Report ESF Exploratory Workshop on

The Future of Patent Governance in Europe

Hamburg (Germany), 1- 2 September 2014

Convened by:

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Introduction

The workshop was triggered by the realization that decision-making in intellectual property (IP) has become increasingly politicized and contested by a growing number of stakeholders. The upheavals in the patent system are ongoing, and fundamental reforms of the European patent system are under way. These shifts need to be assessed from an **interdisciplinary perspective**, combining legal, political and social science expertise, to grasp the nature of empirical changes, the interests of the stakeholders involved, and the structures of decision-making in the European multi-level system in its international context.

The **format of the event** was a closed workshop: the number of participants to the workshop was limited to twenty and only included participants who were also acting as speakers and discussants. Speakers consisted of a mix of, on the one hand, young, mid-career, and senior scholars with a background from law, political and social sciences, and, on the other hand, policymakers. Presentations were relatively short, followed by critical feedback by one discussant leaving ample opportunity for intense interaction and discussion with all the participants. The final program is included as an annex to this report.

The **underlying objectives** of the ESF workshop were threefold. First, it aimed at exploring important paradigm shifts in European patent governance induced by patent reforms, technological and socioeconomic developments at the European ("inbound") and international level ("outbound"). Second, it provided an anticipatory impact assessment of the Unitary Patent Package. Third, it initiated a new debate on norms, criteria, and procedures for good governance in the patent system.

The **first day of the workshop** focused on (1) the evolution of the multilevel patent system in Europe, including the impact assessment of the recent European patent reforms, the Unitary Patent Package, and (2) the "inbound" dimension of European patent governance and increased patent integration through the work of the patent executive (national patent offices and the EPO), courts and policymakers. The **second day of the workshop** was devoted to the (3) the "outbound" dimension of European patent governance and concentrated on international harmonization by the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and by bilateral free trade agreements, and (4) the translation of "good governance" to the patent context with an analysis of "best practices" developed in Europe, the US, Japan and Korea.

At the end of the workshop it was decided to **disseminate the results of the workshop** in three different ways: (a) to collect summaries of all the presentations, which will soon be made publicly available on a

website hosted by the University of Hamburg dedicated to the workshop; (b) to write a report with the main findings of the workshop, which will likely be published by the highly regarded peer-reviewed journal International Review of Intellectual Property and Competition Law (IIC) beginning of 2015; (c) to prepare a manuscript for a book dealing with European Patent Governance with the participants who are willing and available to submit a full chapter by Summer 2015. The summaries have all been collected and are the basis of the current report and the more extensive report for IIC.

In addition, all participants shared an interest in continuing the debate and discussions regarding the future of patent governance in Europe potentially within the context of a project funded within the framework of Horizon 2020. The organizers listed several options for calls forthcoming in 2015. For now, none of the themes were directly related to the future of patent governance in Europe. The organizers will continue to review topics for calls and plan to deliver a proposal for a research project in 2015/2016.

Description of the Results

The Evolution of the Multilevel Patent System in Europe

The first contribution by *Ingrid Schneider* (FSP BIOGUM, Universität Hamburg, Germany) analysed the structures of the European patent system and the prospects of the current patent reforms (Unitary Patent Package UPP) in Europe through the lenses of political theory and integration theory. The two meta-theories referred to were the neo-functionalist supranationalist and the liberal intergovernmentalist school of European integration. Her first thesis stated that the European patent system has already anticipated many constellations and struggles with which the European integration project currently has to deal, namely 'differentiated integration'. This term implies 'two speeds of integration', and a differentiation between a group of core countries willing for stronger cooperation, and a number of less integrated units. The European patent system is an interesting case study in this regard, as its first supranational pillar, the European Patent Organisation (EPOrg), is currently comprising 38 contracting states and thus "running ahead" in European integration as compared to the second supranational pillar, the European Union with its 28 Member States. The Unitary Patent Package (UPP) originally aimed at bridging and unifying the system but in fact adds a third layer, thus making the multi-level patent system even more complex. The UPP is based on the Enhanced Cooperation Procedure, and will only comprise 25 EU Member States. Three projections on the results of this new, 'variable geometry' were presented: The first, optimistic one, assumes ever more integration to the benefit of all. The second, more pessimistic perspective presumes a widening gap between the center and the periphery, at the cost of the fragmentation of the system. A third scenario projects winners and losers on both sides, and new cleavages between several groups of states with a stronger or weaker patent culture.

