

The International Patent System and the First World War

Nicolas CHACHEREAU
Gabriel GALVEZ-BEHAR

ABSTRACT

The First World War interrupted the construction of an international order of patents for inventions, which had begun in the late nineteenth-century. In a war that was also waged in the economic sphere, belligerents broke with the principle of not discriminating against foreign patentees, with the Allies notably seizing numerous German patents. In spite of the ambiguity of peace treaties, which simultaneously legalized these war measures and declared the restoration of rights, the international system was gradually reestablished in the 1920s.



In October 1914, the British government forced the German company Hoechst to authorize Burroughs, Wellcome & Co. to manufacture the antisyphilitic medicine Salvarsan, which was under patent protection. Source : [Science](#)

During the second half of the nineteenth century, patents for inventions, which ensured exclusivity for their holder over a technological artifact or process, became a key element in the strategies of certain companies. As is true today, these strategies unfolded on an international scale. Beginning in the 1870s, jurists, politicians, and industrial actors called for facilitating the use of patents and other “industrial property” titles (notably protection of trademarks and product design) in multiple countries at the same time, prompting the creation of international regulation corresponding to this goal. While it did not exclusively involve Europe, its center of gravity was located there. During the 1900s, patents granted to non-residents represented over half of the total in numerous European states, reflecting the technological dependence of France and Great Britain, among others, on Germany and the United States, a dependence that was not without its tensions.

A Hindered International Order

The outbreak of the First World War disrupted this configuration. Between 1914 and 1918, the annual average number of patent applications fell in certain countries (France, Germany, Austria) by 40% in comparison to the years between 1910-1913. The mobilization of men, coupled with economic and communication difficulties between belligerent countries, impeded the work of different actors in industrial property. Patent agents and professional patent consultants found it increasingly difficult to correspond with their colleagues in other countries, whereas before the war they worked to mitigate the absence of uniform or centralized procedures. Along the same lines, the International Association for the Protection of Industrial Property (AIPPI)—the primary interest group working to facilitate the international exploitation of patents—could no longer meet. Founded in 1897, the AIPPI was the voice of those who supported the internationalization of patents—and who quite often stood to benefit from this process—including jurists, agents, and certain industrial companies, especially in organic chemistry (dyes, medicine) and electrical engineering.

Finally, the conflict also affected the work of national offices for intellectual property. The war involved material difficulties and extended to economic questions, and also contradicted a central aspect of the international patent system, the convention that founded the International Union for the Protection of Industrial Property (known as the Paris Union). Signed in 1883, it facilitated the obtainment and exploitation of patents in the member states of the Union, primarily by prohibiting them from disadvantaging foreign patentees. With the war, specialists held discussions to determine whether the convention was still in effect from a legal point of view. In practice, belligerent countries simply stopped respecting the principles, but without leaving the Union.

Patents at Stake in Economic Warfare

It is true that special measures were taken in favor of patent holders in practically all European states. The extension of the period of priority, in which the same invention can be patented in multiple countries, even helped to uphold an international order. The logic of economic warfare nevertheless prevailed. The belligerents suspended the granting of patents relating to national defense, or patents that were requested by nationals from enemy countries. What’s more, the Allies sequestered patents held by Austrians and Germans, authorized their exploitation, and even confiscated them. The United States went especially far, seizing over 4,000 enemy patents. Similar laws were adopted on the German and Austro-Hungarian side, but were rarely applied. German industrial actors opposed these war measures, for they held many patents abroad, especially in France and Great Britain, much more so than Allied nationals held in Germany. Fear of retaliation prompted a certain amount of caution.

Collaboration within alliances reflected these same considerations. When they met in Paris in 1916, the Allies

discussed economic war measures that should be adopted against Germany, and included projects for legislative harmonization and collaboration for patents. In private circles specializing in industrial property, some hoped to take advantage of this to pursue internationalization beyond prewar hindrances, which stemmed from the diverging interests between both national economies and competitors. These problems persisted, with war measures against enemy patents being the only measure that garnered consensus. As for the central empires, private associations held very prudent discussions regarding a possible harmonization of industrial property, a project that would not come to any conclusion.

Ending the War, Abandoning the Logic of War

In short, the Great War marked a rupture in the international integration of European patent systems that had begun in the late nineteenth century. The goal of furthering this process did not disappear, but was reconfigured by the logic of military alliances. The immediate postwar period was marked by tensions between the victors, France in particular, and the vanquished, especially Germany. While the Treaty of Versailles proclaimed the reestablishment of industrial property titles, it legalized certain patent seizures after the fact, or made others possible, to the great displeasure of German industrial actors and patent agents. This continuation of economic war also involved the project for an Inter-Allied Patent Office, which would allow for centralized application review and registration. The stated objective of the French government, which had been flirting with this idea since 1916, was to compete with the German patent office, which had held a prominent position on the international scene since 1914, owing to the good reputation of its application reviews. The French project was sidelined, especially due to the silent opposition of Great Britain, which pursued a similar project on the scale of its empire.

Notwithstanding this continuation of war, the international functioning of patents was gradually restored. Peace treaties not only reestablished property rights and international treaties, they also provided for various exceptional time periods that facilitated the preservation of patents. Following complaints by industrial actors from neutral countries, which were transmitted by their respective governments, an agreement was signed within the Paris Union in June 1920—taking up the provisions of peace treaties favorable to patentees, that had applied only to belligerents. A new conference of the Paris Union was held at The Hague in October 1925. In the preceding summer, the AIPPI met for the first time since the war. Europe had changed indeed; the new states that had emerged, especially from the break up of the Austro-Hungarian Empire, joined the Paris Union. The League of Nations and the International Chamber of Commerce now concerned themselves with intellectual property. Despite change, the international patent order was reassembled along its basic structure from before the First World War. In retrospect, some even see the 1920s as the apex of industrial property, well before the creation of the International Patent Institute in 1947, or the European Patent Office in 1973.

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