European IP Policies between Harmonization and Variability

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Europeanisation of Innovation: Levels, Institutions and Procedures in the Governance of Research and IP Policies

Short Version of the Presentation

European Integration Research

- **Europe heading toward harmonization or variability**?
- General Questions:
  - Where to draw the boundaries of Europe?
  - Self-definition?
  - Dealing with differences?
  - Speaking in a single voice?
  - Centralised or federalist model?

- → applied to **European IP/ Patent System and the transnational cooperation of patent offices**

Outline

- 1. Theoretical frameworks from EU integration theory: Variable geometry and transnational cooperation
- 2. Basics: The European Patent System
- 3. Empirical findings on harmonization/variation and questions for future research
- 3.1. Grant of patents by the EPO
- 3.2. European patents post-grant
- 3.3. National Patent Offices (NPOs) and the EPO
- 3.4. Effects of „centralization“ (EPO) on NPOs
- 4. Challenges to the international patent system
- 5. Responses to Europeanization and international challenges
- 5.1. NPO – EPO: “Centralization”
- 5.2. NPO – EPO: “Decentralization”/Cooperation: The European Patent Network
- 5.3. Internationalization
- 5.3.1. Bilateral Cooperation: PPH
- 5.3.2. IP5 – cooperation of the major Patent Offices
- 6. Tentative assessment and possible future developments

1. Theoretical frameworks

- 1.1. European integration theory:
  - “Negative“ and positive „positive“ integration (Scharpf)
  - technocratic vs political integration in IP issues
- 1.2. Widening and deeping of integration:
  - “core of Europe” (Habermas, Derrida) with France and Germany as “engines” or “gravitation centres” (Fischer)
  - “Europe of two speeds” (Schäuble, Lamers)
  - “Europe à la carte”
  - “variable geometry”

  → both harmonization and variability
- 1.3. European “administrative spaces” (Olsen 2003, Egeberg 2007),
  - governance by administrative networks (Slaughter 2004)
  - “transnational regulatory regimes” (Eberlein, Grande 2005)

European Enlargement: possible consequences

- **Research questions:**
  - **How is widening and deeping of European patent integration being realized?**
  - **And how can we assess the impact of these processes**?
- "Two speeds":
  - More harmonization and convergence or
  - exacerbation of gaps and divergences?
- Variable geometry:
  - those leading in the "deepening of integration" will "pull the others behind" with positive effects for all, or
  - Segmentation, and thus a setback for Europe as a whole?
- Inside/ Outside Europe:
  - more cooperation and approximation or
  - growing disparities between the centre and the periphery?

6. Tentative assessment and outlook to possible future developments

- 6.1. “Variable geometry” and “two speeds”
- 6.2. European Patent Network – what model for Europe?
- 6.3. Possible scenarios for the future
- 6.4. The difficulties of anticipatory impact assessment

The difficulties of anticipatory impact assessment

- Whether current processes will lead towards
  - technical and/or political harmonization and convergence
  - or to peaceful co-existence of variations
  - or to expansion at the expense of capabilities for guidance and steering (EPO – Ad Council)
  - or to growing divergence and even fragmentation
- should be subjected to academic inquiry and scholarly scrutiny
- So far: little knowledge and transparency
- Problematic in terms of democratic decision-making:
  - Mostly administrative or executive politics
  - Not subjected to parliamentary control