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Sectoral e-Business Watch Workshop Summary

IPR for Competitiveness: Challenges for European ICT SMEs

Paris, June 4th, 2008

1 Summary

Background

Intellectual property rights (IPRs) which include copyrights, patents, and trademarks, are widely recognised as **key drivers for innovation** in the information and communication technology (ICT) domain. Adequately protecting and promoting IPRs is thus fundamental to Europe's future ICT competitiveness. Considering the current debate on the existing IPR legal system and its proposed evaluation, this workshop presented findings from a recent study on the use of IPR among European ICT small and medium-sized enterprises (SMEs) carried out in the context of the Sectoral e-Business Watch (<http://www.ebusiness-watch.org>). Expert participants from academia, industry and government institutions discussed the study's findings and provided suggestions for further elaborations.

Programme

Following an introductory welcoming by the host, **Laurent Gille** (Departement de Sciences Economiques et Sociales de l'Ecole Nationale Supérieure Telecom Paristech), the workshop was opened by **Hasan Alkas** (EC, DG ENTR) who also welcomed participants and introduced the Sectoral e-Business Watch (SeBW) program. After this introduction, **Maria Woerndl** (empirica GmbH) outlined the main results of the 2007/2008 SeBW program. **Gabriella Cattaneo** (IDC EMEA) and **Elena Vaciago** (IDC Government Insights) then presented the results of the empirical study on the use of IPR by ICT SMEs. **Vincenzo Spiezia** (OECD) and **Carlo Piana** (Lawyer) acted as discussants providing comments on the findings of the IPR in ICT SMEs study.

In the second part of the workshop, panel participants **Charles-H. Schulz** (Foundation for a Free Information Infrastructure, FFII), **Carlo Piana** (Lawyer), **Henry J.F. Ryan** (Lios Geal Consultants), and **Alfred Radauer** (Austrian Institute for SME Research) engaged in a lively discussion about IPRs in ICT SMEs. Issues discussed included:

- Possible links between IPR use, competitiveness and business models
- Problems encountered by ICT SMEs considering IPR and
- Policy implications and recommendations arising from the research results

The workshop ended at mid-day with **Hasan Alkas** (EC, DG ENTR) and **Gabriella Cattaneo** (IDC EMEA) thanking participants and summarising the main issues discussed.

2 Main points presented and discussed

Comments on the study findings from discussants:

Vincenzo Spiezia stated that

- The study reports many interesting aspects, as IPRs are becoming more important for SMEs; furthermore, this study is important as it includes a search for relevant new innovation business models
- It is interesting to note the variety of behaviour and the sophisticated use of IPR among SMEs, as these are usually not found in enterprises within these size bands
- Detailed information about method and methodology is needed. Further information about the sample and issues such as sample industry bias should be discussed
- A methodological limitation should be highlighted: it is difficult to link the survey with data from other databases such as business statistics (in particular the Community Innovation Survey)
- European Patent Office processes appear too costly for SMEs although European patent quality is high. A solution might be to help SMEs through external support and providing resources rather than reducing cost
- A question about the sophistication of IPR adoption and firm growth arises, especially regarding 'What is the cause and what is the effect?' If growing firms are able to get the IPR, there is no need for policies – it would be important to grasp this issue.

Carlo Piana stated that:

- IPRs cover many different things, and it is important to keep in mind that the study includes IPRs other than patents (where the issue of cost resides). To access IPRs an SME must be sophisticated, and consider the hidden costs of enforcement and litigation
- It is very interesting that the majority of firms in the study's sample do not have dedicated IPR management: this could be a hint that there is a business case for support services
- The intensity of IPR use measured by quantity of IPR can be used to measure the dedication, but it is not the best indicator for sophisticated use (a firm with only one tool as patents could do many things with this one patent).
- The issue of lack of harmonisation is difficult to solve: one of the temptations could be to solve the lack of harmonisation with shortcuts, through for example mutual recognitions between US and the EU; this however would could potentially create more problems
- There are many IP-intensive businesses while other firms use less: therefore, it is important to take into account the different business models
- Looking at companies that are using both, open source and patents, the possibility should be accounted for that they have different lines of production.

