



Friedrich-Alexander-Universität
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Fraunhofer
IIS

Prof. Dr. Grill and colleagues

Patenting for Innovation

23.10.2023

The first impression counts

Patents – from a business perspective (I):



**We turn ideas into inventions,
inventions into patents,
patents into profit.«**

Source: Macdonald, S. (2004). When means become ends: considering the impact of patent strategy on innovation. Information Economics and Policy, Vol.16(1), p.148

The first impression counts

Patents – from a business perspective (I):



**Let's grow the cake as big as we can and
if we have to share a piece with a partner
it doesn't hurt.«**

Steven Davey
VP Licensing
BT Exact

Source: O. Gassmann, M.A. Bader (2017). Patentmanagement, Springer, p.113

Agenda

Patenting for Innovation

1. **Part I: The introduction to IPs and patents in general**
2. **Part II: The role of IPs and patents in research, development and (open) innovation**
3. **Part III: The patent exploitation through licensing contracts and patent pools**

Agenda

Patenting for Innovation

1. **Part I: The introduction to IPs and patents in general**

- Intellectual Property
- Copyright
- Patents and Utility Models
- Trademarks
- Designs
- Other IP Rights

2. **Part II: The role of IPs and patents in research, development and (open) innovation**

3. **Part III: The patent exploitation through licensing contracts and patent pools**

Organizational Information

Requirements to attend and pass this course

Short Admission Work

Submit a one-page document (not more than 1500 characters) that covers the effects of copyright for the Large Language Models made available by OpenAI, no later than Nov. 03rd at 1 PM. Final admission to the course will depend on personal presence in the first two lectures on Oct. 23rd and Oct. 30th plus receiving at least 5 out of 10 points of the submitted admission work.

Examination

- Seminar paper (6 pages)

Challenge to solve using AI

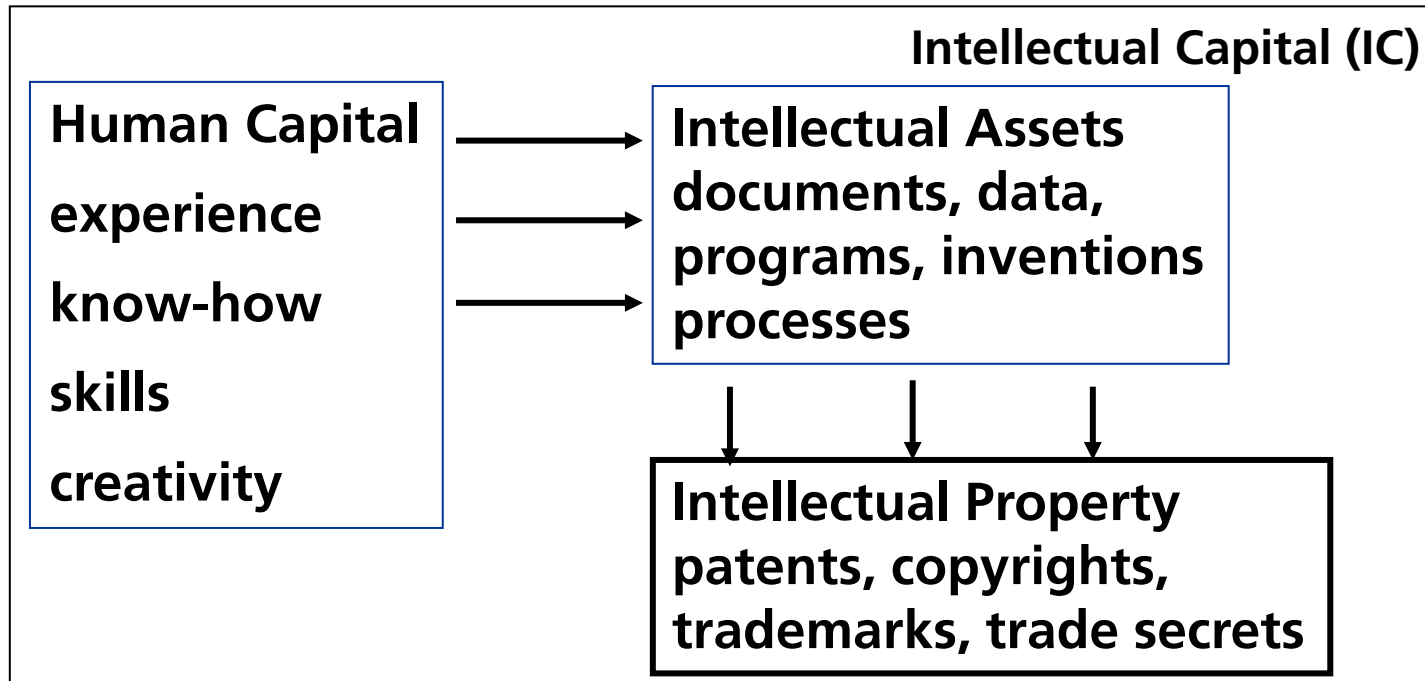
Submit a short document containing the following:

1. An AI-prompt used to solve a task that will be provided during this course
2. The output of an AI (e.g. ChatGPT) using the prompt from 1.
3. A corrected version of 2. without hallucinations and errors

Lesson 1: The introduction to IPs and patents in general

Intellectual Property

What is Intellectual Property



Human Capital (HC):

resource to generate value directly or to create intellectual assets

Intellectual Assets (IA):

codified, tangible or physical descriptions of knowledge

Intellectual Property (IP):

IA that receive legal protection

➡ IA and IP are the most usual elements of IC to be commercialized

Sullivan, Patrick. H.: Profiting from intellectual capital. Extracting value from innovation, New York: Wiley, 1998, p. 22

What is Intellectual Property

No filing	Filing necessary Industrial Property Rights			
Copyright ©	Patent (P)	Utility model (U) Gebrauchsmuster	Trademark ™, ®	Design (D)
Protection: Works of literature, science and art as well as computer programs and database	Protection: Technical invention (products, process, apparatus or use) (In USA also computer programs)	Protection: Technical invention (No process allowed!)	Protection: Products, services, commercial designations and work titles	Protection: Form of appearance of industrial or crafted products
	6 months grace period			12 months grace period
No examination	Examination by patent office	No examination	Examination by trademark office	No examination
70 years	20 years	10 years	10 years* <small>* can be extended arbitrarily frequently</small>	25 years

DIN 34 and ISO 160016, quoted from Cohauz, H. B.: Gewerblicher Rechtsschutz, in Copat, 14.04.2007, [online] <https://www.copat.de/> [10.10.2020].

