CSIC/OECD/OEPM CONFERENCE

RESEARCH USE OF PATENTED INVENTIONS

Madrid, Spain, 18-19 May 2006
RESEARCH USE OF PATENTED INVENTIONS

OBJECTIVES
The aim of the conference is to engage policy makers and stakeholders from OECD countries in policy-relevant discussions related to the use of patented inventions and the knowledge embedded in them for research in the public and private sector. Researchers, industry representatives, experts, legal practitioners and policy makers will review available evidence to determine how patents affect the use of inventions for research purposes and analyse the effects of different mechanisms to improve access (e.g. licensing, research use exemptions in patent law). Participants will also attempt to draw policy-relevant conclusions from evidence and discussions.

ORGANISERS
The conference is jointly organised by the Spanish National Research Council (CSIC), the Spanish Patent and Trademark Office (OEPM) and the Organisation for Economic Co-operation and Development (OECD).

WITH THE SUPPORT OF

VENUE
Consejo Superior de Investigaciones Científicas (CSIC), Serrano 117-119, 28006 Madrid, Spain
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## Description of Sessions and Abstract

- **Session One** 9:00-10:00
- **Session Two** 10:10-11:10
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- **Session Four** 13:10-14:10

## Speakers and Chairs

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THURSDAY, 18 MAY 06

9.30  REGISTRATION

9.45  OPENING SESSION
  • José Manuel FERNÁNDEZ DE LABASTIDA., Vice-President, Spanish National Research Council (CSIC)
  • Mª Teresa MOGÍN, Director, Spanish Patent Office (OEPM)
  • Nobuo TANAKA, Director for Science, Technology and Industry, OECD
  • Bruno van POTTELSBERGHE, Chief Economist, European Patent Office (EPO)

10.30  KEYNOTE SPEECH I
  • John BARTON, Professor of Law, Emeritus, Stanford Law School

11.00  COFFEE

11.30  SESSION ONE  HOW DOES PATENTING AFFECT ACCESS TO INVENTIONS FOR RESEARCH PURPOSES?
Chair and discussant Stephen MERRILL, Executive Director, Science, Technology, and Economic Policy, The National Academies
  • John WALSH, Associate Professor of Sociology, University of Illinois at Chicago
  • Jana ASHER, Senior Programme Associate, Project on Science and Intellectual Property in the Public Interest, American Association for the Advancement of Science (AAAS)
  • Sadao NAGAOKA, Professor of Economics, Institute of Innovation Research, Hitotsubashi University

13.00  LUNCH

14.45  SESSION TWO  PERSPECTIVES FROM THE PRIVATE AND PUBLIC RESEARCH SECTOR
Chair and discussant Richard JOHNSON, Arnold and Porter, Vice-Chairman, BIAC Technology Committee
  • José Luis DE MIGUEL, Director, Technology Transfer Office, Scientific Spanish Research Council (CSIC).
  • Peter M. KLETT, IP Counsel, IBM Research GmbH, Zurich Research Laboratory
  • Miguel Ángel FLORES, Research Scientist, RepsolYPF
  • Eduardo BRAVO, CEO, Genetrix, Madrid

15.20  COFFEE

17.00  SESSION THREE  HOW EFFECTIVE ARE RESEARCH EXEMPTIONS IN PATENT LAW?
Chair and discussant Alberto BERCOVITZ, Universidad Nacional de Educación a Distancia (UNED) and Estudio Jurídico
  • Trevor COOK, Partner, Bird&Bird, United Kingdom
  • Joseph STRAUS, Director, Max Planck Institute for Intellectual Property, Competition and Tax Law
  • Andrew CHRISTIE, Director, Intellectual Property Research Institute of Australia (IPRIA)
  • Nikolaus THUMM, Senior Economic Counsellor, Swiss Federal Institute of Intellectual Property

19.00  COCKTAIL / BUFFET-DINNER
FRIDAY, 19 MAY 06

9.00  KEYNOTE SPEECH II

- Margarita SALAS, Research Professor, Spanish National Research Council (CSIC)

9.20  SESSION FOUR  FACILITATING ACCESS TO INVENTIONS FOR RESEARCH PURPOSES

Chair and discussant Alison BRIMELOW, President Elect EPO
- Rebecca EISENBERG, Professor of Law, University of Michigan Law School
- Jerry ROSENTHAL, CEO Open Invention Network
- Brian FITZGERALD, Head, School of Law, Queensland University of Technology
- Sean O’CONNOR, Associate Director, Center for Advanced Study and Research on Intellectual Property (CASRIP)

11.00  COFFEE

11.30  ROUNDTABLE  LOOKING TO THE FUTURE

Chair Nobuo TANAKA, Director for Science, Technology and Industry, OECD
- Sadao NAGAOKA, Professor of Economics, Institute of Innovation Research, Hitotsubashi University
- John H. RAUBITSCHEK, Patent Counsel, Office of the Chief Counsel for Technology, US Department of Commerce
- Elisabeth THOURET-LEMAITRE, Head of IP Department, Sanofi-Aventis
- Alain GALLOCHAT, IP Counsel, French Ministry of Research
- José Manuel FERNÁNDEZ DE LABASTIDA, Vice-President, Spanish National Research Council

13.00  ADJOURNMENT
Concern over the impact of patenting and licensing on biomedical research has grown since the CAFC’s 2002 Madey v. Duke decision, which visibly affirmed the absence of any general research exemption shielding universities from infringement liability. This paper examines the impact of patents and licensing on access to knowledge and material inputs for academic biomedical research. We report the results from a survey of 1125 academic researchers (including university, non-profits and government labs), which yielded 414 responses (adjusted response rate of 40%). We also collected data from 93 scientists who are conducting research on one of three important signaling proteins (CTLA-4, EGF and NF-kB), fields that were chosen because they have the preconditions likely to generate problems of research input access.

Our results suggest that commercial activity is widespread among academic researchers. Patenting does not, however, appear to significantly restrict access to the intangible knowledge inputs that are essential to research. Only 1% of our random sample report suffering a project delay of more than a month due to patents on knowledge inputs necessary for their research. None had stopped a project due to the existence of third party patents on research inputs. Our respondents tend not to be aware of relevant patents and few regularly look for relevant patents.

