

Greek Gifts and Pandora's Package the mythology of European patent reform

Professor Dr Jeremy Phillips

Greek Gifts



Laocoon and Cassandra



The sack of Troy



Neues Museum



CENSORED

Pandora's box



Only Hope remains



Is our new patent package ...

- more competitive against other patent systems?
- more cost-effective?
- better at coping with patent thickets?
- effective in combating trolls?
- able to produce “quality patents”?
- easy for litigants to handle?
- kind to Small and Medium-Sized Enterprises (SMEs)?

A more competitive patent system



Systemic competitiveness

- Do IP systems compete with one another?
- Yes (eg Community trade mark v national marks; Community trade mark v registered Community design; patent v utility model)
- No (eg patents in different countries)

More cost-effective



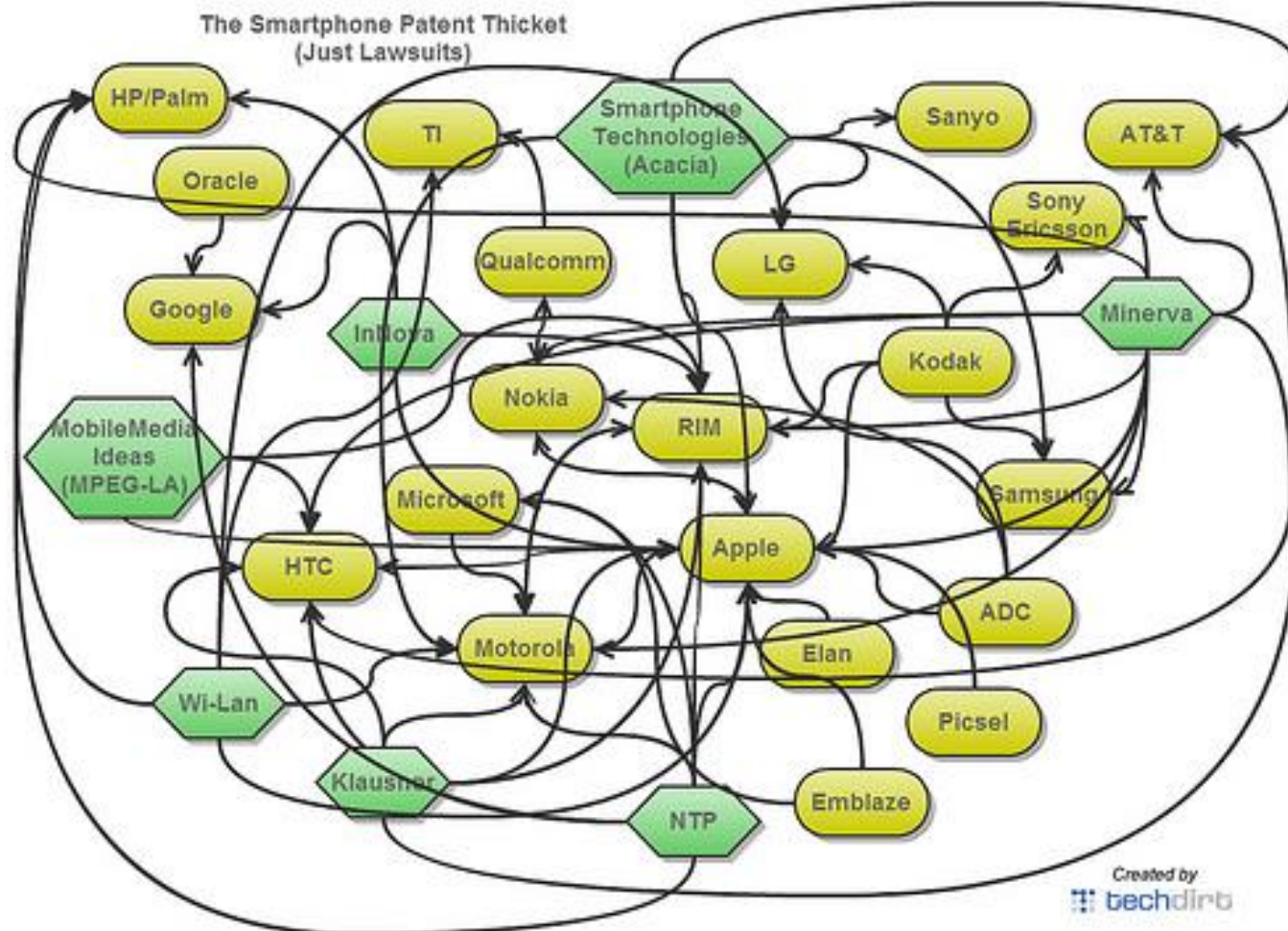
Bargain



Cost and value

- In historical terms, patenting in Europe is not so expensive
- The cost of a patent, which is an objective fact, should not be confused with its subjective value
- What should be measured: the cost of acquiring a patent or the overall cost of introducing a new product or process to the market?