Crucial elements, such as the level of fees and renewal fees, and the distribution key for the Unitary Patent (UP) are as yet undecided. According to Schneider's analyses, however, these decisions will have a strong impact on the acceptance of the Unitary Patent by its users, and on the financial sustainability of the patent offices within the whole system. The complex structure of the Unified Patent Court has also raised concerns about potential forum shopping by the patentees, and an inherent pro-patent bias of the new Court system. The European Court of Justice as a general court will probably get mostly sidelined, and thus will hardly be able to strike a balance and act as a counterweight to the specialised judiciary. Schneider's conclusion, drawn from anticipatory impact assessment, postulated that even though the Unitary Patent Package mainly rests on intergovernmental treaties and procedures, it will in the long term

strengthen the supranational governance of the patent system, in particular the judges of the Unified Patent Court and the European Patent Office. She noted that as this would happen largely outside of the democratic institutions and the constitutional framework of the European Union, it would unfortunately weaken robust mechanisms of democratic control and accountability.

The second presentation by *Thomas Jaeger (*Max Planck Institute for Innovation and Competition, Austria) focused on the Enhanced Cooperation Procedure for the Unitary Patent as authorized by the Council in Decision 2011/167/EU. In his view, this was "the original sin" triggering the demise of the ambitious patent plans by the EU. Enhanced Cooperation sent the first signal for choice of feasibility over coherence, and of form over substance. Substantive coherence, meaning one patent law for Europe through a single court, and territorial coherence with respect to the EU's internal market and the integration of the ten additional, non-EU Member States of the EPOrg, were put behind. Nonetheless, in Jaeger's opinion, Enhanced Cooperation cannot provide a justification for the "awkward and truncated design" of the Unitary Patent Package which has primarily aimed at keeping the Court of Justice of the EU (CJEU) out of the equation. Jaeger examined closely several decisions of the Council of the EU, and provided a critical reading of the CJEU's judgments in cases C-274/11 and C-295/11 brought before the CJEU by Spain and Italy. In his reflections, he made clear that the CJEU took a purely formalistic approach to questions of Art. 118 TFEU and the matters of shared or exclusive competences of the EU, thus straightforward disregarding the telos and history of the norm. In his conclusion, a dangerous precedence has been created for future European integration, as the threshold for Enhanced Cooperation, originally thought to be a last resort only, has been dramatically lowered. Finally, he regretted that the substantive patent law of the Unitary Patent would be anachronistic in nature, due to an uninspired EU approach.

The third speaker, *Antonina Bakardjieva Engelbrekt* (Faculty of Law, Stockholm University, Sweden), examined old and new stakeholders, forums and arenas of patent governance in Europe. Her analysis built on the participation-centred comparative institutional approach (Kosemar 1994) to conceptualise and assess markets, political processes and courts as alternative institutions to which decision-making on important law and public policy issues can be allocated. She identified various deficiencies in the institutional architecture of the European Patent Organisation (EPOrg), such as the gradual transfer of legislative powers to the Administrative Council, the dominance of technocratic governance, the limited access of public interests, and insufficient independence of the European Patent Office's (EPO) Boards of Appeal. These limitations seem all the more glaring when compared with the more sophisticated design of the EU's governance framework. She acknowledged the ambitions of the Unitary Patent Package in terms of lowering the costs of patenting and increasing the accessibility of patent litigation, especially for SMEs, as commendable. However, she pointed at the fact that the new system builds exclusively on the

existing structures of the EPO in the granting phase. Thus, these EPO decisions, in particular if the EPO refuses to grant a Unitary Patent, will effectively escape the supervision of the EU Court of Justice. For the future, she envisioned two possible scenarios. Following an optimistic route, the EU's constitutional model of multi-level governance could via the Unified Patent Package have positive spill-over effects on the EPO, including increased influence of the European Convention on Human Rights (ECHR) and the Union Charter of Fundamental Rights as a blueprint. On a more pessimistic track, the intergovernmental model of governance may increasingly 'infect' the newly built patenting regime of the EU. Her concerns are based on the fact that international agreements are difficult to change and adapt to dynamic developments and generally remain "underconstitutionalised".

Europe "Inbound": Increased Patent Integration

While the first presentations had mostly referred to policy coordination on the supranational level, *Georg Artelsmair's* (European Patent Office, Vienna, Austria) presentation shed light on patent integration by granting practices and the interaction between National Patent Offices and the EPO. He pointed to the complexity of the system, with three possible routes to file a patent, the national, the European route, and the International route (PCT), which could lead to patents valid in up to 147 countries. Users appreciate the EPO for its overall quality, for patent information services, and its highly skilled and specialised patent examiners. The users' needs are also perceived as a main driver for international co-operation activities, not least as each year around 300,000 "same" applications are filed in two or more IP5 Offices (US, Japan, China, Korea and Europe). The EPO is addressing this complexity by striving for high quality services, by cooperation with its 38 Member States in trainings for staff and patent attorneys, patent-related IT services, registers, patent information awareness tools and other on-going co-operation projects. Moreover, the EPO is also cooperating with international organisations such as the WIPO, the EU, the OECD, and ISO. Altogether, he emphasized that harmonization, centralization, and networking are not competing but complementary forms of coordination between the EPO and its environment.