Access to tangible research inputs from others is more problematic and is more likely to impede research. Nineteen percent of respondents did not receive their most recently requested material, and rates of refusal seem to have increased in recent years. Scientific competition, business activity and the costs and effort involved are the main reasons for not fulfilling such requests.

When we focus on research in specific signal proteins where we expect higher rates of problems due to patents, we find that, while adverse effects from patents are still infrequent, they are somewhat more common for these researchers than for the random sample. Material transfers, on the other hand, have much higher rates of adverse effects for those working on EGF and NF-kB.
Early in 2005, the Project on Science and Intellectual Property (SIPPI) of the American Association for the Advancement of Science (AAAS) undertook a survey of AAAS members' experiences with the acquisition and dissemination of patented intellectual property (IP). The 1,100 respondents to the survey represented an international cohort of scientists from an exhaustive array of scientific fields and professional sectors. About 24 percent of the respondents reported obtaining protected IP since 2001, and 40 percent of those respondents reported encountering difficulties during that process. In contrast, about 46 percent of respondents reported creating IP since 2001, and 55 percent of those respondents reported protecting their intellectual property with a patent. Of the respondents that reported creating IP, protecting it with a patent, and disseminating it, 85 percent used more traditional means for dissemination, including publications and other means of informal sharing.

This paper explores the seemingly contradictory experiences reported by those acquiring patented IP and those disseminating patented IP. It provides explanations as to why 40 percent of those obtaining protected IP are experiencing difficulties, when 85 percent of those that protect their IP with a patent and disseminate it are doing so via informal, free methods. The paper studies the experiences of scientists acquiring technologies via different transfer methods (e.g., exclusive licensing versus nonexclusive licensing) and compares the methods of dissemination used by scientists that chose to patent their technology to the methods used by those that did not patent their technology. Experiences of scientists in different academic fields (focusing on biological versus non-biological fields), different professional sectors (focusing on academia versus industry), and different countries (focusing on U.S. scientists versus non-U.S. scientists) are contrasted. Finally, some hypotheses as to the general effects of patenting on access to IP by research scientists are explored.

My presentation consists of the following three parts. First, I will report our research on the patenting of research tools, based on the 47 key inventions in the life science area identified by the JPO. In particular, we address how important are the research tools among these inventions, who owns them, how important are the government interests, and how globally they are applied for patents. Second, I will report our research on the conditions for research licensing, based on the licensing database in the life science area of RecapIP, which covers more than 800 contracts, mainly disclosed by US biotech firms either as licensees or licensors. The questions we address include whether exclusivity and high royalty are more or less imposed for licensing at discovery stage, relative to the downstream stages such as identification of lead molecules, whether ex-ante licensing implies lower royalty than ex-post licensing and whether such licensing conditions differ across the types of licensors. Third, I would like to report what difficulties and problems Japanese pharmaceutical and biotechnology firms face in their access to research tools, based on an industry survey and experts views.
The focus of this session will be to gather a variety of perspectives on access to patented inventions and the knowledge embedded in them for research purposes. The presentations in this session will complement the overview and empirical evidence discussed in the previous session. Speakers will also provide their view on the impact of patents with respect to alternative means of protection (e.g. proprietary databases, secrecy, etc).

Chair and discussant Richard JOHNSON, Arnold and Porter, Vice-Chairman, BIAC Technology Committee

JOSÉ LUIS DE MIGUEL

PERSPECTIVES FROM THE PRIVATE AND PUBLIC RESEARCH SECTORS

For an institution as the CSIC, with a broad spectrum of research areas and activities, patents mean the best [only?] way to make publishing (knowledge dissemination) compatible with industrial use of the obtained results.

In the nature of science and science advancement, communication between scientists of different institutions and countries all over the world is key. Not only to be able to perform incremental research but, above all, to achieve those breakthroughs that have, along the last couple of centuries, improved the quality of life of human kind.

Present society demands that public research sectors contribute to the creation of wealth, not just knowledge. In practical terms, this means that research results should be conditioned as to make them attractive to those who will take them to the market: industry.

Communicating, as a proven way to advance in science, and protecting, as a means to take obtained inventions to the markets, come together in patenting.

During the presentation, data from CSIC will try to show the relevant role played by technology and knowledge transfer in the strategy of this public research center.

PETER M KLETT

PATENTS – FRIEND OR FOE FOR RESEARCH

In the everyday life of a researcher patents play an important role. Apart from their function as indicators of a legal monopoly, researchers can make good use of the teaching offered by patents. Patents also convey the message that the invention disclosed is considered of business value to the owner. For researchers patents hence provide a source of business-relevant wisdom usable as a guideline and basis for their own research.

There is a long-existing opinion that education and research should be uninhibited by patents, and this idea has broad endorsement in academia and industry. In some laws research is therefore classified as non-infringing use of a patent. However, there are a number of challenges coupled to the uninhibited research doctrine. The exceptions are ruled on a national level, but international companies will have a hard time managing research activities on a national level.

Also, research may be free but development is not, and there is no sharp boundary between them.

