

Intellectual Property

32682 characters in 4621 words on 834 lines

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1 introduction

1.1 intellectual property (IP)

legal concept
exclusive rights for creation of the mind
form of ownership (right to exclude)
intangible aspects, tangible aspects (not physical, physical products)

resolves market failures

high investment cost → protect with IP
dumb consumer → protect with trademarks, warranties

for public good

non excludable, others can use invention
non-rivalrous, usage does not negatively impact others
incentives for research

upsides

turn innovation, creations into business assets
important source for companies, researchers, developers
helps with marketing, promotion, reputation of service
revenue for artists (although most earn very little)
increases funding for research because result can be protected

downsides

exclude competition (high fees, deny completely)
limitation of competition (maybe no substitutions)
deadweight loss (monopoly price leads to less total payoff)
most IP worthless (but overhead of registration, controlling)

fight downsides

limit IP, compulsory licensing, different forms of IP

1.2 IP usage

steps to undertake

ensure good is not infringing other patents
focus protection on specific territory
determine if protection is strictly necessary
determine if public or secret protection
choose to protect product, process, form, trademark, ...

statistics

generally increasing amount of applications
japan used to be big, now more distributed
asia big with industrial design
NA a lot of patents
china exponential growth, but overall less than US
400'000 filings japan, US, 150'000 rest of the world
a lot more trademarks registered than patents or others
EU more trademarks, US more patents
asia lots of industrial design, utility models

1.3 IP rights

some need to be registered, others apply automatically
can forego IP rights to public or employer under controlled conditions

registered rights

patents (new inventions, needs to be applied for & are examined)
trade marks (identification of products, registration)
registered designs (looks, registration)
utility models (petty patents, not CH)

unregistered rights

copyright (creative works, exists automatically)

other forms of protection

trade secrets (non-public info, keep secret)
unfair competition laws, db protection

2 trivial IP handling

2.1 disclose information

cheap, others can't patent any more
but no exclusivity, competition sees inventions

2.2 do nothing

no effort required
no exclusivity, competitors may learn details

2.3 utility models

cheaper than patents, for incremental inventions
not supported in all countries, but in some majors
10 years maximum protection, only fulfil novelty

2.4 trade secret (confidential information)

cheap, potentially unlimited protection
no protection against RE/duplications, secrecy hard

requirements

not generally known
business, commercial, economic value
is subject to reasonable efforts to keep secret

protection means

practical (need-to-know basis, encryption, monitoring)
contractual (non-disclosure agreements)
legal tools (unfair competition, employment agreement)

3 patents

3.1 concept

reveal invention to public, get exclusive rights
encourage technological innovation & dissemination
protect inventions which solve technical issues

advantages

strong, enforceable legal right
exclusivity enables higher return on investments
trade inventions

disadvantages

reveals invention to competition
expensive application & proceedings
grant maybe only short-term
no monopoly in the economical sense (work-arounds possible)

examples

data-processing methods, OS, UX
plant materials generated by a specific method
existing chemical composition found to have a new application
computer implemented inventions

3.2 legal requirements

US (everything made by man under the sun) less restrictive than EU

novelty

not state of art (before date of filing)
no written/oral disclose
combination ("claims") of elements must be new
EU disclose OK if <6 months before && due to abuse or exhibition
US disclose OK if <1 year before

non-obvious

solves issue, disproves dogma, surprises, difficult research, simple solution
information gap overcome by inventor using a creative, intuitive way
judged by fictional person (know-it-all, rational but no imagination)
judged by prior art (by determining most similar prior art)

of no importance if created by pure luck or economically viable
"obvious" if solely combination of known work or size alterations

industrially applicable

to be used in gainful, economic activity (not only personal)
discovery alone not sufficient

disclosure

must be sufficient, clear, with an application example

3.3 exclusions

non protectable inventions

if commercial exploitation contract moral (independent of lawfulness)
animal / plant species & biological processes (but microbiological OK)
surgery, therapy, diagnostic for humans/animals (but products OK)

not considered inventions

discoveries, scientific theories & mathematical methods
aesthetic creations, playing games, presentation of information
business methods (definition, reaching objective) & rules of games
programs (only if cause further technical effects, easier in US than EU)

