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The Unitary Patent: boosting technology transfer through trade and investment

Patents, trade and foreign direct investment in the EU
November 2017 | Summary of the key findings



Patents, trade and foreign direct investment in the EU

About this study

The study, carried out by the European Patent Office (EPO) with experts led by Professor Keith Maskus (University of Colorado Boulder), assesses the impact of the European patent system on the circulation of technologies through trade and foreign direct investment (FDI) in the European Single Market.

Industries with above-average use of intellectual property (IP), especially patents, are already known to make a greater contribution to GDP and external trade*. This study shows that further improvement is however possible. Under the current patent system, which is fragmented post-grant, limitations are found to hinder cross-border trade and investment in IP- and technology-intensive industries. The Unitary Patent will remove many of these limitations, and it is thus expected to facilitate technology transfer through trade and FDI within the EU, thereby supporting productivity growth and economic development.

Main findings

Contribution of high-IP industries to trade and FDI in the EU

Compared with other industries, IP-intensive industries such as analytical instruments, biopharmaceuticals, chemicals, ICT, medical devices and production technologies make a greater contribution to outgoing than to incoming or intra-EU trade and FDI flows. Trade and FDI flows in these high-IP industries are found to be particularly sensitive to the level of patent protection in EU countries.

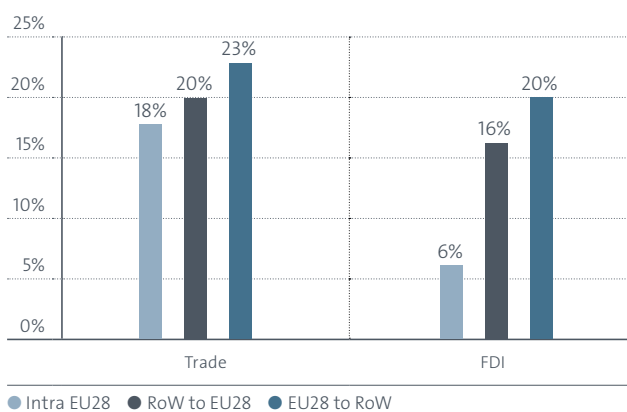
Limitations in the EU market for technology

The current, fragmented European patent system creates limitations to the circulation of patentable inventions within the EU. Most European patents are only validated in a few EU member states, to save on the cost of validating and maintaining them in each country. In addition, they often end up providing uneven levels of national patent protection and are subject to the risk of parallel litigation with possibly divergent outcomes.

Economic benefits of harmonising patent protection

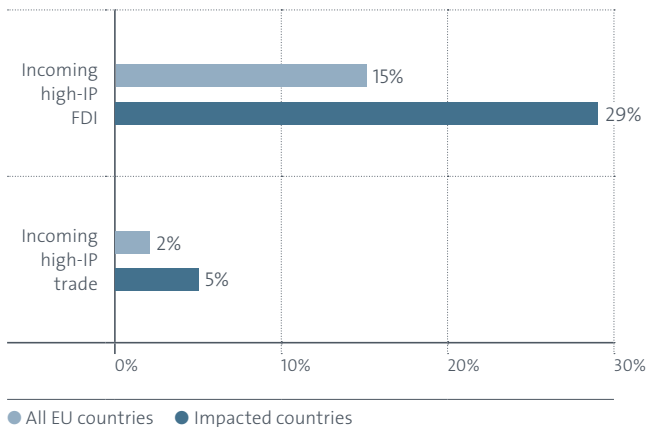
Further harmonisation of patent protection in the EU would boost European trade and FDI in high-IP industries. At EU level, high-IP trade and FDI flows to or between EU countries are expected to increase by 2% and 15% respectively, resulting in annual gains of EUR 14.6 billion in trade and EUR 1.8 billion in FDI. This corresponds to an increase of 5% and 29% respectively in high-IP trade and FDI flows into or between the 15 EU countries which will be most impacted by this development.

Proportion of high-IP industries in EU trade and FDI



Source: Comtrade, Zephyr of Bureau van Dijk, Delgado et al. (2013)

Gains from patent harmonisation



Source: Authors' calculations

* See "Intellectual property rights intensive industries and economic performance in the European Union. Industry-Level Analysis Report, October 2016", published by the European Patent Office and European Intellectual Property Office, epo.org/ipr-intensive-industries

The Unitary Patent package

Background

The EPO provides a single uniform grant procedure for Europe, enabling owners of European patents to take up their rights in over forty countries. It delivers high-quality patents to applicants. However, once granted, these European patents must be validated and maintained in force in each individual country in order to take effect. This fragmentation of the post-grant procedures results in high costs and complexity for users. Similarly, European patents are enforced before the national courts, so there is fragmentation at the litigation stage too. This adds further expense and complexity as well as creating legal uncertainty when national courts hand down conflicting decisions.

The Unitary Patent and Unified Patent Court will address these post-grant limitations by giving inventors access to an alternative, simplified and cost-effective route to patent protection and dispute resolution throughout Europe.

The Unitary Patent: simplified and broader patent protection at a lower cost

The Unitary Patent will enable inventors (natural persons, companies or institutions) to obtain uniform and broad territorial patent protection in up to 26 member states of the European Union. Instead of validating their European patent in several countries, patentees can file a single request for a Unitary Patent with the EPO. This will not replace the existing routes to patent protection in Europe, but will be another option alongside national patents and “classic” European patents (where a single application results in a so-called “bundle of national rights”). It will drastically reduce red tape through simplified and cost-efficient post-grant administration where the EPO will act as a one-stop shop.

There is no extra cost for requesting unitary effect for a patent at grant. The annual renewal fee for Unitary Patents is very attractive and business-friendly. For the first ten years, which is the average lifetime of a European patent, the aggregate cost of renewal fees will be less than EUR 5 000. This means that coverage in up to 26 states is secured for a price comparable to that for protection in just four countries under a “classic” European patent. The full cost-saving potential is realised when all the indirect costs currently associated with validating and maintaining a European patent are factored into the equation. In total, the savings will represent a 70% decrease in overall costs compared with the current situation. This will facilitate access to the European market for SMEs, universities and research centres.

Centralised enforcement through the new Unified Patent Court

The Unified Patent Court (UPC) will be a new international court set up by 25 EU member states. It will have jurisdiction over the infringement and revocation of Unitary Patents and European patents (although proprietors of the latter, or applicants therefor, can “opt out” of UPC jurisdiction for the first seven years of the new court’s existence).

The UPC will provide an effective forum for enforcing and challenging patents in the participating EU member states. It will reduce costs and complexity by putting an end to costly parallel patent litigation in multiple countries with the risk of contradictory judgments.

Furthermore, it will enhance legal certainty for all users of the patent system through harmonised case law in the area of patent infringement and validity. The procedure is designed so that judgments can be expected within about a year of filing an action. The UPC also provides safeguards for small companies in the form of reduced court fees and a lower ceiling on the costs a successful party can recover in the event of loss of an action.

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