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COMMUNITY PATENT TO A NEW DEVELOPMENT STRATEGY OBJECTIVES OF THE UNION

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Abstract: *The article discusses issues related to the issue of EU patent system and its importance to the realization of a central pillar of the innovative EU as a foundation of Contemporary Knowledge-Based Economy. It also points to the need to unify and strengthen the protection of industrial property rights. In addition, the article is characterizes steps towards the harmonization of rules and the barriers towards the establishment of an EU patent. The conclusions of the article mainly indicate the need to intensify work on this issue because without effective protection of inventions and technical ideas of completed statutory grounds, it will be impossible to fully realize the idea of so-called Innovation Union.*

INTRODUCTION

The contemporary economic policy is oriented at the improvement of competitiveness, innovation, and even at effective transfer of exclusive rights based on uniform rules. At the same time it requires the creation of explicitly outlined frames of protection of industrial property's laws. A crucial role in this scope may be fulfilled by the institution of the community patent.

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Independently from the ongoing discussions regarding the essence and rightness of the patent system, in the area of union policies the attempts to carry out the ideas of its strengthening and standardizing are consequently undertaken. Inventions and their derivative innovations are undoubtedly the driving force of the economic development. As the practice shows, the countries with a strong patent protection are at the same time more innovative.

“If we didn’t have the patent system, it would be irresponsible, based on our current knowledge regarding its economic consequences, to recommend its implementation. However, if the patent system has existed for many years, it would be irresponsible, based on our current knowledge, to recommend its elimination” (Łazewski 2008).

Therefore, the protection of inventions, technical thought with the statutorily fulfilled conditions, constitutes one of main goals of the new strategy of development EU2020. It is a milestone in the journey towards the realisation of ideas, so called Innovation Union, which will carry out tasks connected with the increase of research-developmental activity of subjects, with special consideration of the sector of small and medium enterprises, and activities connected with the solution of fundamental social-economic problems created in the Strategy (climatic changes, unprofitable demographic trends, poverty, stimulation of enterprise).

The aim of the work is to introduce the essence and particular functions of the patent system, the barriers connected with the performance of ideas of the Community Patent and the directions of changes leading to the enhancement of the union patent system’s effectiveness.

INNOVATION UNION – ESSENCE AND GOALS

The superior goals of the new strategy EU2020 announced in March 2010, outlining the direction of the social-economic growth for the next decade, include:

- increasing the employment index for people within the age range of 20–64, from the former 69% to at least 75%;
- increasing the size of investment in research and development to the 3% GDP level (with special consideration of the private sector and new research tools);
- decreasing the emission of greenhouse gases about 20% in comparison to the level from 1990 or about 30% if the conditions seem profitable, increasing the share of renewable energy to 20% and reaching 20% of the energy efficiency’s growth;
- decreasing the share of people with primary education to the level of

10% (from previous 15%, with the simultaneous increasing of the percentage of people with the higher education within the age range of 30–34 to 40%;

- decreasing the number of the Europeans living below the poverty level in particular countries by 25%, which should cause a notable improvement in the economic situation of 20 million people (COM (2010) 2020 final).

The above goals are the consequence of accepting three central initiatives of the Strategy. They include actions connected with the broadly understood intellectual capital, balanced development and reinforcement of the work market and social-economic cohesions of countries.

Regarding the intellectual capital, the foundation of actions concerns three groups of problems – innovations, education and development of computer network. The flag initiative connected with aspiring to innovative Europe is the improvement of frame conditions and the access to sources of financing in order to reinforce the innovation chain and to increase the level of investment connected with them. It is, among others, about the reinforcement of cooperation between work and practice, so that the consequently created innovations were the product in the market meaning. In guidelines concerning education (programme “Young people on the way”) it was shown that there is a necessity to improve the effectiveness of the educational system and the international appeal of the higher education. Regarding the problems of disseminating the digital network, all undertaken actions should aim at disseminating the access to wideband Internet links and benefiting from the uniform digital market, not only by enterprises but also by households.

