

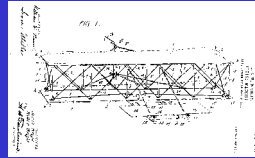
US and EU Patent Policy in a Global Economy: Where from Here?

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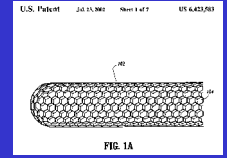
2003 European Intangibles Summit
London
July 4, 2003

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1903
Flying Machine



2003
Nanotube



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Overview

- Guiding principles for change
- A European agenda for EU Policy (and a US view)
- A European agenda for US Policy (and a US view)
- Conclusion: So far so good, but resistance to integration/harmonization may be strong
- Other procedural, institutional, resource issues on the US agenda
- Other substantive patent policy issues on the US agenda
- Conclusion: The latter could have a more profound effect on IP strategies and valuation

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Guiding Principles

- Strong but not excessive protection of genuine inventions in new technological areas
- Rights obtainable and enforceable in relevant markets at reasonable cost
- International harmonization of patent standards and procedures
- Work-sharing among principal patent agencies
→ An international patent

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A European Agenda for EU Policy

- Community-wide patent
- Community-wide enforcement
- Accelerate opposition process
- Make system more responsive (e.g., to new technologies, business methods)
- Allow some discovery in litigation

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A European Agenda for US Policy

- Application priority: replace first-to-invent with first-to-file
- Application publication: no exclusion for US only applications (i.e., expose remaining “submarine” patents)
- Litigation
 - Contain cost escalation (e.g., limit discovery)
 - Increase predictability and consistency (limit jury trials)
 - Limit awards to actual damages (no 3X)

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*Estimated Median Costs of Litigation, through end of discovery and inclusive, in a patent infringement suit, 2000
(thousands of dollars)*

Less than \$1 million at risk

End of Discovery	\$250
Inclusive, all costs	\$499

\$1-\$25 million at risk

End of Discovery	\$797
Inclusive, all costs	\$1,499

More than \$25 million at risk

End of Discovery	\$1,508
Inclusive, all costs	\$2,992

So Far So Good...

High degree of consensus

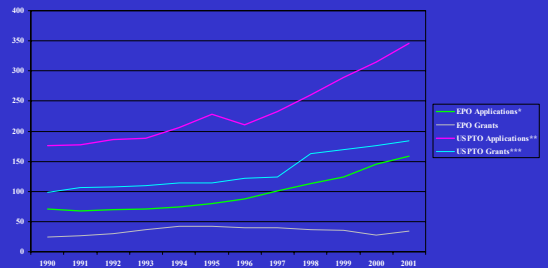
- Business, government authorities, scholars, many practitioners

...But progress slow

- National and language interests (EU)
- Champions of individualism (US)
- Multinational forum (WIPO)

*Other Issues on the US Agenda:
Procedures, Institutions, Resources*

- Improving quality (e.g., creating an opposition system)
- Coping with volume
 - Separating, privatizing search and examination
 - Raising fees



* Total European and Euro-PCT (international phase).
** Includes utility, design and plant patents.
*** Includes reissues.

*Other Issues on the US Agenda:
Substantive Patent Policy*

- Upstream patenting an incursion on public domain information, adversely affecting research
- PROs' patenting and licensing distorts their mission
- Defensive patenting and strategic licensing drive up transaction costs and may block innovative projects
- Negotiating through patent thickets may be too difficult

Conclusion

No agreement on:

- Frequency in what contexts
- Whether balanced by positive innovation incentives
- Solutions to the extent problematic for research, innovation, and competition

But potentially large implications for valuation and use of patents

Intellectual Property in the Knowledge-Based Economy

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