

Policy design for IP

Developing IP policies for innovation requires focusing on three critical issues: which IP policy priorities should be set, what trade-offs arise regarding IP policies and to what extent are they compatible with the wider set of policies? Regarding policy priorities, ensuring favourable legal and administrative conditions for IP holders are preconditions for IP to operate to the advantage of innovation. However, complementary policies targeted at actual and potential users of the IP system are often needed, particularly if IP is to serve a wider group of users. Prioritisation of specific types of policies or specific actors, sectors, and IP types can be appropriate. The trade-off between static loss and dynamic efficiency is at the heart of IP policy: incentives to generate inventions and innovations are provided by granting exclusive rights (thus reducing access to the protected matter). Several other trade-offs are derived from this basic one.

What is meant by policy design and IP?

Policy design refers to three critical questions for IP policies: the first is setting policy priorities, since it is often impossible to implement all policy reforms simultaneously and some may need to be set up first if they are a pre-condition for others to have impacts. A second issue is policy compatibilities: incompatible policies may in effect eliminate each others' impacts. A final dimension is about trade-offs since those policies that might contribute toward social returns can also impose certain costs.

Prioritisation for highest socio-economic payoffs

With respect to the type of policies

Ensuring that there are legal and administrative conditions that hold for IP is a precondition for IP to

However, achieving those baseline conditions might fall short of effectively supporting innovation. In particular, IP holders are often in a position where they have opportunities to manufacture.

Therefore, priorities regarding types of policies are much less feasible since care will not be taken to

With respect to actors

Prioritisation among actors should focus on where IP can have greater payoffs and, when it comes to complementary policies, where the strongest bottlenecks for impacts on innovation performance reside. Yet, it is also important to actively seek to involve a large group of actors so the IP system does not become biased and face corresponding political pressures as well as to provide wider innovation opportunities as discussed above.

With respect to types of IP

Weaknesses in research capacities suggest exploring types of IP other than patents: in particular trademarks as well as utility models. Plant Variety Protection and industrial design can also be important, notably in agriculture and textile sectors. The most advanced sectors, as well as those employing the most people, will also be relevant to setting priorities in the types of IP that should be adopted.

Compatibility

The impacts of IP policies will depend on innovation policies and other types of policies. Not only are

complementary policies needed to support innovation, other policies can also be incompatible and effectively reduce any potential impacts. This can be the case with IP policies to support the commercialisation of IP by public universities and PRIs: such policies can be successful only if universities enact policies allowing licensing to the private sector and/or the creation of spin-offs. As well, they should initiate adequate incentive schemes to encourage researchers to seek longer term engagement for the development of innovations based on initial inventions.

Trade-offs

The trade-off between static loss and dynamic efficiency is at the heart of IP policy. Thus incentives to generate inventions and innovations are provided by allowing exclusive ownership rights (and thus reducing access to them).

The question of whether IP systems provide insufficient incentives or excessive rewards to inventors is one inherent to the IP system. The difficulty of assessing social returns and costs, as these would not only consider inventions that were made but also the inventions that will materialise for a given level of rewards, and the impossibility of doing so on a case-by-case basis, impose a necessarily imperfect approach to addressing the issue. The question of exemptions arises in this specific context to address cases where social welfare would be strongly diminished by costs imposed by IP. However, the costs of such measures in terms of future inventions can be substantial.

Compliance with international treaties and access to foreign technologies impose additional costs. Other provisions such as having a limited duration for IP, renewal fees, disclosure and novelty requirements, seek similarly to provide mechanisms for raising social returns without, at the same time, reducing dynamic gains.

The following trade-offs arise for different dimensions of the IP system.

Patent incentives

Regarding patents, setting the incentive step at a higher level could result in more substantial inventions and lower the number of applications and their impacts, including processing delays and costs. However, it might exclude a substantial number of valuable inventions from the system which would, then, not be disclosed. The threshold level is difficult to determine and has generated substantial debates between the United States and European models. Where the diversity of innovation capacities is substantial, as is the case for developing and emerging countries, a utility model system can help reconcile different objectives.

Patent subject matter and scope

Another trade-off relates to duration and subject matter and patent scope as they critically set the reward for the inventor and the deadweight loss. This is even more challenging as its impacts depend on the fields of IP use as well as the competitive environment. These factors critically affect access to knowledge and dissemination issues. The fundamental question here is to what extent they can be set in a way that would restrain future innovations excessively. Moreover, exclusive rights over an invention can impose particularly high social costs if there are few close substitutes for the invention. At the same time a proliferation of patents of smaller scope can be a restraint if it leads to excessively dispersed ownership of parts of an innovation.

Ownership of research results

The question of IP ownership for research results produced by universities and public research institutes and funded by public resources is a subject of debate. The trade-off is IP ownership as a barrier to the dissemination of knowledge that should be in the public domain and available for future research, over the potential of IP ownership helping to foster the commercialization of such

research results.

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