Lesson 1: The introduction to IPs and patents in general

Copyright

What is Copyright

According to § 1 and 2 (1) German Urheberrechtsgesetz (UrhG) copyright protects works of

- literature,
 - Linguistic works, like written compositions, speeches or **computer programs**
- art,
 - musical works
 - pantomimic works including works of dance art
 - works of visual arts, including works of architecture and applied arts and designs of such works;
 - photographic works, including works created similarly to photographic works;
 - cinematographic works, including works created similarly to cinematographic works;
- Science
 - Representations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and plastic representations.
- Editing of works (§ 3 UrhG)
- Works of anthologies and **databases** (§ 4UrhG)

How does copyright arise and how long is the term*

Copyright arises with the **creation of the work**.

The definition of **works** is in the sense of **personal mental creations** (§ 2(2) UrhG) which has to be perceivable.

The **copyright owner(s)** is/are the **originator(s)** of the work, who is a/are human being(s) which created the work **or their heirs** (§ § 7,8, 28 UrhG).

It is not necessary to

- publish the work (even unpublished works are protected by copyright) or to
- give the work a tangible form or to
- file the work at an official (IP) office.

In general there are no costs for receiving a copyright.

The copyright term is **70 years** after the death of the last originator. (§ 64 UrhG)

* Volker Ilzhofer (2007): Patent-, Marken und Urheberrecht, 7. Auflage, Verlag Vahlen, p. 198

Legal effect of the copyright

The originator of the work can exploit its rights and forbid a third party with

- reproduction,
- distribution,
- exhibition,
- editing,
- public rendering

of the work.

Only the originator has the right to

- publish his/her work,
- be recognized as an author and
- forbid the distortion of his/her work.

Copyright infringement

According to § 97(1) and (2) UrhG the infringer

- can be taken up on removal of the impairment, with the possibility of repetition in the future on **injunction**. The right to injunctive relief also exists when an infringement is threatened for the first time.
- is obliged to **reimburse** the injured party for the resulting damage, in case of acting intentionally or negligently.

Furthermore

- Right to destruction or surrender of the infringing works (§ 98 (1) UrhG)
- Right to destruction or surrender of the devices which were used for production (§ 98(2) UrhG)
- Right to information on origin and distribution channels (§ 101(1) UrhG)
- Right to publication of the court's decision (§ 103 UrhG)
- Right to border seizure of the works (§ 111b UrhG)
- Right to prosecution of the infringer (§ 106 UrhG)

Special regulations for computer programs § 69a ff. UrhG

- According to § 69a (1) UrhG **computer programs, parts** as well as **drafts** are **protected** by copyright.
- Only the **expression of a computer program is protected** and that **ideas and principles** which underlie any element of a program, including those which underlie its interfaces, **are not protected** by copyright. (§69(2) UrhG)
- A computer program is protected if the computer program is an individual intellectual work in the sense that it has to be **a result of an intellectual creation of the author. No other criteria, in particular no qualitative or aesthetic criteria, shall be applied** to determine their eligibility for protection. (§ 69(3) UrhG)
- Therefore, the requirements for the peculiarity must be set low, so that only trivial programs are not protected.

Exploitation rights for computer programs are defined in § 69c UrhG:

- Reproduction
- Editing
- Distribution
- Public rendering

Copyright for computer programs is mostly a protection for unauthorized copying.

Volker Ilzhofer (2007): Patent-, Marken und Urheberrecht, 7. Auflage, Verlag Vahlen, p. 221-223

Special regulations for databases § 87a ff. UrhG

- Definition of a **database**: Collection of works, data or other independent elements, arranged in a systematic or methodical manner and individually accessible by electronic means, and the obtaining, verification or presentation of which requires a qualitatively or quantitatively substantial investment.
- A database is a creative work if the **selection or arrangement of the contents are personal intellectual creations of an author**. The copyright protection of a database work does expressly not apply to the individual elements of the database.

Copyright term of a database*

- The copyright term for a database is only **15 years** (§ 87d UrhG), which will be renewed when the database gets an update. (§ 87d UrhG)

Because of the rising of Artificial Intelligence (AI) technology and associated inventions the protection of databases is getting more and more important, because AI solutions need a lot of data to work properly.

* Cohausz, H. B.: Gewerblicher Rechtsschutz, 2003, p. 262

Securing the rights of use of a copyrighted work

Employee*

- In the case that the originator is an employee and creates a work for the employer, it has the same copyrights as a free originator.
- But the rights of use and especially the exploitation rights will be transferred to the employer by the employment agreement.

Free originator

- In the case that an ordering customer engages a person which creates a copyrighted work, the customer has to secure the rights of use, the exploitations rights and also the right for editing the work in the contract agreement to have full freedom to operate.

* Cohausz, H. B.: Gewerblicher Rechtsschutz, 2003, p. 258

Lesson 1: The introduction to IPs and patents in general

Patents and Utility Models

Discovery or invention

Discovery

- A discovery is to find something that is already there.
- You could gain your knowledge, but a discovery doesn't solve a technical problem.
- The knowledge gained from a discovery can inspire new solutions to a technical problem.
- There is no inventive element in a discovery.

Invention

- An invention is a technical solution for a technical problem.
- An intellectual achievement is necessary to create an invention.

* Walter, Lothar; Schnittker, Frank. C.: Patentmanagement, Walter de Gruyter 2016, p.13

What is a technical invention

A technical invention is a teaching for a technical action.

These are*:

- teaching for planned action
- using controllable forces of nature
- to achieve without intervention of mental steps a causally oversee-able effect.

* BGH case law, quoted from Götting, Horst-Peter: Gewerblicher Rechtsschutz, 11.Auflage, München: Beck 20202, p.128

What is a patent

A patent is a **granted right by the state to use the protected invention exclusively**.

- Article 52 I European Patent Convention (EPC):
 - Patents shall be granted for **any inventions, in all fields of technology**, provided that they are
 - **new**,
 - involve an **inventive step** and are
 - **susceptible of industrial application**.
- Not patentable are according to Article 52 II
 - discoveries, scientific theories or mathematical methods
 - aesthetic creations,
 - schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers (in USA possible),
 - presentations of information.

