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A Comparative Legal Enquiry on the Concept of Invention

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Abstract : The concept of invention is rarely scrutinized by legal scholars since it is a slippery one, full of nuances and difficult to be defined. When does an idea become relevant for the patent law? When is it simply possible to talk of what an invention is? It is the first question to be answered to obtain a patent, but it is sometimes neglected by treaties or reduced to very simple and automatically re-cited definitions. Maybe, also because it is more a transnational and cultural concept than a mere institution of law. Tautology is used to avoid the challenge (in the United States patent regulation, the inventor is the one who contributed to have a patentable invention); in other case, a clear definition is surprisingly not even provided (see, e.g., the European Patent Convention). In Europe, the issue is still more complicated because there are several different solutions elaborate inorganically be national systems of courts varying one to the other only with the aim of solving different IP cases. Also a neighbor domain, like copyright law, is not assisting us in the research, since an author in this field is entitles to be the 'inventor' or the 'author' and to protect as far as he produces something new. Novelty is not enough in patent law. A simple distinction between mere improvement that can be achieved by a man skilled in the art (a sort of reasonable man, in other sectors) or a change that is not obvious rising to the dignity of protection seems not going too far. It is not still defining this concept; it is rigid and not fruitful. So, setting aside for the moment the issue related to the definition of the invention/inventor, our proposal is to scrutinize the possible self-sufficiency of a system in which the inventor or the improver should be awarded of royalties or similar compensation according to the economic improvement he was able to bring. The law, in this case, is in the penumbras of misleading concepts, divided between facts that are obscure and technical, and not involving necessarily legal issues. The aim of this paper is to find out a single definition (or, at least, the minimum elements common in the different legal systems) of what is (legally) an invention and what can be the hints to practically identify an authentic invention. In conclusion, it will propose an alternative system in which the invention is not considered anymore and the only thing that matters are the revenues generated by technological improvement, caused by the worker's activity.

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