Using the innovation as a tool to stimulate the development of economy is the consequence of discovering theoretical deliberations – mainly models of endogenous growth, the essence of which was presented, among others, in works of P. Romer and R. Lucas (Romer 1986, Lucas 1998). Innovations usually appear as the effect of technical progress, so the accumulation of scientific-technical knowledge or human capital used directly in the production process (Tokarski 1996). Belief that the long-term economic growth is not determined by collected savings – as in neoclassical models, e.g., Solow-Swan model (Nowak 2007), but mainly depends on investing in human capital, knowledge and its derivative innovations, has led to the reorganisation of countries’ economic policies and attempts to implement assumptions of endogenous growth models into practice. It was accepted that actions in this range may have positive outer effects connected with spreading the knowledge, technological progress and innovation (Schumpeter 1939). They, for instance, change the economic structure, and bring benefits not only to those who have directly invested in them, but to every-

one who wants and who can use them (Cohen, Levinthal 1989). In a long run, this leads to the growth of productivity, which neutralizes the phenomenon of decreasing incomes, inextricably connected with the necessity to increase the expenditures in the traditional sense. Thus, the conscious investments of the internal character, which increase the research-developmental and technological potential of the economy and they contribute to the growth of human capital, enable the constant and competitive economic growth.

However, the problem is that the broadly understood innovation will meet the specific real barriers weakening the strength of its positive influence on the economy. So, in order to limit the obstacles weakening the technological development, and at the same time the dynamisation of the development based on knowledge and innovations, the European Commission passed the project “Innovation Union” on 6 October 2010. Its most prominent assumptions are included in several priority actions.

The first one is “promoting high quality in education and developing abilities.” Such activities are connected, among others, with creating attractive conditions of employment in education, shaping strong stimuli for running research-developmental works, effective strategies of attracting and promoting researchers. In this range, there are also demands to work out the specialist benchmarking of colleges, in order to mark out their way to improve effectiveness and competitiveness, as well as clear comparative criteria. Another important step, which has been discussed for many years, is the improvement of cooperation between business and colleges by creating the platform of information and needs exchange, so called “knowledge alliance.” The promoted features of contemporary scientific and didactic centres are: interdisciplinary nature, enterprise and e-skills training.

Another challenge for the Union’s innovation is the completion of European Research Area’s ideas, the fulfillment of which was planned to 2015.

Another crucial action concerns the concentration of EU financing instruments within the innovation of the Union’s priorities, which means, among others, the focusing on actual social problems and facilitating the access to financing means. The supplement of the above point are the actions connected with the improvement of accessibility to financial means for innovation companies and supporting the European Institute of Innovation and Technology as the institution administering the European innovations (one of the ideas concerns the evaluation of the “EIT degree” as the peculiar international label of perfection).

An especially crucial issue are the actions connected with appointing the uniform market of innovations. Their fundamental goal is finishing the work on the Community Patent – with the uniform system of solving dis-

putes and justifications, as well as standards. Individual countries have been obliged to inspect and adjust the national regulations to requirements of the international patent system.

What is also postulated is leaving the supporting of non-market projects towards commercial ones, useful in practice and awaited by the market. In this meaning, innovations are of the “goal” character – it is about fighting the social and economic problems of countries. The above course of actions also includes the necessity to spread the benefits from innovations, as the positive external effects should spread to the widest circle of recipients possible. A broad plan of regional research and creation of cluster structures will be used for this purpose.

All of the above actions require the involvement and consolidation of powers from countries. Joint efforts seem to be essential in order to convince the citizens of the Union and the third countries that it is worth living, working and planning the future here. Innovation is nonetheless the key investment in order to perform this ambitious assumption. For example, the previously mentioned incensement of expenses for research and development to the 3% level of Union’s GDP, may create 3.700.000 new jobs and bring the annual increase of GDP to 795 billion euro in 2025.