When is an invention ...

... new?

According to Article 54 I EPC an invention shall be considered to be new if it does not form part of the state of the art.

Article 54 II EPC says that the state of the art shall be held to comprise everything made available to the public by means of a

- written or
- oral description,
- by use, or in any other way,
- before the date of filing of the patent application.

When is an invention considered to involve...

... an inventive step?

According to an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

Invention has an „Eureka“ effect like*

- Overturn of a technical prejudice
- To describe a task of an unknown problem
- To transmit a known technical solution from one field of technology to another
- Combination of known work materials or methods to obtain a new and uniform effect

* Cohausz, Helge B.: Gewerblicher Rechtsschutz, Multimediakurs, Fernuni Hagen: 2003, p. 130

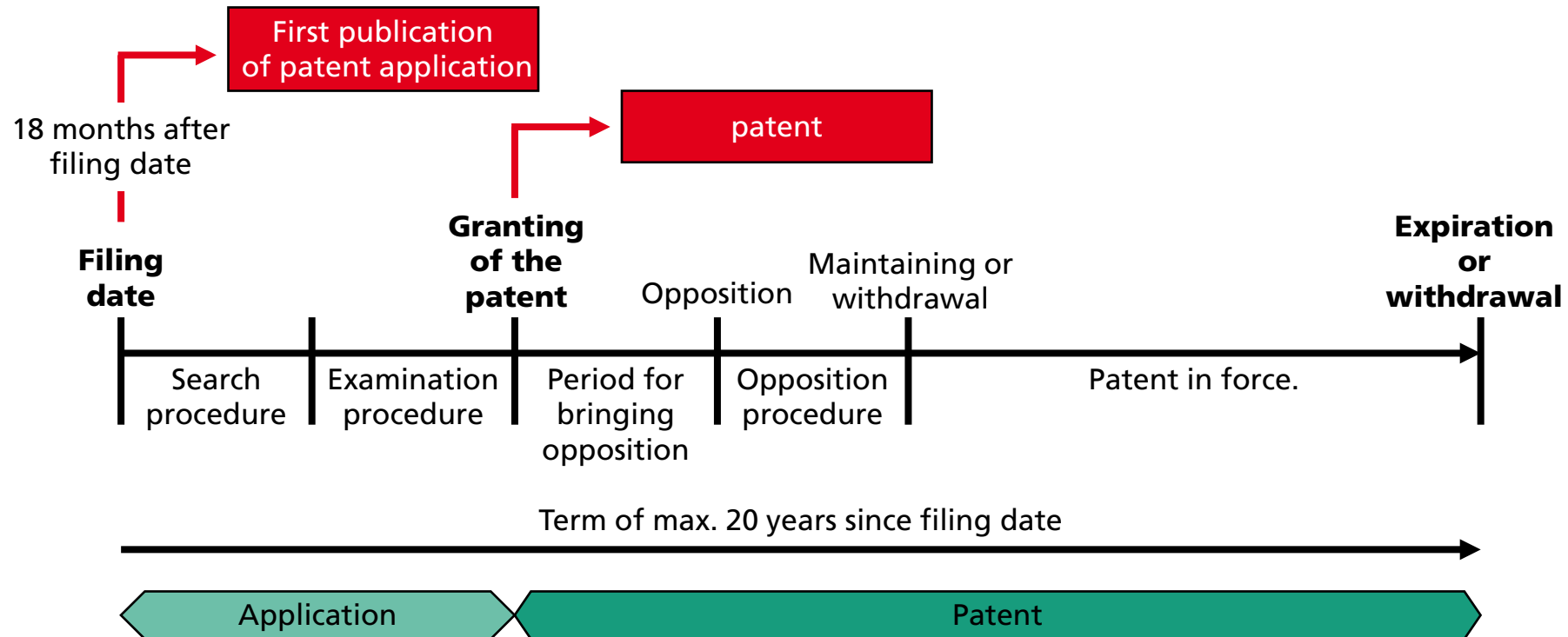
When shall an invention be considered...

... as susceptible of industrial application?

According to Article 57 EPC an invention shall be considered as susceptible of industrial application if it can be made or used in

- any kind of industry,
- including agriculture.

Procedure of a German patent application



Legal effect of a patent

- A patent is an **absolute right**, it affects everyone in the commercial sector as soon as the patent is granted.
- According to § 9 Patentgesetz (PatG) it is forbidden to every commercial party without the owner's authorization
 - to produce,
 - to offer,
 - to distribute / to sell,
 - to use (the product / the process),
 - to import,
 - to ownthe protected invention (product, process and the product manufactured by the process) without a license.

Patent infringement

If someone is infringing a patent, the patent owner can start

- an action for an **injunction**.
The infringing activity should not be repeated in the **future**.
 - Withdrawal of market products or their destruction
 - Closure of production plants
- an action for **reimbursement** (on intent or gross negligence).
This is a **past data damage analysis on***
 - loss of profit,
 - handing over the infringer's profit
 - analogy of a license
 - Additional reimbursement in USA (**triple damage calculation**)

Where can you file a patent

National Patent Office

Deutsches Patent- und Markenamt (DPMA), United States Patent and Trademark Office (USPTO), State Intellectual Property Office of the P.R.C. (SIPO)

