

# **Balancing Economic Benefits and Human Rights in European Patent law: A Co-operative Model of Relationship**

## **Research Background**

The opponents of immorality clauses in biotechnological inventions, particularly the patent community, argue that including such criteria enshrined mainly under Article 53(a) of the European Patent Convention, and in Article 6 and 7 of the 1998 EU Directive on the Legal Protection of Biotechnological Inventions, concede too much to morality. To that extent, it is argued that the consideration of morality places the European system at a disadvantage, economically, when compared to the United States and Japan. Therefore, it may be suggested that these morality exclusions are in contradiction, and conflict with protection of intellectual property rights of the inventors, as a result of the limitation arising from such provisions in the Directive and EPC. In this paper, I present my comments on these objections and justify a 'cooperative model'. The paper examines the nature of immorality exclusions in intellectual property law to justify such 'co-operative model' as opposed to a 'conflict model' for interpretation of morality or moral rights and intellectual property rights. First, an analysis of selected cases brought to European patent authorities will be presented in order to examine how the approaches of the patent office in relation to interpretation of morality exclusions have changed. Subsequently the narrow conception to morality is analysed which brings a conflict model of relationship between morality (human rights) and patentability followed by the broad interpretation of morality and a co-operative model. The framework used in this paper is built upon the key idea that, although the two sets of values can come into conflict, they can also support each other.

**Research Questions:** The first question this paper seeks to answer is whether immorality exclusions in European patent law should be interpreted broadly or narrowly. It also seeks to answer whether morality or moral rights are necessarily in conflict with intellectual property rights and whether the morality exclusions can plausibly work in support of IP rights.

**Research Objectives:** The main objectives of this paper are to justify a broad concept of morality in EU patent law and to defend a co-operative model of relationship between intellectual property rights and human rights.

**Methodology:** This paper applies a framework that is based on Alan Gewirth's moral theory, according to which the Principle of Generic Consistency (the PGC) is the supreme principle to judge the permissibility of actions.

**Keywords:** Intellectual property law; Human rights; Biotechnology patents; Principle of Generic Consistency, Co-operative model

## References

- Adcock, M. & Beyleveld, D. (2016) Morality in Intellectual Property Law: A Concept-Theoretic Framework. *Journal of Intellectual Property Rights* 154 4(1). 1-23.
- Beyleveld, D. Brownsword, R. & Llewelyn, M. (2000). The morality clauses of the directive on the legal protection of biotechnological inventions: conflict, compromise and the patent community. *Pharmaceutical Medicine, Biotechnology and European Law*.157-181.
- Caulfield, T. & Brownsword, R. (2006). Human Dignity: A Guide to Policy Making in the Biotechnology Area? *Nature Reviews. Genetics*.7, 72-6.
- Geiger, C. (2004). Fundamental rights, a safeguard for the coherence of intellectual property law? *IIC: International Review of Industrial Property and Copyright Law*.268-280.
- Heins, V. (2008). Human Rights, Intellectual Property, and Struggles for Recognition. *Human Rights Review*. 9, 213-232.
- Helfer, L.R. (2007). Toward A Human Rights Framework for Intellectual Property. *U.C. Davis Law Review* 40. *Vanderbilt Public Law Research Paper No.06-03*.
- Murray, F.E.S. & Stern, S. (2005). *Do Formal Intellectual Property Rights Hinder the Free Flow of Scientific Knowledge? An Empirical Test of the Anti-commons Hypothesis*. Cambridge, Mass: National Bureau of Economic Research.
- Nott, R. (1998). 'You Did it!' the European Biotechnology Directive At Last. *European Intellectual Property Review*. 20, 347-351.
- Schatz, U. (1997) Patents and morality', in Sterckx (ed) *Biotechnology, Patents and Morality*, pp 159-170.
- Shum, J. (2010). Moral Disharmony: Human Embryonic Stem Cell Patent Laws, Warf, and Public Policy. *Boston College International and Comparative Law Review*.33, 153-178.