



Intellectual Property, Innovation and Competition in the IT Industry

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Summary

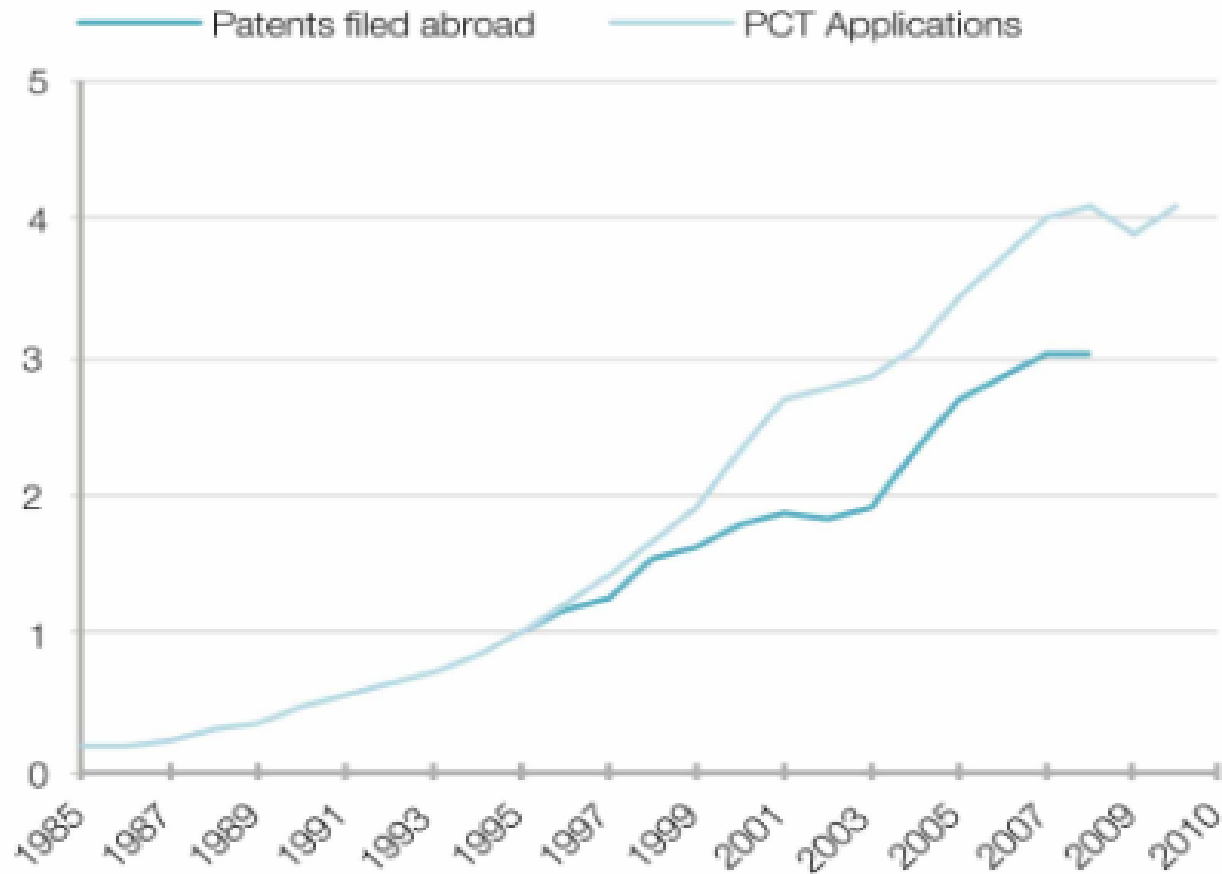
- Some background data on IP/Innovation growth in ICT
- The IP & Competition Policy interface
- Main areas of potential antitrust concern regarding IP/Competition interface and ICT
- WIPO's work in this field

Background data on IP and innovation relevant for competition

- In a shifting geography of R&D intensive industries, international patenting has become the crucial competitive asset for most companies (data on international patent filings)

Patent applications worldwide (Wipo, The Changing face of Innovation, 2011)