3.4 rights

granted country-wise, for limited time (up to 20 years)
national courts can extend duration to compensate for regulatory approval

exclusive right

to commercially make, use, sell, offer, import, license
also for goods directly obtained from patent
not right to use (may be illegal due to environment, health, risk laws)
often IP not used at all

applications

exploitation of invention
license or transfer to third party
blocking other patents
publicity, reputation

license

authorize use of patent using private law (contracts)
define parties, subject, scope, royalties, warranties

transfer

transferring & permanent owner change

3.5 remedies (rechtsmittel)

infringement

direct use of product, process, offering, import, export, transport
indirect use if product is used to violate patent law (secondary liability)

determine infringement

protection over formulated claims, interpreted using the drawings
everything that is literally covered by claims, possibly more than intended
determined according to national law, unified patent court (UPC)

defence from infringement

no infringement because outside scope or expired patent
no right broken due to limitations or exclusions
patent is invalid (patent may be revoked, may need separate proceeding)

options after infringement

request to show authorization
warning letter
file a complaint with a court
apply for preliminary injunction

possible decisions

interim, preliminary injunctions (immediate termination)
final, permanent injunctions (permanent termination)
destruction / surrender of products
recovery of damages

3.6 exhaustion principle

after first unrestricted sale by IP owner protection limited
others can import/use/resell/use patent protected goods in exhausted area
national/regional/international exhaustion

EFTA

regional exhaustion

switzerland

regional exhaustion with EFTA
international exhaustion if of subordinate importance

no exhaustion if price is set by the state

3.7 limitations

territorial principle

rights limited to country where it was granted
national courts have higher jurisdiction than international treaties

fees

the owner has to pay fees to avoid revocation

revocation

owner can revoke, limit patent

compulsory licensing scheme

for dependent inventions, public interest
medicine in developing countries
farmers privilege allows to reuse protected seeds

always legal usage

private, non-commercial usage
for experimental purposes (testing out, certification, teaching)
use of biological material to discover new plant variety
biological material obtained from the field by luck or technical necessity

farmers privilege

may reproduce the product on their farm
not allowed to trade seed, in the US illegal to plant again
always stronger than private law

subordinate importance

if IP of small importance relative to whole product
owner has to prove otherwise
in force in Switzerland

3.8 procedure

registration

first-to-file system (EU, USA since 2013, force early disclosure)
first-to-invent (rewards innovator, hard to administer)
fill out application (request for grant, description of invention)

content

bibliographic information (inventor, proprietor, date, technology class)
abstract (around 150 words, to search & find patent)
description (prior art, solved problem, solution advantages, instructions)
independent claims (claims with technical features)
dependent claims (further claims elaborating on independent claims)
drawings (illustrate claims and description)

processing

formal examination, then substantial (concerning novelty, non-obviousness)
then grant for the scope defined in claims
people included are applicant, patent examiner, representative or legal

patent owner

inventor (team) designated by patent (earliest application)
but owner is the employer (if invention relevant to field of employment)

how filed

natural or legal person, can be filed jointly
territoriality principle, no international patents

priority right

time where it can be filed in another country / place

3.9 filling places

with initial filing "priority date" starts
other filings can be done afterwards, but priority must be claimed

3.9.1 national patents

also for non-residents
DE costs 1700 - 5000 EUR

swiss patent office

does not examine novelty, non-obviousness
patent can be contested after grant
ex post in contrary to ex ante as in US, EU

3.9.2 european patent convention (EPC)

grants bundle of national patents with single application
costs 3000 translations, 10'000 attorney, 5'000 fees

territory

EU member states, CH & some more (but not EU project)
handled by European Patent Office (EPO)

includes european biotechnology directive

steps

file within one year of priority date
wait for immediate search report, may withdraw before publication
if not withdrawn, publication after 18 months
5 years total examination till patent is granted
then validation at national office & start of 9 months opposition time

legal devices

board of appeal while in opposition time, revocation decision final
else can go to each national courts to fight for revocation