In contrast to this rather harmonistic view on cooperation and legal harmonization, *Rob J. Aerts* (Keygene N.V., Wageningen, Netherlands) addressed uncertainties deriving from the hybridity of the present system in ruling the patenting of biotechnological inventions in the European Union. He emphasized that here are two separated judicial systems that ultimately decide on the criteria for patentability of biotechnological subject-matter, namely national courts of Union Member States applying Union law in collaboration with the CJEU, and Boards of Appeal of the EPO applying EPC law.

This hybrid situation results in legal uncertainty, since decisions made by the two separate judicial systems about the patentability of the same subject-matter must not necessary be similar, as some striking

examples in the field of patenting of human embryonic stem cells have demonstrated. The new system creating a European patent with unitary effect also appears to be a hybrid system: when the UPC examines the validity of a granted European patent with unitary effect and the Biotech Directive is involved, this court can or must refer questions to the CJEU. In contrast, when the EPO investigates a granted European patent with unitary effect during opposition procedures, it cannot refer questions to the CJEU. There is no guarantee that the two judicial systems will come to similar conclusions. Thus, Rob Aerts questioned whether uniform protection of patent rights, as required by the Treaty provision on which the creation of the European patent with unitary effect is based, and which is desirable for legal certainty, can be fully achieved.

The hybridity between EU and international law with respect to the Unified Patent Court (UPC) was also stressed by *Christophe Geiger* (Centre for International Intellectual Property Studies (CEIPI), University of Strasbourg, France), who dedicated his talk to legal integration by courts and the role of the CJEU in the newly emerging European patent order. In the drafting of the new judicial system, the role of the European Court of Justice was limited, as was already emphasized by several speakers. As the CJEU was not awarded an appellate function, it will only be able to be active when it is asked through preliminary rulings. However, Geiger reminded the audience about the “conquering spirit” of the CJEU's past jurisprudence, which may suggest that the CJEU will not accept to stay in the limited function assigned by the UPC Agreement. Notably, as stated in its Preamble, the Unified Patent Court will have to “respect and apply Union law” and to cooperate with the CJEU “by relying on the latter’s case law and by requesting preliminary rulings”. In this respect, the role of the CJEU could become crucial in the future by, first, securing the coherency of the system in harmonizing and "fixing" interferences of European patent law (non-EU law) with the EU's legal framework through the effects of case law. Second, the CJEU could help to secure the acceptability of the system by safeguarding the proper balance of rights in accordance with the general principles of EU law on free movement of goods and services, free competition, and human and fundamental rights law, thereby reconciling economic rationales with ethical principles. Finally, in the long run, as Geiger concluded on a very positive note, the case law of the CJEU might inspire a future revision of the system and the creation of a true EU Patent system.

This optimistic spirit was shared by *Michael König* (Intellectual Property Directorate, DG Internal Market & Services, European Commission, Brussels, Belgium), who located the UPP in the Commission's general approach to IP policy, coined as "the inventor's trail". Intellectual Property is not a purpose in itself but a tool to stimulate innovation and dissemination of knowledge. A well calibrated intellectual property system creates qualified jobs and growth in Europe. The Commission's objective is to make sure that inventors and creators are successful on the "inventor's trail". This requires good laws, efficient

registration procedures, the capacity to leverage capital for developing an idea, a clear and predictable legal environment for distributing and licensing innovations, efficient jurisdictions for ensuring respect for rights and investments, and trade agreements with third countries that offer a stable and predictable environment for exporting innovations. To overcome fragmentation and high costs, the Commission made the Unitary Patent Package a top priority for the single market. It is convinced that the 2012 "landmark political agreement" will bring substantial benefits to European innovators in establishing a one-stop shop procedure for unitary title, centralizing litigation and offering substantial reduction in costs and administrative burden. The Commission wants to ensure that the system becomes an attractive option for innovative companies. Hence, key features in the implementation process include timely ratification and entry into force, an attractive cost structure, legal certainty and trust in the new judges, a good balance of patent holder and user interests, and full compatibility with Union Law. Further patent integration at the international scale is needed to face grand challenges. WIPO and trade agreements can be instrumental to progress in these areas.

