

# THE GOVERNMENT'S RESOLUTION ON THE STRATEGY CONCERNING INTELLECTUAL PROPERTY RIGHTS

26 March 2009

The Government's Resolution for a strategy concerning intellectual property rights has been prepared at the Ministry of Employment and the Economy (MEE) in collaboration with the Ministry of Education (ME).

The decision on drawing up a strategy concerning intellectual property rights is included in the Government Programme of Prime Minister Matti Vanhanen's Second Cabinet. The strategy is drawn up as part of the process of strengthening national innovation policy. Special attention will be paid to the opportunities of SMEs and private inventors to utilise various forms of protection and thus improve the opportunities to commercialise various of their products. The strategy consists of measures based on the goals presented in the report drawn up in connection with the preparatory work ('IPR to efficient use! Material for the strategy concerning industrial and intellectual property rights', MEE Publication 37/2008).

## **Background**

Intellectual property includes patents, trademarks, copyrights, industrial designs, utility models, business names, domain names, geographical indications, and plant breeder's rights. Intellectual property rights are also referred to as immaterial property rights or IPRs (short for intellectual property rights).

Intellectual property rights are generated by creative activity, such as artistic expression, and research and development. These rights are extensively exploited in commercial operations. In accordance with the Government's report on innovation strategy (VNS 5/2008), exploitation of intangible assets will be developed, securing the incentive-based division of benefit generated by the value network among different operators and users. According to the report, practices for protection and utilisation of intangible assets will be revised in a manner complying with the needs of diversifying innovation activity and the global operating environment. Capabilities (of SMEs in particular) of protecting and exploiting expertise and intangible capital will be promoted in a manner that supports open, communal, and user-oriented innovation activity.

The concept of intangible capital is often used to provide a broader-scale description of assets that cannot be reduced to possession of physical objects. It has been estimated that 75 per cent of company assets may be composed expressly of intangible assets. Intellectual property rights constitute a more and more central part of such company assets. For instance, the value of economic

activities associated with exploitation of copyrights is some 3.5 per cent of Finland's gross national product, or more than five billion euros per year. From the point of view of enterprises, competence related to intellectual property is playing a more and more significant role.

At least four key development trends will have an impact on the importance of intellectual property – namely, *globalisation, digitalisation and convergence, politicisation of intellectual property rights, and expansion of the scope of intellectual property rights.*

*Globalisation* is present in the everyday activities of Finnish companies in the form of international operations implemented in accordance with international rules. Even relatively small Finnish enterprises operate at least in areas neighbouring Finland or even globally. In other words, knowing the international practices in relation to issues of intellectual property rights is an essential success factor for Finnish companies. Finland's decreasing legislative freedom of action is also associated with globalisation. Finland has joined systems regulated by agreements on international trade and intellectual property rights and, as a member of the EU, is under an obligation to comply with the Community legislation. On the other hand, engagement in international systems has also opened doors to international trade.

*Digitalisation and convergence* are most clearly visible with the Internet. The development of information technology has brought versatile audiovisual production and distribution systems that are available to everyone. A private citizen may carry around a calculator, mail ability, banking and shopping services, a library (the Internet), games, radio, television, a camera, plenty of audiovisual content, and a positioning device, all in his or her mobile phone alone. Technological development has made copying and distribution of digital material in the information network practically free of technical cost.

*The politicisation of intellectual property rights* is evident in the fact that things that used to be remote to this field, such as health care, supply of medicines, or traditional cultural expressions (folklore), have been given a strong intellectual property rights dimension. For instance, today international negotiations address matters such as intellectual property rights related to pandemic influenza viruses.

*The expansion of the scope of intellectual property rights*, on the other hand, manifests itself particularly as an explosive increase in patent applications worldwide. The emerging economic powers of the Far East are using all their strength to enter this sector. Globally, there are approximately 3 million pending patent applications. The expansion also shows in that, while the field of intellectual property used to be distinctively about negotiations and agreements between companies, consumers today must face issues related to intellectual property rights more and more often. For instance, counterfeit products can be found in the arenas of information technology, pharmaceuticals, and design. Furthermore, with the Internet, copyrights have involved legislation affecting the behaviour of private citizens more directly than before, since the meaning of, for instance, communications content created by consumers has increased. Consequently, the consumer perspective has become emphasised in the field of intellectual property rights in recent years.