On the other hand there are a number of facts that reduce the risk of running into patents when doing research. Validity issues and the pre-product quality of research might give researchers more comfort in doing their job even in an patent minefield. This of course does not mean that one can ignore patents, especially since at some time the research phase will lead into development and production. To prepare oneself for this stage, there are ways to improve one’s own situation: For one it is countering patents with patents. Having an own patent portfolio is a good basis to do research on. In addition, the research community is still driven by a profound interest in creating knowledge for its own sake. Many researchers follow unwritten rules of their scientific network relationships and see sharing of knowledge as a dominant quality of their profession. This attitude reflects the insight that innovation can only be pursued by collaboration. Collaborative research happens strengthened by collaborative mechanisms such as open source and standards. They provide a platform of knowledge on top of which innovation can take place, thereby striking a balance between proprietary and non-proprietary innovation.
RepsolYPF is a regionally integrated oil and gas company, operating in more than 28 countries, leader in Spain and Argentina. RepsolYPF has a portfolio of around 100 patents and utility models. Our patents are mostly related to chemical technology and our patent strategy is mainly focused on protecting and assuring our freedom to operate. We believe that the collaboration between industry and university can be very fruitful to both parties. In this regard, we have about 200 ongoing R&D contracts with universities and academic institutions and 16% of the R&D budget is dedicated to such collaborations. The controversy in regard to the exception use for research purposes might a priori affect negatively the scope and goals of this model. However, we have not detected this concern within the academic groups we collaborate with. Also, we have not experienced a situation where a third party considers that RepsolYPF research activities are infringing the exceptions in force in the law. We are neither aware of such a situation in the petrochemical industry, at least within our areas of interest. We believe that exception use for research purposes is a basic condition in patent law that is beneficial for the advancement of science and to the patent system as well. The modifications being currently undertaken in the law within the European Union seem to be in line with this view. On the other hand, we detect other aspects that limit access to the knowledge embedded in patents, namely the view of a part of the academic community that patents are difficult to understand, or that the scientific information in patents is not reliable. Also, patents cause delays in publication of scientific papers and are not considered as important as scientific papers for the purpose of assessing merits. For these reasons, in order to favour the industry-university collaboration model, there is a need of policies to promote patents as valuable scientific achievements in the academic community.

The positive and negative effects of patents on research and product development in biotechnology SMEs will be addressed. In particular, patents will be examined as doorways to new areas of research, obstacles to research and development, fortifications against competition and bridges to partnering and financing. The availability and usefulness of patents as an information resource, the use of the various on-line tools for extracting patent information and the impact of patent information on generating new research topics and exposing the research aims of others will be considered. The extent to which patents can restrict or confine research and researcher behaviour will be discussed, in addition to considering the extent by which clinical research must take patents into account. The use of patents to protect the intellectual capital of a company and defend against competition will be examined as well as alternative strategies to patenting for securing a monopoly position in the market for example orphan drug status exclusivity. The value of patents in raising finance and forming research and development partnerships will be assessed. Finally, a snapshot of the pros and cons of the patent system, as seen from the viewpoint of a biotech SME, will be given.

When researchers make use of patented inventions without explicit authorization from patent holders they may face infringement actions, unless the use of the patented invention falls within the scope of a research use exemption applicable within their jurisdiction. This session will examine the role and effectiveness of research exemptions in providing access to patented inventions for research purposes. Participants will discuss the limitations of this mechanism and identify options to improve their effectiveness and adapt to a changing environment.

Chair and discussant Alberto BERCOVITZ, Universidad Nacional de Educación a Distancia (UNED) and Estudio Jurídico Alberto Bercovitz
In recent years the application of the statutory experimental use defence to patent infringement that exists in the UK, Germany and much of the rest of Europe to “research tool patents” and “gene patents” has been the subject of controversy. At the same time the USA, lacking such a defence, has been exploring the extent to which its regulatory review defence for medicinal products can extend back into early stage research, culminating in a decision last year of the Supreme Court. Against this background Australia and Canada have been investigating introducing their own statutory experimental use defences, and Switzerland has recently done so.

Most of the case law in Europe about the statutory defence for “use for experimental purposes relating to the subject matter of the invention” has been developed in the absence of a regulatory review defence and in the context of late stage efficacy and safety trials of medicinal and other regulated products to many of which a regulatory review defence would be expected to apply. Thus the analysis in such cases has tended to focus on whether such use was “experimental” rather than on whether or not it was in “relation to the subject matter of the invention”. However there are clear principles that can be derived from some of these cases that apply to this later question, and which is the critical one which arises in relation to the application of the defence to early stage research. It is suggested that on a proper analysis the defence can be applied to many aspects of early stage research, including much research on patented genes. It is however suggested that it cannot be applied to “research tool use” as this does not relate to the “subject matter of the invention” and would in any event deprive patents to research tools of all value. If from a policy point of view it is desired to facilitate “research tool use” then it is suggested that other approaches be adopted than seeking to modify the statutory experimental use defence.

Not covered by even this broad research exemption remains the use of patented research tools for experimentation. Apart from an explicit appeal of the German Research Association (DFG) of 1990s, in which the DFG requested such an exemption for the use of research tools for patented purposes in academic area, little if any discussion has taken place in Germany on this issue. It remains to be seen, whether in the future this may change. Much will depend on the behaviour of patent owners whether or not they would be willing to sue academic researchers in appropriate cases. An empirical survey performed by the Max Planck Institute could not identify specific problems and register complaints neither from academic research institutions, nor the biotech industry.
Australia currently does not have a statutory exemption for research use of a patented invention, and arguably it does not have a non-statutory exemption either. What are the consequences of this? Should the position be changed? If yes, what are the options? What is the preferred solution? And what are the lessons for those contemplating reform? This presentation will consider, and offer answers to, these questions.

ANDREW CHRISTIE

LESSONS OF THE NON-EXISTENT NON-STATUTORY EXEMPTION

The patent system was designed as an incentive mechanism for the creation of new, economically valuable knowledge and as a knowledge-dissemination mechanism helping to distribute innovations. In a recent OECD survey, 75% of firms reported that they patent inventions today which they would not have thought to patent ten years ago. As a result, some people fear that the patent system could have become an end to itself and that patents are working against the original aim of promoting innovation and knowledge distribution. Concerns have been raised as to the extent to which strong patent rights could build up barriers to follow-up research and thus hinder technological advance. This poses a number of difficulties particularly in the area of genetics with respect to the scope of protection and the definition of what is patentable. Such difficulties are especially of concern in areas where society at large has an interest in having certain technological knowledge publicly accessible for educational or public health reasons. Biotechnology and in particular the field of genetic inventions are sensitive areas, where DNA patents have been criticized for having a detrimental impact on follow-up research. ‘Anti-commons’, limitations for upstream inventions, patent thickets and royalty stacking with licenses for genetic inventions are some of the concepts that have been mentioned in this context.

