

Intellectual Assets, Innovation, IP and Value Creation

Vilnius Innovation Forum “Innovation Drift”

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Ladies and Gentlemen –

A very good morning to you all. Let me start by thanking the Ministry of Economy of the Republic of Lithuania, in particular, the honorable Minister Mr. Evaldas Gustas, as well as the Agency for Science, Innovation and Technology (MITA) for organizing Vilnius Innovation Forum “Innovation Drift”. Please allow me also to convey to you the greetings of Dr. Francis Gurry, Director General of WIPO, and his best wishes for a successful Forum. It is a privilege for me to have this opportunity to be with you in such a beautiful city of Vilnius on such a beautiful day. I would like to share some thoughts on state of play of intellectual property internationally and importance of intellectual property – and intellectual property management – in value creation.

Intellectual Assets, Innovation, IP and Value Creation

Intellectual assets play an important role in value creation, growth and economic performance. The intellectual assets created through the processes of innovation represent a major share of the value of today's businesses. Over the past few decades, the center of wealth creation has been shifting from physical capital to intellectual capital.¹ In a number of advanced economies, the rate of increase in investment in knowledge-based capital is consistently out-pacing the rate of increase in investment in physical capital.

To be successful in an increasingly competitive international market, companies must innovate. **Innovation** is a key force behind the economic growth and national competitiveness. Consequently, at the macro level, governments are making efforts to put in place the efficient innovation infrastructures, to grow R&D activities of enterprises, and to induce innovation at all levels. As numerous empirical studies show, innovation has a positive pervasive effect on the entire economy, and its benefits flow both upstream and downstream to every sector of the national economy.

Thus, there should be no surprise that both developed and developing countries are investing heavily in innovation and knowledge production activities.² The latest OECD data show that, in spite of the economic downturn, world investment in R&D has increased steadily since 2007, and reached some USD 1.4 trillion in 2012.³ The data also show the changing

¹ In 1978, the asset distribution of the corporations in S&P 500 was 95% in tangible assets and 5% in intangible assets. By 2010, the ratio had completely reversed: the share of tangible assets dropped to 20% and intangible assets increased to 80%.

² The level of R&D expenditures has been used as a proxy or indication of innovation.

³ OECD Science, Technology and Industry Outlook 2014. 70% of world investment in R&D in 2012 was attributable to OECD countries.

landscape of global R&D towards Asia. Since 2009, China has been the second largest R&D performer behind the United States of America.⁴

IP rights associated with intellectual assets are the legal underpinning for potential returns on investment in value creation. The development of the knowledge economy, the globalization of markets, technological development, the Internet, as well as the increasing complexity of products and services, has further increased the importance of IP.

Consequently, there is increased demand for IP protection worldwide. In fact, demand for IPR continues to rise at the rate that outpaces the growth in the world economy.⁵ In 2013, the number of patent applications filed worldwide amounted to around 2.57 million, a 9% increase from 2012.⁶ Around 215,000 PCT international patent applications were filed with WIPO in 2014, showing 4.5% increase over the previous year. And a picture similar to R&D investment is observed: the three countries in Asia – namely Japan, China and the Republic of Korea – amount to 38% of PCT filings.

While patents play a very important role in value creation, I should note that other types of IP, such as trademarks, industrial designs, trade secrets, geographical indications and appellations of origin, also play significant roles in value creation. Indeed, WIPO's statistics show growing demands for trademarks and industrial designs worldwide, and the membership of the Madrid and Hague Systems continues to grow.⁷

The increase in the volume of IP rights has created unintended consequences and particular challenges, some of which have also been addressed at WIPO as I will explain in a few minutes. More recently, what we observe is **strategic use of IP** that aligns to a firm's business model. With growing realization of the value of IP, companies are increasingly **managing** their IP rights, and not just for the sake of amassing IP rights or as defensive protection against imitation.

IP rights are managed as an active and powerful tool to sharpen their competitive edge, increase their sector influence, to maximize revenue, attract new investment and enhance their reputation as market innovators. IP is increasingly seen as a form of capital and an ingredient for success in business. It is through the effective utilization of IP that companies can create and maximize value to their businesses.

The increasing centrality of intellectual assets in today's competitive markets is reflected in the growth in the economic and management literature dealing with IPR since the mid-1990s.⁸

⁴ The share of global R&D investments has decreased over time in the United States (in 2012, the US accounted for 28 % of global R&D investments, whereas in 2004 it was 35%), Japan (10% in 2012, 25% in 2004) and the European Union (20% in 2012, 25% in 2004). [OECD report of 2014]

⁵ Speech of the DG at the Conference "Intellectual Property and Beyond", Riga, March 3, 2015.

⁶ World Intellectual Property Indicators 2014.

