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Lost property: the European patent system and why it doesn't work. Bruegel Blueprint Series No. 9, 29 June 2009

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Abstract

It is of therefore hardly surprising that patents have in recent years been the subject of fierce controversy. From the Trade-related Intellectual Property Rights (TRIPs) of the Uruguay round to the patentability of living organisms and of software (not to mention the exchange of music and movies via the Internet) numerous disputes have drawn attention to the delicate trade-offs involved in the public granting of property rights over discoveries or inventions. But most of these debates have focused on the trees and missed the wood. There has been much less discussion about the overall performance of the patent regime, the consistency of rules across countries and global governance questions concerning international cooperation among patent offices, though these are of major importance for competitiveness and growth. These matters are the focus of Bruno van Pottelsberghe's analysis. He first addresses a specific European issue, and brings bad news: in spite of the supposed ending of the linguistic dispute that for decades prevented its rationalisation, the European patent system is still far from satisfactory. Forget the fact that only 15 of the 35 members of the European Patent Convention have signed the London Agreement on translation requirements. Even in these countries, patents are still at least three times more expensive than in the US or Japan. Fragmentation across European countries, and the ultimate power of countries over patent validity decisions, furthermore results in legal uncertainty and unevenness in the quality of the patents that are enforced. There is room for discussion on the scope, the breadth and the duration of patents. But a costly and fragmented system that grants national property rights of dubious quality and uncertain solidity is an unwarranted tax on innovation that is detrimental to both entrepreneurs and consumers. Van Pottelsberghe makes a number of simple proposals to improve upon the current situation in Europe, such as the Community patent, a centralised litigation system, reforms in the governance of the European Patent Office and an SME status. These should be at the top of the list for policymakers looking for ways to spur an innovation-based recovery and encourage research in Europe. Van Pottelsberghe's second topic is what he calls global patent warming and what could equally be called inflation. Here again, issues are first order and numbers speak volumes: in the US, Europe and Japan combined, about one million patents are filed each year. There is overwhelming evidence that this ballooning of patenting activity does not reflect an increase in innovation activity but rather a deterioration in the quality of patents that results from strategic use of patenting, especially in the US.

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In his blueprint, Bruno van Pottelsberghe first looks at the performance of patent arrangements in Europe, especially their cost effectiveness and the consistency of rules and remedies across countries. He then looks at current attempts at global patent cooperation to see if they will help or hinder the emergence of innovation worldwide and in Europe. Using new and hard-hitting data, van Pottelsberghe paints a dark picture of today's patent landscape both in Europe and internationally. It is a tale of failed public cooperation at all levels and of a regime in danger of rampant patent infringement. In some European countries, national patents are substantively examined, while in other countries there is no provision for such examination and patents are thus granted only if formal requirements are met, while novelty and inventive step is not evaluated. It can be cheaper and tactically advantageous to apply for a few national patents rather than for a European patent at the European Patent Office.^[10] Bruno van Pottelsberghe, Lost property: The European patent system and why it doesn't work, Bruegel Blueprint Series, Volume IX, 29 June 2009, ISBN 978-90-78910-12-1. Retrieved from "https://infolgalactic.com/w/index.php?title=European_patent_law&oldid=572185". Categories