

6 June 2013

## **Recommendation Regarding a National Strategy for Intellectual Property**

### **Background**

All forms of intellectual property (IP) rights are pillars of a new, knowledge-based economy. The potential for revenue from commercial property rights (patents, trademarks, utility models, design, copyright law) is just as important today as access to goods. Commercial property rights, i.e. intangible assets, are also increasingly used today for evaluating companies, especially in the biotechnology and pharmaceutical fields, and in the digital economy and in consumer goods sectors, where business models are determined to a large extent by intellectual property.

Active markets for technology and innovation are driven by market players who have a solid understanding of intellectual property. Making better use of intellectual property through licensing and commercial exploitation is a central factor in a successful business model in today's economy. However, the discussion on intellectual property and its economic utility has been delayed in Austria and is still not sufficiently developed.

The feebly developed IP culture has an effect on Austria's position in an international comparison of innovation systems. As a result, Austria has a lower score in the Innovation Union Scoreboard for international<sup>1</sup> patent applications than the Innovation Leaders.<sup>2</sup>

The Austrian Council for Research and Technology Development therefore already referred to the necessary improvement in the Austrian IP system in its Recommendation of 24 November 2011 on the Efficient Implementation of Research Results in Innovations. Establishing a central contact point for patent enquiries was in particular identified as a priority. As this role is assumed mostly by patent offices in comparison countries, the Austrian Council subsequently commissioned a study<sup>3</sup> to better understand the role of the Austrian Patent Office (APO).<sup>4</sup>

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<sup>1</sup> Patent Cooperation Treaty (PCT)

<sup>2</sup> Innovation Union Scoreboard 2013

<sup>3</sup> Oxfirst Ltd. (2012): Analyse des Österreichischen Patentamtes (ÖPA) im europäischen Vergleich

<sup>4</sup> The Austrian Patent Office is a subordinate office of the central government. Some of the services it offers have been spun off in an organisation that is managed as a private entity (serv.ip).

## Recommendation

### National Strategic Orientation

In contrast to many other knowledgebased<sup>5</sup> economies, Austria has no national strategy on intellectual property. The Federal Government's research, technology and innovation strategy only makes a slight reference to commercial property rights and contains no specific or comprehensive strategy for the protection, use, enforcement or creation of awareness, and competence for intellectual property.

IP competencies are fragmented in Austria. IP services are rendered by public and private service providers alike. However, they are not always optimally integrated with one another.

*The Austrian Council therefore recommends:*

- Preparing a national IP strategy which covers all commercial property rights with regard to their role in the innovation process.<sup>6</sup>
- Introducing a reform of the structures, organisation, division of powers and content of the Austrian IP system based on the national IP strategy.

### Access to IP-relevant information, increasing awareness and public relations

Public relations and measures to increase awareness on intellectual property are integral components of the functions of a national IP system. Yet Austrian market players are still often lacking awareness about the importance of commercial property rights.

Building on a recommendation from the European Commission<sup>7</sup>, the BMWF in conjunction with the BMWFJ and the BMVIT, and with the operational support of the Austria Wirtschaftsservice, established a National Contact Point for Intellectual Property (ncp-ip), which supports public research institutions and universities via events and the preparation of IP guidelines.

Many organisations currently provide general information on commercial property rights, e.g. the Austrian Patent Office (APO), aws, the Austrian

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<sup>5</sup> Singapore has recently published a strategy to turn Singapore into a global hub for IP services (Intellectual Property Hub Master Plan: Developing Singapore as a Global IP Hub in Asia). In 2011 the United Kingdom began a thorough overhaul of its own IP system with the national strategy Digital Opportunity, A Review of Intellectual Property and Growth.

<sup>6</sup> Consideration should be given as to whether the IP strategy should be directly linked with, or ideally, how it can be integrated into the RTI strategy. Practically speaking, coordination of the IP strategy process should best be undertaken by the BMVIT, the ministry responsible for both the Patent Office and for innovation and technology policy.

<sup>7</sup> Commission Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and public research organisations, 10 April 2008.

Research Promotion Agency (FFG), the Austrian Federal Economic Chamber (WKO), Technology Transfer Offices (TTOs) of universities and practising patent lawyers.

It can be assumed that important IP-relevant information is available in the system. However, due to the fragmentation of these services, it is not always guaranteed that potential customers can find the best access to the information they need. Companies, universities and research institutions often only find the correct information after several attempts, or the information is only rarely tailored to the customer. Due to lack of size or number of cases, the development of organisations' own competences or networks is frequently inadequate.

*The Austrian Council therefore recommends:*

- Performing a comprehensive analysis of customer needs by the IP-relevant institutions.
- Providing a customer-friendly information portal for IP, for example by improving and better integrating the online services available from various IP-relevant institutions such as the APO and aws.
- Focusing on public relations in order to make a broader public aware of the importance of the legal protection of commercial property.
- Strengthening IP presence at trade fairs, conferences and seminars on intellectual property and innovation.
- Additionally providing important information in English as part of the development of international markets for IP services as well as the general globalisation of innovation-related activities.

## **Networking and customer presence in the IP system**

The APO currently focuses most of its efforts on the investigation procedure for industrial and commercial property rights. The APO's service centre, serv.ip, which is managed as a private entity, also provides business-related services and information services. These services partially overlap with what the aws provides, with which the sovereign part of the APO otherwise cooperates successfully in the "discover.ip"<sup>8</sup> programme. The size of serv.ip is subcritical in relation to the tasks to be covered. Topics such as commercialisation, licensing markets and the economic importance of patents, trademarks and designs are not adequately covered.