⁷ 4.87 million trademark applications (estimated) were filed worldwide in 2013, 7.6% more than in 2012. Compared with 1995, the number of trademark applications has more than doubled. As regards industrial designs, 956,600 industrial design applications (estimated) were filed worldwide in 2013, with growth of 1.7% over 2012. The number of industrial design registration worldwide increased at a high pace between 2009 and 2012, during which the annual growth rate was 9.9 to 25%. The number of Madrid trademark applications in 2014 was 47, 885 (growth 2.3%) and the Hague design filings counted 14, 441 (growth 9.6%).

⁸ A study (2013) analyzing the IPR-intensive industries (defined as those having an above-average use of IPR per employee) to the economic performance and employment in European countries found that IPR-intensive industries generated almost 26% of all jobs and almost 40% of total economic activity (GDP) in the EU during the period 2008-2010. See: http://ec.europa.eu/internal_market/intellectual-property/docs/joint-report-epo-ohim-final-version_en.pdf.

While IP management, particularly patents, is often associated with big multinational firms, there are increasing recognition that IP rights can play a fundamental role in corporate strategy of **SMEs and start-up companies** to maximize revenue and attract new investment.

One of the successful stories, among many others, is that of DA Glass (a Polish SME in the field of chemical processing of glass) which in collaboration with Enterprise Europe Network (Technology Transfer Office) filed an international application under the PCT for its newly developed photovoltaic cells with extended service life and higher efficiency. As the company reported, patent protection was invaluable asset which allowed the company to offer its innovative product in a broader market, with much better chances to fight against imitators.⁹

Other studies confirm that patents play an important role in the success of start-ups and their ability to secure funding.¹⁰ In particular, the recent 2014 study found that patents provided a good benchmark indicator for venture capital funds to make their investment decisions and that a start-up has about a 2.5 times greater chance of achieving success within 10 years of the venture capital investment if it holds patents before that investment.

Nevertheless, the appreciation of the importance of IP appears to be still limited within many SMEs and financial institutions, despite the successful good practices of a few. Those practicing in the field recognize many barriers, such as the complexity of development and protection of IPRs, the associated costs and communication gaps between companies' IP managers and business decision makers who are not IP savvy. A report published by the EU¹¹ states that one of the major challenges is the accurate **valuation of IP** as a tradable asset class. Though there are several generally accepted ways to measure the value of IP, the introduction of more transparency in IP valuation procedures may increase market actors' confidence in IP transactions and IP based financing.¹² This will also allow companies and investors as well as policy makers to make informed decisions about the value of intellectual assets.

Innovation performance in Lithuania

Turning to our host, Lithuania's innovation performance, we can observe from the WIPO's Global Innovation Index 2014¹³ that Lithuania is ranked 39 in 2014, up one position from 40 in 2013, and thus on par with most high-income countries.

Lithuania scores consistently well in terms of its innovation environment, with a good performance in institutions, human capital and research, infrastructure and market sophistication.

Lithuania's relative strengths are in ease of starting a business, good performance in schooling and tertiary education, in the number of researchers, and knowledge-intensive employment in firms.

⁹ <https://www.iprhelpdesk.eu/node/2168>.

¹⁰ Can Patent Data Predict the Success of Start-ups? June 2014: <http://www.iam-media.com/Magazine/Issue/70/Features/Patent-positions-and-start-up-success>.

¹¹ Final Report from the Expert Group on Intellectual Property Valuation, EU, 2014.

¹² Ibid

¹³ The Global Innovation Index (GII) consists of a ranking of world economies' innovation capabilities and results. The GII measures innovation based on criteria such as institutions, human capital and research, infrastructure, credit, investment, linkages, the creation, absorption, diffusion of knowledge, and creative outputs.

Lithuania is particularly strong in matters relating to information and communication technologies (ICTs), and in using ICTs for business innovation, ranking particularly well in ICT & organizational model creation (24th).

Thus, for Lithuania, the further focus might be on translating these good innovation conditions into high-impact innovation outputs, including in the area of measurable research and innovation results such as scientific papers and patents, and concrete impacts such as investments, exports, enterprise creation and innovation-induced growth.

WIPO in Value Creation

In today's global economy, the international dimension of value chains and competitions cannot be neglected in leveraging IP to generate added value. Thus many WIPO activities are relevant to the international value creation.

Delivering Global IP Services: Our objective in this area is that our Global IP systems, namely, the Patent Cooperation Treaty, the Madrid System for the International Registration of Marks, the Hague System for the International Registration of Industrial Designs and the Lisbon System for appellations of origin, provide innovators and businesses speedy, streamlined international systems to enable them to protect their innovations and intellectual assets in multiple countries. The growth in the use of these systems has continued at a robust pace and our objective is to ensure they remain robust and healthy.