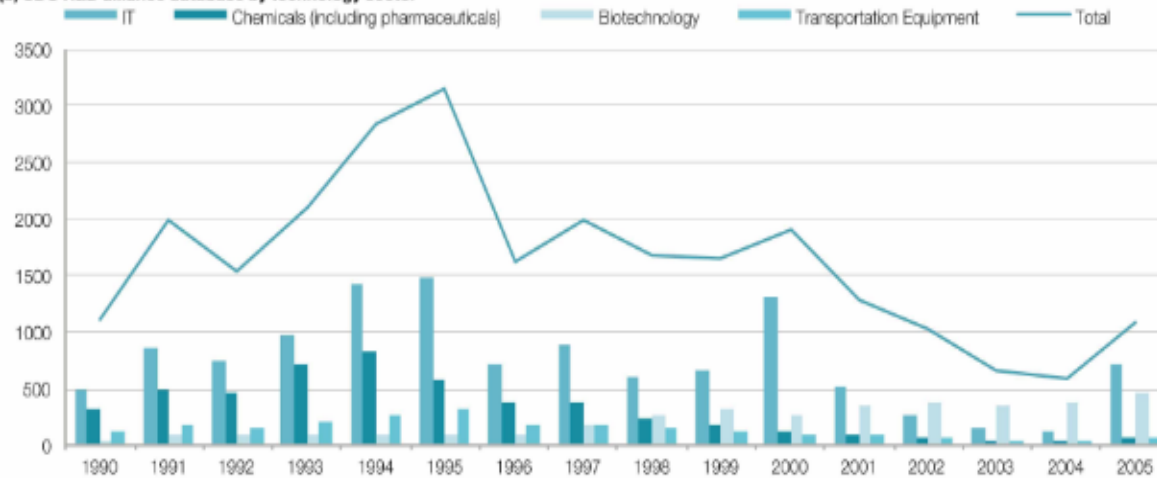
Growth of patent applications abroad and PCT applications, 1995=1, 1985-2010



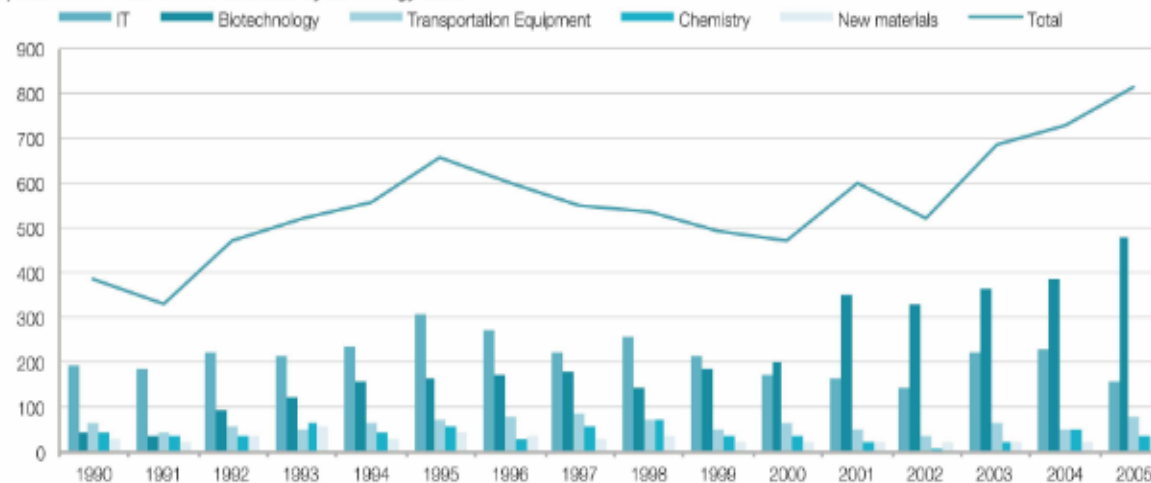
Background data on IP and innovation relevant for competition

- Very significant number of world-wide R&D collaboration in the IT sector (SDC and MERIT-CATI databases)