The presentation considers as to how far empirical evidence of these kinds of problems could have been found in the case of the Swiss biotechnology industry. A survey of 53 biotechnology companies in Switzerland builds the empirical basis of the investigation. Its findings could confirm that the concepts of ‘anti-commons’, ‘patent thickets’ and ‘royalty stacking’ are not only theoretical concepts. However, the mentioned problems are not highly relevant for the Swiss biotechnology industry from an economic point of view. A broad research exemption combined with a protection limited to concrete disclosure functions of DNA patents and compulsory licensing arrangements are considered as feasible remedies for overcoming difficulties with gene patents.

On the basis of the empirical work commissioned by the Swiss Federal Institute of Intellectual Property a concrete formulation of a broad research exemption has been proposed for the revision of the Swiss patent law. The presentation explains the definition and scope of the research exemption under discussion. It presents its current status and the next legislative steps until the adoption of the final version of the revised Swiss patent law.

NIKOLAUS THUMM

A NEW RESEARCH EXEMPTION FOR SWITZERLAND: EMPIRICAL FINDINGS AND THE DRAFT REVISION OF THE PATENT LAW

Basic research has been and will be the basis of technology applications. Thus, as an example the discovery of the phenomenon of restriction-modification in bacteria opened the possibility to isolate restriction nucleases which were a fundamental tool for the development of Genetic Engineering or recombinant DNA technology. In my laboratory we have been working for almost 40 years with a Bacillus subtilis phage called ø29. We soon learned that the phage DNA has a phage-encoded protein covalently linked to the 5’ ends, the so-called terminal protein, that acts as a primer for the initiation of the viral DNA replication. The phage also codes for a DNA polymerase that incorporates the initiating nucleotide, dAMP, into the hydroxyl group of a specific serine residue in the terminal protein. This represents a novel mechanism to initiate replication that is also used by other viruses of health relevance such as adenovirus or poliovirus, among others.

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The same viral DNA polymerase elongates the initiation complex to give rise to full-length ø29 DNA in vitro. The basic properties of the ø29 DNA polymerase were studied with the finding of a potent 3’à 5’ exonuclease activity, involved in proofreading. The phage polymerase was also shown to be highly processive (→ 70 kb) and to have strand displacement (helicase-like) activity.

MARGARITA SALAS

FROM MOLECULAR BIOLOGY TO BIOTECHNOLOGY
In the absence of a research exemption, many researchers simply ignore patents and go about their work as if the patent laws did not apply to their activities. Patent owners may or may not be aware of these infringing activities, but much of the time they do not actively enforce their patent rights against researchers or their institutions. What are the implications of widespread infringing use of patented inventions in research?

**SESSION FOUR**

**FACILITATING ACCESS TO INVENTIONS FOR RESEARCH PURPOSES**

A number of approaches have been introduced to improve access to inventions for research purposes. This session will review recent initiatives, such as royalty-free licensing schemes for scientific results, and explore their effectiveness. Chair and discussant Alison BRIMELOW, President Elect European Patent Office (EPO).

**REBECCA EISENBERG**

**INFRINGEMENT AS A WORKAROUND STRATEGY**

In the absence of a research exemption, many researchers simply ignore patents and go about their work as if the patent laws did not apply to their activities. Patent owners may or may not be aware of these infringing activities, but much of the time they do not actively enforce their patent rights against researchers or their institutions. What are the implications of widespread infringing use of patented inventions in research?

**JERRY ROSENTHAL**

**PROTECTING COLLABORATIVE INNOVATION**

While it is one of the fastest growing computing environments, no one company owns all or even the majority of the Linux intellectual property. This era of collaborative innovation requires new thinking in addressing intellectual property protection. Mr. Rosenthal will discuss how OIN performs this role in providing patent protection for the Linux environment.

**BRIAN FITZGERALD**

**THE SCIENCE COMMONS**

This presentation will outline the Creative Commons and Science Commons projects. In particular it will consider new approaches to the lawful sharing of research data and materials through facilities such as open access publishing and repositories and standard form MTAs. It will highlight and distinguish the notions of open access based serendipitous innovation and that type of innovation generated through secure knowledge communities. The concepts of open source biology and open source patents will also be considered.

**SEAN O’CONNOR**

**PUBLIC-PRIVATE PARTNERSHIPS AND DE FACTO RESEARCH USE EXEMPTIONS IN THE U.S.: THE CASE OF THE THOMSON STEM CELL PATENTS**

The U.S. has very limited formal research use exemptions. Nonetheless, under both federal and state public-private research partnerships, private researchers can enjoy the protection of sovereign rights-type exemptions to intellectual property infringement. The case of the Thomson human embryonic stem cell patents – assigned to Wisconsin Alumni Research Foundation (WARF) and its affiliate WiCell – is examined. An often overlooked license provision of the Bayh-Dole Act, distinct from march-in rights, is being employed by the Public Health Service to authorize extramural research by government grant recipients. At the same time, other intellectual property infringement exemptions reserved by federal and state governments that could be extended to government contractors performing work on behalf of the government are explored in the context of the current stem cell patent controversy.

These properties of the ø29 DNA polymerase have been the basis for the development by the company Amersham Biosciences (now GE Healthcare) of two very successful kits to amplify circular and linear (genomic) DNA, respectively. Since the time the ø29 DNA polymerase was patented we have continued the work on the enzyme. Thus, the patent has not stop us from our basic work. But the basic work led to an important biotechnological application which, in principle, was neither expected nor looked for.
José M. Fernández de Labastida holds a Ph.D. in Physics from the State University of New York at Stony Brook (USA). Since 2004, he is Vice-President of the Spanish National Research Council (CSIC). Previously, during the period 2001 – 2004, he was Deputy Director General for Research Programmes in the Ministry of Science and Technology of Spain.

He is Professor of Theoretical Physics, University de Santiago de Compostela, since 1991 (on leave). In this University, he has held various managing positions, such as Director of the Particle Physics Department (1991 – 1994), Dean of the Faculty of Physics (1994 – 1997) and Director of the Graduate School (1999 – 2001). His research fields are Quantum Field Theory, String Theory, Knot Theory and Topological Quantum Field Theory; he has authored and co-authored more than 80 scientific publications, led five national and European research projects and advised five Ph. D. thesis.