COMMUNITY PATENT

Reorganisation of the previous patent system is an integral element of the building process of the Innovation Union. Independently of the discussions on the international forum concerning the essence and rightness of the patent protection, the Union’s institutions rather consequently undertake attempts to accomplish its reinforcement and unification, assuming that the effective protection of intellectual property rights – with special consideration of the industry property – constitutes the green light for innovation and commercialization of inventions. Thus, it realizes the strategy of development based on the broadly understood knowledge, as well as the new strategy EU2020.

The conviction about the correlation between the number of acquired patents and innovation (in consequence also competitiveness) of individual economies is reflected in the study of different innovations, which refer to protective rights. They are systematically published and refer both to innovations of countries and regions. One of them was the so called European Innovation Scoreboard (EIS), transformed into Innovation Union Scoreboard (IUS), which by evaluating the countries’ innovation takes into consideration, among others, the number of new EPO patents, the number of new USPTO patents and the number of new triadic patents for a million of

inhabitants. Currently, methodological works within the patent area are led in OECD and Eurostat, and consider such issues as the development of new indexes (e.g. values of patents) or joining patent data with data from business research.

Rights of industrial property so the creator's right granted statutorily to the exclusive, gainful and professional usage of inventions are the specific set of entitlements, whose accomplishment stirs numerous controversies concerning the theory and economic practice. As it was mentioned above, supporters and opponents of the idea of strong protection of exclusive rights quote strong arguments for their theses and they do not stop their argument exchange (Zajączkowski 2003). It is understandable, because rights of this type bring about specific problems striking the very core of the idea of the full and unhindered freedom of goods rotation. Constituting the statutory form of monopoly, they tend to escape the rules of competition in the national and international dimension. Creating the specific intellectual monopoly, they simultaneously create the legal and common-sense foundations of its maintenance in the form of patent protection. This is the only form of monopoly sanctioned in the area of law and economics. This is understood, because the economic activity, whose goal is the production or service activity, is contemporarily based on strictly determined technologies, almost always constituting the subject of exclusive rights. "Patent as the negotiable right, which can be licensed, allows the spreading of knowledge included in the patent, contributing to the technological and economic progress. We should remember that it is not the invention that makes the progress but its usage" (Szczepanowska-Kozłowska 2003)

Thus, the patent system has two main goals to accomplish. First of all, it has to encourage to run the research-developmental activity and to make its results available with strictly determined, honest and profitable rules, which facilitates the spreading of knowledge. Secondly, it has to be the motivation for intellectual effort, creating inventions and their commercialization in the form of innovation. Thereby agreeing to the temporary limitation of own rights – in the form of patent monopoly – the society at the same time gains new or improved products, services or ways of managing. "The patent constitutes the instrument of creating and publically revealing new and useful progresses in technology, in return for the exclusive monopoly for the limited period of time. The balance between motivating to generate innovations and awarding the invention, patent protection on one hand, and taking care for avoiding monopolies of the unnecessary and blocking the competitiveness on the other, was the feature of patent rights awarded from the very beginning. (...) Individual investors must draw sufficient benefits from their innovations and avoid or limit the probability of imitations. Otherwise, as it is pointed out by M. Lemann (Leman 1985), inventors could

recognize the introduction of new technologies and works on them as unprofitable, what would lead to the glaring waste of resources.”