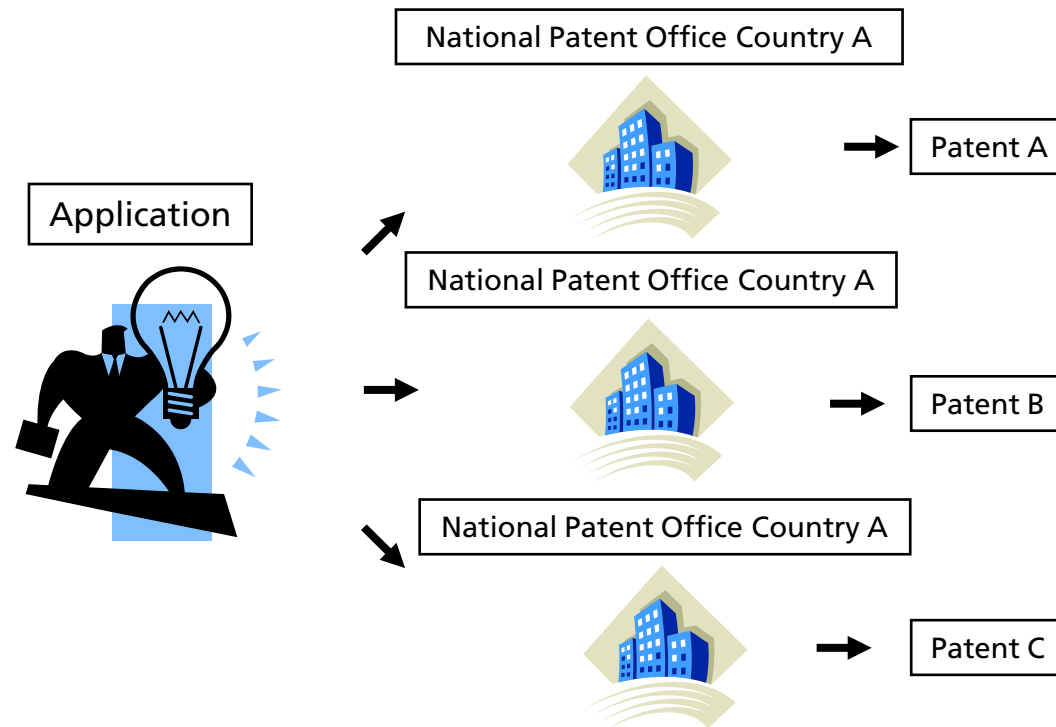
Regional Patent Office

European Patent Office (EPO)

International Patent Office at the World Intellectual Property Organization (WIPO)

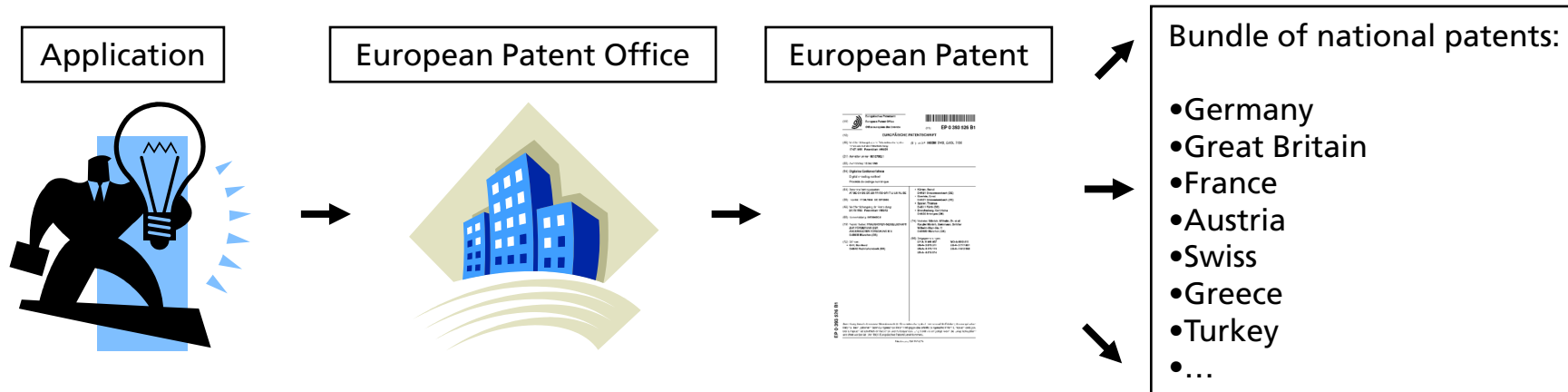
PCT-Application (Patent Cooperation Treaty)

National patent procedure



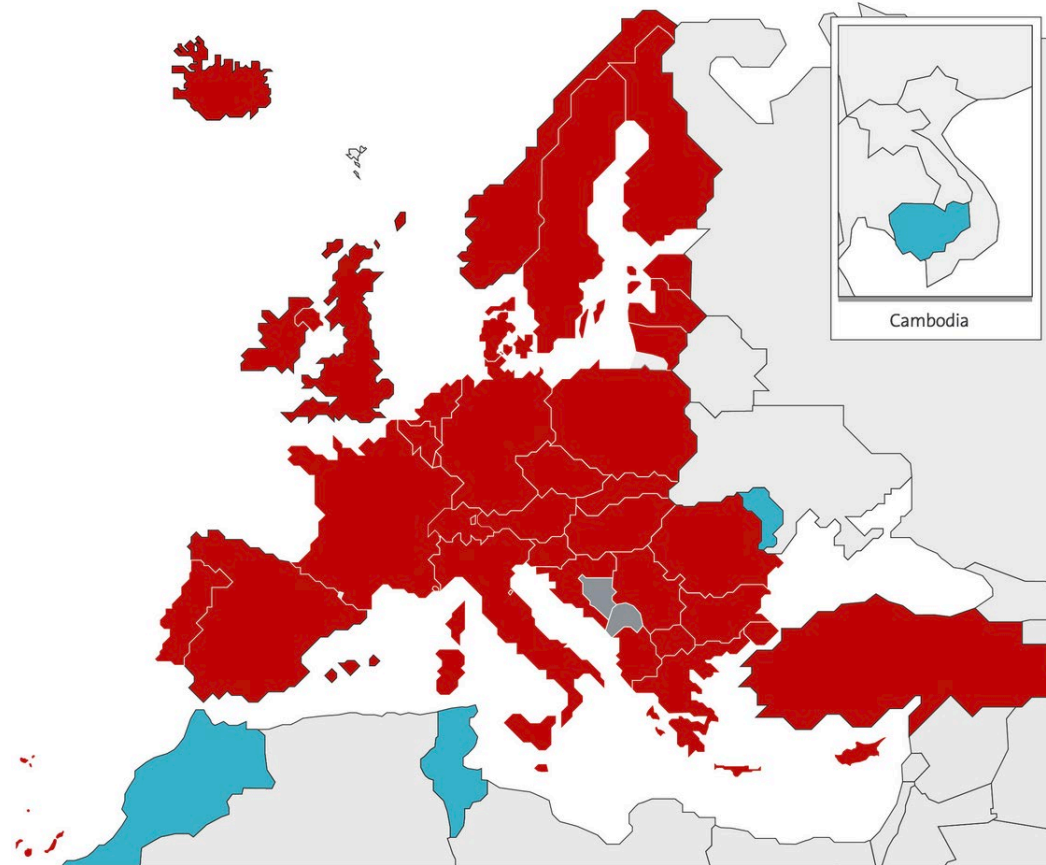
Patent procedure at the European Patent Office