3.9.3 patent cooperation treaty (PCT)

not an international patent (members not bound to result of examination)
but examines patent, gives more time to decide where to apply for patent

territory

handled by international bureau WIPO in geneva
get up to 141 countries, can take up to 30/31 months
examined by international search authority (ISA) (major patent offices)

steps

file within one year of priority date
ISA searches for relevant earlier patents (16months)
WIPO publishes application w/ written opinion (18months)
applicant might request optional international search (till 28months)
applicant enters national phase in target countries (max 30/31months)

3.9.4 EU unitary patent

truly unitary patent for EU members
unitary character of limitation, transfer, revocation, lapse
no translation needed besides one in german or english or french
issues patents, afterwards administration by EPO (fees etc)

territory

protection for 25 EU countries (except spain, croatia, italy), not CH
was tried before, low acceptance / incompatible with existing law

legal devices

unified patent court takes care of legal issues
regional → central → appeal

3.10 trivia

patent thicket

many inventions covering same product, manufacturers avoid its production

license agreement

patent owner can create license agreement with user of patent(s)
restrict field of usage
allow to grant third-party licenses
give authority to defend patent before court

supplementary protection certificates (SPC)

for pharmaceutical, plant protection
because of lengthy approval procedures
last up to 5 years, granted by national offices
enters into force after patent expired (law sui generis)

compulsory licensing

if invention is based on another, can get license from owner
only if the invention provides significant technical advancement

advice

do not publish, present, sell without NDA before filing
keep confidential, seek professional advice

4 copyright

4.1 concept

automatically protect artistic works, original literary
protects expression of idea, not idea itself

motivations

fundamental to intellectual creation
protect author plus two generations

examples

literature, theatre, choreography, pantomime, music, ringtone
drawings, paintings, sculpture, photo, movie
architecture, plans, maps, 3D
computer programs (binary & source, maybe additionally patented)

4.2 legal requirements

US similar to patents (public good, utilitarian)
EU expression of artists personality (natural, personal right)

intellectual creation

made by human being
idea not protected, only original expression of it

originality

individual character makes it unique
low standards, does not need to be fine art

4.3 exclusions

database

unfair competition laws, but no protection as is

4.4 rights

granted country wise automatically (till 70 years after death of author)
country of conflict place of court & law
owner is/are author(s) or employer
can be registered at US copyright office

economic rights

exclusive rights to reproduce, distribute, rental, perform, broadcast, publish

moral rights (droit d'auteur)

claim authorship, can object to usages
cannot be waived / transferred in europe (US yes, utilitarian justification)

neighbouring rights

of performers, film producers, broadcasters (may differ from copyright law)
independent of the copyright status of the performed work

concerning private law

some copyright limitations cannot be waived (RE of software, moral rights)
other restrictions from consumer protection law, mass-market contracts
other limitations can be waived by private law

4.5 procedure

automatically granted, no notice / registration required

4.6 remedies

infringement

directly, indirectly use work as a whole or substantial parts
copy, issuing, distribution, rental like upload (primary)
dealing with copies like P2P operating (secondary)

possible decisions

interim, preliminary injunctions (immediate termination)
final, permanent injunctions (permanent termination)
destruction / surrender of products, recovery of damages

defend from infringement accusation

show that created at same time / not linked to each other
list of exceptions in EU
fair-use defence in US

defend from infringement

send cease & desist letter
sue users, ISP (but some are exempted)
apply technical protection
change business model

enforcement

by law, border control, collecting societies (SUISA, ProLitteris, ...)