This optimism was not shared by *Manuel Desantes* (Faculty of Law, University of Alicante, Spain) who made an impassioned appeal to the Commission to create a new, ambitious vision for a truly Unitary Patent system in Europe, which he sorely misses. In a tour d'horizon, he recapitulated the various failures (1962, 1975, 1989) of the EU Community Patent. He emphasized that the 2012 Unitary Patent Package is far off from having achieved a system where a) a single patent office b) applying a single patent granting process c) would grant a Unitary Patent with common effects, d) subject to a uniform Community law, and e) where all issues dealing with both revocation and infringement would be solved by a common judiciary. Instead, by Enhanced Cooperation, 25 EU Member States are clearly leading the process towards a “European patent with a unitary effect” and a Unified Patent Court outside the framework of the European Union where the institutions of the Union are virtually absent. In Desantes' view, the political will of some EU Member States has prevailed over the governance of the institutions, marking a dangerous tendency to move from a delegation/supervision scheme to a simple replacement of the EU institutions by the Member States themselves. Intergovernmentalism thus has trumped institutionalism, which according to Desantes' evaluation should never have happened, as the risk of generalisation of these practices would be too high, with too much at stake for the future of the European Union as a whole.

The previous role of the European institutions in patent legislation was eventually reflected by *Sebastian Haunss* (University of Bremen, SfB 597 - Transformation of the State, Germany). He traced the three Directives in which the Commission tried to shape European patent law, namely biopatents, software patents and the enforcement of intellectual property rights. Of these, only the Enforcement Directive passed the legislative process without larger conflicts, the software Directive completely failed,

and the biopatent Directive was only passed in its second turn. His conclusion was that the Commission was only capable of successfully shaping IP politics by seeking compromises, and thus not merely to account for the IP community and select industry actors but also for other actor groups with stakes in the field of patent politics. The European Parliament was in the end only able to use its own veto power to reject a proposal, but not to originally shape the policy field. The Council seemed to be the most passive of the three institutions. Seen from a broader perspective, the involvement of the European institutions in IP politics has politicized a field formerly characterized by de-politicized technocratic governance.

Europe "Outbound": Balancing Harmonization and Plurality in International Patent Governance

The first speaker of the second day dealing with international patent governance was *Tomoko Miyamoto* (Patent Law Section, Patent Law Division, WIPO, Geneva, Switzerland). Miyamoto discussed the future of international patent cooperation beyond the scope of WIPO. She recognized that increasingly multilateral cooperation for the development of an international IP system that encourages worldwide innovation and creativity and facilitates participation by all Member States seems to be failing. One of the contentious issues in this respect is the international harmonization of patent laws. However, Miyamoto emphasized that according to the definition of "harmonization" by Boodman (1991), harmonization does not require the "unification" of law, but it inherently embraces flexibility and diversity. Therefore, in the complex web of national, bilateral, plurilateral, regional and multilateral frameworks the coordination of activities is vital for the future of international patent cooperation. For instance, international cooperation regarding PCT and non-PCT foreign filings could be intensified, particularly in the area of patent search and examination. Furthermore, she highlighted the intertwined nature of pre- and post-grant issues at the international level and the need to scrutinize the conditions of patentability from the perspective of innovation promotion and dissemination of technological knowledge.

Miyamoto was followed by *Ahmed Abdel Latif* (International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland) who focused more specifically on the Development Agenda (DA) within the context of WIPO and the role of the EU in this respect. He explained that the DA proposal was launched in 2004 by a group of twelve developing countries and adopted in 2007 by the WIPO General Assembly. It emerged in the context of mounting criticism by many developing countries and civil society groups towards WIPO's "one size fits all" approach to IP protection, and is in favour of a more balanced approach recognizing both the benefits and costs of IP protection, considering different levels of development and ensuring that IP effectively promotes innovation. Abdel Latif believes that the WIPO DA has indeed incited WIPO to ensure that development considerations form an integral part of its work. However, tensions remain vivid between two competing visions of the IP/development interface

encapsulated in the DA recommendations: "IP for development" i.e. the use of the IP system as an engine of growth vis-à-vis "development-oriented IP" i.e. the need to ensure that such a system is balanced, takes into account different levels of development and is supportive of public policy objectives. Ultimately, the implementation of the WIPO DA remains a work in progress. According to Abdel Latif, the EU is well-placed to potentially bridge the gap between developed and developing countries in a manner that advances in a constructive manner the WIPO DA implementation process. Actually, some EU countries played an important role in reaching agreement on the DA, and the EU could further contribute to building trust with developing countries on a range of matters which have proven divisive, including patent related issues.

