Study on the policy of the European Institute of Innovation and Technology (EIT) and its Knowledge and Innovation Communities (KICs) regarding Intellectual Property Rights

Executive Summary

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Background

Technopolis/ICF GHK, supported by the University of Oxford’s technology transfer firm ISIS Innovation, were invited by the European Commission to perform a study on the policy of the EIT (European Institute of Innovation and Technology) and its first three KICs (Knowledge and Innovation Communities) KIC InnoEnergy, KIC Climate and KIC ICT Labs regarding Intellectual Property Rights (IPR). The study team performed the review on the basis of interviews with CEOs and IP board managers of the three KICs, the EIT and external IP experts.

The analysis was set against the backdrop of the growing significance of IPR and IP management for organisations such as business and research organisations in many different technology fields. As evidenced by soaring number of patent applications (i.e., a more than 50% increase of patent applications at the EPO in the last decade), a widened scope of usage of IP and the emergence of sophisticated IP-based business models, there is generally a strong need to deal with the topic of IP in a much more systemised and professional manner than in the past.

IP management is understood as the ability to handle and decide on the usage of the various types of IPR – including formal instruments such as patents but also informal ones like trade/business secrets – in the context of the specific business strategies. Hence, IP management issues are contingent on the various commercial strategies of the KICs. A coherent and directed set of goals, rules and procedures for IP management decisions and activities define an IP(R) strategy or policy. The IPR strategy of an organisation describes what the KIC wants to achieve in term of IP, and how it intends to do it. To this end, the EIT has provided a generalised guideline with some basic requirements for an IP policy designed by a KIC. It leaves considerable guideline with some basic requirements for an IP policy designed by a KIC. It leaves considerable leeway for the organisations to follow own approaches.

The study team had to assess to what extent the KICs implemented the EIT guidelines, to what extent the different approaches led to an impact on innovation and whether the EIT should keep its rather ‘hands-off’ attitude regarding the definition of an IP policy. Furthermore, we were to develop recommendations for the EIT on how to handle IPR in the future.

Findings

All three KICs have established IP boards and have created IP policies. Still, the IP policies are work in progress both in terms of design (refinement) and implementation. The current state is that the policies have tackled the majority of EIT requirements regarding IPR at least in general terms. However, there are major differences between the three KICs regarding the level of sophistication and detail, with which the various IP-related topics were treated.

The common element of all IP strategies is that their core focuses on regulating IPR in collaborative R&D/innovation projects, which KIC partners carry out as part of the KIC activities. The general rule is that ownership of foreground IP created in the course of such projects stays with the parties who created the respective R&D results behind the foreground IP. This means that none of the KICs own themselves any of the IP created. The business case for all KICs in this particular context is, to different degrees, to provide a facilitating framework for collaboration on multi-stakeholder R&D and innovation projects.

KIC InnoEnergy is probably the KIC that follows such a facilitating approach in the, by comparison, most thorough manner. KIC InnoEnergy operations follow the thinking of a start-up that needs to develop in the long term a sustainable business model and pay out initial
investors. The envisaged long-term business offering of the KIC is to provide to stakeholders in the alternative energy sector a platform for collaboration which lowers the transactions costs of the KIC members considerably via a set of well-established rules and operations (if compared to other modes of ad-hoc collaborations or participation in other platforms or R&D programmes).

IPR plays a significant role as element of the business strategy. First, it provides a set of clearly defined structuring rules, accompanied by IPR support services delivered partly by the IP board. These rules govern, among others, mandatory market and technology readiness assessments, searches in IP databases to examine the freedom-to-operate particularly prior to project start or the establishment of a database of background IP available to all KIC partners. Support services comprise for example a patent funding/subsidy scheme for small firms and PROs, equity funding schemes or training and awareness raising measures.

KIC InnoEnergy plans to retain, as a general rule, a 10% commission on foreground IP created within the KIC and licensed out. Hence, IPR is to become one of several sources of income for the KIC. The attractiveness of the IP business case in the overall business model depends to a large extent on whether the benefits of taking part in the KIC-supported activities exceed the costs, i.e. the 10% cut. The KIC believes that the benefits will outweigh the costs mainly because a professional and active IP management will lead to valuable strategic IP being collaboratively created (unlike in other platforms/funding programmes, where weak IP regimes are seen as a deterrent to participation with high-value projects). As with any business model, it will be up to the addressed market to decide on the success of the business model. KIC InnoEnergy is the sole of the KICs that was established as a for-profit firm, and while the interviewed KIC representatives stated that this factor was not decisive, it was said to have been “helpful” for the development of the particular IP policy. By contrast to KIC InnoEnergy, KIC ICT-Labs takes a much leaner and less regulatory approach. The IP policy is codified in the EIT ICT-By-Laws and is made up of seven principles for joint R&D/innovation projects. These items were derived from standard FP7 procedures. KIC ICT-Labs policy takes account of the diverse and often conflict-laden usage of IP in the ICT sector. Against this backdrop, this KIC opted in its current approach for a careful policy that only adds additional regulation where standard procedures would not suffice for KIC-specific activities. Against this backdrop, this KIC is rather sceptical concerning the possibility to obtain significant income streams from cuts in licensing deals resulting from IP created within the KIC.

