

Bridging the divide is key to a positive IP future

Set amid rolling green hills, the Alpine town of St Gallen is situated right in the heart of Europe, where the border between Austria and Germany meets Switzerland. This European crossroads was an appropriate setting for a new type of patent conference, which brought together in-house counsel and independent patent attorneys along with academics from universities and business schools from all over Europe.

Organised by the European Patent Academy (<http://academy.epo.org>), in cooperation with the University of St Gallen, BGW Management Advisory Group and the Università Commerciale Luigi Bocconi, the European Patent Summer Course included talks from some of industry's big hitters, such as Ingrid Baele of Philips, Ingo Brückner from DaimlerChrysler, and Donat Bischof, head of IP at SwissRe.

What made the course noteworthy was the deliberate effort to bring together academics and researchers on the one hand, and patent practitioners on the other. Explaining the strategy, Jeremy Philpott, the innovation support unit manager at the European Patent Academy, said there were benefits for both sides. "Academics and researchers need to get beyond statistics and listen to how practitioners use IP in the marketplace and as a lever in negotiations." Likewise, he stated, IP practitioners can become immersed in the particular areas in which they are working. "We hoped this would give them the chance to take stock and look at the bigger picture beyond their own industry sector."

Of particular note, Dr Roland Tschudin of the Swiss Federal Institute of IP offered a glimpse into the day-to-day running of a national IP office, as well as a

useful reminder of how many divisions and disparities remain within Europe: with four official languages and division into 26 different cantons or independent districts, Switzerland could stand as a microcosm of the continent. He discussed how, having accumulated a large budget surplus, the Swiss institute is considering lowering its filing and renewal fees. Speakers from the floor immediately pointed out that removing this financial barrier could allow patent owners to continue to protect redundant technology and keep it out of the common ground, which can be destabilising. However, as a private, non-profit entity, the Swiss institute is prohibited from cross-financing – other than lowering fees; so where else can the money go?

Peter Klett, manager of IP law at IBM, discussed how patents can be managed in collaborations. These are key to IBM and Klett emphasised the difficulty of trying to encourage the open communication necessary to generate new ideas while maintaining the confidentiality necessary to protect inventions. His talk pointed out that parties often fail to anticipate a joint invention and suggested different models to deal with the situation. His statement that at IBM 99% of deals are not exclusive was met with a barrage of responses from the floor, a useful reminder that gulfs do not only lie between IP academics and practitioners: different conditions and working methods also divide industry sectors as well.

Perhaps the most striking aspect of the course was the group of papers on IP protection in emerging markets. Wulf Höflich, vice president of patents at Airbus, reported that China is expected to become the world's

largest aviation market after the US: already over 50% of the Airbus fleet contain parts manufactured by Chinese companies. He was followed the next day by a cluster of three research papers focusing on IP protection in China by Zheng Han and Martin Bader, Angela Beckenbauer and Johann Storck.

The papers were a refreshing alternative to the usual press reports that China is a den of piracy and devoid of IP protection. Instead, the speakers argued that emerging economies such as China and India are, in fact, developing economies that will benefit from stronger IP rights: competition in China increasingly relies on technology and innovation, and IP management is one of the main concerns of tech-intensive companies there. Further, China's laws are TRIPs compliant and while penalties are still low, patents are enforceable in the country.

Beckenbauer and Storck's papers, in particular, discussed how Western companies doing business in China are adopting factual protection methods to complement IP rights. These can include extra-legal means such as increasing the complexity of machinery to make it more difficult for competitors to copy, to limiting the dissemination of sensitive data.

Intellectual property protection in China is not just a dry, academic subject: the European Patent Office has seen applications by Chinese organisations rise rapidly in the last few years, a trend that is set to continue. Unless European companies take the same proactive approach to China, they are in danger of losing out.

The European Patent Summer Course was an important reminder of how much academics and practitioners still have to learn from one another and a promising first step

towards getting the two groups to cooperate more closely. The quality of the speakers, the liveliness of the debate and the consistent display of intellectual vigour throughout, demonstrated the value in bringing the two groups together. More work remains to be done in encouraging this coordination. One suggestion might be to have a broader chair, with both a practitioner and an academic. Also there was some sense that the segregation of the course into a practitioners' day and a researchers' day maintained the division between the two groups rather than breaking it down, although Philpott says that for the next course they are already considering grouping papers by theme, rather than by the writers' professional background.

Research on intellectual property is not just an academic curiosity, it is vital to a proper understanding of what impact IP is having on the European economy. There is not enough of it happening at the moment, which means IP owners have little with which to present their case apart from opinion and conjecture. This is damaging to their cause. If the strategic management of intellectual property in Europe and beyond is to advance, then opportunities to promote research and enhance understanding on the one hand, and to share experience gained from working with intellectual property on a day-to-day basis on the other, need to be encouraged.

As intellectual property becomes more and more central to the European economy and emerging economies start making their mark on the world stage, it is time for all involved in intellectual property – from theory to practice – to remember that they need each other and to start working more closely together.