

# ORGANIZATIONAL INNOVATION AS INTELLECTUAL PROPERTY

Seyed Reza Eftekhari\*

Islamic Azad University – Gonabad Branch, Iran, IR

**Abstract.** Organizational innovation is a broad concept. Knowledge as the means of development is applied in the form of research, theories, tools, formulas, products and even ideas throughout the world of organizational endeavor. Modern organizations are heavily dependent on knowledge and applicable scientific methods. Scientific research and ideas are intellectual property and must be protected and the rights of the owners must be preserved. Arguments exist defending the idea of restricting IP regimes and limiting the use of legal measurements for imposing exclusive rights of research applications to the interests of companies. We argue that humanities and social sciences play a decisive role in defining the function of IP regimes to manage the rights over innovative products and business models. The debates about expanding or restricting the domain of IP regimes for protection of organizational innovation pose another theoretical conflict. We suggest that copyright law in relation to patents of scientific researches and huge investments of organizational entities should be redefined as a constitutional right of natural and legal persons in order the public and private right alike might be ensured through states' regulations. Local and international rules may help improve the IP systems

**Keywords:** Intellectual Property, Organizational Innovation, Patent Law, Copyright

## 1. Introduction

Development owes its progress to organizational innovations. Governmental and international rules are all directed toward protecting innovations in the form of copyright systems that according to some scholars, is a state mechanism directed at enhancing the democratic character of civil society.(Balganesh, 2009) What we know as intellectual property may appear in different forms. In this paper the main argument is about organizational innovations. In modern organizations theoretical issues and abstract ideas are considered deciding elements of knowledge development. Our attempt is to suggest some analyses regarding what are organizational innovations, its role in corporate progress, and whether legal measures have been provided by conventional systems to protect them as intellectual property. As Peter Lee suggests conventional wisdom holds that patents contribute to progress.(2004) It is naturally expected that this progress is guaranteed by defining these innovations as intellectual property. From a technical point of view, it is very important to define the responsibility of domestic legislator or to determine international rules to assume the task of protecting it. Patents normally protect research products in scientific areas which entail huge investments such as pharmaceutical formula as they are intellectual property belonging to organization and manufacturer.

We suggest that scientific research and ideas are intellectual property and must be protected. Patenting this salient part of organizational entity may conflict with scientific norms of communal sharing and as it is said, it can discourage investment in primary levels. The movement to patent public funded research and theories has commenced by scientific, economic, statutory, and legal developments as this is the case in USA regarding federally funded research.(Lee, 2004) Since intellectual property is defined as a broad concept that covers several types of legally recognized rights arising from some type of intellectual property, or that are

---

\* Phone: +98 511 8546434; E-mail: sreftekhari@gmail.com

otherwise related to ideas (Kinsella, 2001), domestic legislators may consider different organizational products and tools as assets that must be protected by law.

## **2. Organizational Knowledge and IP Regimes**

Organizational innovation is a broad concept. Companies today are increasingly moving toward progress phases by investing in scientific areas within their organizational terrain. Knowledge as the means of development is applied in the form of research, theories, tools, formulas, products and even ideas throughout the world of organizational endeavor. Modern organizations are heavily dependent on knowledge and applicable scientific methods. In this way they may press on states to protect their achievements legally. Regarding the personal and organizational intellectual properties, lawmaking in the modern regulatory state is a painstaking task. (Cry, 2001)

Copyright conventions and the jurisdictional procedures in local societies hosting organizational innovations and justifying the ownership of development research projects distinguish precisely between two domains of abstract ideas and applied sciences used in that area. Arguments exist defending the idea of restricting IP regimes and limiting the use of legal measurements for imposing exclusive rights of research applications to the interests of companies. However, two main concerns they are talking about are as follows:

