

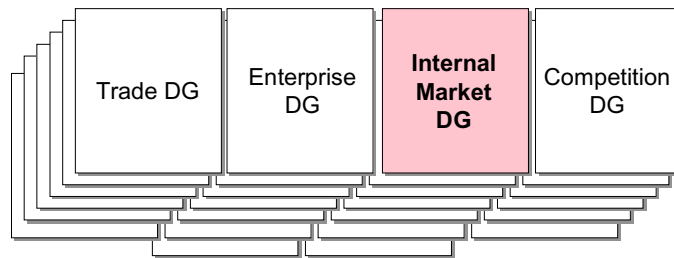
# Patents and entrepreneurship

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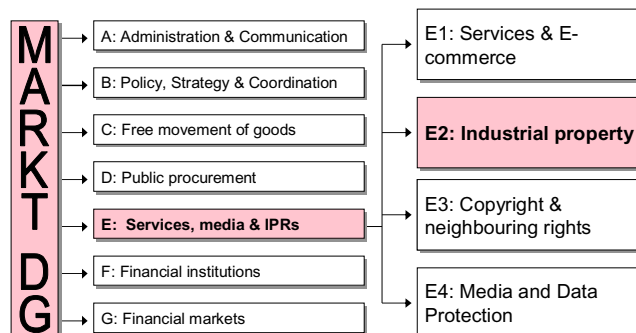
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## European Commission structure



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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

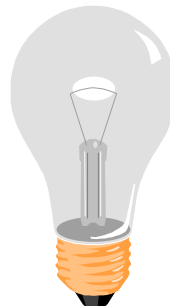
- **company size**
  - do patents disadvantage small companies and, if so, how do we correct this?
- **industry sectors**
  - do the benefits of patents vary between sectors and should we vary patent protection accordingly?
- **competitive structure**
  - are patents pro- or anti-competitive and, if 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](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](http://europa.eu.int/comm/internal_market/en/indprop/index.htm)



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