The Ministry of Justice is responsible for copyright law, while competency for counterfeiting and product piracy is located at customs. However, there is a gap in the specific support for these areas of the legal protection of industrial and commercial property.

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<sup>8</sup> Over the past five years, some 250 companies have received coaching or been subjected to a property rights audit carried out by aws together with the sovereign part of the Austrian Patent Office within the framework of "discover.ip".

The aws on the other hand, has offered technology transfer services for 15 years and as part of these activities is active in the fields of consulting, financing and exploitation. For example, it conducts market research on intellectual property which should help SMEs to assess the economic value of a potential patent application, it supports universities in evaluating invention applications and it supports the patent brokerage business.

The aws IP department focuses on patents in particular. Economic aspects of copyright law, design protection and trademark protection are not a focal point. Similarly to serv.ip, the size of the aws IP department is also subcritical and cannot do justice to the broad range of tasks.

Furthermore, the chamber of commerce as well as federal and provincial funding agencies offer consultation on intellectual property.

*The Austrian Council therefore recommends:*

- Bundling both consulting and concrete activities for the commercial exploitation of intellectual property and establishing active markets for industrial and commercial property rights.
- Setting up online platforms (e.g. an “IP Marketplace”<sup>9</sup> as in Denmark).
- Setting up technology exchanges to stimulate the licensing market (e.g. a national patent fund such as in France) or supporting the participation of Austrian players across Europe or on international exchanges.

## **International Orientation and Development**

The increase in international trade and the international integration of technology markets has brought the international dimension of IP protection into focus. Globalisation opens up opportunities for trade with IP-based products, processes, services and expertise. However, it also changes the commercial foundation of national IP systems.

For example, national patent applications are no longer economically interesting for many companies in Austria due to internationalisation. An application via the European Patent Office (EPO), the World Intellectual Property Organization (WIPO) or the German Patent and Trade Mark Office (DPMA) is often preferred. It can be assumed that this trend will continue to strengthen with the creation of the unitary patent and a unified patent jurisdiction within the EU. In addition to the targeted reduction in costs for companies to protect their inventions, the EU patent will also have a structural effect on national patent systems.

The national contact point in the Austrian Federal Ministry for Science and Research represents Austria on the topic of “IP in knowledge transfer activities” in European committees and principally serves to network with other countries.

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<sup>9</sup> <http://www.ip-marketplace.dk/>

*The Austrian Council therefore recommends:*

- Stepping up cooperation in international fora as part of European integration and in the context of regional bilateral contacts.
- Using bilateral relations in the IP sector for a comparison in order to understand how the efficiency of one's own activities can be improved in light of the experience of other countries.
- Using international relationships to provide one's own services worldwide.

## **IP Analyses**

Analyses on intellectual property and economic growth should also be covered by a national IP system. There are currently no economists in public service in Austria who exclusively deal with intellectual property and who help to better understand the economic contexts of the trends in this sector. There is a lack of both critical reflection on the national patent system and research activities on IP and IP policy.

*The Austrian Council therefore recommends:*

- Introducing a chief economist for intellectual property (such as in the United Kingdom, France, the EPO, the WIPO, in Australia and in the USA).
- Investments in research on intellectual property as an important basis for political decisions.
- Presenting practical and politically relevant research activities on the IP portal that is to be set up.

## **The tasks of the Austrian Patent Office as a potential hub of the IP system**

In contrast to other countries, the Austrian Patent Office with its current remit and its current structure does not have the role of a true IP hub in the Austrian innovation system.

The granting of patents, trademarks and design rights and providing services and information in the area of legal protection of commercial property is one of the core tasks of the Austrian Patent Office (APO). Furthermore, awareness-raising measures are also implemented in the IP system to a certain extent.

However, the national audit office<sup>10</sup> and the study carried out on behalf of the Austrian Council<sup>11</sup> document the lack of networking between the APO and the other institutions of the innovation system and the APO's lack of visibility among potential customers. It is predicted that the introduction of EU patents and other international trends will lead to a massive change to

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<sup>10</sup> Bericht des Rechnungshofes, Österreichisches Patentamt, Bund 2012/7.

<sup>11</sup> Oxfirst Ltd. (2012): Analyse des Österreichischen Patentamtes (ÖPA) im europäischen Vergleich

the basis of the APO's business in the future. Nor is the APO subject to any independent external benchmarks to date, and is still not involved in many European initiatives on industrial and commercial property rights.

*The Austrian Council therefore recommends:*

- Evaluating the APO's fields of activity on the basis of the national IP strategy that is to be drawn up at a future date.
- For the evaluation, considering the impact of the introduction of the EU patent on core business as well as using the best practice examples of comparable organisations in other countries (e.g. with regard to awareness-raising measures, building competence, international networking, training and integration into innovation consulting).
- Re-aligning the evaluation results in accordance with the organisational and financial structure of the APO and the division of labour with other IP-relevant institutions (e.g. the tasks that are carried out by the aws on the one hand or by serv.ip in the APO on the other).
- Regularly subjecting the Austrian Patent Office to external quality assurance procedures.