## **Future prospects and targets status for 2015**

As concerns intellectual property rights, the key elements of social development within the next few years can be described as follows:

### *Outlook for 2015*

- The importance as well as the amount of innovation and creative work has increased.
- Open innovation and, for instance, the great importance of content produced by consumers challenge the system of intellectual property rights based on exclusive rights.
- Skills, knowledge, and their controlled distribution are significant competitive factors.
- Patents, trademarks, and model rights are mostly granted through international systems.
- Direct licensing of copyrights will increase.
- Competition and IPR viewpoints associated with standardisation have become more central.
- Legal collisions have increased.
- Regulation of intellectual property rights is developed primarily by the EU and the WIPO. More often than before, legal disputes concerning intellectual property rights are settled at supranational level.
- The exploitation of digital technology has become more versatile, progressing to new areas.
- Convergence has changed and integrated conventional branches of business.
- Cross-licensing and co-operation projects crossing national boundaries have increased.
- The use of intellectual property rights as a medium of exchange has become more common.
- The expansion of the number of patent and trademark applications is a challenge to the intellectual property rights system.

#### *Targeted status for 2015*

Succeeding in the operating environment of 2015 requires the following developments.

Finland has an IPR operating environment providing effective support for innovation activity and creative work.

Legislation concerning intellectual property rights encourages innovativeness and creative work and facilitate investments in them. The intellectual property rights system is flexible in the transformation situations of technology and business operations, promoting the competitiveness and service innovations of Finnish companies.

In the drafting of legislation concerning intellectual property rights, special attention is paid to the financial importance of the legislative decision and its economic and other effects. Indicators have been developed for the assessment of the intellectual property rights system and its various aspects.

As a rule, intellectual property rights are exploited in a global operating environment. Activity focusing on national markets alone is an exception.

The importance of skills has become emphasised in the activities of both companies and individual creative actors or innovators. Companies know how to exploit their intellectual property rights in the manner that best supports their business strategy. In order to succeed, one has to be familiar with the legislative forms of protection but also know other methods, such as strategies associated with openness and distribution of information.

Efficient exploitation of property rights is based on the functionality of the markets, the clarity of the rights, the functionality of competition, and the efficiency of the enforcement system. The resources of administrative authorities who handle intellectual property rights in registering rights and performing other administrative operations have been guaranteed. The resources of courts of justice concentrating on intellectual property rights have been increased in order to ensure expertise and expeditious handling of cases.

In the EU and in international forums, Finland actively and systematically influences the development of intellectual property rights and the IPR system as a whole in accordance with its national IPR strategy.

The achievement of the targeted status requires determined decision-making and activity in the chosen target areas, including competence, the effectiveness and clarity of the rights, competition policy and the functionality of markets based on intellectual property rights, the functional and economic efficiency of the system, and international influence. Furthermore, achievement of the targeted status also requires appropriate and sufficient resourcing of measures.

## **Target areas for measures**

### **1. Skills**

#### **1.1. Goals**

Success in both domestic and international markets requires versatile command of protection issues. However, company surveys carried out in connection with the background study for the strategy concerning intellectual property rights indicate that there are significant shortcomings in competence related to intellectual property rights.

Intellectual property rights training should be given a higher priority in both legal and business-related education. Strategies based on open innovation require full understanding of intellectual property rights as well. The conditions for co-ordination and integration in the field of education need to be improved. As far as possible, the technical, economic, and legal knowledge should be made available within the framework of one single line of study.

In business strategy, the field of intellectual property rights must be regarded as not just protection of legal rights but also as correct identification of various protection and user needs related to the operations – i.e., as new ability to read business operations. The economic value of creative work will not become visible before the property rights created on the basis of creative activity are exploited in a professional manner. This requires, for instance, development of managerial skills in the field of art. Also, in the work of industrial property and innovation agents, high-level competence is a prerequisite for the success of Finnish innovation activity in international trade.

