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EXPLORING THE ROLE OF PATENT POOLS IN FOSTERING INNOVATION AND
COLLABORATION IN THE EU SPACE SECTOR

Abstract

Intellectual property rights embody the limited, in terms of scope, duration and geographical extent, power of the holder to use and exploit their intangible assets, benefit from them, and exclude others from their use in exchange for disclosing information about their creation. This monopoly increases ex-ante innovation by providing incentives to researchers, while the disclosure requirement promotes ex-post innovation by allowing information to spread efficiently to other inventors. In the context of space activities, patenting space-generated inventions was not always considered necessary, especially because the few space actors capable of conducting experiments to invent patentable subject matter would be the only ones possibly inventing alternatives to their inventions. However, the proliferation of private actors and investors in the space sector has caused a paradigm shift. With the emergence of new markets, researchers and private entities are becoming more conscious of their intangible property, in the interest of investment recovery among other factors, advocating for legal certainty and frameworks and practices that could ensure such advantages. This paper researches the ways in which the application of patent pool models for space-generated inventions could be beneficial within the EU space sector. First, the correlation between patenting a space-generated invention and the principle of space activities being conducted in the interest and benefit of all States is examined, followed by the application of broadly accepted patentability criteria to space-generated inventions. Consequently, the research proceeds by examining how existing legal instruments and policies attempt, if at all, to balance the stakeholders' interests. In particular, the research focuses on two space-specific patent protection mechanisms, namely the vertical patent policy between ESA and its procurement contractors and the horizontal patent policy between Member States of the ISS. Following some interim conclusions, the possibility of promoting space patent pools is explored within the EU legal framework. The paper argues that space patent pools could be beneficial to a certain extent to the stakeholders' interests, contribute to the stimulation of the EU space market and benefit humankind.