He has also been very active in several scientific societies; he has been President of the Theoretical Physics Group of the Royal Spanish Society of Physics (1998 – 2001), Vicepresident of the Royal Spanish Society of Physics (2001 – 2005) and Member of the Council of the European Physical Society (2000 – 2004).

Maria Teresa Mogín Barquin is Civil Servant in the Superior Body of Civil Administrators of the State. She has a degree in Economics from the Autónoma University of Madrid.


Nobuo Tanaka has been Director for Science, Technology and Industry at the Paris-based Organisation for Economic Co-operation and Development (OECD) since 16 August 2004, with responsibility for a broad range of issues including science policy, information and communication technologies, economic and statistical analyses, biosciences, and sectoral issues. Mr. Tanaka heads the internal OECD Steering Group for the Centre for Entrepreneurship.

Mr. Tanaka has a degree in Economics from the University of Tokyo and an MBA from Case Western Reserve University, Cleveland, Ohio. In 1973, Mr. Tanaka began his career with the Ministry of Economy, Trade and Industry (METI) (formerly known as the Ministry of International Trade and Industry, MITI), in Tokyo. He has extensive national government and international experience within METI, the Embassy of Japan in Washington D.C. (twice) and OECD. Within METI, he has held a broad range of high level posts, Deputy-Director of the General Affairs Division, Machinery and Information Industries Bureau, Personnel Division, Director of International Nuclear Energy Affairs of the Natural Resources and Energy Agency. He first joined the OECD in 1989 as Deputy Director of the Directorate for Science, Technology and Industry, and was promoted to Director in 1992. In 1995, he returned to METI as Director of the Industrial Finance Division. He has since worked
Bruno van Pottelsberghe is Chief Economist of the European Patent Office (EPO) since December 2005. His task is to inform EPO policy for economic related matters and to conduct studies and projects on economic aspects of patenting in Europe. He has been professor at the Brussels’ University (ULB) since September 1999. As holder of the Solvay S.A. Chair of Innovation he teaches courses related to the economics and management of innovation and intellectual property. Until November 2005 he was Vice-president of the Solvay Business School, Director of its MBA Programs and of its International Exchange Program. Bruno van Pottelsberghe has published several articles on S&T policies, the internationalisation of R&D activities, innovation competencies, entrepreneurship, and intellectual property. In the past he has worked for two years at the OECD (Department of Science, Technology, and Industry), and several months as visiting researcher at the Columbia Business School (NYC) and at the Research Institute of the METI (Tokyo) and as visiting Professor at the Institute of Innovation Research of Hitotsubashi University (Tokyo) and at the University of Stellenbosh Business School (Cape Town).

John H. Barton is emeritus professor of Law at Stanford University, where he long taught on international and high technology issues. Prof. Barton has published extensively on biotechnology, technology transfer to developing nations, patent-antitrust tensions, and patent law. He chaired the UK Commission on Intelectual Property Rights and Developing Countries (2001-02), and was a member of two working groups of the Commission on Macroeconomics and Health. He was also a member of the National Research Council committee on patent law that produced the 2003 report, Patents in the Knowledge-Based Economy, and of the Nuffield Council on Bioethics committee that produced the 2002 report, The Ethics of Patenting DNA. He has spoken previously at OECD meetings on patent-antitrust issues and on patents and developing nations, and is cofiler of a brief in the Metabolite case currently before the U.S. Supreme Court, a case which deals with the scope of patentable subject matter. Prof. Barton came to Stanford to teach in 1969; he has also been a visiting scholar at the National Institutes of Health Department of Clinical Bioethics (2004-05), and a visiting professor at several prominent US universities. He is a fellow of the American Association for the Advancement of Science, and has been a member of the roster of trade experts for NAFTA dispute settlement. He is a member of the District of Columbia and Supreme Court Bars. His educational background includes a J.D. from Stanford University and a B.S. degree majoring in philosophy and physics from Marquette.

Stephen Merrill has been Executive Director of the National Academies’ Board on Science, Technology, and Economic Policy (STEP) since its formation in 1991. With the sponsorship of numerous federal government agencies, foundations, multinational corporations, and international institutions, the STEP program has become an important discussion forum and authoritative voice on technical standards, trade, taxation, human resources, and statistical as well as research and development policies. At the same time Dr. Merrill has directed or co-directed several STEP projects and publica-
John P. Walsh is an Associate Professor of Sociology at the University of Illinois at Chicago. In the fall, he will be joining the School of Public Policy at Georgia Institute of Technology. 

Professor Walsh’s research focuses on the relations among work, organizations, institutional context and innovation. Recent studies include the impact of patents on research inputs for biomedical research, the role of patents and other appropriability mechanisms for firm R&D in the U.S. and Japan, and university-industry linkages in Japan and the U.S. His work has been published in Science, Research Policy, Management Science and Social Studies of Science.

Professor Walsh received his Ph.D. in Sociology from Northwestern University. He has held visiting positions at Carnegie Mellon University, University of Tokyo, Hitotsubashi University, and Japan’s National Institute of Science and Technology Policy.

Jana Asher is a Senior Program Associate for the Science and Human Rights Program (SHR) and the Project on Science and Intellectual Property in the Public Interest (SIPPI) of the American Association for the Advancement of Science. Her past work has included the design and implementation of a national survey on human rights abuses in Sierra Leone, technical advice towards a national survey of human rights abuses in East Timor, design of the stratification and modeling for an analysis of data for Peru’s Truth and Reconciliation Commission (CVR), co-authorship of the statistical appendix for the final report of the Sierra Leone Truth and Reconciliation Commission, and development of the statistical methods for estimating the death counts outlined in a report to the International Criminal Tribunal for the Former Yugoslavia. She also has served as an expert advisor for the Metagora project of OECD. More recently, she co-authored the AAAS report “The Effects of Patenting on the AAAS Scientific Community,” and she currently is working on an international survey of scientists regarding their experiences with intellectual property protections.