- Powerful IP regimes deter investments in R&D programs even by non-profit organizations and doing so, weaken the innovative and creative trends in scientific domains. Opponents of enforceable regulations protecting organizational innovations refer to econometric studies that do not conclusively show net gains in wealth (Kinsella, 2001) as a result of executing these regulative regimes. Perhaps there would even be more innovations if there were no patent laws; may be more money for research and development (R&D) would be available if it were not being spent on patents and lawsuits. (Id.)
- Limited availability of research tools due to the decrease of organizational investments is another argument. As Peter Lee says, “as research tools become more specialized and propertized, more and more fields of inquiry [and research] will ultimately fall under the domain of patents. While this causes concerns over the inhibitory effect of patents on scientific progress, it also opens the door for patents to help induce paradigm shifts”. (2004) Furthermore, the coexistence of private interests and a public interest though does not necessarily create a conflict, can make legal protection a public challenge. The conflict occurs where the self-interest of investing organizations and the public good pull in opposite directions. (Birnhack, 2003) Anyway, noticing the afore-mentioned void, many activists of the private sector and investing companies may attempt to look after the alternatives for IP regimes or to act another way to lead development researches. Some R&D managers, operating within strong regimes, have spent time and money setting up IPR scanning procedures. Other (innovative) business strategists have sought to operate independently of IPR considerations, be creatively designing new ways of capturing revenues and appropriating profits from digital products that depend only upon markets and technologies. (Singer & Singer, 2002)

## **3. Patent Law and Organizational Innovation**

Organizational entities, companies and states in some cases tend to hold the exclusive rights of using and exploiting research products and scientific innovations. Patent law system, though differing globally, has been advised to protect these rights legally. Many challenges like what is referred to a conflict theory originate from exerting the system to the interests of producers and investors. Generally as Abrahamson proposes, the patent system was designed to ensure that knowledge embodied in the patented good is disseminated widely, while the commercial exploitation of that knowledge by anyone other than patent holder is severely restricted. This protection may be viewed as shallow for scientific purposes but deep for commercial purposes. (2002) Upon this argument is based the challenging idea that considers patent law hurdling the free use of knowledge shared by all human societies. Organizations and companies by constraining the free use of technical innovations, enjoy patents to increase the value of such innovations and ensure that more will be generated, thus benefiting society as a whole. (Lee, 2004)

Traditional patent theorists focus on the positive effects that patents exert on scientific and technological innovation. Critics, however, argue that patents on upstream research tools disrupt norms of communal sharing and can impede downstream experimentation and application. (Lee,2004) Whether the acts of investing organizations and companies creates such environment of harsh conflict between public interests and patent holding entities, or impede the scientific progress or is in contrast with the idea of communal interest of sharing knowledge and information or not, remains the subject of legal discussion. But it is generally believed that patent law serves two basic economic functions: protection of market exclusively and generation of revenue through licensing. (Kline, 2008) Typically the patent owner has invested heavily in researching the innovation and in developing that innovation into a commercially viable product or service. Patent rights protect this investment by allowing the patent owner to market a product or service without being undercut by competitors who have not made similar investment.(Id.)

As such, there can be found a dual though conflicting role for patent law regarding research investment in organizational domain. Proponents of this approach may view the impact of patents from two different and contradictory perspectives. Firstly, as noted before, states and global officials consider patent law useful for development purposes. From another point of view, patents have a stifling function. Organizational innovations and their products when perceived as intellectual property are normally supposed to be exploited exclusively and under the strict supervision of local legislator. This approach is not limited to any special legal system. Empirical evidence suggests that, if anything, patents and the patent system are growing in complexity. (Allison & Lemely, 2002)

Recently, the discussions about the function of patent law to protect organizational innovation are mainly focused on business model of organization's patent. These patent holding organizations acquire patent rights through invention or assignment and, unlike a typical inventor or manufacturer, exist solely for the purpose of licensing the patent to others. (Kline, 2008) These are called patent holding organizations. The term "patent holding organization" is not intended to refer to any specific form of business association. The term is intended as generic phrase to refer to organizations that behave as described herein and is not intended to reference any external definition. The term is distinct from a natural person holding a patent as an individual rather than as a business association; the individual is subject to a more limited patent venue statute. (Niro, 2006)