4.7 limitations

exhaustion

free market wins against distribution rights

fair use defence (US)

purpose & character of use (commercial, non-profit educational)
nature of work (news or fiction)
amount, sustainability of work relative to copyrighted work
effect on use & value of copyrighted work

list of exceptions (EU)

photocopy, reproduction by libraries, press, parody
use for research, disabled people, public speeches, public security
reproduction of sculptures in public places, copies of programs

exceptions (CH)

private purposes (personal sphere, relatives, friends, not strangers)
research, citations, publicity, disabled people, temporary copies
but no distribution (like upload), no programs
defence against reproduction right of owner, not granted right

5 trademark

5.1 concept

sign distinguishing goods and services from others
represents origin, quality, advert
ensures customer that info about product is accurate

examples

words, letters, numerals, slogans, logos, 3D, colours
sounds, music, smells, hologram

5.2 variants

certification marks (CE, TÜV)
collective marks (members of specific organisation)
protected geographical indication (PGI) (specific region)
protected designation of origin (PDO) (attributed to region)
traditional speciality guaranteed (TSG) (special, traditional processing)

different strengths

generic, descriptive (can not be registered)
suggested, arbitrary, reputed (can be registered, increasingly stronger)

famous trademarks

extended protection, beyond principle of speciality
use forbidden if capable of taking unfair advantage (free-riding)
use forbidden if reduces distinctiveness (blurring, dilution ("flecken"))

5.3 legal requirements

"original and intellectual creation", graphic representation

distinctive character

distinguishable from other services/goods
by average consumer (low requirements)

no absolute grounds for refusal

no distinctive character, of descriptive character
sign is culturally, technically, valuably necessary shape
→ unless acquisition of secondary meaning happened

no relative grounds for refusal

based on prior rights issues with similar characteristics
identical trademark & (confusingly) similar goods (or vice versa)
similar trademark takes advantage of another for different product

in usage

active usage (direct or licensed) for licensed services / goods
different form also allowed, as long as distinctive mark is not altered

5.4 procedure

registration & examination needed

content of application

trademark (the logo itself)
time info (filling, expire date)
owner & representative (the company)

5.5 rights

granted for 10 years, can be renewed indefinitely
applicable if clear representable
scope of protection in register

usage as a mark

requires that it is used as mark, to distinguish products from competition

5.6 law frameworks

TFEU

Treaty on the Functioning of the European Union
required to comply for all member states
implement framework legislation into national law
on failure to implement damage payments, legal action
overrides all national laws, new laws must comply

europaean trademark directive

includes rules for granting, opposing, enforcing trademarks

harmonization of substantive laws, procedural laws determined by members
procedurals include administration, competition law, unregistered TM

5.7 filling places

5.7.1 national registration

register at national court

5.7.2 european trademark regulation

unitary EU-wide trademark & design right
national, community TM can coexist & are treated equally

steps

register at European Union Intellectual Property Office EUIPO (formerly OHIM)
checks if any absolute grounds of refusal (does not check relative)
publishes with opposition time (may attack relative grounds)
registers trademark for 10 years, but must be in use within 5 years

limitations to TM

must be graphically represented
registration of 3D restricted (avoid valuable shape monopolization)

legal devices

court of appeal
courts of member state for EU wide implications

5.7.3 international registration

madrid system, apply at WIPO online
manage & apply to for national / community trademarks

5.8 procedures

registration, first come first serve with exceptions
register for specific category of service, product ("nice" classification)

5.9 remedies

infringement

sign & products identical, or confusingly identical
products not identical, but reputation of sign taken advantage of
affixing, import, export, business paper usage of sign
also applies to imported products, but not to exported

infringement by absolute grounds

descriptive or not distinctive
shape required by function

infringement by relative grounds

protect public interest, narrow scope of protection
1. compare goods, services (identical, similar, dissimilar)
2. compare signs (visually, aurally, conceptually, overall)
3. identify distinctive & dominant elements (colour, contrast)
4. identify relevant public (geography, amateur / specialist, attention level)
5. global assessment (similar service, signs for relevant public)

