



Perspectives on Patenting and digital markets – innovation, growth and employment

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Intel – digital innovation & contribution to economic growth in the EU

Innovation for digital markets is the lifeblood of Intel's business

- **Annual investments of more than \$10 billion in R&D**
- **Nearly 60,000 patents and patent applications**
 - Including more than 10,700 listed on EPO's online register
- **Intel in Europe:**
 - ~10,000 employees
 - Advanced manufacturing plant in Ireland:
 - Capital investment of €10.5 billion; €880 million contributed to Irish economy; 7,068 jobs supported; 756 Irish suppliers supported
 - More than 40 R&D locations in Europe
 - Austria, Belgium, Denmark, Finland, France, Germany, Ireland, the Netherlands, Poland, Romania, Spain, Sweden, UK
 - Computing technology, visual computing, Cloud, Internet of Things, security, automotive, mobile communications, high-performance computing
 - Long-term cooperation with EU universities and engagement in Horizon2020

Invention vs Innovation & Economic Growth

- **Innovative effect of an invention relies on practicing it through implementations, i.e. products offered to a market**
 - Typically requires commercial implementation by inventor and/or by others
- **(Only) wide-spread application of an invention contributes to economic growth**
 - By diffusing the innovation towards enabling new, improved or more capable products, and/or by enabling additional (on-top) innovation
- **Intel's strategy around innovation and patents promotes wide-spread diffusion of inventions. We innovate and contribute to growth by:**
 - Commercially implementing own inventions – building our share of the market
 - Enabling others to commercially implement inventions – seeding innovation ecosystems and growing the markets we operate in
 - Often by commoditizing inventions by contributing them to standards, e.g.:
 - Royalty-free licensing commitments for our patents in USB
 - Default royalty-free licensing commitment for IoT patents in OIC
 - FRAND licensing commitments in many other standards organizations

ICT patents & innovation – Is the EU system fit for the Digital Single Market? (1/2)

- **ICT is perceived to be a particularly patent-intensive industry segment**

- Mostly based on counting the number of patents – is this the right metric for the innovative value of patents in ICT?

- **As opposed to other industry segments, digital (ICT) products essentially built on a single patent are a rare exception**

- Smart phones, PCs, tablets, IoT devices typically combine 1000's of patents, and their value is determined by implementing a combination of many inventions

- **Are EU rules fit for supporting future economic growth in this situation?**

EU IPR Enforcement Directive: *“Member States shall provide for the [...] remedies necessary to ensure the enforcement of the intellectual property rights [...] Those[...] remedies shall be **fair and equitable** and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.”*

- Under which conditions can an injunction, based on a single patent, against a complex end product implementing 1000's of inventions be *fair and equitable*?
- How can these conditions be shaped to avoid deterring innovation and economic growth?
- What level of Member State variation can a successful Digital Single Market afford?

ICT patents & innovation – Is the EU system fit for the Digital Single Market? (2/2)

EU IPR Enforcement Directive: *“When the judicial authorities [of Member States] set the damages:*

- a) *they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any **unfair profits** made by the infringer and, in appropriate cases, elements other than economic factors [...] “*

– How to apportion value of (profits derived from) a single patent to a multi-component ICT end product?

- Very limited case law in EU (as e.g. compared to the US) creates uncertainty and may limit realizing the EU's full growth potential from innovation
- Also very limited guidance in case of FRAND-committed standards-essential patents (Horizontal Guidelines)
- We applaud the Commission for addressing this question in the recent Public Consultation on Patents & Standards in the context of FRAND-committed standards-essential patents

