



What patent system for Europe?

BY ALAIN POMPIDOU*

INTELLECTUAL PROPERTY AND, IN PARTICULAR, PATENTS REPRESENT A CENTRAL SUPPORT FOR INNOVATION AND FORM AN ESSENTIAL ELEMENT OF THE KNOWLEDGE ECONOMY IN EUROPE. A WELL-FUNCTIONING PATENT SYSTEM IS A GREAT ASSET TO EUROPE AND ONE WHICH MUST BE DEVELOPED AND FULLY EXPLOITED.

Under the conditions of the knowledge economy, the role played by knowledge and information has increased. The prosperity of individuals, of groups and of states is determined largely by their access to these resources. In such a context, those who create knowledge have the greatest advantage of all and it is this group, Europe's innovation community, that adds to Europe's reservoir of knowledge and increases its competitiveness.

The global economy has led to a renewed recognition of the value of knowledge and to a massive increase in interest in intangible assets. The Lisbon and Barcelona declarations reflect these realities. It is the task of the political system to ensure that Europe has efficient structures and a culture to

support innovation, as these are a key to economic growth.

In this context the patent system plays an essential role. There are at least three reasons for having a strong one in Europe. Firstly, only patents provide the necessary incentives and guarantees to innovators that allow them to enter the market place. It is through patents that they can expect the legitimate economic benefit accruing from their invention. The filing of a patent is an indispensable step towards successful commercialisation of an invention in the free market. Without adequate patent protection a business would not even contemplate exposing its inventive products to the market. They would remain secret and unexploited, especially where high-development costs are involved.

Secondly, patents serve as catalysts in a process by which innovation breeds innovation. It is not only the innovator that benefits from each patent, but also society at large in return for the rights granted to the patent holder, the patent system obliges the innovator to disclose his innovative idea to the public. The patent system therefore acts as a powerful knowledge disseminator, informing researchers and society of the most recent technical developments.

Thirdly, the patenting process itself is of value. The grant procedure can be followed in tandem with the development of market and commercial analyses. It allows innovators to manage their risks in accordance with fluctuating economic expectations. Investment in technology is often dependent on the prior es-

THE KANGAROO GROUP AISBL IS AN INTERNATIONAL, NON-PROFIT MAKING ASSOCIATION BASED IN BRUSSELS, WORKING FOR THE COMPLETION OF A EUROPEAN HOME MARKET. OUR NEWSLETTER IS DISTRIBUTED FOUR TIMES A YEAR FREE OF CHARGE THROUGHOUT LIBRARY COUNTRIES IN FRENCH, GERMAN AND ENGLISH. WE MOST WELCOME ARTICLES SHOULD IN SOME WAY BE RELEVANT TO THE AIMS AND OBJECTIVES OF THE KANGAROO GROUP AISBL. THE VIEWS EXPRESSED IN THIS NEWSLETTER DO NOT NECESSARILY REFLECT THOSE OF THE KANGAROO GROUP AISBL.

EDITORIAL BOARD | Ana Palacio Vallejo-Suñer, Carlos Alfredo Gasóliba, Böhm, Alain Lipietz, Enka Marin, Karl von Wogau, Liselotte Hallen, Séverine Lérat, Christopher Scott-Wilson, Dorothy Smith

EDITORIAL OFFICE | The Kangaroo Group, c/o European Parliament, Rue Wiertz, 60 EAS, 2, 60, BE-1047 BRUSSELS

TELEPHONE | +32 2 541 0360

FAX | +32 2 541 2936

E-MAIL | [INFO@KANGAROODGROUP.ORG](mailto:info@kangaroodgroup.org)

WEBSITE | WWW.KANGAROODGROUP.ORG

Photographs are reproduced with kind permission of the Audiovisual Library of the European Commission and the Photo Service of the European Parliament.

Copyright © 2005 the Kangaroo Group AISBL

All Rights Reserved

IN SOME ARTICLES, SUB-HEADINGS AND INTRODUCTIONS HAVE BEEN ADDED BY THE EDITORS. PLEASE INFORM US OF ANY SUGGESTIONS REGARDING THIS NEWSLETTER. YOUR OPINIONS MAY BE PUBLISHED IN THE NEXT EDITION.

establishment of patent rights. Such rights may have considerable commercial value, and securing them and the potential subsequent income through transfers or licensing may be crucial business assets.