5.10 limitations

exhaustion

EU has EEA wide exhaustion, but not international exhaustion
swiss has international exhaustion
no exhaustion if TM owner has legitimate interest (product impaired)

parallel imports

packaging, labels change for cultural, legal reasons
large price differences due to local regulations

principles of speciality

scope of protection only over goods, services applied for
similar trademarks may coexist if other products

relevant usage

revocation if not in use, acquired generic character, misused

allowed

usage as person name, descriptive sign
refer honestly to TM ("fits migros razors")

comparative advertising

not misleading, objective comparison
does not create confusion
no reputation misuse
does not present own product as imitations/replicas

6 design rights

6.1 concept

outwards appearance of product resulting from its features
2D, 3D
both unregistered design

examples

form of device, shape of buttons, position of screen

6.2 legal requirements

design

individual lines, contours, shape, colour, material, texture
appearance of whole or substantial part of final product

novelty

not published before date of filing (exhibition, used in trade)
novelty only considered for EU territory
exceptions (disclosure unknown, NDA breach, 12 months grace test period)
but what about retro design, specialized user group?

individual character

overall impression must differ to that of existing design
as perceived by informed user (>normal user, <expert)
degree of freedom of designer is taken into account
design must not be attractive but must fulfil aesthetic appearance
does not have to distinguish products

no grounds for refusal

absolute grounds (needed for functionality / interface to another product)
relative grounds (prior design, TM, geographical indication, copyright)
taking into account if product must fit to other modular products

6.3 rights

granted for 5 years, up to 25 years renewable
exclusive right to make, offer, import, export, stocking
of product with incorporated design

scope

design not producing different overall impression for informed user
freedom of designer taken into account at assessment

6.4 procedure

unregistered designs

copying protection for 3 years
influenced by copyright & competition laws

registered design

national & community registers of EU

6.5 law frameworks

european design directive

national registration, not required to examine the filing
free to set registration, renewal, invalidity conditions

6.6 filing places

international

at WIPO for members

national (EU)

regulated by EU design directive, implemented by national IP offices
no procedural restrictions, not required to examine filing

EU community rights

done by EUIPO
if formal is met (is design & not immoral) IP directly granted
no examination of novelty, individual character
full protection for 5-25 years, 12m grace / 6m priority period

switzerland

with IGE/IPI, no examination

6.7 remedies

infringement before national court
invalidity before EUIPO

invalidity reasons

definition of design does not apply
requirements for protection do not apply

holder not entitled to design
design in conflict with prior right
design uses certain emblems

6.8 limitations

exhaustion principle

spare parts

repair cause (no protection for spare parts)
automobile not harmonized (france no, rest yes or not enforced)

no rights if design dictated by

technical functions, other modular parts
exception for modular systems

allowed

private, non-commercial purposes
experimental purposes, citations & teaching

7 case studies

7.1 nespresso

nestlé uses patents, trademarks, competition law to protect

7.1.1 timeline

jan 2011

denner needs to stop selling capsules, slogan prohibited

march 2011

denner can sell capsules because form is technical requirement
denner can't use slogan "what else", but can mark it compatible

june 2011

case reopened, cause judges lacked technical knowledge

august 2011

nestlé must provide technical opinion

may 2013

form can't be protected, no risk of confusion for consumer
denner allowed to sell capsule

feb 2016

migros starts selling capsules

nov 2016

migros wins before court, can continue to sell

7.1.2 legal issues

function of slogan (distinctiveness)
design follows function (or not?)
competition law (monopoly, exploit vs incentive, quality)

7.1.3 policy issues

secondary product to control market

7.2 vorwerk thermomix

device to cook, with recipes, direct distribution
new competitors emerged, but patents only technical
change to new IP strategy, now patents focused on UX
more patents, higher revenue

7.3 nebu-allerg

brandname, slogan & logo as trademark
advertising as copyright
nozzle, pumping system as patent
design registered & unregistered

7.4 one-click amazon

amazon suing competitor
settlement in 2002 with another shop
since 2006 restricted patent due to DigiCash was first with one-click

