nature

NATURE · VOL 374 30 MARCH 1995

'Public' versus 'private' knowledge

The case is growing stronger for re-opening debate on the European Patent Convention in the light of tensions generated by the growing interaction between the patent system and the academic research community.

LAST week's report that the National Institutes of Health (NIH) have been awarded a broad-ranging US patent on the techniques of *ex vivo* gene therapy — and that the exclusive rights to this licence have been granted to a US biotechnology company, Genetic Therapy Inc. — has highlighted once again the way in which the dynamics of the patent system are encroaching increasingly on the work of research scientists (see page 393). There have been few complaints that the pioneering work of N. French Anderson and his colleagues, which originally raised widespread scepticism, should have been acknowledged in this way. More concern has already been raised on both sides of the Atlantic over the breadth of the patent, and the impact this could have on the work of others.

In this context, Britain's professional academic societies have done the intellectual community a valuable service by publishing a carefully considered report on the vexed question of intellectual property rights (see page 398). Their document, *Intellectual Property and the Academic Community*, deserves to be closely read on both sides of the Atlantic. But, as with so many such reports, pin-pointing problems is likely to prove considerably easier than putting solutions into practice.

The report, prepared by a working party of the National Academies Policy Advisory Group (whose four sponsors include both the Royal Society and the Royal Academy of Engineering) covers topics ranging from the applications of patents in genetics to the implications of the growing use of electronic communications. In many places, it echoes widespread concern about the potentially disruptive effect of patents on freedom of publication and open debate at scientific conferences. For example, it acknowledges that "the natural phasing of research papers [may be] seriously disturbed by the demands of patenting".

Such concerns can be exaggerated; few researchers seem, in practice, to have encountered serious difficulties in delaying publication sufficiently to allow their university lawyers to file patent applications. Furthermore, there are other reasons besides the need to avoid "prior revelation" that encourage a respect for confidentiality in the peer review process (another of the panel's concerns). But there remains a concern that a system built on the traditions of "public knowledge" may be undermined by an apparently contradictory system in which an increasing amount of such knowledge becomes accepted as public property.

A second problem highlighted in the report is an apparent over-eagerness by patent offices on both sides of the Atlantic. The report points out correctly that this enthusiasm, creating what it describes as a "patent plague", is already having a serious impact on industrial fields such as electronics, faced with the need to handle the resulting "clouds of prior rights". It says that this tendency poses an "even graver threat" to the academic sector as it seeks to turn its applied work to commercial purposes.

Another topic which is usefully highlighted is the question of a "grace period". British academics, bound by the rule that nothing can be patented once it has entered into the public domain (even, in theory, by a remark inadvertently thrown into debate at a public meeting) often look with envy at the situation of their American colleagues, who are allowed a period of 12 months between first revealing their invention and eventually applying for a patent on it. The US approach has several advantages (not least in that the value of a discovery may not be immediately apparent to those who first produce it). The NAPAG panel said it looked closely at whether a similar approach should be adopted in Britain, but eventually rejected it — a conclusion which would benefit from more detailed reasoning.

But perhaps the biggest service performed by the report is the way it highlights the case for revising critical parts of the European Patent Convention. This treaty, which provides the ground-rules on which the European Patent Office functions, has served well. But its shortcomings are becoming increasingly apparent, for example in the recent debate on biotechnology patents. A growing number of reasons, such as the need to re-assess the use of concepts of "utility" in granting a patent and concerns about the breadth of patent coverage raised in a number of recent court cases, make it time to revisit the debate outside the pressure-house of Parliamentary politics. It is to be hoped that the British government will take note of the straws in the wind, and persuade its European colleagues to do the same. □

Equity and addiction

A persuasive case against the legalization of soft drugs can be taken as a case against tobacco and alcohol.

THE case for legalizing the use of recreational drugs in rich societies is, of course, strong. Everybody knows that. This is how the argument goes. Used in moderation, drugs such as