Classical European patent



Scope of classical European Patents

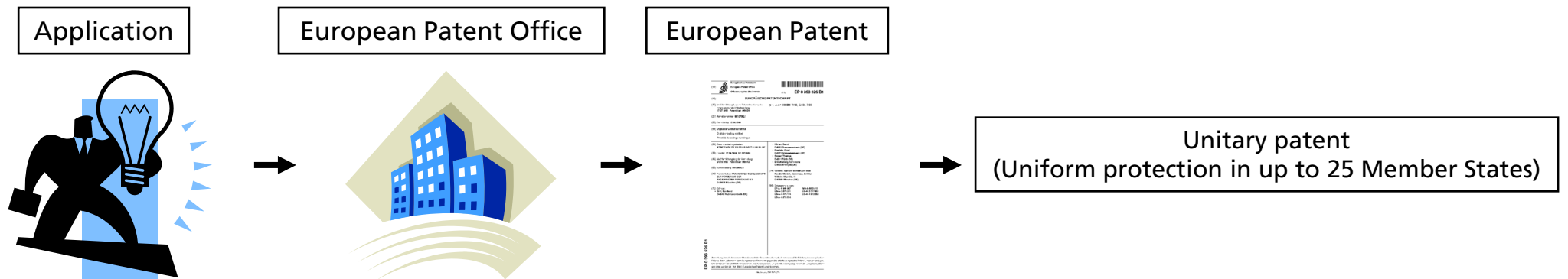
38 Member states EPO, also including two extension states and four validations states



Aus https://www.epo.org/law-practice/unitary/unitary-patent_de.html

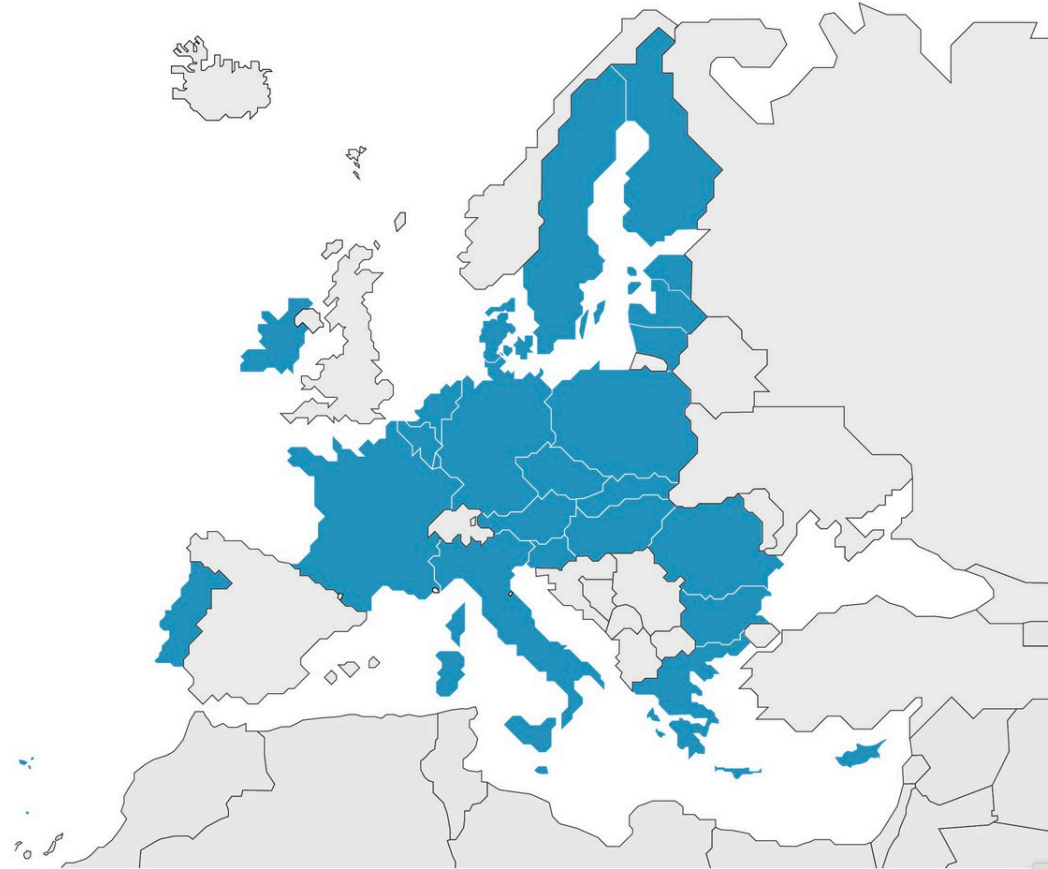
Patent procedure at the European Patent Office

Unitary patent (Launch 01.04.2023)



