

## ***Patenting and licensing nanotechnologies in Europe : now and the future***

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### **Abstract**

Although some skeptical lawyers still think that nanotechnologies do not change law substantially, patent law is a perfect example of the hot areas where researchers and industrials face the most difficult legal challenges. Patent Law texts applicable in Europe have been drafted at times where scientific knowledge was not comparable with the evolution seen during the last 20 years.

The conference will cover four different topics : the patentability of nanotechnologies, the future of the directive on the patentability of biotechnological inventions, the perspectives offered by the new unitary patent system and the future New regulation on licensing agreements on the transfer of technology which will be adopted in late 2013.

### ***Patenting nanotechnologies***

At the level of the European Patent Convention, the different conditions of patentability are questionable. Although the case law of the European Patent Office remains limited, some trends about issues can already be pointed out of the recent cases delivered by the Board of Appeal. The national case law also highlights hurdles that may appear.

Among the conditions, novelty and the question of the state of the art are challenged by certain nanotechnologies. The patent claims are sometimes subject to examination failures when applications seek patent recognition on unclearly limited nanotechnologies.

Nanotechnologies represent an opportunity of using utility models again as they are very popular in China and enhance the competitiveness of companies.

### ***The future of the directive on the patentability of biotechnological inventions***

None can speak about nanotechnologies without drawing some parallelism with the most common precedent to which nanotechnologies are compared, i.e. biotechnologies whose increasing R&D activities and business shaped many debates and legal changes in the 90s.

The current approach of the European Union towards nanotechnologies differs from the way it dealt with biotechnologies more than 10 years ago. The European Union's answer to biotechnologies resulted in the adoption of various autonomous legal instruments while the Union prefers now to adapt the existing legal framework to integrate nanotechnologies.

In the field of intellectual property, the 98/44/EC directive provided for several years an answer to patenting issues in an emerging scientific field. Nanobiotechnologies fall today in its scope and we may ask seriously whether the directive is not outdated or not.

A careful analysis of the provisions of the directive in the light of the case law of the European Court of Justice will allow to draw some conclusions about a potential call for review of this directive, as it concerns a substantial part of nanotechnological patents.

### ***The new unitary patent system***

Second to last, the future impact of the unitary patent system adopted in December 2012 will be assessed.

This unitary patent system offers an alternative to the classical route that applicants follow with the so-called « European patent ». Although this system does not have any nanotechnology-related aspect, it will certainly improve the competitiveness of many actors of the industry as it decreases the costs for patenting inventions.

### ***The future new Regulation on Licensing Agreements on the Transfer of Technology***

Finally, the conference will highlight the changes that will be brought by the new Regulation Technology Transfer Block Exemption to be adopted in mid-2013.

The current difficulties raised by market definitions will be pointed out, as well as the impact of a potential consumer choice that will, in the near future, distinguish markets for nano-free products and products including nanotechnologies.