Other points raised by participants following comments from the discussants:

- Patent trolls: it is true that they constitute a problem for many firms, but it has to be considered that, according to the law, they are legitimate traders
- The question arises, what kind of patents the majority of ICT SMEs are considering and using, national or international patents?
- What does the answer over patent quality really mean?
- Are the opinions of ICT SMEs specific for the European IPR framework or are they general opinions?

- Did the survey measure whether ICT SMEs are happy with the choice of IPR they made, and did they know about the range of IPRs available to them?

3 Recommendations for improving the IPR in ICT SMEs study

The objective of the panel discussion was to gather expert opinions about the study on IPR in ICT SMEs and discuss these opinions with workshop participants. The main focus of the discussion was on policy recommendations emerging from the study

Panel member recommendations:

Recommendations from panel members for improving the study included the following:

Alfred Radauer (Austrian Institute for SME Research) pointed out that according to an abundant number of studies the usage of IPRs is linked to innovation performance and competitiveness, but on the micro-level there are many other, also informal, strategies (such as being constantly in the lead over competitors with innovation) and firms choose them for different purposes, depending on their individual business context. An important issue for SMEs (not only those from the ICT sector) is that they usually cannot enforce IPRs due to high cost for legal services. He gives an example of an SME he recently interviewed on the topic of R&D collaboration with large companies (as it is said that using IPR facilitates such cooperation): the SME's perception is that large partner firms will almost always try to take away the invention from them; hence, they try to make as much money as possible from the IPR in the initial innovation phases. The usage of IPR depends, among other, also on the differences in innovation know-how between the partners: if the SME's idea is extremely easy to copy, the SME will try to keep its idea for itself as much and as long as possible (i.e. use a trade secret). If it is copyable, but it takes some effort for re-engineering, the SME will opt for a patent as the large company will ascertain whether it is feasible to break the patent (if the invention were not patented, the large company would certainly re-engineer it; in the long run, it will also infringe the patent, but at least for some time some sense of security is present). If the SME possess know-how the large company is not likely to be able to copy, it will again stick comfortably to trade secrets. Thus, it is IP management that is correlated with individual business performance, and this is more about skills than quantity (quantity in the sense that the more patents the better).

Charles-H. Schulz (Foundation for a Free Information Infrastructure, FFII) highlighted the varied nature of IPRs – some work well for SMEs and are easy to engage in for them like trademarks – others tend to stifle innovation especially in the ICT sector. Research should consider that ICT make for a faster business and faster business model – patents instead are a tool of the past, of the industrial age – the important thing is that we are not living in the age of scarcity so that information is free – and we need to create the necessary conditions to foster this large pool of knowledge while fostering and protecting IPRs for ICT SMEs.

One of the issues for SMEs is that they usually lack the time and the funds for hiring a patent attorney: a reality check reveals that filing and protecting various patents is generally a large firm territory. Charles- H. Schultz also pointed out that the way innovation happens is by taking away the barriers and embracing competition – it is not about a tailored approach.

A common legal framework for IPR in Europe naturally makes sense, yet the question is how this can be done. He recommended not to copy other countries like the US - Europe needs its own digital rights system and commons – Europe should not position itself as the brilliant second, it has to be disruptive in order to compete.

Henry J.F. Ryan (Lios Geal Consultants) commented that the study provides some significant statistics about IPR management in SMEs. When IPR responsibility is given to SME senior management, the question arises how far ahead in time they think: is it short term or long term? When looking at it from a medium to long term point of view, the outsourcing of innovations is happening everywhere.

Henry J.F. Ryan also pointed out that some references to digital rights management (DRM) and content should be added to the report. Furthermore, attention to long term ties into DRM and standardisation should be discussed.