Patent holding organizations are able to focus on maximizing the value of their intellectual property. (Kline, 2008) The process of patenting new inventions and products in every organization shows different developments building upon each other and the increasing market value due to exclusive exploitation in the light of legal protection. Generally speaking, the patent law as a protecting system much has proved much more useful to companies and innovative organizations than to the individuals who have made a business mode or development research. It is even believed that without some type of intellectual property protection, companies would not survive. (Cry, 2001) Without analytical review and empirical evidence we cannot decide whether this is true with innovative organizations or not. It can be said that patent law system is useful for organizations in the same way that copyright law may protect individuals' right on their expressions and abstract theories. So, it is often stated that a patent protects ideas and copyright protect expressions. However, a closer look suggests that what patent law protects may not simply be general ideas, but a specific implementation of these ideas. (Lee, 2005) As a matter of fact what is asserted as intellectual property by modern companies may be protected by law through two phases respectively. In the first phase, copyright law covers the ideas, research works and abstract theories. That the organizations can claim any right to these items in theoretical forms is the subject of legal discussion. If any investment is made on these theoretical ideas and programs that would end to producing business models, research tools, trade secrets etc. they may be claimed as intellectual property by investing company.

#### **4. The Role of Humanities and Social Sciences**

While patent scholarship has profited handsomely from law and economics and empirical studies, academic inquiries into the psychology and sociology of science can illuminate many features of the legal architecture of innovation.(Lee, 2010) Humanities and social sciences play a decisive role in defining the function of IP regimes to manage the rights over innovative products and business models. A look at the

traditional IP regimes reveals that all international conventions and abundant legal literature have tried to conceptualize the relationship between artistic and theoretical innovations and the exclusive right of their producers. This regime can normally be generalized so as to cover the products of investments made by organizations. Legal thought tends to consider scientific products of these kinds as intellectual property, though there are some doubts among scholars and public at large. The skepticism of scholars and the general public stems from the intuitive belief that an innovative business method or concept maybe inherently different from the invention of technology that patent law aims to protect with patent property rules. (Lee, 2005)

Another issue that appears socially nowadays is the conflict arising from exerting IP regulations in the economic and political domain. Since 1990s there have been many theoretical discussions about the dual function of copyright rules that are protecting private rights over scientific researches and the global need to provide open access to knowledge and communal wisdom. In this way some scholars as Hoppe have advised that property rights must be demonstrably just, as well as visible, because they cannot serve their function of preventing conflict unless they are acceptable as fair by those affected by the rules. (Hoppe, 1989) Besides, in the realm of market place and organizational investments on research programs the conflict may expose the scientific theory to the risk of the social conflict. Others suggest restricting of the borders of intellectual property rights or patents to some definite areas of utilitarian functions of these rules. In this way the debate about the expanding the domain or restricting it pose another theoretical conflict. So, it seems appropriate that copyright law particularly with regard to patents in scientific researches and huge investments of organizational entities should be redefined as a constitutional right of natural and legal persons in order the public and private right alike might be ensured through states' regulations.

Some scholars observing the findings of social sciences argue that patents and copyrights can deter even innovation and improvements on existing works. (Mc John, 2006) Observing the private and personal rights, some scholars prefer economic approach for fostering intellectual property and development researches. They believe that economic dimensions approach to intellectual property law offers powerful tool to both explain and reform intellectual property law. (Id.) In this way, organizations and companies that invest in innovative ideas and inventions to get most in trade system should be viewed as bodies whose rights must be protected by legal system. However, it is the frustrating task of humanities and research in social sciences to deal with the conflict between public interest of shared knowledge and the interests of private holder of patent right including individuals and organizational entities.

## **5. Conclusion**

Organizational innovations are the sources of huge investment in international economy and have brought about intensive discussions about the functions of IP regimes. Companies today are increasingly moving toward progress phases by investing in scientific areas within their organizational terrain. Knowledge as the means of development is applied in the form of research, theories, tools, formulas, products and even ideas throughout the world of organizational endeavor.