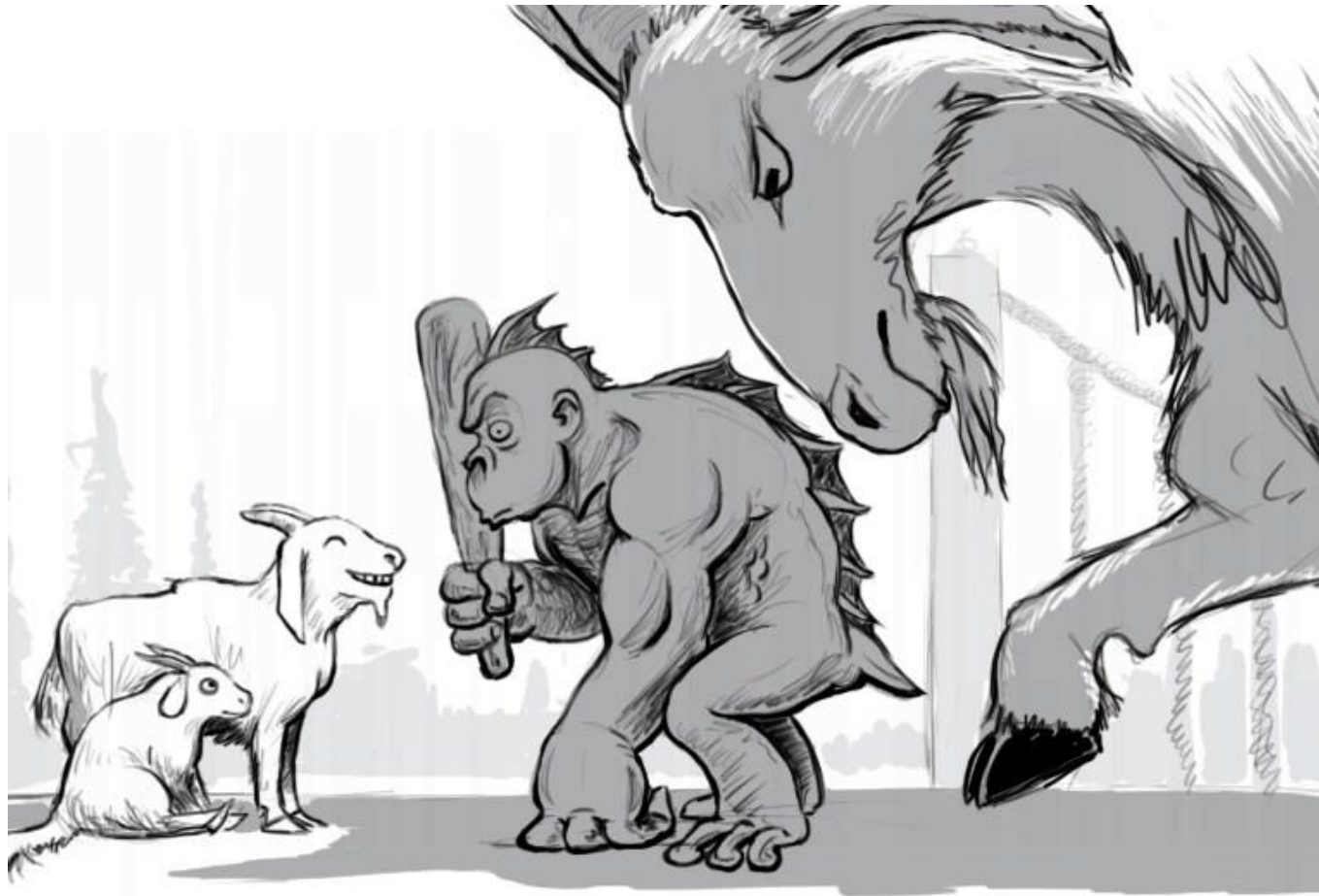
Helps thin out patent thickets



Patent thickets

- Do they exist at all? If so,
- Are they a problem? If so,
- Does the new package fix it?

Disposes of Harmful Trolls



Treating trolls

- Are trolls (a) a pejorative label, (b) a damaging phenomenon that must be tackled or (c) a sign of a healthy patent system?
- Does the new package make any difference?

Produces quality patents



But what *is* a “quality patent”?

- The examiner’s view
- The patent proprietor’s view
- The view of a financial institution taking a security interest
- Does the operation of the doctrines of novelty and inventive step make the concept of the “quality patent” academic?
- Does the new package change this?

Fun to litigate, easy to enforce



Going to court

Patent law is rich in litigation opportunities, eg

- Office actions
- Judicial proceedings in national courts, with prospects of appeal after appeal
- Jurisdictional and trans-border matters
- Infractions of patent licences: contract or delict?
- Ownership and compensation issues

Good for SMEs



SMEs are a perennial problem

- Lack of cash resources for patenting
- Strain on human resources, especially among key personnel
- Difficulties in budgeting for monitoring, maintaining and enforcing patents even once they have them ...
- ... but open to take-overs, asset sales and funded litigation ventures
- Does the new package affect this?

The new package:
a possible solution?

**THE
ULTIMATE
QUICK FIX**



*Si fractum non sit,
noli id reficere.*

Is the adoption of a new EU patent system the answer?

- That depends on the question – and is the new package truly a means to an end, or an end in itself?
- Why are other jurisdictions better at encouraging and promoting innovations?
- Perhaps the solution lies in the availability of ‘positive’ and ‘negative’ funding ...
- ... and in better training to deal with change

What we really need 1



The investment climate

- “Positive” and “negative” investment explained and contrasted
- What is the EU’s position?
- Does the new package make any difference?

What we really need 2



The human factor

- Aversion to change
- “Not invented here”
- The challenge of adoption of the new
- The thrill of the risk
- What works better: a bad system run by good people or a good system run by bad people?

The end ... or is it?