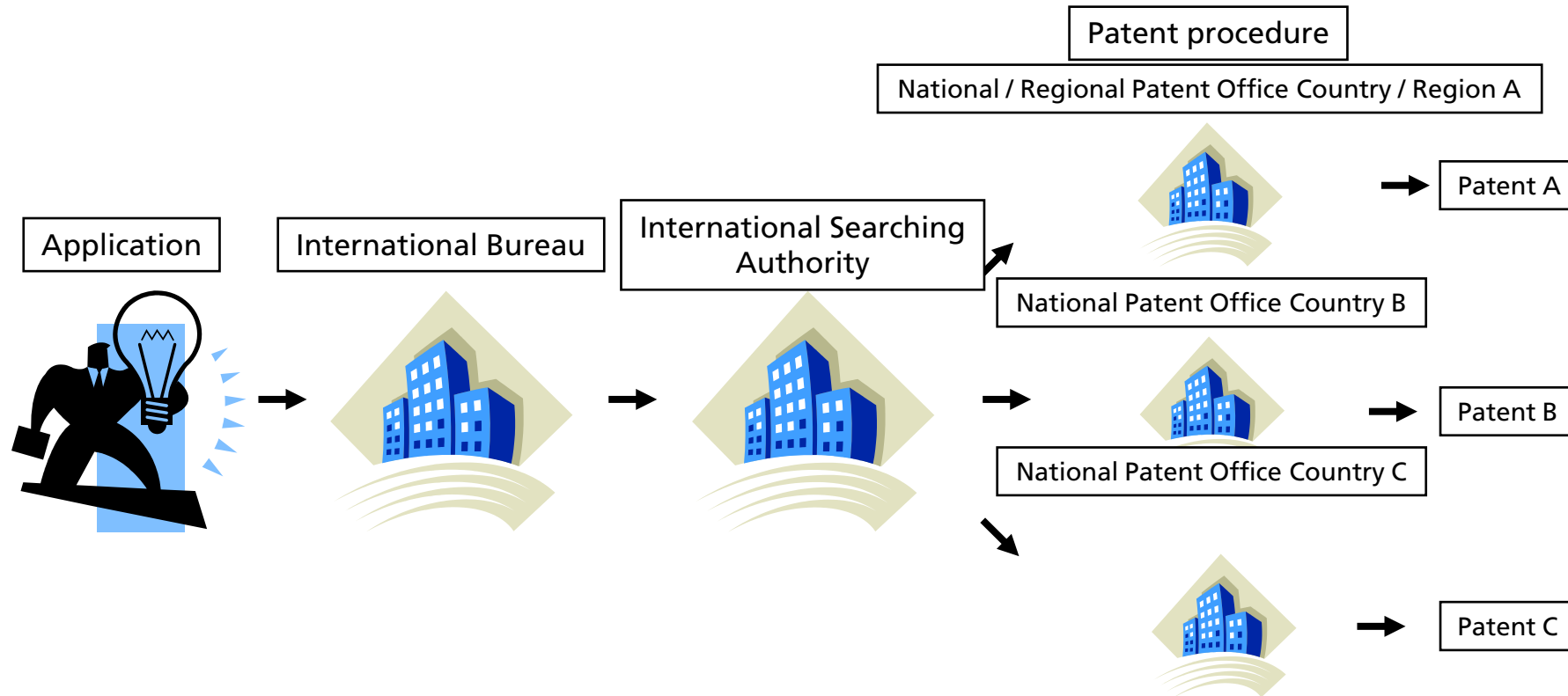
Scope of European Patents

25 states participating in enhanced cooperation



Aus https://www.epo.org/law-practice/unitary/unitary-patent_de.html

Patent procedure for a PCT-Application



General patent cost

- From DE-application to grant of the patent ~7000 €
- From EP-application to grant of the patent and validation in 3 countries ~13000 €
- PCT-application without national/regional phase ~10000 €
- USA or Japan: Translation, from application to grant of the patent ~20000 €

Patent costs for selection of countries DE, US, JP, CN, EP (DE, GB, FR)

entscheidung über auslandsmeldungen 101018.PPT

	DE	12 M. PCT	US 30 M.	JP	CN	EP	DE(EP) ca. 4 Jahre	GB	FR	Σ [€]
Kosten PA [€] ¹⁾	5.300	4.000	12.500	10.000	7.500	7.000	300	500	700	47.800
Übersetzung [€]	--	--	2.300	2.800	2.800	700	--	--	--	8.600
Amtsgeb. [€]	400	4.500	2.100	2.200	600	2.200	--	200	200	12.400
Summe Pat. [€]	5.700	8.500	16.900	15.000	10.900	9.900	300	700	900	68.800
JG 1.-7. [€] ²⁾	100	--	900	1.100	1.000	900	300	200	300	4.800
Σ bis 7. Jahr	5.800	8.500	17.800	16.100	11.900	10.800	600	900	1.200	73.600
JG 8.-14. [€] ²⁾	^{3) 4)} --	--	5.400	7.200	3.400	--	3.000	1.500	1.500	22.000
Σ bis 14. Jahr	5.800	8.500	23.200	23.300	15.300	10.800	3.600	2.400	2.700	95.600
JG 15.-21. [€] ²⁾	³⁾ --	--	⁵⁾ --	9.100	6.900	--	10.000	2.900	4.000	32.900
Σ bis 21. Jahr	5.800	8.500	23.200	32.400	22.200	10.800	13.600	5.300	6.700	128.500

Exploitation of patents

Patents can be exploited in different ways:

- The use of the protected invention in your own products / to show technical expertise for acquisition purposes.
- Licensing of the protected invention
 - exclusive / non-exclusive
 - bilateral, multilateral, in patent pools or with other licensing service companies
 - Cross Licensing
- Selling of a patent
- Blocking patent

Specialty: Computer Implemented Invention (CII)

- **Programs for data processing units** as such are **expressly excluded from patent protection**.
- A data processing unit, which is controlled via a program to achieve a certain result is not sufficient for the program to be patented.
- In order to be patentable, the **teaching claimed by the invention** must comprise **instructions for the solution of a specific technical problem by technical means**.
- **Computer-implemented invention (CII)** covers claims which involve computers, computer networks or other programmable apparatus, whereby at least one feature is realized by means of a program.
- The patent offers protection for a technical teaching formulated in abstract terms; however, **no protection is granted to a specific program code** – this is a matter of **copyright**.

https://www.dpma.de/english/patents/patent_protection/protection_requirements/computerimplemented_inventions/index.html, 05.11.2020
https://www.epo.org/law-practice/legal-texts/html/guidelines/e/f_iv_3_9.htm, 05.11.2020

Specialty: Utility Model (Gebrauchsmuster)

- A utility model (Gebrauchsmuster) could be seen as the “little brother” of a patent.
- A utility model is an absolute right just like a patent, it affects everyone in the commercial sector as soon as the utility model is registered.
- Criteria for an invention as utility model is according to § 1 GebrMG
 - Novelty,
 - Inventive step and
 - To be considered as susceptible of industrial application.

The **differences** between a patent and a utility model are:

- The invention is only registered in the IP office, there is no examination of the invention.
- The IP right of a utility model becomes effective very quickly (few weeks)
- Process inventions could not be protected by a utility model.
- The term of a utility model is **10 years** (for a patent it is 20 years)



Specialty: German Employee invention ACT (Arbeitnehmererfindergesetz)

German Employee invention Act (Arbeitnehmererfindergesetz ArbNErfG)

- According to § 1 ArbNErfG the law is subject to **Inventions** (protected by patent or utility model) and **Proposals for technical improvement** (protectability not given) of **employees** in the private or public sector.
- Balance between the interests of **employee** (The invention belongs to the inventor by patent law) and **employer** (The work output belongs to the employer by labor law).
- Only **employee inventions** are covered by Employee Invention Act. **Free inventions** (made by an employee in fields outside the employer's field of activity) are not covered.