Competence in contractual matters holds a key position where intellectual property rights are concerned. In practice, the usual language of IPR contracts in business operations is English. The concepts and the business practices employed in international trade mainly originate from the common-law legal systems of the United Kingdom and the United States. The conventional conflict-of-law practices applied in the agreements lead to a situation in which agreements are most often interpreted on the basis of some other laws than those of Finland. These factors underscore the great importance of international contractual competence as regards intellectual property rights.

The exploitation of patent information is not sufficiently active. Addressing this would help avoid overlaps in research and development and speed up the generation of commercial applications.

For reaching the targets in the area of competence, the following measures are necessary.

## 1.2. Measures

### *Universities and polytechnics*

- Promoting teaching and research concerning intellectual property rights in collaboration with universities and polytechnics. The matter is taken into account in the performance management of universities and polytechnics. Establishing a programme to promote the goal (Ministry of Education, Ministry of Employment and the Economy).
- Exploring how to develop the opportunities to offer technical, economic, and legal education in the Aalto University (Ministry of Education, Ministry of Employment and the Economy).
- Exploring whether the operation of the IPR University Center could be expanded to cover the research needs of public administration that concern intellectual property rights.
- Promoting intellectual property rights training in researcher education in particular (Ministry of Education, Academy of Finland).
- Providing teachers with an expanded foundation of knowledge and competence concerning intellectual property rights by producing and offering content services for teacher education (Ministry of Education, Ministry of Employment and the Economy).

### *Business and legal competence*

- Developing further education concerning intellectual property rights, making technical, economic, and judicial education available from the same source, if necessary.
- Strongly promoting further English-language education related to intellectual property rights and contractual activities concerning intellectual property rights.
- Developing education and teaching material intended for business advisers (Ministry of Employment and the Economy).
- Developing education in innovation management (Ministry of Employment and the Economy, Ministry of Education). Increasing the competence in intellectual property rights in training for specialist vocational qualifications (e.g. specialist vocational qualifications in product development and management) (Finnish National Board of Education). Developing manager coaching.
- Increasing education in exploitation of patent information (National Board of Patents and Registration of Finland).
- Establishing qualifications for the industrial rights attorneys and drafting the necessary legislation (Ministry of Education).

- Examining the need to increase competence related to rights in employee inventions.

## **2. The efficiency and clarity of the rights**

### **2.1. Goals**

In order to be efficient – i.e., implementable in an efficient manner – property rights should be clear and correctly dimensioned. The same applies to activities in data networks. The development of an electronic marketplace and information society must be promoted by means of counselling and information.

To achieve balanced final results, in legislation concerning intellectual property rights and in practical action, the status of the final user must be taken into account alongside that of the holder of the rights. This applies to both companies as commercial users and consumers as end users of products. In regulation concerning intellectual property rights, special attention is paid to the status of the consumer. In addition, the efficiency and legal clarity of the transfer of property rights must be improved.

Attention must be paid to the standard of patents, since high patent quality holds a key position in examination of the efficiency and enforceability of patent rights.

The high standard and speed of court proceedings hold a central position. With a view to effective exploitation of intellectual property rights, high-quality dispute settlement and court action are of great importance. High-standard court action is also a prerequisite for the development and maintenance of competence related to intellectual property rights in Finland. The standard of court action must be competitive at the EU level. Alongside solid court handling, there must be functional and reflexive dispute settlement mechanisms that can provide agreement-type solutions.

For reaching the targets related to these issues, the following measures are needed.

