INTELLECTUAL PROPERTY MARKETS

Rationale and objectives

Intellectual property rights (IPRs) such as patents, trademarks, designs and copyrights are increasingly traded in markets. Public policy plays a role in shaping the evolution of IP markets and thus their impact on innovation. In today’s highly networked world, the circulation of ideas is vital to innovation. Inventors, designers and authors are not always best placed to exploit their knowledge. Organisations are therefore increasingly adopting open innovation practices, but high transaction costs often impede the successful negotiation of licences or other types of agreements.

IPRs facilitate the transfer of knowledge and technologies by assuring the parties involved that the knowledge will not be misappropriated. IP transactions can sometimes be motivated by strategic considerations, for example defensive or litigation purposes. They may also be used to secure finance by pledging the IP as security. IP market activities may provide an incentive for investment in new knowledge creation but can also lead to opportunistic rent-seeking behaviour, with potential perverse effects. The experience of the recent financial crisis provides a reminder of the importance of transparency, market design and incentives for complex products such as IP.

Major aspects

It is difficult to produce accurate estimates of the size of the IP marketplace because most transactions are proprietary and confidential. Available information suggests an upward trend: cross-country licence and royalty payments and receipts for all types of IP, including among affiliates, increased in the OECD area by an average annual rate of 10.6% between 2000 and 2010 (Figure 7.5), well above the growth of OECD gross domestic product (GDP) over the same period. According to Athreye and Yang (2011), the global total reached approximately USD 180 billion in 2009.

The share of patenting companies that license their technologies to non-affiliated companies was estimated by Zúñiga and Guellec (2008) at 13% in Europe and 24% in Japan. Based on confidential US tax data for 2002, Robbins (2006) estimated domestic and international licensing of patents and industrial processes to be USD 66 billion, or 4.5% of the total private R&D stock (BEA, 2011). Arora and Gambardella (2010) use these figures to estimate the size of the global market for technology at USD 100 billion.

Acquisition of IP has become a key strategic tool for companies seeking to maintain and increase their markets while IP transactions and disputes, especially involving ICT patents, have been widely reported in the media. The patent marketplace has also been transformed with the appearance of new intermediaries and business models, such as those described below (Millien and Laurie, 2009; Yanagisawa and Guellec, 2009; Chien, 2010; Hagui and Yoffie, 2011).

Patenting funds aim to reduce transaction costs and litigation risk by pooling patents and licensing the entire portfolio to members. However, they may induce asymmetries between insiders or incumbents and outsiders.

Patent-assertion entities acquire IP to assert against practising companies. Although they bring liquidity into the market, their business model is controversial because non-practicers are immune from retaliatory IP suits. This allows them to extract a maximum surplus from unlicensed practising companies, which could in turn discourage innovation in complex areas of research.
New online IP marketplaces aim to replicate highly successful platforms for standard products, but some adopt more sophisticated approaches. For example, an exchange platform for unit licence contracts, a new form of IP derivative product, was created in 2011.

**Recent policy trends**

A number of policy initiatives and instruments are used to enhance the impact of IP markets on innovation. A report by the US Federal Trade Commission (2011) noted the importance of patent quality for market efficiency. Authorities are considering whether to encourage a more complete record of patent assignments. In most jurisdictions, post-filing identification of assignment changes is voluntary, even though registration is necessary to assert ownership against third parties (USPTO, 2010). In contrast, Japan’s patent law has been amended to remove the requirement to register licensing agreements as a condition for licencees to assert their rights against third parties.

Many countries are reviewing taxation rules for IP revenue. Such rules can affect how companies exploit knowledge. For example, guidelines on the expensing or amortisation of IP purchase costs can influence knowledge sourcing strategies. Competition policy also plays an important role in evaluating mergers of IP-intensive companies or the creation of patent pools. Authorities have been investigating the use of injunctions against competitors by holders of standard-essential patents – often subject to fair, reasonable, non-discriminatory (FRAND) licensing pledges – in order to prevent abuse of market power.

Governments and public-sector organisations are considering playing a more active role where IP markets are perceived to be deficient. Denmark has set up a new web-based portal (IP-Handelsportal) to facilitate co-operation and trade in IP. The World Intellectual
Property Organisation (WIPO) has set up WIPO Green, a hub aimed at enabling environmental technology owners to make IP and know-how available to users through a searchable public database of available intellectual property assets and resources. Re:Search, a WIPO-led consortium, plays a similar role for research on treatments for neglected tropical diseases.

Some governments are also playing an active role in the assembly of patent portfolios. The Korean government helped launch Intellectual Discovery, a defensive fund which buys patents that might be asserted against domestic firms. Semi-public funds have also been set up to acquire and help commercialise research produced by public research institutions, such as Japan’s Life Science Intellectual Property Platform Fund and the France Brevets fund. Beyond patents, the UK Hargreaves Report (2011) recommends the formation of a digital copyright exchange to simplify clearance for use of copyrighted content.

References