From WIPO, the workshop then shifted to the interface between the EU and its Unitary Patent Package, on the one hand, and the WTO and free trade agreements (FTAs), on the other hand. *Henning Grosse Ruse-Khan* (King's College, University of Cambridge, UK) addressed three specific issues in his presentation (1) the role for TRIPS in interpreting the UPC Agreement, (2) the impact of increasingly detailed IP enforcement rules in the EU's FTAs; and (3) the potential for Investor-State Dispute Settlement (ISDS) over decisions handed down by the Unified Patent Court (UPC). In this report, we concentrate on the third issue. International investment law is becoming increasingly relevant for the protection of IP rights, including patents, abroad. These rules are usually embedded in bilateral investment treaties (BITs) or Investment Chapters in FTAs and protect assets of foreign investors against state interference. BITs or FTAs often allow foreign investors to challenge host state measures directly in international dispute settlement in front of an arbitration tribunal. Increasingly, the measures challenged involve IP rights. As the UPC is a "national court" of *all* the Contracting Member States, its decisions could be challenged by investors who enjoy protection under any of the BITs or FTAs agreed by participating EU Member States, as well as new EU investment agreements. This highlights the potential for international investment law and in particular the ISDS system to interfere with national court decisions, including UPC decisions, and other state measures affecting patents and other IP rights. If one of the underlying reasons for creating the UPC is to keep the CJEU out of substantive patent law in view of its lack of expertise, then there is even more reason to worry about the role of ISDS tribunals, as they have only limited expertise and experience in ruling on patent law matters.

Margo Bagley (Law School, University of Virginia, Charlottesville, USA) was the last speaker in the session on international patent governance and dealt with the role of national interests, plurality and culture in international patent harmonization. Her presentation was based on the following three theses. First, she stated that national interest and culture drive both developed and developing countries. To illustrate this, Bagley refers for instance to the US, which is complaining about China's large scale IP infringements, while

the US is the only country that has not complied with two WTO Dispute Settlement Body decisions related to the TRIPs Agreement. Second, Bagley believes that substantive patent harmonization is not in the best interest of many developing countries. In this regard, she pointed to the proposed EPO Patent Validation Program encouraging non-EPO countries to allow international applicants to validate the effects of their European patent applications and patents in their national territory as national rights. The system as praised the EPO would "reduce national office examination workload by up to 90% and allow the offices to focus on developing their examination capacity for national filings." Bagley refers to this example as "colonialism déjà vu?", as it would make it easier for foreigners to obtain patents, and potentially more difficult for domestic applicants. Third, according to Bagley, plurilateral engagement may be the best option for developed and developing countries on some issues, such as the disclosure of origin. Developing countries may choose to work plurilaterally to achieve agreement amongst themselves on this issue first. In view of the need to create legislation to implement the Nagoya Protocol, a related treaty, when enough countries adopt such legislation, it may create sufficient momentum to return to a broad, multilateral effort.

Good Patent Governance: Norms, Criteria and Procedures

In the afternoon, the workshop explored a novel theme related to 'good governance' and its implementation in the patent area. *Christine Godt* (Department for Jurisprudence, Carl von Ossietzky University of Oldenburg, Germany) started off with a more general introduction into good governance, identifying nine governance norms by which political scientists aspire to better judge the legitimacy of modern governance arrangements. However, she claims that while governance norms can easily be channeled as normative guidelines into law making processes and processes of administrative organization, the quest to integrate the norms into judicial reasoning are much more demanding. She illustrated this with two examples from the patent field focusing on the norm complex "regulation" which encompasses the norms of territorial sovereignty, and pro-active dealing with complexity. The two examples relate respectively to public regulation and private self-regulation and take place within a pre-grant and post-grant constellation: the patent exemption of human embryonic stem cells, and the restriction of patent injunction to a duty to license for standard essential patents. This exercise revealed that a discussion of governance norms in the patent context enables a normative reflection of social practices and conflicting constitutional positions. The judicial reasoning becomes enriched by a more complex reflection on a set of legitimacy norms beyond a narrow text application often misunderstood as the proper judicial task. Legal principles applied become more transparent and the legal decision appears more convincing.

