



Incentives and Innovation - Old and New Paradigms

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DRUID Fundamental on Open and Proprietary Innovation Regimes

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Overview

- Starting Points
- Developments in the European IP System
- Problems and Potential Solutions
- New Paradigms
- Conclusions

Starting Points

- We are currently watching a general reassessment of IP policies.
- Current systems (patents, copyright, marks, ...) show signs of strain.
- Policy makers and courts are struggling to understand economic evidence while still following naive rethorics.
- New incentive systems are emerging – they are partially in conflict with classical IP.
- They also require new approaches in management.
- Key question: how to balance the system?
 - use classical systems to encourage innovation vs. utilize potential of new incentive systems
 - Introduce appropriate policy reforms
 - manage incentive systems properly in private organizations

Developments in the European IP System

- No offense, but - European IP policies have been a failure.
- However, the failure has been even greater in the US.
- Much of economic policy still follows the rethoric that more IP helps innovation.
- Examples: patents, copyright, database protection.

Developments in the European Patent System

- Much of economic policy still follows the rethoric that any patent must be a good patent, and every patent is equivalent to more innovation.
- Conclusion 1:
Patents should be available at low costs (London Protocol, Community Patent).
- Conclusion 2:
Patents should be enforcable at low costs (EPLA, Luxembourg Court) – to the enforcer.

Developments in the European Patent System

- The EPO is flooded with applications and blocked for the next 5-10 years.
- Some patent applicants revert to new strategic behaviors – *patent constructionism* prevails
- Focus on single patents is no longer appropriate – patent portfolio views dominate. But offices (and many researchers) follow a single-patent logic.
- Patents will be getting cheaper.
- There will be harmonized patent litigation in Europe. The big question is – what will it look like?

Problems and Potential Solutions I

- Patents are already inexpensive, and the early phase is cross-subsidized by renewal fees, giving stake-holders dysfunctional incentives.
- Major restructuring of fees necessary (and under discussion) in order to deter opportunistic behavior:
 - higher claims fees
 - higher examination fees
 - possibly with preference for SMEs
 - academic proposals for “portfolio taxes”
- Some measures introduced already (e.g., incentives for examiners to refuse a grant, ...)

Problems and Potential Solutions II

- The patent system is opaque.
 - high costs of product clearing
 - high levels of uncertainty
- Greater emphasis on clarity of disclosure required.
- Reassessment of the social costs of “narrow patents” necessary.
- Taking the sting out of innocent infringement by foregoing injunctions/licensing declaration – IBM’s “soft IP” proposal.

Problems and Potential Solutions III

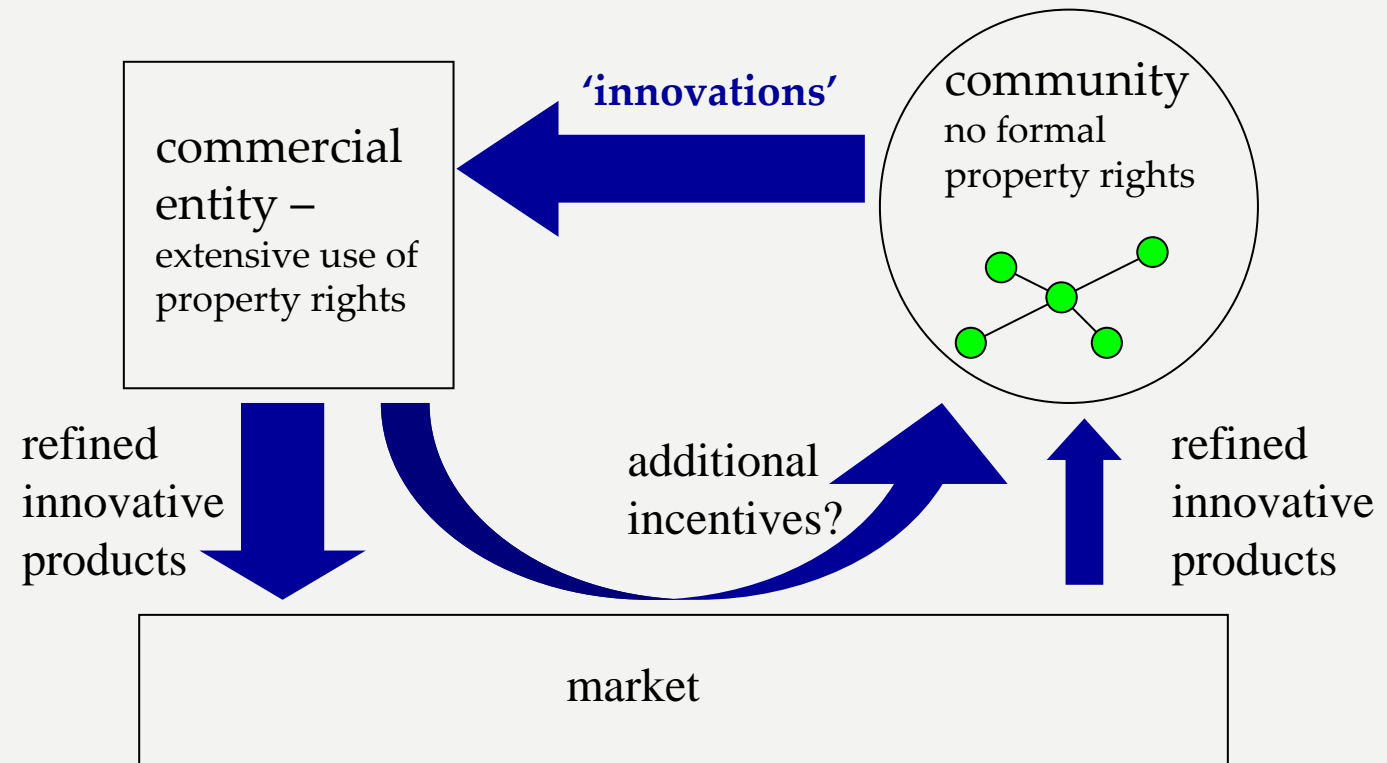
- Litigation system reform is coming to Europe.
- Recall – was that not the start of all evil in the US?
- Emphasis currently on ease of enforcement, but should be on ease of revocation/annulment.
- Centralization of court systems can lead to improvements - or to multiplication of errors.
- Subtle issues – technical vs. legal expertise, selection of judges, languages, ...

New Paradigms

- Open source development mode by now not new, but classical.
- Community-firm interactions of various shades becoming more important.
- Research needed on emergence, stability, competition.
- Particular propositions developed in the research paper (see web).
- The new incentive modes should be taken into account in recent IP reforms. The new models need “space” (freedom from interference by formal IP).



Hybrid Models



Examples: mySQL, Stata Corp.

Conclusions

- Not all is bad, but much could be better ...
- No need for romanticism, either – both classical IP and new modes needed.
- Great time to do research on incentives for innovation (and how they can be influenced).
- As to policy-making in IP systems – still dominated by naïve political calculus – more is better.
- More education for policy-makers urgently required (i.e., STOA Report).
- Own conclusion: a small patent system is a beautiful patent system.
- International harmonization? Handle with great caution!