

"The potential for optimising the Swiss national patent system" study

Even though the Swiss patent system has stood the test of time over the years, it is worthwhile reviewing from time to time to ensure that it still meets the requirements of a rapidly changing framework. To this end, the IPI mandated the economic consulting companies Polynomics and Fronter Economics to compile the present study. The goal of the study was to identify potential for improvement and – if any was found – to make recommendations on how this could be rendered usable for the public at large. Particular attention was paid to the question concerning the extent to which introducing a fully examined Swiss patent would make the patent system more efficient and reliable and whether such an option corresponds to what various stakeholders actually want.

Results

In addition to the option of abolishing the national Swiss patent, the following four possible aspects of reform could also be identified from some twenty structured interviews carried out with representatives from key stakeholder groups: switching to a fully examined patent, adding a utility model, introducing a grace period and strengthening international cooperation in patent examination.

A subsequent more extensive electronic survey revealed that around 20 per cent of those questioned want to abolish or replace the Swiss patent with a utility model. A good third prefer to maintain the status quo or replace it with a novelty grace period, and almost half are in favour of introducing a fully examined patent.

The economic analysis investigated the reform options in particular with regard to their potential for reducing uncertainty in the system. A comparison with other countries also showed that many national patent systems have had positive experiences with various forms of a full patent examination.

An important implicit result of the study is that the existing Swiss patent system is clearly very well accepted. This is largely reflected by a clear majority of those surveyed indicating that they think the system has a positive effect on innovation. In addition, more than 70% of respondents judged the scope of protection and exceptions to protection in the current system as being satisfactory.

Recommendations

Based on the survey, the economic analysis and the international comparison, the authors of the study made the following recommendations:

- No abolition of the national Swiss patent
- No change to the scope of protection nor exceptions to protection within the current system
- No introduction of a utility model or a grace period to the current Swiss patent
- The introduction of a full patent examination (with a utility model and international cooperation)
- Based on the results concerning willingness to pay, doubling the procedural fees for a fully examined patent would be possible.

Fully examined

A patent filed in Switzerland currently undergoes a substantive examination by the IPI, but is not examined for novelty and inventive step. With a full patent examination such as that carried out by the European Patent Office, patents would also be examined for novelty and inventive step. Ninety per cent of patents registered in Switzerland currently originate from the European Patent Office.

Extensive electronic survey

More than 5,000 patent owners were questioned, all members of the relevant patent attorney and intellectual property associations, professors (of law), consumer organisations, NGOs, etc. More than 200 responses were evaluated