

Legal quality of IP

The ability of IP to contribute to innovation will critically depend on whether the legal and administrative conditions provide owners with guaranteed IP titles. This in turn depends on factors ensuring “legal quality”. For patents, utility models, registered industrial design and plant variety, the following conditions characterise legal quality: (1) certainty of legal provisions and the IP examination process, (2) stability over time, (3) clarity, and (4) a reasonable inventive step. In the case of trademarks and geographical indications, certainty of the IP examination process and stability are the key components of legal quality. For unregistered industrial design rights, copyright and trade secrets, it is essentially the certainty over legal provisions and stability that will be critical.

What is meant by legal quality of IP systems?

In the case of patents, utility models, registered industrial design and plant variety, the following conditions characterise legal quality:

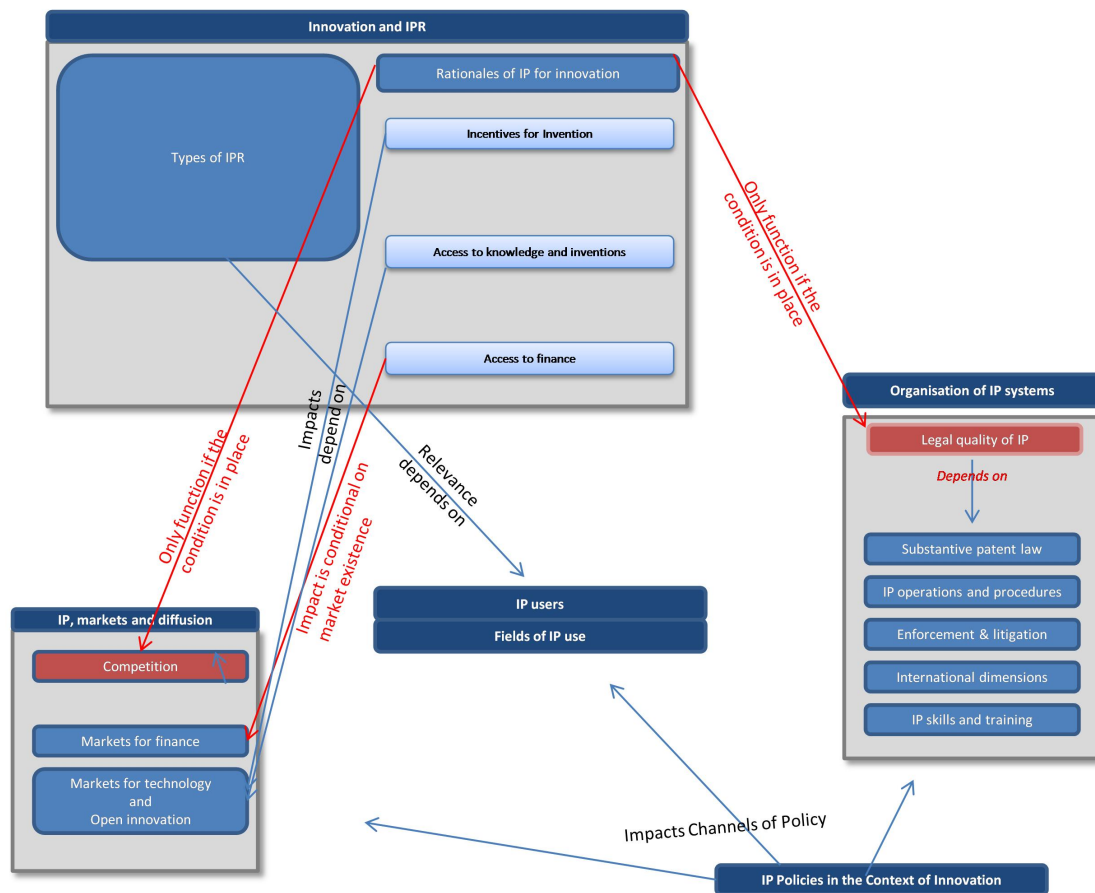
- Certainty of the legal provisions and the IP examination process needs to be guaranteed. In the case of patents, legal certainty is about clear legal provisions regarding subject matter, duration, scope and breadth, inventive step, disclosure requirements. It also requires objective, high-quality and timely IP examination procedures and enforcement: that is, the IP examination process has to be applied within a reasonable time period using standardised criteria and decide on IP titles efficiently and in such a way that a low proportion of IP titles are rejected in courts.
- Stability over time, avoiding frequent changes that raise perceived uncertainties and put in question ex post rewards for ex ante investments so as to weaken the incentives provided by the system.
- Clarity to ensure that the IP system has effective disclosure of inventions.
- A reasonable inventive step, which is, the distance of the invention to be patented from the state of the art in the given field (and novelty in the case of utility models) needs to be adopted so that it draws a balance between encouraging substantial inventions and excluding many relevant incremental innovations from the system.

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Why is legal quality relevant for IP policy for innovation?

IP can serve innovation by providing incentives for inventions, facilitating access to knowledge and inventions (e.g. by providing opportunities for licensing and disclosing information on inventions in patent documents), stimulating innovation by resolving information asymmetries (e.g. trademarks allow firms to signal the quality of their product), facilitating international competitiveness and trade (e.g. by strengthening knowledge transfer from international to local firms), and enhancing opportunities for access to finance (if e.g. IP can serve as collateral for credit) ([Rationales of IP for innovation](#) [1]). However, for those contributions to hold, much will critically depend on whether the legal and administrative conditions provide that owners are guaranteed their IP titles. This scenario in turn depends on factors ensuring “legal quality” (see Figure 1). It will, however, also depend on IP, markets and diffusion, and notably the competition context and suitable markets for technology and finance ([IP, markets and diffusion](#) [2]).

Figure 1: Binding Constraints for the Impacts of IP on Innovation



Source: OECD (forthcoming), National Intellectual Property Systems, Innovation and Economic Development with Perspectives on Colombia and Indonesia, OECD, Paris.

What are the policy implications of legal quality for IP systems?

Legal quality has to be achieved at a reasonable trade-off against the costs required to achieve this state of the IP system. The central importance of legal quality for the IP system requires policy attention to the legal framework for IP ([IP Law](#) [3]), IP operations and procedures ([IP operations and procedures](#) [4]), enforcement and litigation ([IP enforcement and litigation](#) [5]) as well as IP skills and training ([IP skills and training](#) [6]). The international context is important in its implications for the organisation of national IP systems ([International dimensions of IP systems](#) [7]).

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