give the floor to
Monsieur Pompidou!