Duties of the employee

- Obligation to report employee's inventions
 - The employee is obliged to report such invention to the employer in writing.
 - The invention report should describe the technical task, its solution and the creation of the invention.
 - In the case of joint inventions of employees of two or more companies, each employee must submit a separate invention disclosure to their relevant employer.

German Employee invention ACT (Arbeitnehmererfindergesetz ArbNErfG)

Employer's action

- **Obligation to confirm**

The employer must confirm the date of receipt of the invention report in text form.

- **Claiming the employee's invention**

The employer can claim the employee's invention without restriction within 4 months after receipt of the invention disclosure by means of a proper notification.

The claim is automatically considered to be declared after 4 months.

- **Compensation for claiming**

The employee is entitled to an appropriate compensation if employer claims the employee's invention.

Effect of the claiming

- **Claiming of the employee's invention**

All rights to the employee's invention are transferred to the employer (int./nat. patent applications, commercial use, licensing)

- **Released employee's invention**

Upon release (in text form) by the employer, the employee can freely dispose of the invention.

Lesson 1: The introduction to IPs and patents in general

Trademarks

What is a trademark

- A trademark
 - is used to **identify the goods and/or services** of an enterprise
 - **identifies the source** of the goods and services of one owner
- **Signs suitable for distinguishing goods and/or services** of an enterprise from those of another enterprise **can be protected as trademarks**.
- The **term of protection** starts on the filing date and initially lasts **ten years**. It can be **renewed for further ten-year periods**, by payment of the renewal fee.
- If an opposition is lodged successfully against the trademark after registration, the trademark will be cancelled, possibly in part. (E.g., Subject of obligation to use within last 5 years)

How do you receive a trademark

According to the § 4 German trademark act (MarkenG) you could receive an IP right for a trademark by

- Registering a mark as trademark at the patent and trademark office or
- Public use of a mark in the course of trade, where the mark has acquired a reputation as a trademark through market recognition or
- the determination of whether a mark is well known abroad.

The owner of a trademark right according to § 7 MarkenG could be

- a natural person,
- a legal person or
- private companies.

What can you register a trademark for

A trademark can be registered for

- **goods** and
- **services**.

All goods and services are defined by classes, you have to name the class or even the desired product within the class on the registration.

The “**Nice Classification**” (“International Classification of Goods and Services for the Purposes of the Registration of Marks”, NCL) is an international classification system for trademark applications (34 classes for goods and 11 classes for services)

Examples Nice classification

Class 9 (Goods)

- Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media; mechanisms for coin-operated apparatus; cash registers, calculating devices; computers and computer peripheral devices; diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; fire-extinguishing apparatus.

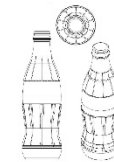
Class 42 (Services)

- Scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software.

https://www.wipo.int/classifications/nice/nclpub/en/fr/?basic_numbers=show&class_number=9&explanatory_notes=show&lang=en&menulang=en&mode=flat¬ion=&pagination=no&version=20200101

Examples of trademarks

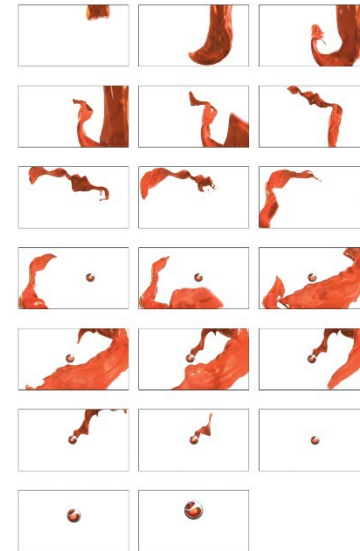
- Word marks, e.g. ADIDAS, FRAUNHOFER, BMW
- Figurative mark
- Figurative mark containing word elements
- Shape mark, e.g. Coca Cola bottle
- Position mark, e.g. Prada
- Pattern mark, e.g. Louis Vuitton
- Colour mark, e.g. Deutsche Telekom Magenta



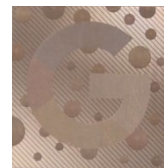
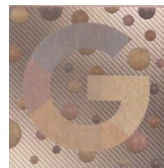
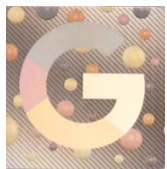
<https://euipo.europa.eu/ohimportal/en/trade-marks-examples>, 02.11.2020

Examples of trademarks

- Sound mark, e.g. Deutsche Telekom
- Motion mark, e.g. Sony
- Multimedia mark, e.g. Calzados



- Hologram mark, e.g. Google



<https://euipo.europa.eu/ohimportal/en/trade-marks-examples>, 02.11.2020

How to register a good trademark

General rule:

The more distinctive the mark, the bigger the scope of protection of a trademark, the less descriptive is the mark.

- Trademarks could be register for any goods and services, except for
 - marks which could not be represented graphically,
 - marks which have no distinctiveness or
 - marks which have only descriptive signs or indications of the product.
- Example:

A fruit dealer could not register the trademark „Apple“, because it is descriptive and other companies have to be able to use this word.

For a computer company the trademark „Apple“ is a very good trademark, because it is not at all descriptive for computer products & services.

Where can you register a trademark

- **National registration**

- You can apply for a trademark at every national IP office, e.g. DPMA, if you are only interested to have an IP protection in one specific state.

- **Registering at EU-level**

- It is possible to apply for an EU trademark at EUIPO (European Union Intellectual Property Office), if you want IP protection for all EU member states.

- **International registration via WIPO**

- If you like to expand your trademark protection internationally, you can use your national or EU trademark to register an international trademark in 123 countries (see members of the Madrid Union).

<https://euipo.europa.eu/ohimportal/en/trade-marks-in-the-european-union>

<https://www.wipo.int/madrid/en/members/>

Cost of a trademark

■ German Patent and Trademark Office (DPMA)

- Filing fee (inclusive class fee up to 3 classes): 300 EUR
- Filing fee (for every further class from 4th class): 100 EUR
- Expansion fee (inclusive class fee up to 3 classes): 750 EUR
- Expansion fee (for every further class from 4th class): 260 EUR

■ EU trademark at EUIPO

- Basic fee (one class) for application and renewal for an EU trademark: 1.000 EUR
- Fee for second class for application and renewal : 50 EUR
- Fee for 3 classes or more (application and renewal): 150 EUR each class

■ International trademark at WIPO

- Basic fee (trademark has no color / color): 653 / 903 SFR
- Additional costs depending on where you want to protect your trademark, and how many classes will be covered.