Sadao Nagaoka, a national of Japan, is the director and a professor at the Institute of Innovation Research of Hitotsubashi University (http://www.iir.hit-u.ac.jp/index_e.html). Dr. Sadao Nagaoka has a M.S. (Management) and a Ph.D.(Economics), both from Massachusetts Institute of Technology. He has work experiences in the Ministry of International Trade and Industry of Japan, the World Bank and the OECD. His current research interests cover the institution and policy of intellectual property, determinants of R&D productivity and profitabil- ity, compensation for innovators, and innovation policy. He has participated in a number of government committees and study groups on intellectual property rights, standards, competition policy.
Richard Johnson is a Senior Partner in the Washington, D.C. office of Arnold & Porter LLP. He specializes in legal, regulatory and public policy issues related to fundamental research, technology innovation and strategic relationships for corporations, research universities and public research organizations – especially with respect to biotechnology and life sciences, nanotechnology and other emerging technologies. He formerly served as General Counsel for International Trade at the U.S. Commerce Department, where he was responsible for both trade policy and international technology issues.

In addition to receiving his Juris Doctor from the Yale Law School where he was Editor of the Yale Law Journal, he received his M.S. degree from the Massachusetts Institute of Technology where he was a National Science Foundation National Fellow and his A.B with Highest Honors from Brown University. He is a member of the MIT Corporation’s Visiting Committee; several university and think tank advisory boards; the National Cancer Institute NIH leadership roundtable; and participates on several National Academy of Science advisory panels. In OECD/BIAC matters, he serves as: Chairman of the Biotechnology Committee; Vice-Chairman of the OECD Technology and Innovation Committee; and Chairman of the BIAC Intellectual Property and Innovation Task Force. He is the former Co-Chairman of the American Society of International Law annual meeting and a member of its Executive Board.

Jose Luis de Miguel Antón holds a Ph.D. in Physics from the Complutense University of Madrid. Since May 2005, he is director of the Technology Transfer Office of the Scientific Spanish Research Council (CSIC).

Previously he had held several managing positions at the Telecommunications Market Commission (the Spanish telecom and audiovisual regulator), where he joined since its creation in 1996. As Director External and International Relations, Director Markets and Director Planning, Coordination and Control, sequentially, he participated very actively in the regulatory authority initial design and development.

Before that, he worked in Telefónica I+D [the R&D company of the Spanish incumbent telecom operator] for seven years. During that period, he performed as Project Leader in the Optoelectronics Division, Division Head of External Technical Relations, representative of Telefonica in the R&D Board of the Unisource Consortium and Division Head of International Development.

His made his Ph.D. in the Institute of Materials Physics of the CSIC and in the Max Planck Institute for Solid State Physics. For a three years period, we worked as a Post-Doctoral fellow in Bellcore (the R&D company of the US local operators) and in AT&T Bell Labs, both in the USA. Later, he joined the National Center for Microelectronics of the CSIC as permanent staff.

Peter M. Klett holds a Master’s degree in electrotechnical engineering and information technology from the Technical University of Munich, Germany. After having worked for several years for the IP department of Robert Bosch GmbH in Stuttgart, Germany, he obtained the qualification of a European Patent Attorney and joined the Intellectual Property Law Department of the IBM Research Laboratory in Rüschlikon, Switzerland in 1995. In 1999 he graduated as Master of European and International Business Law, [M.B.L.-HSG], at the University of St. Gallen, Switzerland. Peter M. Klett then spent a year on an International Assignment at the
IBM Research Laboratory in Yorktown Heights, New York, U.S.A. and at the IBM Intellectual Property & Licensing Headquarters in Armonk, New York. On his return to the Zurich Research Lab he became manager of its IPLaw department and founded the IBM European Center of Competence for EU-government funded projects. Since the restructuring of the European IP function in 2005 he has now responsibility as IP Counsel for all of IBM Research’s IP matters in Europe, Middle East, and Africa.

ALBERTO BERCOVITZ

MIGUEL ÁNGEL FLORES
Miguel A. Flores (born in 1969 in Almería, Spain) obtained his B. A. degree in 1992 from the Universidad Autónoma de Barcelona and his Ph.D. degree in 1997 from the same University, although the research work was developed in the Materials Science Institute of Barcelona (ICMAB, CSIC) within the group of Prof. Teixidor in the area of homogeneous catalysis. He spent one year as a RepsolYPF postdoctoral fellow at the Massachusetts Institute of Technology with Prof. Schrock, Chemistry Nobel laureate in 2005, where he worked in the area of olefin polymerization catalysis. He has developed his professional career as a research scientist in two companies: in BASF AG (Ludwigshafen, Germany), where he worked on a project to develop homogeneous catalysts for the hydrocyanation of butadiene, and in RepsolYPF, where he has spent most of his professional activity, working in different projects concerning the development of metallocene catalysts for production of polyolefins.

EDUARDO BRAVO
Prior to his appointment as CEO of the Genetrix group, Eduardo held various positions with Sanofi-Aventis, including VP Latin America, VP Internal Medicine & CNS, General Manager Aventis Belgium, and MKG & Sales Europe at Aventis. In addition he was also General Manager for Recordati and Cephalon in Spain and held various international positions with SmithKline Beecham.
Andrew Christie is the Davies Collison Cave Professor of Intellectual Property at the University of Melbourne Law School. He is also the founding Director of the Intellectual Property Research Institute of Australia (IPRIIA), a national centre for interdisciplinary research on the economics, law and management of intellectual property, based at the University of Melbourne. Andrew has Bachelors degrees in Science and in Law from the University of Melbourne, an LLM from the University of London, and a PhD from the University of Cambridge. He is admitted to legal practice in Australia and the United Kingdom, and worked for many years in the intellectual property departments of law firms in Melbourne and London. Andrew is an active adviser to governments and intergovernmental organizations on intellectual property law and policy, and is a current member of the Australian government’s Advisory Council on Intellectual Property. In July 2005 he was identified by the international magazine Managing IP as one of the world’s 50 most influential people in intellectual property.
Mr. Nikolaus Thumm works as Senior Economic Counsellor at the Swiss Federal Institute of Intellectual Property. He is chairman of the United Nations Advisory Group on the Protection and Implementation of Intellectual Property Rights for Investment and acts as country representative in different expert groups with the European Commission, the Organisation for Economic Cooperation and Development, and the World Intellectual Property Organisation. A German industrial engineer by training, he holds a PhD in economics and has published extensively in international journals on innovation systems and IPR protection.

