



# Newsletter EIPIN-IS

1/2019

## Scientific Communication Skills Training and XXth EIPIN Congress in Alicante

*By Tamar Khuchua*

EIPIN IS early stage researchers (ESRs) all gathered in Alicante from 22<sup>nd</sup> to 26<sup>th</sup> January 2019 to participate in another useful training and an inspiring conference. The Scientific Communication Skills training helped the ESRs master the art of making an effective presentation by employing four main modes of communication such as verbal, written, nonverbal materials and body language. Teresa Morell Moll, professor at the University of Alicante, led the young researchers throughout the training days. While keeping the long working hours rather entertaining, she gave some important recommendations to the researchers as to how to communicate scientific results to public in a simple, yet professional way. All the more, on the second day of the training, the ESRs were on stage. During the five-minute presentations they had the opportunity to present their research topics while at the same time practice the components of an effective scientific presentation. All 15 ESRs received very positive feedback both from the professor as well as their peers.

The second part of Alicante events gathered an even bigger crowd as the XXth EIPIN Congress kicked off on 23<sup>rd</sup> January at the premises of University of Alicante in the heart of the town. This time, the congress brought everybody's attention to the interaction of intellectual property and innovation. During the three conference days, the topics covered the role of intellectual property for innovation and *vice versa*, in diverse industries such as agricultural and nonagricultural business, artificial intelligence, pharmaceuticals and biomedicine. In the final day some issues concerning competition, licensing and standard essential patents were highlighted. Speakers coming from public institutions, private sector as well as academia triggered hot discussions which allowed the participants to hear broad spectrum of ideas and receive some food for thought for their research.

While the days were rich in academic discussions, during the evening hours nice dinners were organised that brought everybody together to socialise, relax, and of course get the taste of the Spanish cuisine.



## Meeting our EIPIN Researchers in Munich: One year in - IP Innovation, Economics and Literature training, Fall 2018

*By Gerben Hartman*

The EIPIN-Innovation Society EU Marie Curie Researchers have taken centre stage at the four-day training at the Max Planck Institute for Innovation and Competition in Munich, which took place in the Fall 2018.

These fun and action-packed training days in MPI's most vibrant and intellectually inspiring environment allowed all of us to present our current research questions and views in front of a most excellent assembly of prominent academics and practitioners in law and economics.

Kicking-off the trainings, **Krish Jayaraman** mapped out his multi-level analysis of progressive adaptations to innovation law & policy in the health sector in view of agency and stewardship theories and commercialization aims in the biomedical industry, and our resulting discussion kindled innovative perspectives of the public as principal and individual stakeholders as agents.

**Girish Somawarpet** shared his pyramid models to (re-)structure the patent

system, questioning the so-called one-size fits all patent system, identifying sectoral diversity of innovation and looking into further needs for change from a dynamic economic or social value-based perspective of individualised stakeholder interests. **Niccolò Galli** swiftly brought us up to speed on economic incentives and disincentives regarding his Patent Aggregation and Innovation: Competition Law (Re)Appraisal research and on the valuation of patent portfolios—wherein size potentially matters from an industry perspective, adhering to the adagium ‘bigger is better’ and seeking synergy ‘the whole is greater than the sum of parts’ for strategic offensive and defensive value in competition.

**Maurizio Crupi** took us along on his research expedition into Innovation within Tradition. He guided us along his path with central questions as to whether the (EU) sui generis system of protection by Geographical Indications for the link between origin and quality of certain agricultural products should be extended to non-agricultural products or handicrafts? And how this works in view of innovation and other economic rationales?

In this context we enjoyed a graphic discussion on fundamental issues of concurrence and positive and negative convergence of various other IP regimes such as copyright and trademark law with their own particular object of protection, limitations and exceptions in aims of fostering innovation. And this seamlessly intertwined with **Jared Onsando’s** presentations on Agribusiness and (re-)shaping the legal landscape in patent and plant breeder’s protections in view of European innovation policies. Jared also seeks to resolve overlapping issues, in particular between the patent systems and plant breeder protection regimes with a breeder’s exemption and requirements under international law (such as article 30 TRIPs on limited exceptions to patent rights in light of the Doha-declaration on TRIPs and public health).

**Francesca Mazzi** enlightened us with her visions on Patentability of 4th industrial revolution Artificial Intelligence generated inventions, questioning needs for reform of patentability standards in view of distinctions between human or AI generated inventions as well as public or inventor-focused innovation rationales. And we discussed the importance of dealing with these

issues for innovative industries such as pharma wherein (control of) access to big data is likely to affect problem-solving and decision-making more and more as we go forward.