Despite the creation of a well-functioning European Patent Office almost 30 years ago, the current system is far from perfect and there is much potential for improvement. There are three main areas where changes are necessary. These are:

1. A reduction in patenting costs for innovators
2. A better legal framework, including a unified European Patent Court
3. A strengthened patent culture for Europe

The high costs of patenting are a source of concern, especially for SMEs. The European Patent Office has made a significant contribution to keeping costs down, reducing its procedural fees four times in the period 1995 - 2003 which resulted in a 38% fee reduction in real terms.

However, further cost reductions are necessary. One area which is particularly costly to users is the current translation regime, which requires the translation of each of the countries where protection is sought. The work started after the 1999 intergovernmental conference in Paris has made good progress to reducing the cost burden. The result is an internation-

al agreement, known widely as the London Agreement, which represents Europe's best chance of cutting translation costs. If ratified by at least 12 states including Germany, the United Kingdom and France, it could lead to reductions of translation costs of up to 50%.

Secondly, although Europe has a very good centralised granting system in the form of the European Patent Convention, there is a great need to introduce a centralised patent court to handle post-grant litigation. In the current system litigation is based on non-harmonised rulings by multiple national courts, leading not only to prohibitive costs for litigants, but also, in many cases, to divergent rulings in the various countries. This problem is set to get worse by 2010 the number of national patents granted through the European Patent Office and still valid in the Member States is likely to exceed 2 million, none of them being subject to a European jurisdiction.

This unfortunate situation stands in stark contrast to the existing systems in the USA and Japan which both benefit from a unitary patent litigation system. A similar solution has been proposed for Europe under the draft European Patent Litigation Agreement, EPLA, which, if successful, will establish a single patent court for Europe. Such a court would provide both lower costs and greater legal certainty, thereby greatly enhancing the environment for innovation in Europe.

Thirdly, there are also improvements required in the patent culture in Europe. It is clear that Europe lags behind the US and Japan also in terms of awareness and utilisation of patents. This is due in part to the deficiencies in the existing legal framework in Europe, but also due to the lack of a strong patent culture.

In terms of patent licensing the global technology transfer market is worth in excess of \$100bn however, the lion's share of this is conducted by Americans. Compared to the USA, relatively few Europeans either understand the benefits of the patent system and even fewer actively exploit its full value. A recent EPO study demonstrated a clear under-utilisation of our online patent information facilities, despite being available to everyone free of charge. The same study also showed that, compared to the USA, patent information was used by Europeans mainly for scientific purposes and less as a business tool.

Europe needs to increase both the awareness and the general understanding of the patent system. Our goal should be the creation of a strong patent culture in Europe in which patents are freely acquired, freely transferred and freely licensed, where Europe's innovators can rely on an open market in ideas embodied in patents.

• Alain POMPIDOU is President of the European Patent Office

The Kangaroo Group is pleased to welcome Professor Alain Pompidou, President of the European Patent Office, as new Honorary Kangaroo Group Member

Alain Pompidou has had a long and distinguished academic and political career. He took doctorates in medicine, science and biology and from 1974 to 2004 was professor of histology, embryology and cytogenetics in the medical faculty of the University of Paris. Until 2004 he was also director of the laboratory of the Cochin-St Vincent de Paul-La Roche Gayon Hospital in Paris and chairman of the hospital group's advisory board. At the same time, Mr Pompidou served on the consultative and scientific committees of numerous national, European and international organisations including the WHO, UNESCO and the European Commission. From 1990 to 1998 he was vice-president of the Ethics Committee of the Human Genome Organisation (HUGO). Between 1986 and 1997 he acted as special adviser to the French prime minister, the minister of research and higher education and the minister of health. As a member of

the European Parliament from 1989 to 1999, he was particularly concerned with the EU framework programmes for research, with the preparation of the Directive on the legal protection of biotechnological inventions and with bioethical issues. From 1994 to 1999 he was president of the European Parliament's Scientific and Technological Options Assessment Office. Since 2004, Mr Pompidou has been a member of UNESCO's World Ethics Commission. From 1999 to 2004 he served as spokesman on research and space policy on the French Economic and Social Council. From 2000 to 2004 he was a member of France's newly created Academy of Technologies. He is also the author of numerous articles and monographs on science, ethics and society, and on biomedical ethics. His book "Souvenirs toi de l'Homme: l'éthique, la vie, la mort" was published by Editions Payot in 1989.

Distinctions

- Chevalier de la Légion d'Honneur
- Officier de l'Ordre National du Mérite
- Chevalier des Palmes Académiques