

Core Competencies: The Question of Heterogeneity in the Patent Law of the European Union

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Previously, I have argued that the domestic intellectual property regime must be viewed within a multi-institutional context, a departure from a perspective that views patent-decision-making in a purely centralized context. The patent law of the European Union presents a different problem: an overwhelming diversity of alternative actors and structures at the national, regional, and international levels. Recent proposals, such as the European Patent Litigation Agreement, seek to streamline this diversity by providing, for instance, a community-wide ability to pursue the infringement actions against the relevant actors. These proposals, however, face significant difficulties in determining the appropriate actors in which to centralize patent-decision-making. Moreover, such centralized solutions may ignore important subsidiary actors that address secondary patent issues such as antitrust and import regulations. This Article contends that the patent law of the European Union presents significant, but not irresolvable, challenges, to the usefulness of a heterogeneous regime. This Article will examine three issues. First, this Article will analyze the current existing framework of the European Union, assessing the different regulatory actors at the national, regional, and domestic level. Consolidating roles of these actors has presented significant difficulties to the patent law of the European Union. Second, this Article will examine the tentative proposals suggested by various actors that seek to resolve the significant heterogeneity issues associated with the patent law of the European Union. Finally, this Article argues that any administrative patent reform of the European Union may want to take into account the current debate over centralization with the context of U.S. policy and moreover, assess how a centralized regime will interact with subsidiary regulators.