

Innovation Insights' Perspectives: Exceptions and Limitations to Patent Protection

Observers of the World Intellectual Property Organization (WIPO) Standing Committee on the Law of Patents (SCP) have been invited to submit their perspectives regarding the effectiveness of exceptions and limitations to patent protection. Innovation Insights appreciates this opportunity to share our views, based on the practical experience of our members.

Innovation Insights is a cross-sectoral group of innovators that advocates for enabling environments for technological advancement. We believe that technological innovation will enable us to address society's greatest challenges in new and cost-effective ways. We consider effective patent systems that deliver quality, enforceable intellectual property (IP) rights in a timely manner to be one critical element of an enabling environment for technological advancement and, especially, for collaboration and knowledge sharing.

A well-functioning patent system encourages investments in research and enables valuable ideas to be expeditiously transformed into solutions that improve people's lives. The exchange of information between partners and "handoff" of promising research between institutions, firms, and other innovators – facilitated by patents and other forms of IPRs – is crucial to the development of solutions and their delivery, adaptation, and improvement. It also improves the knowledge base. This dynamic is referenced in the "G20 Blueprint for Innovative Growth", which endorses a voluntary approach to technology transfer.

In contrast, non-commercial technology transfer approaches based on broadening exceptions and limitations to patent protection are likely to be ineffective in, and even counterproductive to, accelerating technology innovation and diffusion. Government actions that reduce the availability or enforceability of patents can generate uncertainty in the marketplace, slowing the development and deployment of new technologies over the long term.

We submit the following points for consideration by WIPO members, and would welcome the opportunity to elaborate on them during the next SCP meeting.

- Innovation critically depends on collaboration between all relevant organizations – public research institutes, universities, established firms, individual inventors, startups, and others – when conducting research and also when adapting and deploying solutions in the market. Collaboration permits the sharing of knowledge and capabilities, ensuring that technology advancement and deployment can benefit from a broader pool of ideas and resources. Collaboration is particularly important for individual inventors, academic institutions, and startups; these actors may develop niche solutions but lack the mission or resources to scale.

- Quality, enforceable IP rights can help to direct resources towards innovation, while also supporting technical collaborations. With the confidence that they can leverage IP rights to benefit from their R&D investments upon success in the marketplace, businesses are more willing to invest in risky R&D ventures. With quality IP rights in hand, innovators are more likely to choose to work with partners to enhance the innovative process, sharing what they know in the process.
- The approach most likely to advance technological innovation as well as the deployment of new solutions on the ground is one based on voluntary technology partnering and technology transfer on mutually agreed terms. Importantly, this is identified as the preferred approach of the G20 nations in their recently published G20 Blueprint for Innovative Growth.
- In contrast, policies that encourage non-commercial technology transfer can inhibit innovation investments, FDI, and knowledge sharing. In particular, policy tools like compulsory licensing can undermine the role that IP rights can play in facilitating the critical exchanges of knowledge that are most likely to boost absorptive capacity and economic development, especially in developing countries. While such instruments may be applied in specific, narrow contexts, encouraging their broader use is unlikely to stimulate technology and knowledge flows. Rather, they discourage innovators, whether domestic or foreign, from sharing technology and know-how.
- Incremental and adaptive innovations, *i.e.*, novel refinements and improvements to existing solutions, deserve patent protection. As noted, for instance, in the UN report on collaborative R&D to address global climate change, incremental innovation is especially important for technology deployment and development in emerging economies where technology requires adaptation in order to best meet local needs.¹ Those best positioned to advance technology to meet local needs are those most embedded in the local environment.
- IP systems should be business model-neutral, supporting innovation in all its forms and across all fields of technology. Given that it is impossible to predict where innovation will come from, or in what form, it is important not to prejudice any particular approach or business model. While IP plays different roles depending on the context, treating IP assets differently based on how they are managed or depending on the technology they embody can slow down technology development and distort design choices. And IP policies should not be designed based on a static snapshot of an economy at a given moment in time.
- Finally, it is important to note that IP systems are only one component of a functioning enabling policy environment for innovation, the transformation of ideas to deployable solutions, and ultimately their utilization. Many complementary policies are necessary to generate absorptive capacity, push the technological frontier outward, and ensure that all innovation needs are met, particularly those not backed by a functioning market.

¹ United Nations (2010) Framework Convention on Climate Change. Report on options to facilitate collaborative technology research and development. FCCC /SBSTA/2010/INF.11