The idea of a common union patent system isn't new. First steps in this direction were undertaken in 1975 by passing the “Convention for the European patent for the Common Market”, which despite the ambitious plans was not ratified by countries. The next attempt was undertaken in December 1989, by passing the “Agreement relating to Community patents” as the improved version of the previous one. However, also this document was ratified only by 7 countries, with the obligatory condition of the universal ratification (the agreement was not accepted by 5 countries). Despite the real barriers in building the uniform patent system, the essence and main rules of patenting in particular member countries are similar (e.g., providing the possibility of legal protection of inventions in all areas of technology during the time period of twenty years and limiting the forced licence), what results, among others, from the fact that they are the sides of Paris Convention signed in 1883 (1900, 1911, 1925, 1934, 1958, 1967, 1979), TRIPS agreement, and most of them also of the Convention regarding the European patent. However, these are still no uniform frames eliminating the existing fragmentation of the court system, excessive costs and procedural length of European patent regulations. That is why, in 2000, the European Commission worked out the next version of the document, which was to reorganise the existing patent system. The main assumptions of the directive were based on the demand to reduce procedural costs, to increase system's flexibility, among others by reducing the time from proposing the motion to its settlement and to fixing the special court, which would settle cases connected with invalidating patents. Next years were the next attempts of final shaping of the patent system, one of them included the organisation of the so called “public hearing” –survey social councils, which were to point out the most important problems and directions of the development of the community patent institution. The next steps is the presentation of the agreement's project about the European Patent Court and the project of the Council's directive establishing the uniform community patent (published on 23 May 2008). Despite the size of legislative acts and numerous attempts to systematize these issue, the community patent system was perceived as lengthy, expensive and ineffectively protecting the exclusive rights of creators. “The fragmented single market for patents has serious consequences for the competitiveness of Europe in relation to the challenges of the US, Japan and emerging economic powers such as China. The EU lags behind the US and Japan in terms of patent activity. Even in Europe, the US and Japan patent more than the EU: at the EPO 137 patents per million population are from the EU versus 143 patents from the US and 174 from Japan. The lack of critical patent mass at home translates in less

patents that are filed in both the US, the EU and Japan, the so called triadic patents. Whereas Europe has 33 triadic patents per million population, the US has 48 and Japan have 102. Therefore, the US and Japan have respectively 45% and 209% more triadic patents than the EU” (Commission’s Announcement for the European Parliament and Council – Improving the patent system in Europe – COM/2007/0165).

Currently, appointing the uniform community patent has mainly the ordering nature, it doesn’t refer to the rightness of patent’s existence per se, which is its essence. Instead of separate systems, only one is promoted, which fulfills the functions concerning the existing ones, while at the same time it reducing the costs and facilitating the formalization of the procedure connected with the invention proposal for protection. In order to fulfill the statutory requirement of novelty, self-evidence and applicability of the invention and after the accomplishment of the standard, simplified application procedure obtain the exclusive rights. The European Commission is for maintaining the strong protection of exclusive rights, its innovation stimulator. This guarantee function (certainty of the compensation for the incurred effort and expenditure) of the patent, first of all, undoubtedly encourages entrepreneurs or private subjects to increased research-developmental works, and secondly, reveals the results of the activity, on fair conditions, acceptable by all parties.

The system proposed on the Union forum will still differ from the solutions accepted in rival patent systems. For example, the American system has the procedural rules, as in the USA there is the “first-to-invent” rule, while in the Union or Japan there is the “first-to-file” one, or with the range of patent motions – in the USA the patented invention doesn’t have to provide physical effects, so it is customary to patent business methods or software. However, this is undoubtedly a significant step in a right direction.

The most important changes proposed by the European Commission include:

- legislating the institution of one community patent in effect in all member countries, without the necessity to propose the invention separately in each of them, preceded with the review of the previous rules (among others concerning the requirement of novelty, non self-evidence and application of the invention) with the potential establishment of new and essential ones in order to promote and use the patent system;
- reducing time from the moment of submitting the motion until obtaining the protective rights, as so far this period has been 5 years on average, and regarding the solutions of biotechnological nature even 7 years – this meant in practice that it was not profitable for companies, especially enterprises to deal with high technology, to even start trying to get the patent with the 1,5 year life of inventions in this business, because at the

moment of obtaining it would be simply worthless;