### **2.2. Measures**

- Consolidating handling of disputes concerning intellectual property rights with the Market Court by 2012. The necessary resources facilitating the consolidation measures will be ensured for the Ministry of Justice (Ministry of Justice).
- Ensuring that the copyright legislation and system are up to date by establishing a working group to examine the following areas:
  - Licensing systems based on the Copyright Act (e.g., contractual licensing, the Creative Commons system, and direct licensing) and structural change to international copyright licensing
  - Promotion of commercial use of material (e.g., multi-channel distribution and online storage services)
  - Promotion of interoperability and access to information on holders of rights
  - Assessment of the legal status of search engines operating in data networks and the impact of such activities on the markets (Ministry of Transport and Communications, Ministry of Education, Ministry of Employment and the Economy)

- Studying the handling of copyright issues in the case of national digital library and other national digitisation projects on the basis of, for example, partnerships between the private and public sector.
- Exploring the need to amend the Trademarks Act, the Business Name Act, and the Unfair Business Practices Act (Ministry of Employment and the Economy, Ministry of Education).
- Increasing information and counselling on what is allowed and what is not allowed in data networks. Clarifying the legislation, as necessary (Ministry of Education, National Board of Patents and Registration of Finland, Finnish Consumer Agency).
- Paying attention to patent quality in the performance management of the National Board of Patents and Registration of Finland (Ministry of Employment and the Economy).
- Exploring the legal risks associated with licensing and exploitation of open-source software (Ministry of Education).
- Revising Chapter 3 of the Copyright Act (Ministry of Education, copyright committee).
- Passing legislation on copyrights associated with works created by employees (Ministry of Education).
- Developing assessment methods and criteria related to the functioning of the copyright system (Ministry of Education).

### **3. Competition policy and functionality of markets based on intellectual property rights**

#### **3.1. Goals**

Both the competition rules and legislation concerning intellectual property rights aim at ensuring efficient operation of the markets and effective exploitation of innovations. For Finland, whose competitiveness and national well-being are critically dependent on the country's ability to produce new innovations and exploit them to the maximum, the meaning of open and well-functioning national and international markets is especially important. Market bottlenecks and obstacles to technological development should be actively cleared.

By 2015, the key European Community Block Exemption Regulations (on specialisation agreements, R&D co-operation, and technology transfer) concerning the exploitation of intellectual property rights will be re-examined. In this connection, it should be ensured that the regulations take account of the rapid technological development, transition in the forms of international trade, and the increasing need of European business life to secure its global competitiveness by means of R&D co-operation.

Use of intellectual property rights as company assets should be promoted by increasing information about the opportunities associated with intellectual property rights – in particular, issues related to valuation of intellectual property rights. The use of intellectual property as collateral is important in terms of financing opportunities for companies in the field.

The usability of patent information, as well as publicly produced information, should be promoted.

Reaching these targets requires the following measures.

### **3.2. Measures**

- Influencing the European Community Block Exemption Regulations (on specialisation agreements, R&D co-operation, and technology transfer) concerning the exploitation of intellectual property rights such that they take account of the rapid technological development, transition in forms of international trade, and the global competitiveness of European business life (Ministry of Employment and the Economy).
- Linking the issues concerning intellectual property rights with the performance negotiations of the Finnish Competition Authority (Ministry of Employment and the Economy).
- Assessing the licensing practices of copyright organisations from the standpoint of competition policy (Ministry of Employment and the Economy).
- As large numbers of public databases are created by state institutions, municipalities, and organisations under public regulation, including the National Board of Patents and Registration of Finland, the Finnish Meteorological Institute, Statistics Finland, and various taxation-related organisations. Examining the obstacles to efficient exploitation of public databases and archives and promoting the exploitation of public databases, while observing the competition policy (Ministry of Education, Ministry of Employment and the Economy, Ministry of Finance).
- Exploring the following (Ministry of Employment and the Economy, Ministry of Education):
  - Valuation methods for intellectual property rights
  - Development needs related to financial information concerning intellectual property rights (e.g., development of statistics compilation methods employed by Statistics Finland)
  - Obstacles to exploitation of intellectual property rights generated as a result of creative work (e.g., those related to taxation) (Ministry of Employment and the Economy)
  - IPR questions related to standardisation

## **4. Functional and economic efficiency of the system**

### **4.1. Goals**

The intellectual property rights system should be co-ordinated in an efficient manner at a high political level, in order to ensure that state operations in the arena of intellectual property rights remain systematic and in compliance with the targets set. The various ministries should act as an efficient virtual organisation. The status of the National Board of Patents and Registration of Finland as a high-standard authority responsible for intellectual property rights should be developed.