Esther van Zimmeren (Faculty of Law, University of Antwerp, Belgium) and *Nari Lee* (Department of Accounting and Commercial Law, Hanken Business School, Helsinki, Finland) also welcomed the use of 'good governance' as a normative/procedural tool to evaluate policy implementation. Esther van Zimmeren emphasized that in some legal fields, such as company law, environmental law and EU institutional law, principles of good governance have already been widely acknowledged and confirmed in legislation, policies, soft-law documents and corporate strategies. Patent law largely is an uncultivated area in terms of good governance. However, analyzing patent systems from a good governance perspective is helpful, in particular in comparing different jurisdictions, as these jurisdictions differ significantly in terms of their institutional, administrative and regulatory framework. For instance, despite attempts at the EU level to establish administrative law principles and model rules, Europe lacks a uniform administrative law framework, which could contribute to the realization of a balanced, consistent patent governance system. On the other hand, most countries do have an extensive body of administrative law and doctrine, but differ considerably in content. Moreover, patent systems around the world are subject to important reforms, such as the Unitary Patent Package in Europe, the US America Invents Act and the different reform cycles in Japan aimed at turning it into an "IP based nation". Therefore, working with general principles that underpin good governance seems to be apt in such a comparative, dynamic context. Examples of such principles are: transparency, public participation/inclusion (input legitimacy), effectiveness/expertise (output legitimacy), accountability, coherence/consistency, subsidiarity/proportionality and access to justice.

Van Zimmeren and Lee then analyzed different practices used in Europe and the US, on the one hand, and Japan and South-Korea, on the other hand, in the light of good patent governance. With respect to Europe, van Zimmeren payed particular attention to the decision-making process on the Unitary Patent Package (transparency), the use of the Enhanced Cooperation Procedure in the decision-making process on the Unitary Patent Package (input legitimacy & coherence), the opposition procedure at the European Patent Office (EPO) and the EPO's Scenario's for the Future project (input legitimacy), and the limited competence of the Court of Justice of the EU in patent matters (access to justice). Regarding the US, van Zimmeren's presentation focused on USPTO Notice-and-comment rulemaking (transparency & input legitimacy), the newly created review procedures (input legitimacy), the relationship between the US Patent and Trademark Office (USPTO) and the specialized IP court (Federal Circuit) (output legitimacy), and the role of the US Supreme Court in patent law (access to justice).

Lee clarified that in Japan, IP governance went through a series of structural reforms (2002-2003), resulting in central coordination of the IP policy making through the IP Headquarters. Korea went through a similar reform process in 2011 creating a "Presidential Council on IP". According to Lee, these examples

highlight the benefit of coordination in the area of IP law. In the past, various Cabinet ministries were entrusted with mixed tasks of policy and agenda setting in the area of IP law. This led to overlaps as well as risks of conflict. Nonetheless, sometimes competition amongst institutional actors is unavoidable and even good as long as it takes place through a transparent, democratic process. In terms of deriving certain lessons for Europe from this practice, Lee considered that perhaps the task of long term policy setting cannot be expected from the different individual Directorate Generals (DGs) (i.e. Internal Market, Enterprise, Competition, External Relations) involved in IP decision-making, and should rather be entrusted to a strong executive power with a clear mandate.

Assessment of the Event & Impact of the Event

During the wrap up of the workshop, the organizers, Ingrid Schneider and Esther van Zimmeren, listed the most important findings of the two workshop days. Moreover, they inquired whether the participants were interested in publishing the results of the workshop and continuing the interaction by way of a more stable collaboration. It was decided to disseminate the results of the workshop in three different ways: (a) to collect summaries of all the presentations, which will soon be made publicly available on a website hosted by the University of Hamburg dedicated to the workshop; (b) to write a report with the main findings of the workshop, which will likely be published by the highly regarded peer-reviewed journal 'International Review of Intellectual Property and Competition Law' (IIC) beginning of 2015; and (c) to prepare a manuscript for a book dealing with European Patent Governance with the participants who are willing and available to submit a full chapter by Summer 2015. The summaries have all been collected and are the basis of the current report and the more extensive report for IIC.

In addition, all participants shared an interest in continuing the debate and discussions regarding the future of patent governance in Europe, potentially within the context of a project funded within the framework of Horizon 2020. The organizers listed several options for calls forthcoming in 2015. For now, none of the themes seem to be directly related or relevant with regard to the future of patent governance in Europe. The organizers will continue to review topics for calls and plan to deliver a proposal for a research project in 2015/2016.