7.5 sugru

pliable substance which quickly sets to repair, mount, grip
model easily, adhesive properties at room temperatures
independent claims directed to a composition
dependent claims including product, process claim
priority 2006, PCT 2007, determined to be not novel
made more specific then entered national phases, granted

7.6 hövding cycle helmet

airbag helmet contained inside collar
product for protecting portion of body in case of abnormal movement
method for protecting head of user at abnormal movement
determine to be not novelty
defined parts more specific

7.7 SAS vs World Programming

SAS is developer of analytical software, extremely proprietary
WP produces system by analysing behaviour of SAS system
no RE, no source code access, bought copy of SAS
copyright infringement manual (no, reuse syntax/commands/wording)
misuse license (no, obtained legal copy, was allowed to use functions)
copyright infringement components (no, functionality not protected)
because WP did not use preparatory design work & source code all was OK

7.8 lindt

lost community trademark because not distinctive enough in all EU states

7.9 lego

no 3d trademark possible because of technical necessity

7.10 bang & olufsen

wanted community trademark for shape in music furniture
relevant public determined as consumer with high level of attention
determined as common by appeal board, final court said not common
TM not granted because shape determined by good

7.11 rappers (pepsi vs grupo promer)

some kind of disk targeted at small children
promotional item, informed user has intermediate attention to detail
designer restricted by technical, market constraints
no disclosure of previous design (because filing before)
bad faith no reason for invalidity (reasons specified exhaustively)
some features could have been freely chosen (but designer didn't)
design protection lost by pepsi

8 ETH knowledge transfer

ETH produces graduates, know-how, software, inventions
outlicensing of technology to existing companies, spin offs
research collaboration with partnerships, shared projects, services
new competencies with scholarships, sponsored profs & infrastructure
ETH transfer for research interactions with companies
ETH foundation for sponsored chairs, infrastructure, scholarships

8.1 ETH transfer

industry relations

collaboration agreements if interests on both sides
competence tours of ETH competencies
brainstorm company problems in ideas lab
partnerships for sponsored research projects
coop, migros, abb, post, siemens, sulzer, swissRE, nzz
nanotechnology center BRNC build by IBM, used jointly
disney research center since 2008

forschungsverträge

parties own IP of projects, ETH zürich publishes
non-exclusive, limited exclusive use for 1.1*cost
(non)exclusive use, and all further inventions for 1.45*cost
but ETH can still use & sublicense, gets back unused

patents & licenses

evaluates inventions & creates fact sheets
gives advice & helps with application (incl. funding, strategy)
identifies licensees & negotiations
helps with the patent process
revenue control & distribution
inventions of employees for ETH, students keep its own inventions

ieLab

innovation & entrepreneurship laboratory

spin-off support

ETH technology, SW, know-how & students, employees of ETH
with sustainable, sound business plan & entrepreneurial skills
helps licensing IP, I&E labs rent rooms & infrastructure
consulting & coaching (business plan, development, negotiation)
link to seed money (external or within ETH)

contacts to training, press
usage of ETH spinoff label
very high survival & growth rate

8.2 entrepreneur

valley of death

basic research with research grants
applied research with development grants
proof of concept / business case for pre-seed grants
prototype for friends, family, fools money, enter valley
products development with business angels
alpha stage products to get corporation partners
growth, revenue to attract the "real" investors, exit valley
start at ETH departments, go to project house, entrepreneur club
continue to focus projects, innovation labs
then to technopark zürich, wyss center, ...

needs of entrepreneurs

seed capital (bridge gap between invention to start up)
peer home (a biotope with others, peer support & pressure)
coaching (profit from experience, role models)
networks (access to ETH know how & relations, spin offs, startups)

pioneer fellowship program

18m duration, 150k seed funding through donations
promotes ETH talent, moves research results to market
ieLab as a service

