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Ensuring further technological developments of Clean Technologies – IPR aspects in the current climate change debate

1. INTRODUCTION

In order to tackle global climate change effectively, further innovation and a broader use of *clean technologies* are essential. Accelerated innovation in this field offers the potential to reduce the costs of climate change stabilisation significantly, eventually saving trillions of dollars globally. Private sector investment in innovation is crucial to achieve this goal as it is the dominant source of the world's investments in clean technology innovation. The private sector is also the most effective source of know-how and technology diffusion.

To secure and further enhance investment in innovation, intellectual property rights (IPR) are vital since they reward substantial spending in R&D activities which are necessary to achieve breakthrough innovations. In this context, retaining a strong IPR regime and other commercial market-based mechanisms are important to maintain incentives for private sector investment in research and development. IP rights and commercial, market opportunities are a key driver of investment in R&D, innovation, and dissemination.

2. ENGINEERING INDUSTRIES' MAIN CONCERNS

While the industries represented by Orgalime recognise the need of the least developed and of emerging countries to obtain access to and deploy environmentally sound technologies (EST), we fear that some economies are misusing the climate change debate to advance their own industrial policies. Some governments have suggested weakening IPR with the aim of obtaining very easily access to advanced technologies; their proposed measures include compulsory licensing and even the forced transfer of technology. Although this approach might in the short term be beneficial for their rapidly growing and often highly competitive domestic industries, such proposals in the long term threaten to undermine the broader environmental and economic objectives.

By forcing innovative engineering companies to share their knowledge via IPR restrictions, they will lose the incentive to invest in R&D. This will thus hamper necessary investment in R&D to mitigate climate change on a global scale. Moreover lower standards of IPR protection, including legalising the use of technology via compulsory licences, and distribution of licences by funds, will have a negative impact on the further development of EST and the overall long-term economic growth of the industries we represent. Technology transfer, including licences of patents and know how on a

Orgalime, the European Engineering Industries Association, speaks for 34 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

commercial basis, can help to accelerate the development of necessary technologies and their implementation.

Engineering companies have been for many years successfully involved in the transfer of technology with developing countries via trade and FDI activities. Core elements of these transfers have included the establishment of their own research, production and assembly facilities and the improvement of affiliates' and partners' facilities. Large parts of the R&D budgets of innovative engineering companies are spent abroad. Altogether this is far more than patent licences can do. A forced technology transfer will change this situation and will have a negative impact on trade flows and FDI in general, since it discourages our companies from doing business in markets where such mandatory technology transfer requirements occur. Furthermore we believe that mandatory transfers of technology are inefficient as they often lead to situations where the owner has no option of selecting the most suitable partner or the most efficient set up for his business. This can even have a negative impact on the environmental and economical situation of the imposing country.

In summary, governments should acknowledge that IPRs encourage innovation and that they provide the assurances needed for businesses, inventors and rights holders to share and disseminate their technologies. Published patent documents (patent databases and patent landscaping) offer a vast, freely accessible source of technological information on which others may build.

3. OUTLOOK

Strong IPR, the removal of trade and other market barriers, and the deployment and dissemination of technologies go hand in hand. Orgalime therefore sees the need to further develop and promote integrated solutions; these include technical, operational, commercial, as well as system know-how and education to successfully operate modern and efficient infrastructures. For the transfer of this complex know-how, a framework based on voluntary measures, such as partnering and business alliances, is the most effective solution, as it fosters long term cooperation and thus provides the prerequisites for sustainable and successful operations. Technical cooperation is rarely hampered by problems regarding licences or patents, but rather by a lack of absorption capacity and policies which discourage businesses to engage long term on a mutually beneficial basis.

As negotiators look for measures to facilitate further scale up investments in the most possible cost-effective and efficient way, we believe numerous potential options are at their disposal, each of which blends public and private sector action, thus providing a positive and effective contribution to the worldwide response to climate change. To name a few:

- Ensure effective, non-discriminatory and fair procurement practices which are consistent with international rules.
- Ensure a continued strong IPR paradigm including strong protection for low carbon IP.
- Expand the use of Public - Private Partnership models, which should be based on commercial best practices, including on the basis of licensing of IP rights on commercial terms and conditions.
- Mixed financing vehicles, pulling together carbon market funding with public and private sector investment.
- Guarantees funding pools to help unlock financing from regional (private sector) banks: such pools could be either public or privately financed and run by an appropriate financial institution.
- Ensure a stronger focus on capacity building, enabling environment and local training especially in least developing regions. This could be technical assistance and commercial advisory capacity for developing countries to adapt and deploy environmentally sound technologies within their countries.

- Incentives that foster the diffusion of environmentally sound technologies within the framework of bilateral or multilateral development cooperation.
- Reduce or eliminate all tariffs and other border measures currently affecting trade in Environmentally Sound Technologies (EST).
- Formulation and application of global standards replacing local standards, wherever possible, to foster global exchange and interoperability.

In conclusion then, Orgalime calls on governments and international organisations like the WTO to discuss the issue of IPR rights on environmentally sound technologies in international groups of experts in order to come up with a appropriate solutions. The main aim is to prevent a possible slowdown in R&D activities and thus innovation in the domain of green technologies, leading to negative effects on the global efforts to fight climate change and on the performance of highly innovative companies.



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