The public actors in financing and counselling roles should operate openly in an efficient and uniform manner in order to promote the development of intellectual property rights competence in practical business operations. From the point of view of start-up companies in particular, incompetence in relation to intellectual property rights issues may lead to loss of the entire product or business idea. Counselling services should be provided also in the area of copyrights. Special attention should be paid to efficiency of the innovation and research co-operation between the public and the private sector.

Reaching these targets requires the following measures.

## **4.2. Measures**

### *Administration*

- The ministries handling intellectual property right issues pay attention to IPR affairs in their strategies, and the rest of the state administration in their own activities.
- Assessment of the operation of the National Board of Patents and Registration of Finland is implemented in 2009, evaluating the development of the authority's operations, the development needs of intellectual property administration, and the authority's role as part of the Finnish innovation system.
- In connection with the evaluation concerning the National Board of Patents and Registration, the opportunities to specify the prioritisation of the National Board of Patents and Registration's operations will be examined, for instance, by means of supplementing its tasks associated with copyright counselling (Ministry of Employment and the Economy, Ministry of Education).
- A high-level IPR forum is organised annually, for instance, in connection with the WIPO's World Intellectual Property Day (Ministry of Education, Ministry of Employment and the Economy, National Board of Patents and Registration of Finland).
- Invention and innovation agent operations are developed toward broader expertise in intellectual property rights, taking into account, for instance, copyrights (Ministry of Employment and the Economy, National Board of Patents and Registration of Finland, T&E Centres).
- The Foundation for Finnish Inventions is the organisation responsible for providing support related to intellectual property rights (industrial rights) in the development projects of private inventors and start-up companies (micro companies). This foundation's authorisation to grant funding will be gradually increased, taking the needs of the operating environment into account. This includes exploring the status of innovation activity of micro companies and private persons as part of the innovation policy, including equal opportunities to exploit industrial policy instruments (Ministry of Employment and the Economy).

### *Financing*

- Business aid: A report on intellectual property is required before launching of any development projects, whenever appropriate in view of the nature of the project

(Ministry of Employment and the Economy, Tekes, T&E Centres, Foundation for Finnish Inventions), including the following:

- Mapping of the technological level
  - A survey of competitors
  - A novelty value survey
  - The intellectual property of other parties
- Whenever necessary, the financial instruments already in productive use will be supplemented, increasing the competence related to intellectual property rights in companies, by such means as Tekes aid to SMEs for acquisition of innovation services.
  - Service vouchers will be introduced for commissioning the first survey of intellectual property owned by a company or an inventor (Ministry of Employment and the Economy, National Board of Patents and Registration of Finland, T&E Centres).

#### *Universities and polytechnics and public research organisations*

- The problem areas related to intellectual property rights of universities and polytechnics and public research organisations will be mapped (Ministry of Education, Ministry of Employment and the Economy) in terms of:
  - IPR problems in co-operation between research and industry
  - Assessment and development of co-financed research and legislation concerning research implemented as joint projects between industry and public organisations to encourage co-operation and enhance exploitation of research results
  - Appropriate exploitation of IPR restriction regulations in research commissioned from universities and polytechnics (Ministry of Education, Ministry of Employment and the Economy)

#### *Counselling*

- The way in which the efficiency of counselling concerning intellectual property rights could be increased will be explored (Ministry of Employment and the Economy, Ministry of Education) through the following:
  - Combining operations
  - Guiding operations in a centralised manner
  - Taking of joint stands on political questions
- Counselling on intellectual property rights will be linked with the Ministry of Employment and the Economy's growth company service, with the forms of implementation including education benefits as part of a research, development, and innovation project; the development project for industry; and expanded use of service vouchers (Ministry of Employment and the Economy, T&E Centres, Tekes, Finnpro).
- Intellectual property rights will be prioritised appropriately in the Enterprise Finland project.

- The amount of copyright counselling services provided in connection with T&E Centres will be increased (Ministry of Employment and the Economy).

## **5. Activities related to international and EU intellectual property rights policy**

In the EU and in international forums, Finland will contribute actively and systematically to the development of the intellectual property rights system.