To make these systems truly global, we have been working with a number of prospective new Contracting Parties. We hope to see this work materialize in the form of new members. In this regard, we are delighted with the developments that are occurring with respect to the Hague and Madrid Systems. Last year, the Republic of Korea joined the Hague System and in February this year Japan and the United States did likewise. These are major new developments for that system which will increase its viability and attractiveness across the world. We also expect Canada joining the Hague and Madrid Systems by the end of this year and the Association of Southeast Asian Nations (ASEAN) aims at joining both Systems on behalf of its Member States in the near term.

In addition to expanding the geographical reach, we pay close attention to the efficiency, quality and cost-effectiveness of the international work product. Users will not use the systems in international value creation unless these systems are reliable and credible. For example, the importance of the quality of PCT work products is essential to the well-functioning of the international patent system for the benefit of national Offices, users and society as a whole. A Quality Subgroup established by the PCT International Authorities has been discussing ways to improve quality of PCT International Search Reports and International Preliminary Examination Reports and reviewing the quality management systems.

Delivering Dispute Resolution Services: Effective IP management requires time- and cost-efficient dispute resolution. The WIPO Arbitration and Mediation Center enables private parties to efficiently settle their IP and technology disputes out of court. The WIPO Center also offers domain name dispute resolution services. Its records prove that the WIPO Center is truly an international dispute settlement body: in 2013, almost 2600 Internet domain name

disputes were filed by complainants and respondents from 109 countries. The cases were decided by WIPO panelists from 50 countries with 14 different languages of proceedings.

In addition, in our response to increasing litigations involving standard essential patents, the WIPO Center makes available tailored arbitration model submission agreements. Using these model agreements, parties may refer their disputes involving the determination of fair, reasonable and non-discriminatory (FRAND) licensing terms to WIPO arbitration.

Development of the International Legal Framework: Beyond the development of the international filing and registration systems, a fundamental part of WIPO's activities is the progressive development of international norms and standards. The process of developing international IP law is driven by Member States and takes place in three WIPO Standing Committees dealing with specific legal matters – (i) patents, (ii) copyright and neighboring rights, and (iii) trademarks, industrial designs and geographical indications. Another intergovernmental committee deals with issues relating to genetic resources, traditional knowledge and folklore.

The norm-setting area of WIPO is currently very complex. It is becoming very difficult to reach international agreements on many issues. In the area of patents, we observe a high disparity of Member States' views regarding the harmonization of substantive patent law. Member States have different issues that are their utmost priority, given their interests and positions in international negotiations. As a result, the current agenda of the Standing Committee on the Law of Patents (SCP) includes broad topics such as patents and health, transfer of technology and quality of patents.

In spite of this difficult reality in norm-setting for WIPO, we should try to identify concrete opportunities where interests are sufficiently aligned to permit a specific agreement. Beyond a political divide, patent offices and/or courts all over the world are entrusted to determine the patentability of inventions in accordance with their applicable law. Does the accurate and timely determination of the patentability meet the interest of everyone? Even in the area of patents, which can often be politically controversial, I hope it will be possible to identify common challenges that require concrete and practical international solutions. As our Director General has said, “multilateralism offers the unique and indispensable values of legitimacy and universality, which are so important for developing successful solutions to global challenges.”¹⁴

Global infrastructure and development: Although they are not under my responsibility, I would like to add a few words on the global infrastructure and development. International normative frameworks and international practical collaborations are like two wheels of a cart. We can achieve a lot through practical projects that help IP offices manage the rising global demand for IP titles. Take for example the Digital Access Service (DAS), which offers a rapid, secure, and inexpensive means of exchanging priority and similar documents between IP offices; or the Centralized Access to Search and Examination (CASE) platform, which facilitates the sharing of search and examination information between IP offices. These are important elements of shared technical infrastructure that improves the quality and efficiency of global IP operations.

Development and capacity building are the other important areas for the Organization. Developing countries often seek opportunities to successfully participate in, and utilize, the IP

¹⁴ DG's interview “Making International IP Law”, WIPO Magazine, September 2014

systems in order to meet their needs and development priorities, whether it is international transfer of technology, local innovation or responding to public health needs. Their aspirations are in fact nothing different from other more advanced countries. The question is: how to reap benefits from the IP system and to enhance their participation in the global innovation economy?

Conclusion

Knowledge is power. However, imagination is often more powerful. Thanks to our imagination, we stand on an existing foundation of knowledge, and continuously push the frontier of the unknown world. Imagination is not monopolized by scientists and engineers. Together with technological, cultural and social developments, the IP system ought to develop as well in order for it to continue harnessing innovation and value creation. Let's believe in our power of imagination for a better IP system.

I thank you very much for the opportunity to be able to talk to you this morning, and I look forward to interesting dialogs and conversations with you today and in the future and I thank you for your kind attention.