Another point for consideration is that the future of Europe is in the hands of SMEs – large corporations fulfil their roles and IPR cycles, yet the business ecosystem needs to be considered and conclusions should be drawn from it, in particular, about the business models for the future. Making money out of ideas is the point – a lot of innovative SMEs reside in the EU providing many new inventions, but these SMEs need to be able to make money from their inventions. A focus on business models might give EU policy makers an opportunity to improve SME performance through IPRs.

Carlo Piana (Lawyer) remarked that the policy recommendations presented in the report are very valid, especially the need of policy harmonisation. Policies sometimes tend to protect innovators rather than innovation which can be an obstacle. Promoting innovation among ICT SMEs in the EU should be the main scope. Another issue is the need to protect competition and let newcomers compete with established players.

Carlo Piana pointed out that SMEs cannot work alone; they have to work with other companies. Promoting standards and interoperability means promoting competition and IPRs are not against competition, they have the same goals as competition, so these things must be dealt with together. Another important factor is to take particular care of the impact of IPR on competition and on SMEs, as SMEs often do not offer products because they fear litigation from existing operators or large competitors.

Regarding the proposed policy recommendation to “enhance the utilisation of patents”, Carlo Piana suggested that it should include the issue “to do what with an IPR?” An SME showcasing technology is not the important scope: it is no good to keep patents in a drawer.

Workshop participant recommendations:

Recommendations from workshop participants for improving the study included the following:

Georg Erber (DIW) stated that the existing literature evidence is very inconclusive about the link between IPRs and innovation – some authors even reject a link between patents and innovation. George Erber also thought that the policy recommendations are very general but clear cut. He remarked that the point should be: first, do no harm – second, are there important policy questions? What about the length of the patenting process and how long should patents be valid for? These are specific questions to be answered.

Carlo Piana (Lawyer) replied that SMEs tend not to engage in IPR cross licensing. They are worried about litigation threats and misuse of the actual patent system.

Bruno Robine (PIN-SME)) argued that his experiences with patents are very good. He does not support the policy recommendation to ‘promote greater practical knowledge of the full range of IPR among ICT SMEs’: this is not enough and there is a need to promote alternative systems; and to help firms make alternative choices, i.e. help them to choose the right IPRs for them.

Bruno Robine also highlighted the role of the individual firm’s business model for IPRs: in the software games sector for example, the average life of a game is 3 months, too short and too costly to engage in IPRs. Furthermore, whereas the traditional technology innovation life cycle was 7 years it is now about 3-5 years. From his experiences, when SMEs decide to use IPRs they have only 18 months to make something of it before other firms copy the innovations and bring them to market.

For **Mark Lange** (Microsoft), the study presents some interesting information about the use of the different types of IPRs, especially the wide use of trade secret protection. He agreed with the third policy recommendation to ‘promote greater harmonisation between innovation policies, IPR policies, and SME policies’ as especially in the ICT industry, the prosperity of large businesses depends significantly on the prosperity of SMEs within the ecosystem: mutual dependency among firms within ecosystems tend to be strong. Mark Lange also pointed out that it is very important to recognise what aspects are and are not unique to SMEs’ use of IPRs - both, SMEs and large firms for example may have common interests to reduce trivial patents; this is not uniquely a SME issue. Likewise, SMEs

may lack the resources for such things as IPR management just as they may lack the resources for such things as environmental regulation management; lack of resources is not uniquely an IPR issue.

Hasan Alkas (EC, DG ENTR) added that a classification between SMEs that do innovation and SMEs that do not do innovations but, for example, focus on inventions would be useful.

For **Lucio Picci** (IPTS-JRC) the recommendations are too generic – but, as he pointed out, the ‘devil is in the details’. The cost of patenting varies enormously across the different EU countries depending, for example, on the scope of protection such as the size and type of market covered. One approach would be to reduce costs, but, on the other hand, costs should be raised to avoid the inflation of the patent system. Hence, there is a need to provide precise policy recommendations.