<https://www.dpma.de/service/gebuehren/marken/index.html>
<https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo>
<https://www.wipo.int/madrid/en/>

What is the benefit of a trademark

1. Legal presumption that you are the owner of the mark
2. Legal presumption of exclusive right to use the mark
3. Puts public on notice of ownership of the mark
4. Mark listed in the patent office database
5. Can record registration with custom & border protection
6. Right to bring legal action concerning mark in federal court
7. Use registration as basis for foreign filing
8. Able to use federal registration symbol ® (only US)

USPTO. <https://www.uspto.gov/trademarks-getting-started/trademark-basics/basic-facts-about-trademarks-videos> , 21.09.2020

Relation to domain names and business names

Domains

- A **domain name** is an alternative name for the internet-protocol-address of a webpage, which is easier to handle by an internet user.
- By registration on a registrar company, you can receive a domain, which is unique.
- Whoever registers the domain first will receive it under the condition there is no infringement with IP rights of other parties.
- A domain name does not justify any absolute right, it is just an ownership of the domain name received by an agreement with the registrar company.
- Because domain names can infringe IP rights like trademarks, business names or name, it is possible to start an injunction, a removal or to ask for a reimbursement.

Business name

- Business names , i.e., the company names which are used in the course of trade are also protected in Germany by the trademark act (§5 MarkenG), but also by the German Commercial Code (§17 HGB).

Lesson 1: The introduction to IPs and patents in general

Designs

Protection of design

- According to Article 3 (a) of the Council regulation on Community Designs a **design** means **the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation;**
- Requirements for a design (Art. 4, 5 and 6):
 - A design shall be protected by a Community design to the extent that it is **new** and has **individual character**
 - A design shall be considered to be **new** if no identical design has been made available to the public
 - A design shall be considered to have **individual character** if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public
- Designs have a **grace period of 12 months**

https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/cdr_legal_basis/62002_cv_en.pdf

Exclusion from protection of a design

- A design shall **not subsist** in features of appearance of a product which **are solely dictated** by its **technical function** (Art. 8 (1)).
- A design shall **not subsist** in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions **in order to permit the product** in which the design **is incorporated** or to which it is **applied to be mechanically connected** to or placed in, around or against another product so that either **product may perform its function**. (Art 8 (2))

https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/cdr_legal_basis/62002_cv_en.pdf

Registered and unregistered design protection

- There are 2 kinds of design protection
 - **Registered protection:** Registration of your design at an IP Office
 - National Office (e.g. DPMA)
 - Regional Office (e.g. EUIPO)
 - International registration at WIPO
 - **Unregistered protection** at disclosure of your design
- Registered protection: Registration at an IP Office
 - In Germany / in the EU a design is initially **valid for 5 years** from the date of filing and **can be renewed in blocks of 5 years** up to a **maximum of 25 years**.
- Unregistered protection at disclosure of your design:
 - The **term of protection is 3 years** in Germany / the EU from the date on which the design was first made available to the public. An extension of the protection is not possible.

<https://euipo.europa.eu/ohimportal/en/designs-in-the-european-union>

https://www.dpma.de/docs/dpma/veroeffentlichungen/2/bro_design_dt.pdf

Examples of designs

- Design protection for automobiles and vehicles [toys] (DE402019100166-0001, Porsche):



- Design protection for clocks (DE000345673-0001, Braun GmbH)



Scope of design protection

Registered protection:

- Registered designs are protected against similar designs even when the infringing design has been developed in good faith, i.e. without knowing of the existence of the earlier design.

Unregistered protection:

- Unregistered designs grant the right to prevent commercial use of a design only if that design is an intentional copy of the protected one, made in bad faith, i.e. knowing of the existence of the earlier design.

<https://euipo.europa.eu/ohimportal/en/designs-in-the-european-union>

Cost of design protection

- Germany (DPMA)
 - Registration fee for one design: 70 EUR
 - Registration fee for a multiple application: 70 EUR at least/
7 EUR each design
 - Renewal fee 6.-10. year: 90 EUR
 - Renewal fee 11.-15. year: 120 EUR
 - Renewal fee 16.-20. year: 150 EUR
 - Renewal fee 21.-25. year: 180 EUR
- Community design at EUIPO
 - The fee for registering and publishing one design is 350 EUR for five years' protection.
 - For a multiple application, the fees for registering the 2nd to the 10th design are subject to a 50% discount while, for the 11th design onwards, the fee is just 25% that of the basic fee per design

<https://euipo.europa.eu/ohimportal/en/designs-in-the-european-union>

https://www.dpma.de/docs/dpma/veroeffentlichungen/2/bro_design_dt.pdf

Lesson 1: The introduction to IPs and patents in general

Other IP Rights

Other IP rights

For completeness of the technical IP rights here a short presentation of two more IP rights

Plant Variety Rights Act (SortSchG)

Protection of ownership of plant varieties

Requirement: According to §1 SortSchG if a plant variety is distinguishable, homogeneous, durable, new and designated by a registered variety denomination.

The duration of plant variety protection is 25 years; for hops, potatoes, vines and tree species 30 years.

<https://www.bundessortenamt.de/bsa/sorten/sortenschutz/>
https://www.dpma.de/service/schutzrechte_kurz_erklaert/index.html

Semiconductor Protection Act

Protection of three-dimensional structures of microelectronic semiconductor products

Requirement: Uniqueness of three-dimensional structure, no mere reproduction of another topography

Begin of IP right is depending on whether the topography has already been used for business

Term of this IP right is 10 years.

Summary

- Intellectual property is defined as intellectual assets that receive a legal protection. Following IP rights have been presented:
 - Copyright (no filing necessary)
 - Industrial property rights (filing in an IP office necessary)
 - Patents and Utility models
 - Trademarks
 - Designs
 - Plant Variety
 - Topography for a semiconductor
- IP rights are **absolute rights** which can forbid a third party to use/exploit the protected intellectual asset.
- For the own use/exploitation you don't necessary need IP rights, in some cases you are not even allowed to use/exploit your own IP rights because by using it you could infringe older IP rights from third parties.