Climate-KIC has placed its IP policy against the objective to create an ‘open innovation’ environment for collaboration in the emerging climate technology sector. This particular approach has led to a series of interesting issues and solutions, as there have been many experiments with open innovation approaches and only few were acceptable to all partners of the KIC. The current IP policy reflects these learning experiences. The policy consists of a main, non-binding policy document and two template partner grant agreements and a template consortium agreement at the implementation level. These documents are considerably more detailed than the guiding principles of ICT-Labs, but cover less “service-type” activities than in KIC InnoEnergy.

The general rule is that, while consortia can come up with their own IP rules, the actual consortia agreements will be checked against the principles of the IP policy. Two features make Climate-KICs IP policy interesting: First, a focus on and very positive attitude towards joint ownership of IP, which is otherwise a very controversial topic among IP professionals. Secondly, the aim of and the issues encountered when setting up a database/registry of foreground IPR. Due to emerging discussions, the KIC now plans to have one such generalised public database with less sensible information and a more detailed internal database. Climate-KIC has reserved the right to introduce a commission on licensing income for foreground IPR akin to KIC InnoEnergy in its IP Policy, but has not yet taken any further steps in this direction.
All three KICs had and have to cope with significant efforts establishing the commonly agreed upon IPR policies. The reason is basically that these rules should complement rather than compete with the IPR policies of the KIC members and that there is considerable heterogeneity within the respective cast of KIC members with regard type of organisations present, their individual IPR awareness and the goals of the KIC-member IPR strategies.

In this context, it was interesting to learn that negotiations were relatively easy-going in all KICs with academia, small firms and also larger, but mostly nationally active, firms. By contrast, more efforts have to be spent to get KIC IPR regulations in line with the IPR policies of large multinational companies. Such companies usually have very stringent IPR policies in place, which may not be easy to alter or adapt to the ideas within the KIC. Furthermore, representatives of such multinationals active in the formulation of the KIC’s IP policies may not have large possibilities to influence their firm’s activities, and we have been also told of cases of staff fluctuation (i.e., changing persons representing the multinationals) which negatively impacted efficiency and effectiveness to reach a commonly agreed upon IPR policy.

The difficulties of creating a consensus among a larger cast of different types of actors, as well as the long-term identity-seeking process for a novel institution such as the KICs, are probably the factors contributing most to the rather long process of defining an IPR policy in all details. Because of the length of this process, and the young age of the KICs, there are no impacts yet to report from IPR-related activities.

There have not been any cross-KIC activities with respect to the development of the IPR strategies that are worth mentioning. Most KIC representatives interviewed did not see that as a problem, because the IPR strategies are tailored to the specific needs and issues of the KICs. However, all KIC representatives interviewed would welcome some form of exchange of experiences, mostly to learn but not to copy the other KIC’s approaches.

There is full consensus among all interviewees that a more directive control from the EIT for drafting and implementing the IPR policies is not warranted. We concur with this assessment. Given the complexity of the subject matter, the challenge of aligning the different KIC member interests into a common IPR framework as well as the individual character of the ensuing IPR policies means that more EIT control would lead to even higher complexity. It could also mean that tailored approaches would be more difficult to achieve. However, interviewees agreed that the EIT could improve on the monitoring by checking to a greater extent whether the IPR policies designed are in line with commonly agreed good practices.

The particular organisational set-ups of the KICs, their focus on regulating IP in collaborative R&D/innovation projects and the fact that the KICs do not own any of the foreground IP created means that the IP policies of the KICs show only partly features which an IPR strategy usually has in a regular private business owning IP. For example, there are hardly provisions on IP enforcement. KIC InnoEnergy is the KIC that probably moved most beyond regulating IP in R&D and innovation projects, as it includes support measures and training activities as part of an integrated package covered by the general IPR policy.

**Recommendations**

Because of the work in progress for defining and detailing the IPR policy in practically all three KICs, and also because there is a lack of experience of how the regulations work in practice, it is difficult to recommend a larger set of specific courses of action for the EIT and the Commission. Nonetheless, we believe that some steps should be considered:

- Providing support for refining and adapting the long-term business models of the KICs, as the IP policies are contingent on them
- Facilitating the exchange of good practices and experiences in drafting IPR policies
- Stick to the practice of the lean/non-directive approach
- Monitor the IPR activities of the KICs with respect to general good practices in IP management
- Consider expanding the scope of the IPR regulations slightly to cover also aspects such as IP training
- Providing EIT headquarters more resources so that it can take a stronger supportive role for the development of the IPR policies
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