

Microsoft® Research and Innovation Supplement**The patent system that Europe needs**

The Prime Minister of Finland, speaking as president of the European Council, recently made some important comments about patents, once a topic that few policy makers found exciting. "We need a comprehensive strategy on intellectual property rights in the EU. This is an important part of an effective innovation policy," Prime Minister Matti Vanhanen told journalists after the 20 October presidency conference. "Patents are an essential part of intellectual property rights."

Industry – which widely supports the patent system – could not agree more. Most of Europe's largest and most competitive industries, from aerospace to pharmaceuticals, from automotives and chemicals to information and communication technology, have long relied on patents to fund research and secure a return on investment. Some of Europe's most innovative individuals and small enterprises do too – think of James Dyson, the man who revolutionised the vacuum cleaner industry, as a prime example of the power of the patent.

As Europe turns its attention to patents, particularly the long-stalled idea of a Community Patent and some procedural improvements to the existing European Patent system, what patent system does Europe need to stay competitive with its traditional developed-country trading partners and aggressive high-tech economies like China, Korea and India?

First and foremost, the patent system must be affordable. At present, a bundle of European patents costs about three times as much a US patent with equivalent coverage—€30,000 as opposed to €10,000—mainly because the European patent must be translated into as many as 20 languages. The 'London Agreement' for updating the European Patent Convention, requiring only that patent applications be filed in French, German or English, would be a big step forward. If individual inventors, small companies or even large enterprises are to

have affordable access to the patent system and a level playing field in Europe, the number of language translations required to get a patent simply must be reduced to the bare minimum.

Second, the patent system must provide business certainty. At present, the balkanised system of patent courts across Europe can produce duplicative proceedings and inconsistent results. Without a unified court of appeal, a European patent can be declared valid in Germany but invalid in the UK, or infringed in Sweden but not infringed in Spain. The European Patent Litigation Agreement (EPLA), another update of the European Patent Convention, would help tremendously by providing a common court of appeal. A well-designed Community Patent could do the same.

Finally, the system needs to maintain the underlying patent law, which already works well to promote innovation and competitiveness. There have been some recent calls from the fringe to rewrite patent law, tinker with the rules of what is patentable, or add new qualifications. Any of these would be counterproductive. In fact, European patent law works remarkably well. Most of the complaints one hears about the US patent system simply do not apply in Europe. Rigorous examination and opposition procedures at the European Patent Office mean that the quality of European patents is high and few trivial patents get through. There are no business-method patents or patents for software as such, but all inventions with a 'technical effect' in any area of technology can be patented and protected.

An affordable and predictable patent system in Europe is vital to European competitiveness and innovation. A few important improvements along these lines would be well worth the exercise of political will needed to deliver them.

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Europe should look abroad for research partnership models

As he looks for ways to improve the contribution which European universities can make towards developing the knowledge economy, Mateo Valero draws unfavourable comparisons with the United States.

"If you see what is happening over there in the US, we are a long, long way from them. We need much more cross-pollination between companies and universities," the director of the Barcelona Supercomputing Centre explains.

He points to the well-established American practice of sending students as interns to major companies during their holidays. In Europe, such schemes are rare, although he successfully initiated one this summer which enjoyed positive feedback from the firms that participated. Teaching staff too, he believes, could benefit from similar exchanges.

Funding is clearly an issue, particularly for long-term research lasting five to ten years. That continuity and stability of staff in the laboratory enables researchers, Valero explains, to work not just on the next generation of products, but on the ones which will come after that. "Companies are looking for tomorrow, not the day after tomorrow. In academia, we should be looking even further ahead into the future," he says.

The European Union can obviously play a major role. Michael Resch, director of the High Performance Computing Centre at Stuttgart University, fears that the EU is now concentrating too much on pure research. "Ten years ago, national member states would fund basic research and you would get some money from the EU to work with industry and encourage know-how transfer. Now they both fund basic research and do not promote partnerships with industry," he says.

They are hoping that the 7th research framework programme and the new European Research Council will inject the necessary flexibility to develop university/industry partnerships.

Simon Cox, Professor at Southampton University's School of Engineering Sciences, points to other financial obstacles. Whether a university owns its intellectual property rights or not can vary depending on the form of funding it receives – a potential problem when it looks to create a spin-off company. Financial bottlenecks can also occur when the research money ends and the process of trying to commercialise the results begins and when a small company is looking for a major financial injection to make the leap, say, to a turnover of several hundred million euro. Like his two colleagues, he believes lessons can be learnt from the US.

"What I would like to see is a recognition in Europe that there are different ways of doing things. We should look at best practices and if we have the aspiration to build big software or hardware companies, we should look elsewhere in the world and study the climate that makes it happen," he says,

The trio maintain that academia must reassess its role and not think that the purity of its work would be contaminated by commercial connections. "I do not distinguish between basic and applied research, but only between good and bad research," says Valero.

Resch agrees. "In the US, research in universities is considered to be beneficial to the whole of society and companies help to fund it. In Europe, universities are seen as more mediaeval places with clever people and fancy ideas. The public should be more aware of the benefits of research, and university colleges should be aware they get money from the tax payer and should give something back," he says.

Cox points to the benefits for the business community itself if it too opens up and involves the academic community in the genesis of its work. "By getting in early on, they can listen to our expertise and advice. Feedback at an early stage can often make a significant difference."

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