For **Alfred Radauer** (Austrian Institute for SME Research) the first recommendation 'to promote greater harmonisation between innovation policies, IPR policies, and SME policies' should include a better differentiation angle: it should differentiate between the two dimensions 'do we accept the framework as it is and help SMEs to deal with it? Or shall we change the framework? In essence, in his opinion, there is a need to do both. The time element should also be considered: it takes time to deal with policy recommendations and in the short term providing IPR training/coaching for SMEs would be a step forward. Alfred Radauer also remarked that University education rarely covers IPRs and a need for basic IPR education exists not only at University. He thinks that IPR knowledge should be available and accessible before SMEs tend to practically engage in IPR activities.

Charles-H. Schulz (Foundation for a Free Information Infrastructure, FFII) stated that, as an idealist on a mission, he believes that patents kills software as they are not suitable for software in general. Software is ‘quick business’ and patents originate from the industrial age which is very different to today’s service economy. For many ICT SMEs, patents create fear of litigation and conditions for legal ambush by large corporations. Hence, a basic recommendation would be to introduce a new patent directive at an EU level and to renew the European system banning software patents. Furthermore, national IPR offices should be put under the coordination of, and report directly to the European parliament.

For **Henry J.F. Ryan** (Lios Geal Consultants) the main issue is ‘to do no harm’. Competition law needs to be taken into consideration as are emerging implications from standardisation. In his view, one single initiative is not enough: a forum of stakeholders could be brought together who could then try to reach a level of understanding. This could be a step forward and provide common denominator pushing instruments that can be used by everybody. Henry J.F. Ryan mentioned that the ICT standard forum will hold a meeting about standardisation and IPR in autumn of 2008.

4 Conclusions

The workshop on IPR in ICT SMEs provided a good platform to discuss the findings from this recent study. One of the main issues for the European Commission, according to **Hasan Alkas** (EC / DG ENTR), is to explore the impact of IPRs on ICT SMEs. The main questions for the Commission include: what industrial policies could foster innovation in the EU and what innovation incentives are useful for ICT-producing SMEs? Other questions to be addressed include whether exclusive IPRs create barriers to innovation and what is better, open innovation or patent exclusivity, or something in between?

In conclusion, **Hasan Alkas** (EC / DG ENTR) summarised the key points raised during the workshop as follows:

- Changing innovation dynamics such as shorter product life cycles and sector characteristics such as the games industry need to be taken into consideration
- Networking effects are very important: pooling patents work only if there is a balance, if not other instruments are needed
- Further discussion about benefits for ICT SMEs from IPRs would be useful. This should include SME classifications and cost benefit analyses

- The study should include a short discussion drawing links between the results of the study and the existing literature
- The results from the study are generally considered very interesting by the experts.

5 Workshop participants

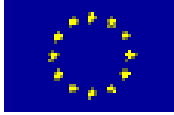
In alphabetical order:

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- **Marie-Florence Estimé**, Deputy Director CFE, OECD
- **Laurent Gille**, Director, Département de Sciences Economiques et Sociales de l'Ecole Nationale Supérieure Telecom Paris
- **Mark Lange**, Senior Policy Counsel, Microsoft
- **Mariarosa Lunati**, Administrator, OECD
- **Carlo Piana**, Lawyer
- **Lucio Picci**, Senior Scientist, IPTS-JRC, European Commission and University of Bologna
- **Catherine Quatravaux**, Economist, CCIP/IRPI
- **Alfred Radauer**, Researcher, Austrian Institute for SME Research
- **Bruno Robine**, President, PIN-SME
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6 Further information

Further information, including the workshop agenda is available at the Sectoral e-Business Watch Web site (www.ebusiness-watch.org) in the "eBiz Events" section.

For specific questions and feedback please contact the study's author Gabriella Cattaneo, IDC EMEA (g.cattaneo@idc.com) or the project manager Maria Woerndl, empirica GmbH (maria.woerndl@empirica.com).



About the Sectoral e-Business W@tch

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