

A Paradigm Shift in Patent Protection-Protecting Methods of Doing Business: Implications for Economic Development in Africa

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Abstract : Since the early 1990s political and economic pressures have been mounted on policy and law makers to increase patent protection by raising the protection standards. The perception of the relation between patent protection and development, particularly economic development, has evolved significantly in the past few years. Debate on patent protection in the international arena has been significantly influenced by the perception that there is a strong link between patent protection and economic development. The level of patent protection determines the extent of development that can be achieved. Recently there has been a paradigm shift with a lot of emphasis on extending patent protection to method of doing business generally referred to as Business Method Patenting (BMP). The general perception among international organizations and the private sectors also indicates that there is a strong correlation between BMP protection and economic growth. There are two diametrically opposing views as regards the relation between Intellectual Property (IP) protection and development and innovation. One school of thought promotes the view that IP protection improves economic development through stimulation of innovation and creativity. The other school advances the view that IP protection is unnecessary for stimulation of innovation and creativity and is in fact a hindrance to open access to resources and information required for innovative and creative modalities. Therefore, different theories and policies attach different levels of protection to BMP which have specific implications for economic growth. This study examines the impact of BMP protection on development by focusing on the challenges confronting economic growth in African communities as a result of the new paradigm in patent law. (Africa is used as a single unit in this study but this should not be construed as African homogeneity. Rather, the views advanced in this study are used to address the common challenges facing many communities in Africa). The study reviews (from the point of views of legal philosophers, policy makers and decisions of competent courts) the relevant literature, patent legislation particularly the International Treaty, policies and legal judgments. Findings from this study suggest that over and above the various criticisms levelled against the extreme liberal approach to the recognition of business methods as patentable subject matter, there are other specific implications that are associated with such approach. The most critical implication of extending patent protection to business methods is the locking-up of knowledge which may hamper human development in general and economic development in particular. Locking up knowledge necessary for economic advancement and competitiveness may have a negative effect on economic growth by promoting economic exclusion, particularly in African communities. This study suggests that knowledge of BMP within the African context and the extent of protection linked to it is crucial in achieving a sustainable economic growth in Africa. It also suggests that a balance is struck between the two diametrically opposing views.

Keywords : Africa, business method patenting, economic growth, intellectual property, patent protection

Conference Title : ICLS 2018 : International Conference on Law and Society

Conference Location : Montreal, Canada

Conference Dates : May 24-25, 2018