(b) SDC R&D alliance database by technology sector



(c) MERIT-CATI R&D alliance database by technology sector



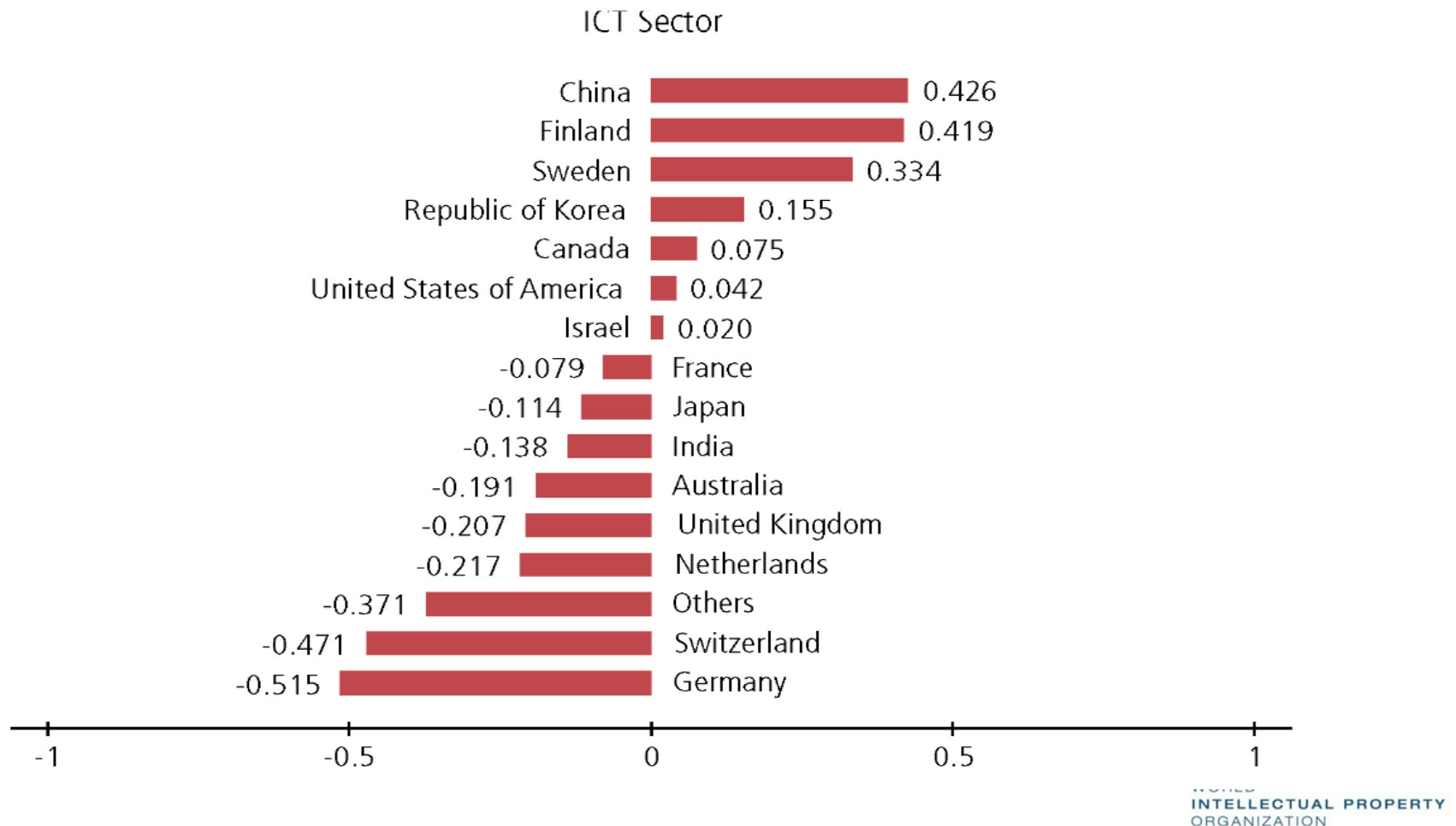
Notes: Following Schilling (2009), panel (a) standardizes R&D alliance counts to allow for easier comparisons between the three different databases. As explained in the Data Annex to this chapter, the data collection methodologies of the three different databases differs in important ways. For easier presentation, panel (b) scales down the total count of R&D alliances by a factor of two. In panels (b) and (c), the technology sectors for the SDC and MERIT-CATI databases have been harmonized with a view to improve comparability.

Source: Schilling (2009).