**Vicente Zafrilla** presented his research approach on the impact of Standard Essential Patent declaration on innovation and competition with a focus on over- and under-declaration and interests of patentees as well as implementers. Vicente seeks to introduce more coherency to the approaches of Essentiality and SEPs in present literature. This culminated in a great debate centering on the question whether Essentiality is a purely factual or legal standard or a mixed question of law and fact, hinging on technical and commercial factors as well as contextual claim construction. Various arguments were made on all sides and we recognized that—especially in FRAND disputes over patent pools— patentees, implementers and courts have not yet conclusively or universally allocated the burdens of SEP determinations.

**Naina Khanna** set out her research steps aimed at Balancing patent quality with effective enforcement, essentially questioning the quality of the granting offices' patentability evaluations in view of post-grant invalidation—with a particular focus on innovation in the European pharma sector. In our en groupe discussion we further delineated challenging problems as to how patent quality and the patent presumption of validity could be strengthened either by legislative reform of the patentability requirements or by more or less strict application of the patentability requirements in pre-grant examination and post-grant review at patent offices or in courts—especially in view of the multiple interests involved (such as interests in fair protection for patentees, legal certainty for third parties or innovation and competition policies for states). In presenting on the impact of the Unitary Patent (UP) package on innovation of startups, **Letizia Tomada** ably shifted our attention from economic incentives for startups to applicable law. Among other things, Letizia questions the implications for startups of international private law connecting factors which connect issues regarding European patents with unitary effect 'as an object of property' to the applicable national law of the relevant state that fulfils the greatest connection (either a participating Member State where the UP

applicant has his residence, principle place of business or place of business, or otherwise Germany where the EPO has its headquarters – article 7 UP Regulation). And among our group we discussed the desirability of such application of national laws in view of European integration and potential issues of uncertainty, non-unification and discrimination. **Anastasiia Kyrylenko** shared her research views on Enforcement of intellectual property rights and trade with a focus on EU influence on policy design in CARIFORUM and Eastern European trade areas. In our discussion we touched on several issues such as IP rule-making and rule-taking as bargaining chips in trade negotiations between developed and developing countries (IP demandeurs and demandés) and potential conflicts of interests in unity or diversity of legal standards and extraterritorial application of EU law.

We were in for a treat when **Clara Ducimetière** shared her animated views on protection of IP as investment in International Investment Agreements (IIA) from an EU perspective. Clara focused our attention on the equation of IP and investment in IIA definitions resulting in potential conflicts in the regimes of protection, the judicial landscape and with safeguards for moral rights, public health and the environment. Alternative purposive or conditional definitions came forth from our expert group discussion and concerns of setting aside national courts' jurisdiction by IIA dispute resolution and private party litigation in public fora for IP and investment disputes were raised.

**Tamar Kuchua** further zoomed in on IP, innovation and judicial design in the EU. Tamar questions whether general or specialised court systems are best equipped to balance pluralistic interests in IP and innovation within the EU legal framework in view of socioeconomic factors such as quality of decisions and cost or length of litigation. And we appreciated that it is challenging to devise such a proper comparative study of actual general or specialised courts, also considering definitional challenges and the endogenous character of – in principle – general courts that may gain specific IP expertise by handling high volumes of IP cases through 'judicial learning'.

In sharing her research views **Natasha Mangal** called into question whether a more institutional approach should be adopted for EU copyright reform, in light

of the working Canadian institutional model in the field of Collective Rights Management. The experts among us praised Natasha's quest to specifically work out which market failures justify market interventions by specific institutional legislative reform, and commended the institutional legal basis in the EU directive on collective rights management and the actual developments in certain EU Member States as promising for research.

Collective Management Organisation issues are also central to **Lucius Klobučník's** research. Lucius clearly and graphically explained fundamental principles of CMO licensing and his views on innovative models for multi-territorial licensing of musical works for online use, as he is seeking solutions to the issues of fragmentation of rights with respect to such musical works. Our expert group discussion focused on two-sided market research opportunities, parallels between CMO and SEP licensing, and justifications of (non-)discriminatory license fee structuring.

As for the ongoing research of this editorial protagonist— **Gerben Hartman**— focusing on supranational jurisdiction of European decision-making institutions (i.e. courts or other tribunals), I presented my views on fitting courts such as the up and coming Unified Patent Court or Multilateral Investment Court in with the European Union legal framework. As I am questioning normative hierarchies of legal orders and whether the Court of Justice of the EU should take an exclusive or inclusive approach towards supranational jurisdiction or multilateral judicial cooperation regarding EU Member States as well as third countries— potentially (further) developing special relations with the EU such as the European Free Trade Area.