Generally any idea, abstract theory or research program on which an investment is made by companies and result in an economic and marketable progress is supposed to be protected by patent law and considered as intellectual property. International conventions have permanently recognized the IP rights on different scientific and artistic achievements. However, they do not suggest any particular priority for organizational innovations as intellectual property. This means that there would be a debate on how legal system distinguishes between what can be patented as IP and what should be as common knowledge. The only legal measure which is applicable to organizational innovations in trade level is patent law for protecting their exclusive right over business models or research tools. Arguments exist defending the idea of restricting IP regimes and limiting the use of legal measurements for imposing exclusive rights of research applications to the interests of companies. TRIPS conventions are minimum standard agreement, but it does allow for a greater level of protection, which is referred to as TRIPS-plus protection. (Cimboric, 2007) It seems that copyright law in relation to patents of scientific researches and huge investments of organizational entities should be redefined as a constitutional right of natural and legal persons in order the public and private right alike might be ensured through states' regulations.

Local and international rules may help improve the IP systems. If knowledge should be considered as a shared and public asset, there would be logically an expectation on behalf of investing organizations in scientific research to have the exclusive right over the products of their investment.

## 6. References

- [1] Abrahamson, Bruce, "Promoting Innovation in the Software Industry: A First Principles Approach to Intellectual Property Reform", 8 B.U.J. Sci. & TECH. L. 75, 76, 2002
- [2] Allison, John R. and Lemely Mark A. "*The Growing Complexity of the United States Patent System*", 82 B.U.L. Rev. 2002
- [3] Baganesh, Shyamkrishna, "*Debunking Blackstonian Copyright*" The Yale Law Journal, 2009, Vol. 118 pp. 1126-1181
- [4] Cimboric, Brian "*The Impact of Regional Trade Areas on International Intellectual Property Rights*", IDEA The Intellectual Property Law Review, 2007, Vol. 48, No. 1, pp. 53-68
- [5] Cry, Robert, "*The Copyright Law*", The Yale Law Journal, 2001, Vol. 11, Case Note pp. 761-768
- [6] Hoppe, Hans-Hermann "*A Theory of Socialism and Capitalism*", BOSTON: Kluwer Academic publishers, 1989
- [7] Kinsella, N. Stephan, "*Against Intellectual Property*", Journal of Libertarian Studies, LUDWIG VON MISES INSTITUTE, 2001, Vol. 15, No. 2, pp. 1-53 [www.mises.org](http://www.mises.org)
- [8] Kline, Adam D., "*Any Given Forum: A proposed Solution to the Inequitable Economic Advantage that Arises When Non-Practicing Patent Holding Organizations Predetermine Forum*", IDEA The Intellectual Property Law Review, 2008, Vol. 48 No. 2 pp. 247-288
- [9] Lee, Nari "*Patent Eligible Subject Mater Reconfiguration and the Emergence of Proprietary Norms: the Patent Eligibility of Business Methods*", IDEA Journal of Law and Technology, 2005, Vol. 45, No. 3, pp. 321-359
- [10] Lee, Peter "*Patents, Paradigm Shift, and Progress in Biomedical Science*" Yale Law Journal, 2004, Vol. 114 pp. 659-695
- [11] Lee, Peter "*Patent Law and the Two Cultures*", The Yale Law Journal, 2010, Vol. 120 No. 2 pp.2-82
- [12] Mc John, M. Stephen "*A New Tool for Analyzing Intellectual Property*" North Western Journal of Technology and Intellectual Property, Fall 2006, Vol. 5 No. 1
- [13] Niro, Raymond P. "*The Patent Troll Myth*", 7 SEDONA CONF. J. 2006, pp. 153-156
- [14] Singer, Alan E. and Singer, Ming "*Intellectual Property and Moral Imagination*", Journal of Economic and Social Policy, 2002, Vol. 7 No. 1, Available at: <http://epubs.scu.au/jesp/vol7/iss1/1>