Research Professor at the Spanish National Research Council (CSIC), she was born in Asturias (Spain) in 1938. Professor Salas holds a doctorate in Chemistry from the Complutense University in Madrid and completed further studies in the Biochemistry Department at the New York University. During her career, Professor Salas has held several academic and research positions: Professor of Molecular Genetics at the Complutense University in Madrid (1967); Research Professor at CSIC (1974); Director of the Institute of Molecular Biology, CSIC (1988-1991); Director of the Severo Ochoa Centre of Molecular Biology, CSIC and IAM (1992-1993). Since 1993, she is member of the governing body of CSIC. She is the author and co-author of more than 300 works on molecular biology and has been awarded several prizes: Severo Ochoa Prize for Biomedical Research (1986); Rey Jaime I Prize for Scientific Research (1994); Mexico Prize for Science and Technology (1998); L’Oréal-UNESCO Prize for “Women in Science” (1999); Santiago Ramón y Cajal National Prize for Scientific Research (1999); Science and Research International Prize of the Cristóbal Gabarrón Foundation (2004). She has also been nominated Doctor honoris causa at Oviedo University (1996), Polytechnic University of Madrid (2000); Extremadura University (2002); Murcia University (2003) and Cádiz University (2004) and is member of the European Biology Molecular Organization (1980); Royal Academy of Exact, Physical and Natural Sciences (1988); founding member of the Academia Europaea (1988); advisory committee of Juan March Foundation (1992-1994); President of Instituto de España (1995-2003); Spanish Royal Academy (2000) and the American Academy of Arts and Sciences (2005).

Alison Brimelow joined the Department of Trade and Industry in 1976. She worked in a variety of Headquarters policy jobs, including private office. She joined the Patent Office in 1991, where she became Head of the Trade Marks Registry. In 1997 she returned to DTI Headquarters to work on European and International Competition Policy. She was appointed Chief Executive and Comptroller General of the Patent Office in March 1999. In 2003 she was elected President of the European Patent Office jointly with Professor Alain Pompidou of France. Her term of office begins on 1 July 2007. She resigned from the UK Civil Service on 31 December 2003. In November 2004 she was appointed Chair of the National Weights and Measures Laboratory’s Steering Board. In February 2005 she was elected Associate Fellow of Templeton College, Oxford.

Rebecca S. Eisenberg is a graduate of Stanford University and Boalt Hall School of Law at the University of California, Berkeley, where she was articles editor of the California Law Review. Following law school she served as law clerk for Chief Judge Robert F. Peckham on the United States District Court for the Northern District of California and then practiced law as a litigator in San Francisco. She joined the University of Michigan Law School faculty in 1984. Professor Eisenberg regularly teaches courses in patent law, trade-
Mr. Rosenthal is CEO of Open Invention Network, a company formed in 2005 to further innovation by acquiring patents on a royalty-free basis in order to protect and benefit the Linux environment.

Mr. Rosenthal has more than 40 years of engineering and technology intellectual property management experience. Prior to becoming CEO of Open Invention Network, Mr. Rosenthal was the vice president of IBM’s Intellectual Property and Licensing business. Previously, he held senior and executive-level management positions, around the globe, supporting IBM’s intellectual property licensing operations. Mr. Rosenthal began his 37 year career with IBM as a technical sales and marketing executive working with the medical systems engineering groups. Prior to IBM, he held engineering positions with the National Institutes of Health and United Aircraft. At the latter, he was part of the biomedical telemetry team that designed the space suits for the astronauts in the Apollo Space Program.

Mr. Rosenthal holds Bachelor of Science and Masters of Science degrees in electrical engineering from New York University. He also holds a Juris Doctorate degree from Pace University and is a member of the New York State Bar. Mr. Rosenthal is a frequent speaker at major IP conferences around the globe. Additionally, he is a member of the Licensing Executive Society.

Brian is a well-known intellectual property and technology lawyer. He has published articles on intellectual property law in Australia, the United States, Europe, Nepal, India, Canada and Japan and his latest (co-authored) books are Cyberlaw: Cases and Materials on the Internet, Digital Intellectual Property and E Commerce (2002); Jurisdiction and the Internet (2004); Intellectual Property in Principle (2004). Over the past five years Brian has delivered seminars on intellectual property law in Australia, Canada, New Zealand, USA, Nepal, India, Japan, Malaysia, Singapore, Norway and the Netherlands. In October 1999 Brian delivered the Seventh Annual Tenzer Lecture - Software as Discourse: The Power of Intellectual Property in Digital Architecture - at Cardozo Law School in New York. Through the first half of 2001 Brian was a Visiting Professor at Santa Clara University Law School in Silicon Valley in the USA. In January 2003 Brian delivered lectures in India and Nepal and in February 2003 was invited as part of a distinguished panel of three to...
RESEARCH USE OF PATENTED INVENTIONS

SEAN O’CONNOR

Sean O’Connor is an Assistant Professor at the University of Washington School of Law in Seattle, where he is also the Associate Director for both the Center for Advanced Studies and Research on Intellectual Property (“CASRIP”) and the graduate IP Law and Policy Program. He teaches courses in intellectual property, biotechnology, business and securities law. His research focuses on the legal issues involved in commercializing science and technology, as well as the social and cultural context of scientific and technological innovation.

Before entering academia, Professor O’Connor was in private practice with major international law firms specializing in technology transactions, licensing, corporate, and securities law. His research focuses on the legal issues involved in commercializing science and technology, as well as the social and cultural context of scientific and technological innovation. Before entering academia, Professor O’Connor was in private practice with major international law firms specializing in technology transactions, licensing, corporate, and securities law. His research focuses on the legal issues involved in commercializing science and technology, as well as the social and cultural context of scientific and technological innovation.

JOHN H. RAUBITSCHEK

Since 1990, John Raubitschek has been Patent Counsel for the U.S. Department of Commerce. In this position, he gives advice on all intellectual property matters, obtains and licenses patents and evaluates claims of patent, copyright and trademark infringement involving the Department. He also negotiates intellectual property rights provisions in international science and technology agreements. He is a recognized expert on the Bayh-Dole Act and has lectured and published on that law.