Our special thanks go to MPI and all experts on panel, including Josef Drexler, Annette Kur, Silke von Lewinski, Luisa Menapace, Stefano Baruffaldi, Andreas Sattler, Fabian Gaessler and Frank Müller-Langer, and to Jurgita Randakevičiūtė for her excellent organisational support. Together with these experts and our team of EIPIN researchers we enjoyed four most intellectually inspiring training days in Munich and we look forward to our next meeting.

## Recent Publications by our ESRs

Anastasiia Kyrylenko , '[Landscaping IPR Chapters Of The EU'S New Generation Ftas: Georgia, Moldova And Ukraine](#)' (3DCFTAs Youth Essay Competition, 2018)

Clara Ducimetière, '[Intellectual Property Under the Scrutiny of Investor-State Tribunals Legitimacy and New Challenges](#)', 9 (2018) JIPITEC 266

Lucius Klobučník (with D. Campello Queiroz), "The role of traditional CMOs in the Digital Era", in [Finding the Value in the Gap](#), A Publication of the International Association of Entertainment Lawyers, Paul Kempton and Massimo Travostino, eds., (2018)

Maurizio Crupi, 'How to protect Indian products in the European Union: fragmented protection of non-agricultural geographical indications' (2019) 54 La Ley Mercantil 5.

>> [Further information](#)

Maurizio Crupi, '[Geographical Indications: linking products to their geographical origin](#)', IGIR blog, December 6, 2018

Naina Khanna, '[The Securitization of IP Assets: Issues and Opportunities](#)' Journal of Intellectual Property Rights, Vol 23 (2-3) (2018)

Naina Khanna & Jasmeet Gulati, [Knowledge/Skill Standards of a "Person Skilled in Art": A Concern Less Visited](#), 17 J. MARSHALL REV. INTELL. PROP. L. 588 (2018)

Naina Khanna, [Patent Quality: Does One Size Fit All?](#) (January 2019).  
[www.4ipcouncil.com](http://www.4ipcouncil.com)



Vicente Zafrilla Díaz-Marta, [‘Unwired Planet vs Huawei: the Appeal’](#), Trust in IP blog, October 25, 2018

### **Recent presentations by our ESRs**

Naina Khanna [presented her work](#) at the First IP & Innovation Researchers of Asia Conference (31 January-1 February)

Niccolò Galli [presented his research poster](#) at TILEC (Tilburg Law and Economics Center) 15th Anniversary Conference, and his [ongoing work](#) at the 2nd Competition Law and Economics PhD Seminar

Krishnamani Jayaraman [presented his work](#) at the 8th International Conference on Information Law and Ethics (13 December 2018)

[Naina Khanna](#) and [Maurizio Crupi](#) presented their work at IGIR Lunch Seminars

Francesca Mazzi and Naina Khanna [presented](#) at Hovione Lumiar on 30 October 2018

Maurizio Crupi was invited to [give a presentation](#) to the Consejo Regulador I.G.P. Jijona Y Turrón Alicante on 24 September 2018

Clara Ducimetière [presented her paper](#) “Intellectual Property under the Scrutiny of Investor-State Tribunals: Legitimacy and New Challenges” on the “IP litigation” at the 2018 EPIP Conference in Berlin. The paper is forthcoming in JIPITEC, 2018, Vol. 9(3), and is already available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3260554](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3260554)

Tamar Khuchua has been invited to [present her research](#) at the Faculty of

Law of Stockholm University at the workshop in European Legal Studies (21-22 August, 2018)

Letizia Tomada [presented her research](#) on “The Impact of the European Unitary Patent System on Innovation of Start-ups” at the “IP Researchers Europe Conference” on the 29<sup>th</sup> June 2018 in Geneva



## Awards

Anastasiia Kyrylenko won the Youth Essay Competition Prize, granted by the Brussels-based think tank CEPS, for her essay "Landscaping IPR Chapters of the EU's new generation FTAs:

Georgia, Moldova and Ukraine" . More info here:

<http://www.3dcftas.eu/publications/other/landscaping-ipr-chapters-eu%E2%80%99s-new-generation-ftas-georgia-moldova-and-ukraine>



Naina Khanna won the 4lp Council Research Award 2018. Her paper titled “Patent Quality: Does one-size-fit all?” has been ranked #1. The publication

can be found here:

[https://www.4ipcouncil.com/application/files/6615/4877/3210/Patent\\_Quality\\_-\\_Does\\_One\\_Size\\_Fit\\_All.pdf](https://www.4ipcouncil.com/application/files/6615/4877/3210/Patent_Quality_-_Does_One_Size_Fit_All.pdf)

[More on our past events here](#)

### Upcoming activities

April 2-3, 2019 | **London**

EIPIN Congress and EIPIN Doctoral Seminar



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