Final Programme

PROGRAMME

Sunday 31 August 2014

Afternoon *Arrival*

19.00 *Welcome dinner (*Brasserie Flum, Hotel Elysée**,** Rothenbaumchaussee 10, 20148 Hamburg)

Day 1 – Monday 1 September 2014

Welcome

08.30-08:45 Registration

08.45-09.00 **Welcome by Hamburg Regional Court, Intellectual Property, Universität Hamburg: Vice-President, and Head of Research Group BIOGUM**

Stephanie Zöllner, Presiding Judge, Hamburg Regional Court

Prof. Dr. Jetta Frost, Vice President Universität Hamburg

Prof. Dr. Regine Kollek (Head of FSP BIOGUM/ FG Medicine, Universität Hamburg, Germany)

09.00-09.20 **Presentation of the European Science Foundation (ESF)**

Daniel David (Professor, ESF Scientific Review Group for the Social Sciences, Head of the Department of Clinical Psychology and Psychotherapy, Babeş-Bolyai University, Cluj-Napoca, Romania)

09.25-12.00 The Evolution of the Multilevel Patent System in Europe

Chair: Esther van Zimmeren

09.25-10.10 **Horizontal and Vertical Structures: The Supranational Double Pillar Structure of the European Patent Office (EPO), the European Union (EU) and the National Level**

Ingrid Schneider (Senior Researcher & Lecturer, FSP BIOGUM/ FG Medicine, University of Hamburg, Hamburg, Germany) (20min)

Discussant: Antonina Bakardjieva Engelbrekt (Professor of Law, Faculty of Law, Stockholm University, Stockholm, Sweden) (5 min)

General discussion (15 min)

10.10-10.30 *Coffee/Tea Break*

10.30-11.15 **The EU Patent Package: The Unitary Patent and a Unified Patent Court, Opportunities and Pitfalls of the EU's Enhanced Cooperation Procedure**

Thomas Jaeger (Senior Research Fellow Intellectual Property and Competition Law Max Planck Institute for Intellectual Property and Competition, Bad Kleinkirchheim, Austria) (20min)

Discussant: Rob Aerts (Principal Patent Attorney, Keygene N.V., Wageningen, The Netherlands) (5 min)

General discussion (15 min)

11.15-12.00 **Old and New Stakeholders, Forums and Arenas of Patent Governance in Europe**

Antonina Bakardjieva Engelbrekt (Professor of Law, Faculty of Law, Stockholm University, Stockholm, Sweden) (20min)

Discussant: Esther van Zimmeren (Research Professor, Faculty of Law, University of Antwerp, Antwerp, Belgium) (5 min)

General discussion (15min)

12.00-13.00 *Lunch*

13.00-17.20 Europe "Inbound": Increased Patent Integration

Chair: Ingrid Schneider

13.00-13.40 **Integration by Granting Practices: National Patent Offices and the EPO: Harmonization, Centralization or Networking?**

Georg Artelsmair (Director European Co-operation, European Patent Office, speaking in his own capacity, Vienna, Austria) (20min)

Discussant: Ingrid Schneider (Senior Researcher and Lecturer, FSP BIOGUM/ FG Medicine, University of Hamburg, Hamburg, Germany) (5 min)

General discussion (15min)

13.40-14.20 **Integration by Courts: Interaction, Complementarity and Frictions between the Court of Justice of the EU, the EPO's Boards of Appeal, National Courts and the New Unified Patent Court**

Rob Aerts (Principal Patent Attorney, Keygene N.V., Wageningen, The Netherlands) (20min)

Discussant: Michael Koenig (Deputy Head of Unit D2 Industrial Property,

Intellectual Property Directorate, DG Internal Market & Services, European Commission, Brussels, Belgium) (5 min)

General discussion (15min)

14.20-15.00 **Integration by Courts: The Role of the CJEU in the European Patent System: Reconciling the Single Market with Human Rights Concerns?**

Christophe Geiger (Associate Professor, Centre d'Études Internationales de la Propriété Intellectuelle (CEIPI), University of Strasbourg, Strasbourg, France) (20 min)

Discussant: Christine Godt (Professor for European and International Economic Law and Civil Law, Department for Jurisprudence, University of Oldenburg, Oldenburg, Germany) (5 min)

General discussion (15min)

15.00-15.20 *Coffee/Tea Break*

15.20-16.00 **Integration by Politics: National Governments and Patent Bureaucracies: Between Supervision and Delegation**

Manuel Desantes (Professor of Law, Faculty of Law, University of Alicante, Alicante, Spain) (20 min)

Discussant: Thomas Jaeger (Senior Research Fellow Intellectual Property and Competition Law, Max Planck Institute for Intellectual Property and Competition, Bad Kleinkirchheim, Austria) (5 min)

General discussion (15min)

16.00-16.40 **The EU Commission's Agenda for Future Patent Integration**

Michael Koenig (Deputy Head of Unit D2 Industrial Property, Intellectual Property Directorate, DG Internal Market & Services, European Commission, Brussels, Belgium) (20 min)

Discussant: Tomoko Miyamoto (Head, Patent Law Section, Patent Law Division, World Intellectual Property Organization, Geneva, Switzerland) (5 min)

General discussion (15min)