Finland is well equipped to adapt quickly to the changes in the international IPR field. As a small country, Finland benefits from as uniform and internationally harmonised a system of legislation concerning intellectual property rights as possible, since that creates opportunities for international trade and enhances the protection of intangible assets.

In the global operating environment, the legislation concerning intellectual property rights applied in various countries should be interoperable. This interoperability is achieved by means of international agreements. European Union laws further harmonise the IPR laws of countries belonging to the European Economic Area. Since, in recent years, it has become increasingly difficult to reach agreement through multilateral conventions, the interoperability of IPR regulations has been promoted by bilateral agreement arrangements also.

### **5.1. Recommended measures**

#### *European Union:*

- Influencing the EU is co-ordinated, and stakeholder groups are involved in discussions of the goals for influence within the EU (Ministry of Employment and the Economy, Ministry of Education).
- In summer 2008, the European Commission published a communication for an industrial property rights strategy. The Commission will be encouraged to handle industrial property rights and copyrights as a totality, due to the changes in the operating environment and the convergence factor in particular (Ministry of Employment and the Economy, Ministry of Education).
- The Commission is encouraged to conduct the surveys mentioned in the communication immediately, and to see that the surveys approach the issue from a clearly economic perspective, paying attention to competition legislation as well (Ministry of Employment and the Economy).
- The Commission is encouraged to draw up comprehensive impact assessments for all legal initiatives affecting intellectual property rights (Ministry of Employment and the Economy).
- Influence is wielded such that, when implemented, the Commission's initiatives of law add value rather than endanger the functionality of national IPR infrastructure (Ministry of Employment and the Economy).
- The EU is influenced to establish a cost-effective patent litigation system (Ministry of Employment and the Economy, Ministry of Education).

- The potential community patent system is implemented without endangering operating conditions for the national searching patent authority. Special attention is paid to appropriate distribution of fees to be collected on community patents between national patent offices.
- Relevant parties monitor and influence the EU's IPR regulation concerning research activity and, for instance, on promoting exploitation of public research results.
- There is an increase in the resources of the Permanent Representation of Finland to the Council of Europe (Brussels) allocated for handling of issues related to intellectual property rights.
- The evaluation and updating of Block Exemption Regulation concerning technology transfer are influenced appropriately (Ministry of Employment and the Economy – see Subsection 3.2 for further details).
- Influence is wielded such that the problems caused by the participation regulations and state aid regulations of the EC programmes, and the Law on the Cash Basis Method for European research and development co-operation would be solved in a manner promoting co-operation.

*International forums:*

- The preparation of national positions concerning intellectual property rights is carried out in a consistent and co-ordinated manner (Ministry of Employment and the Economy, Ministry of Education, Ministry of Justice, Ministry for Foreign Affairs, other ministries as necessary).
- Sufficient resources are secured for bilateral and multilateral negotiations and the ensuing national legislative work.
- The appointments of Finns to international IPR tasks are promoted.
- The status of the National Board of Patents and Registration of Finland as an international searching patent authority is ensured.
- Opportunities to increase patent search co-operation between patent authorities are explored, alongside promotion of projects related to IPR quality (Ministry of Employment and the Economy, National Board of Patents and Registration of Finland).

## **6. Communications and monitoring**

The Government's Resolution will be communicated broadly and translated into other languages as necessary (Ministry of Employment and the Economy, Ministry of Education).

The Ministry of Employment and the Economy will appoint a strategy management group comprising officials, to take charge of monitoring of strategy implementation. The management group will report on the implementation of the intellectual property rights strategy to a

ministerial-level agency handling IPR affairs. An interim report on strategy implementation will be issued in 2010.

An advisory committee on intellectual property rights will be established, to act as a promoter of networking within the field. In addition, discussion and interaction concerning issues related to the subject between the competition authority and intellectual property administration will be increased through establishment of a co-operation forum for the purpose (Ministry of Employment and the Economy, Finnish Competition Authority, Ministry of Education).

An updated version of the material on future prospects and targeted status will be drawn up in 2014, toward the end of the monitoring period.