- lowering the procedural costs connected with patent application, mainly resulting from the necessities to translate the documents into 27 languages – as an example of excessive costs the following calculations are often presented – recognizing the European patent in 13 countries costs about 20 thousand Euro, with about 14 thousand Euro being spent on translations; hence the European patent seems to be, in simple calculations, over ten times more expensive than the American one, for which we have to pay only 1850 Euro – after the changes, the motion will be translated into one of the official languages (English, German or French), while the patent reservations (e.g., concerning the protection range, licence, etc.) into two remaining languages (lowering translation costs is still a disputable issue, for example regarding the Polish entrepreneurs, who will be forced anyway to do translations for themselves);
- the Commission's motion also describes the accompanying means, which must be accepted if the inventors want to have easier access to the patent system. Most of all, we have to make all high quality machine translations of EU patents available in all official languages of the EU; this is extremely important bearing in mind the fact that it results from the research conducted by the European Patent Office, where every year over 20 million Euro is spent on duplicating and working out the already existing ideas – such a clear waste of efforts and money is unfortunately the effect of the lack of knowledge about the current state of technology;
- appointing a modern institution solving all matters connected with functioning of the patent system – instead of previously existing European Patent Office.

The final goal of the above actions is the creation of the uniform cohesive market of innovation so that in 2014 it would be possible to issue first community patents. Reaching it will mean the strengthening of protective guarantees for the subject deciding about the potential exchange or sharing the knowledge, often of the strategic nature, with other companies. Protection of exclusive rights conditions the cooperation between the subjects, and in the further perspective also between the countries. It enables and creates the transfer of thought and technology. It is also worth remembering that, taking into consideration the primeval value of owned rights, the entitled subjects are prone to share their knowledge mainly with those countries or enterprises, whose legal protection effectively discourages the rivals from appropriating someone else's ideas.

CONCLUSIONS

The definite protection of industrial property rights in the form of temporarily limited exclusive right, constitutes a strong and indisputable stimulus in creating innovation and enterprise based on creative and innovative undertaking of market challenges. It constitutes a specific gratification of the subjects' intellectual effort. It is also the economically justified necessity to compensate the costs connected with expenditures to work out and commercialise the innovation. The essence of the contemporary enterprise is not about duplicating someone else's solutions but about creating our own. Today's competition is a rivalry based on technology and knowledge, the broadly understood intellectual capital being its source. Thus, creativity of subjects acting on the market or only suggesting new ideas, awarded with the patent, is a notable added value, which cannot be omitted.

In the well understood social-economic business we should aspire to establish a rightful entrepreneur-creator dialogue with the society-recipient of its invention. This is a fundamental assumption connected with the accomplishment of the economy's idea of the ageless and ex-territorial character. As Ch. Freeman used to write "radical innovations don't bring about sudden and obvious profit. The start takes place after a quite long pregnancy period. This means that during the pregnancy period the positive and patient national politics of help, incentive, experimenting and adaptation may be especially important." The author postulates the creation of the "additional fast lane of movement for breaking innovations." (Kwiatkowski 1990). Currently, the modern and uniform patent procedure may be such motorway for inventions and their derivatives.

As there is no doubt that the European Union, troubled with crisis and the eternal complex towards the economy of the USA, must stimulate and learn how to effectively use its potential in industrial property rights, which shape the economy reality thanks to their progressive character. Its protection is the economical egoism. Only the innovative Europe has a chance to carry out the priority goals determined in the EU2020 Strategy, reducing the dependencies between the economic development and the usage of natural resources, modernisation of the transport sector and spreading the effective application of energy, improvement of the business surrounding, support for the development of the strong and stable industrial base able to cope with the global rivalry, increasing the working power, better adjustment of the demand and supply on the work market and providing the social and territorial cohesion.

Innovation Union is a place where the possibility of obtaining the benefits from the economic development will be given to everyone, also to the poor and excluded, in the manner enabling their worthy and active participation in the social life.

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