16.40-17.20 **Integration by Politics: Policy-Making in the EU: What role for the Commission, Parliament and Council: Revisiting the Biotech, Software, and IPRED Directives**

Sebastian Haunss (Senior Researcher, SfB 597 - Transformation of the State, University of Bremen, Bremen, Germany) (20 min)

Discussant: Nari Lee (Professor of Intellectual Property, Department of Accounting and Commercial Law, Hanken School of Business, Helsinki, Finland) (5 min)

General discussion (15min)

17.20-18.00 **Wrap-Up of Day 1**

Ingrid Schneider & Esther van Zimmeren

Past and Future of Patent Integration in Europe: Opportunities and Challenges

Points to consider and general discussion

19.00-22.00 *Dinner at Ristorante Portonovo, Alsterufer 2, 20354 Hamburg*

Day 2 – Tuesday 2 September 2014

09.00-12.00 Europe "Outbound": Balancing Harmonization and Plurality in International Patent Governance

Chair: Christine Godt

09.00-09.40 **EU and WIPO: What Comes after the Development Agenda?**

Ahmed Abdel Latif (International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland (20 min)

Discussant: Henning Grosse Ruse-Khan (University of Cambridge, King's College, Cambridge/ London, UK) (5 min)

General discussion (15 min)

09.40-10.20 **The WIPO's Vision for Future International Patent Cooperation**

Tomoko Miyamoto (Head, Patent Law Section, Patent Law Division, World Intellectual Property Organization, Geneva, Switzerland) (20 min)

Discussant: Manuel Desantes (Professor of Law, Faculty of Law, University of Alicante, Alicante, Spain) (5 min)

General discussion (15 min)

10.20-10.40 *Coffee/Tea Break*

10.40-11.20 **EU and WTO/TRIPS & FTAs: Hard Standards and Flexibilities**

Henning Grosse Ruse-Khan (University of Cambridge, King's College, Cambridge/ London, UK) (20 min)

Discussant: Sebastian Haunss (Senior Researcher, SfB 597 - Transformation of the State, University of Bremen, Bremen, Germany) (5 min)

General discussion (15 min)

11.20-12.00 **Intellectual Property: Plurality, Culture, National Interest and International Harmonization**

Margo Bagley (Professor of Law, Law School, University of Virginia, Charlottesville, USA) (20 min)

Discussant: Christophe Geiger (Associate Professor, Centre d'Études Internationales de la Propriété Intellectuelle (CEIPI), University of Strasbourg, Strasbourg, France) (5 min)

General discussion (15min)

12.00-13.00 *Lunch*

13.00-15.20 Good Patent Governance: Norms, Criteria and Procedures Chair: Axel Metzger

13.00-13.40 **Good Governance: Norms, Criteria and Procedures**

Christine Godt (Professor for European and International Economic Law and Civil Law, Department for Jurisprudence, University of Oldenburg, Oldenburg, Germany) (20 min)

Discussant: Ahmed Abdel Latif (International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland) (5 min)

General discussion (15min)

13.40-14.20 **Good Patent Governance: Best Practices in Europe and the US**

Esther van Zimmeren (Research Professor, Faculty of Law, University of Antwerp, Antwerp, Belgium) (20 min)

Discussant: Georg Artelsmair (Vienna, Austria) (5 min)

General discussion (15min)

14.20-14.40 *Coffee/Tea Break*

14.40-15.20 **Good patent governance: Best practices in Japan and Korea**

Nari Lee (Professor of Intellectual Property, Department of Accounting and Commercial Law, Hanken School of Business, Helsinki, Finland) (20 min)

Discussant: Margo Bagley (Professor of Law, Law School, University of Virginia, Charlottesville, USA) (5 min)

General discussion (15min)

15.20-16.45 **Wrap Up of the Workshop**

Ingrid Schneider & Esther van Zimmeren

General Discussion (30 min)

Collecting issues for follow-up research (25 min)

Discussing publication of results and future potential research collaborations (i.e. research proposal on Patent Governance in Europe to be submitted at ESF or in the framework of Horizon 2020) (30 min)

16.45-17.00 **Closing of the Workshop**

Ingrid Schneider & Esther van Zimmeren

17.00 *End of Workshop and Departure*

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Statistics

Statistical information on participants (gender repartition, age bracket, countries of origin)

GENDER	M: 9	F: 8	
AGE BRACKET	20-30:2	30-40: 10	40-65: 5

COUNTRY	Austria: 2
	Belgium: 2
	Finland : 1
	France : 1
	Germany: 4
	The Netherlands: 1
	Spain : 1
	Sweden: 1
	Switzerland: 1
	UK: 2
	USA: 1