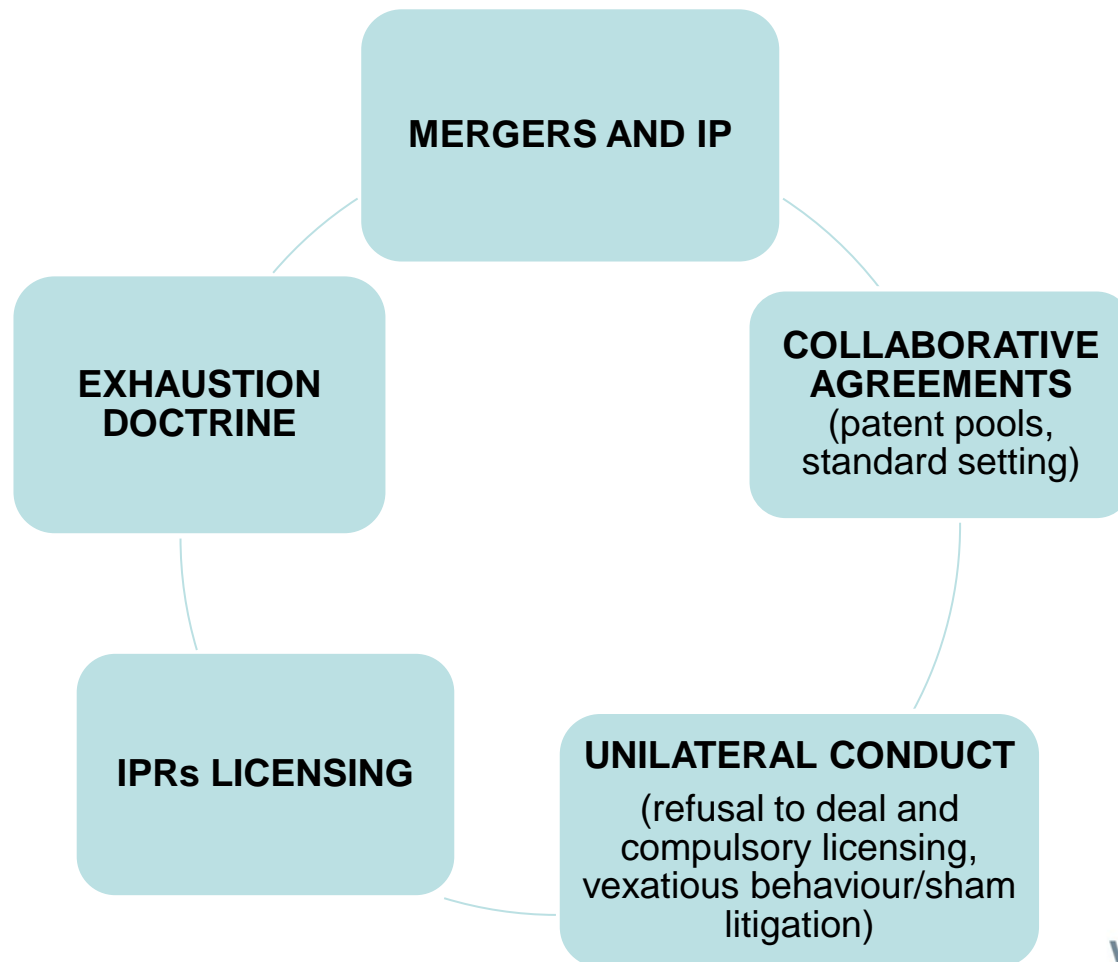
Background data on IP and innovation relevant for competition

- The patent specialization pattern shows the relevant role of China, the Nordic Countries, Korea, Canada and US in the IT sector

Relative specialization index for ICT sector, 2011 (Wipo, The international patent system, PCT Yearly review, 2012)



The IP&CP interface – Five main areas



Areas of major relevance at the international level concerning ICT

- Two main issues:

- Patent pools

- Unilateral conduct: abusing the regulatory/judicial system and using IP to discourage competition

1. Collaborative agreements

- Patent Pools

- Horizontal coordination and potential reduction of competition – substitute vs. complementary technologies

- Case law

- USA: Summit VISX, MPEG-2, DVD, 3G Mobile Communication
 - Brazil: Axalto/Genplus

2. Unilateral Conduct

- Vexatious behaviour and sham litigation – competition by litigation
 - USA: Noerr-Pennington doctrine developed in the '60s; PREI test, 1993
 - EU: ITT Promedia, Court of First Instance, 1998
 - Brazil: Tachographs case, 2011
- IP as a possible barrier to competitive entry in ICT:
 - Australia: Stevens vs Sony, a lock-in strategy to lessen competition
 - Preventing interoperability

Other Areas of IP&CP Interface in ICT of potential concern

- Settlements of litigation
- “Excessive” royalties
- Non-practicing entities

WIPO's work in this field

The 2010/2011 project

- Training in pro-competitive licensing strategy
- Applied research and studies
 - Exhaustion doctrine
 - Sham litigation
 - IP as a barrier to entry ?
- Three surveys
 - Compulsory licensing
 - Franchising
 - Patent Office/Competition Agency relationship

WIPO's Activities 2012 - 2013

- Studies on
 - Copyright, Competition and Emerging Economies
 - Mobile technology, IP and Competition
- Reports on Patent Pools, Refusal to deal
- Surveys on:
 - Collaborative R&D
 - Technology licensing

Thank you for your attention !

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