8.3 patent process at ETH

invention disclosure

inventors fill out disclosure form
details (title, abstract, description, keywords, state of art)
commercial exploitation (development status, applications, interests),
exploit for yourself by funding firm, market potential)
publications, financial support & rights of third parties

examination

online by inventors, IGE Bern (helps with search), attorney
search before defining research project to reduce research effort
additional information, knowledge available in patents

evaluation

assess patentability, strength, invention status
include market development & inventor experience
calculate index determining likelihood of patentability
ensure no small improvement, not simply strategic
check market potential with market need, analyze, effort required
then decision if ETH files patent (and pays for it)
revenue split 1/3 each (chair, eth, inventor)
alternatively lab can file patent with ETH support (but lab pays)
revenue split 1/2 chair, 1/6 eth, 1/6 inventor
alternatively ETH can transfer rights to individual to apply

patenting with PCT

12 months priority application, need positive industry feedback
30 months deadline for license agreement

marketing

fact sheet explaining possibility of invention ("technology offer")
personal relations of prof, publications online & at tech talks
creation of priority year action plan

licensing

IP rights to use & scope ((non)exclusive)
fields of use, sublicensing
license fees (milestones, up-front, royalties)
reporting, warranty, liability

9 patent information

a unique source of information
more than 100m patents, ~80% of all knowledge in solely patents
technicalities disclosed in detail
pool contains applications, granted, lapsed patents

useful for

prevent duplication, avoid infringement, see existing
competition analysis (find partners, spot trends)
innovation because can analyze in every stage of project for priors

balance

control commercialization, get investment back for holder

inspire future work, full disclosure for public

anatomy

publication number, applicants & inventor

title, abstract, patent class (keywords), specification, figures

patent claims

search

by keywords, patent classes, patent applicants, inventors, citations

use OR, AND, NOT, * (any), ? (0/1), # (1), distance<2

switzerland swissreg.ch

EPO (european patents) worldwide.espacenet.com

germany epo.com/espacenet

japan www.j-platpat.inpit.go.jp/web/all/top/BTmTopEnglishPage

WIPO (PCT) patentscope.wipo.int/search/en/search.jsf

USA <https://portal.uspto.gov/pair/PublicPair>

korea <http://www.kipris.or.kr/enghome/main.jsp>

google http://www.google.com/advanced_patent_search

lens.org

patent classification

assigned by independent experts

hierarchical structure, constantly revised & updated

different schemes available

international patent classification (IPC) WIPO

cooperative patent classification (CPC) EPO & US

10 commercializing IP

10.1 licensing

exclusivity

exclusive (excluding also the licensor)

sole (excluding anyone but the licensor)

non-exclusive (can sublicense others)

promise not to sue (no suing if licensor infringes)

reach of license

field of use (certain indications / all treatment)

type of use (development, manufacturing, marketing)

territory (EU, US, worldwide)

maybe also part of deal

performance obligations on license

flexibility in exercising license (sublicensing, transfer)

transfer of IP

protection against insolvency of partner

consequences of termination

10.2 sublicensing

licensee can sublicense patent from licensor

sublicense void if main license terminated

if licensee insolvent, sublicense can be terminated (CH, UK)

avoid licensor insolvency issue

transfer / co-ownership of patent

transfer to other legal entity

issues

academia directly sells to big pharma

mid-sized / biotech more and more excluded

10.3 owner issues

joint patents

patents can be filed jointly, each holder has full rights

so does not need agreement of other party to sign contracts

ownership shares, right to license, share revenues, enforce rights

can split rights, request dissolution (sale) of right

highly country specific

succession

who is legal representative if original disappears

11 varia

11.1 control secondary market

methods of control

incompatibilities, low price, bundling

property, IP, technological control

competition policy analysis

hard to get established, prices over market (welfare loss)

ramsey (discriminating) pricing increases innovation (welfare gains)

consumer underestimates cost (behavioural law)

11.2 EU stuff

european free trade association EFTA

switzerland not part of

not connected to european patent convention

european patent convention EPC

switzerland part of (separate treaty than bilaterale)

directive

require members to harmonize national laws

regulation

directly applicable & binding for firms & citizens in the EU

harmonization

only trademark with community trademark regulation fully harmonized

copyright has national law, EPC leads to national patents