

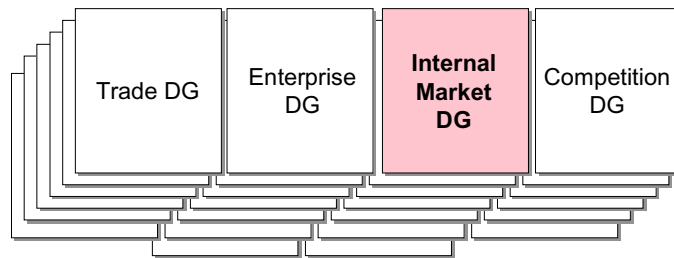
Patents and entrepreneurship

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Internal Market DG



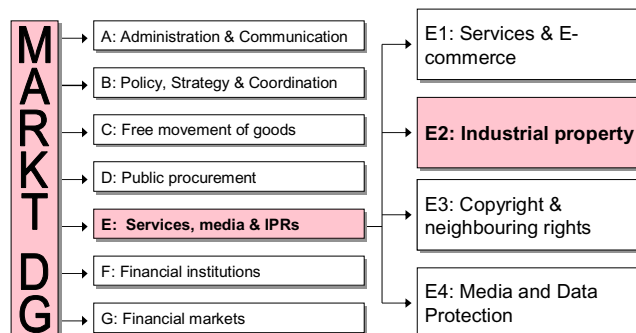
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European Commission structure



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Structure of Internal Market DG



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Responsibilities

- **directive on enforcement of IPRs**
- **directive on patentability of software**
- **competition and IPRs**
- **patent litigation insurance**
- **exhaustion of trade marks**
- **other economic aspects of IPRs**



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Issues

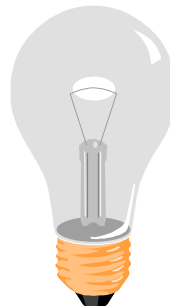
- **company size**
 - do patents disadvantage small companies and, if so, how do we correct this?
- **industry sectors**
 - do the benefits of patents vary between sectors and should we vary patent protection accordingly?
- **competitive structure**
 - are patents pro- or anti-competitive and, if so, under what conditions?



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Problems of access to patents for SMEs

- **cost of litigation**
 - access to legal expertise
- **uncertainty**
 - risk pooling



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Conclusions of Commission study

- **two-stage cover needed**
- **element of compulsion (with opt-out?)**
 - achieve critical mass
- **market mechanisms**
- **defence and offence**
- **all national, European and (future) Community patents covered**



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References

- **Kingston report**
- **Arthur D Little**
 - report for INPI, published May 2002
- **Danish study**
- **DG MARKT web site**
 - http://europa.eu.int/comm/internal_market/en/indprop/patent/litigation



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Sectoral effects of patents

- **added value of patents varies by sector**
 - highest in pharmaceuticals
- **amortisation period of R&D also varies**
 - hard to measure per sector, *ex-post* only
- **TRIPS Article 27(1)**
 - no discrimination by 'field of technology'
- **problem of sectoral discrimination**
 - distortion of claims, legal certainty



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Effects of patents in IT sector

- **Bessen-Maskin paper**
 - problems in sequential, dynamic market sectors
- **Mobility of non-patent factors**
- **Consequences of IPRs for economic organisation**



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Competition vs. IP law

competition law
seeks to eliminate supercompetitive profits by dominant companies i.e. prices go...



IP law seeks to allow IP holders to obtain maximum profits from goods and services incorporating their IP i.e. prices go



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Competition economics

- **marginal cost pricing**
- **average cost pricing**
 - high fixed cost
- **IP-dependent markets**
 - low to zero marginal cost
 - potentially high average cost
 - average cost depends strongly on demand characteristics, difficult to foresee



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Problems of compulsory licensing to a competitor

if an IP is necessary to protect a non-dominant company, it is *a fortiori* necessary to protect a dominant one

it is always better to have a good/service on the market at a monopoly price than not to have the good/service on the market at all



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Further information



http://europa.eu.int/comm/internal_market/en/indprop/index.htm



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