Mr. Raubitschek previously served as an Associate Solicitor and Patent Examiner in the U.S. Patent and Trademark Office and as patent counsel for a number of other agencies, which he represented before various U.S. courts and administrative tribunals.

He received a bachelor of art’s degree from Princeton University and a law degree from Georgetown University.

ELISABETH THOURET-LEMAITRE

Elisabeth Thouret-Lemaitre is Vice President and Head of Patent Operations of the Sanofi-Aventis pharmaceutical group. She was Patent Director of SANOFI-SYNTHELABO (1999-2004) and SYNTHELABO (1975-1999); Patent Ingénieur of CABINET ARMENGAUD JEUNE (1968-1975). She is member of the Intellectual Property Policy Committee of EFPIA (European Federation of Pharmaceutical Industry Associations) and French Representative of MEDEF at UNICEF.
Prior to his appointment as adviser at the Ministry of Research, Mr. Gallochat spent thirteen years at Institut Pasteur, Paris, as General Counsel. He was previously an Industrial Property Manager in a French pharmaceutical company and a patent agent in a private practice. Mr. Gallochat’s other responsibilities include being Associate Professor at Sorbonne - University of Paris I, European Patent Attorney before the European Patent Office (Munich), European Trademark Attorney before the Office for Harmonization in the Internal Market (Alicante), Past-President of the Union of European Practitioners in Intellectual Property, and lecturer at the Centre Paul-Roubier (Lyon) at the French Patent Office (INPI) in Paris.

NATO expert for Intellectual Property matters, and European Commission expert for Intellectual Property matters. Mr. Gallochat has co-authored La brevetabilité des innovations biotechnologiques appliquées à l’Homme with Marie-Catherine Chemtob. His other writing credits include: author or co-author of reports for national authorities (in France: Minister of National Education, Research & Technology and Minister of Industry; in Canada: Federal Government), and author of articles concerning Industrial Property issues, especially in the biotech field (Le Monde, Les Echos, La Recherche, Réalités industrielles, Patent World, European Brief, Dossiers Brevets, Revue du Droit de la Propriété Industrielle). Mr. Gallochat graduated in Industrial Property from the Centre d’Études Internationales de la propriété industrielle (CEIPI), and also in Chemistry from the École nationale supérieure de chimie, both in Strasbourg. He has received the Chevalier de la Légion d’Honneur distinction.
The Spanish Patent and Trade Mark Office (OEPM) is an autonomous body that forms part of the Ministry of Industry, Tourism and Trade and which promotes and supports technological and economic development. It provides legal protection to all types of industrial property by awarding patents and utility models (inventions); industrial designs; trade marks and trade names (distinctive signs) and rights protecting topographies of semiconductor products. It also disseminates information on the various ways in which industrial property can be protected. The OEPM also represents Spain in international forums and organisations that are responsible for protecting industrial and intellectual property. The OEPM has, therefore, a dual function: to award industrial property rights following due examination of applications and to provide technological information services based on information about the various types of industrial property rights awarded by the OEPM and other offices overseas.

The main objectives of the OEPM are as follows: to protect and promote creation and technological innovation in Spain as well as corporate business identity by awarding industrial property rights, to provide information that helps to guide research activity by maintaining archives and databases that enable quick and easy access to up-to-date information on the latest global technical developments in all sectors and to promote the circulation and exchanging of goods and services by disseminating information on registered distinctive signs.

The Organisation for Economic Co-operation and Development is a unique forum where the governments of 30 market democracies work together to address the economic, social, environmental and governance challenges of the globalising world economy, as well as to exploit its opportunities. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies. Exchanges between OECD governments flow from information and analysis provided by a Secretariat in Paris. The Secretariat collects data, monitors trends, and analyses and forecasts economic developments. It also researches social changes or evolving patterns in trade, environment, agriculture, technology, taxation and more.

Work on intellectual property rights and innovation within the OECD Directorate for Science, Technology and Industry aims to provide evidence-based analysis of the links between IPR, innovation and economic performance, and to inform development of IPR regimes that improve innovation and economic performance. Work is currently being done to address issues related to innovation
and knowledge diffusion, in particular the role of licensing and technology markets in stimulating knowledge diffusion and innovation, and mechanisms for promoting research access to patented inventions. Ensuring that patents continue to serve their dual role of providing incentives to innovate and contributing to the diffusion of knowledge is high in the policy agenda of OECD countries. Science and Technology Policy Ministers of OECD countries expressed concerns about the impact of patents on the conduct of scientific research at a meeting in Paris in January 2004 and invited the OECD to examine national policies regarding exemptions for research use of patented inventions. This conference is part of the effort made since then to address their request. More information on this and other OECD activities related to IPR can be found online at: www.oecd.org/sti/ipr

**ORGANISING COMMITTEE**

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SUPPORTING ORGANISATION

The European Patent Office is the executive body of the European Patent Organisation, an intergovernmental institution established by the European Patent Convention and to which all the EPC contracting states belong. The EPO’s governing body is the Organisation’s Administrative Council, made up of delegates from the 30 contracting states. The EPO has its headquarters in Munich, a branch at The Hague and sub-offices in Berlin and Vienna. With over 6 000 staff, it is the second biggest European organisation after the European Commission. The EPO was set up with the aim of strengthening co-operation between the countries of Europe in the protection of inventions. This was achieved by adopting the EPC, which makes it possible to obtain patent protection in several or all of the contracting states by filing a single patent application in one of the three official languages of the EPO (English, French and German). The EPC also establishes standard rules governing the treatment of patents granted under this procedure. More than two decades have clearly demonstrated the advantages of this approach: Since its creation in 1977, the EPO has received more than 1.8 million European patent applications and granted nearly 650 000 European patents. Moreover, the Office has established itself as the leading authority for international procedures under the Patent Cooperation Treaty, a treaty that makes it possible to file for patent protection in more than 100 countries on the basis of a single patent application. In 2004 the Administrative Council adopted regulations establishing the European Patent Academy. Its aim is to foster the advancement of education and training in the field of European and international patent related intellectual property law and practice for the benefit of the European Patent System.
For more information please contact

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