

Recent and Upcoming IP Developments

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Content

- Recent studies on IP
- Legal developments:
 - ✓ searches of national applications;
 - ✓ European trademark system reform
 - ✓ Unitary patent and Unified patent court

“IPR intensive industries: contribution to economic performance and employment in the EU”

- About **half of EU industries are IPR intensive**.
- IPR-intensive industries account directly for 26% of all jobs in the EU – around 56 million direct jobs. With the addition of 20 million indirect jobs, **one in three of all EU jobs – 35% of all jobs – rely on IPR intensive industries**.
- These industries generated almost **39% of total economic activity (GDP) in the EU**, worth €4.7 trillion.
- **IPR-intensive industries pay higher remuneration** than non-IPR intensive industries, with a premium of more than 40%.
- IPR-intensive industries account for **90% of the EU's trade with the rest of the world**.
- <https://oami.europa.eu/ohimportal/en/web/observatory/ip-contribution>

“IPR and firm performance in Europe: an economic analysis”

- Companies that own IPRs tend to have almost **6 times more employees** than companies that do not.
- Their **revenue per employee is 29% higher** on average.
- They pay **wages that are on average 20% higher** than firms that do not.
- About 40% of large companies own IPRs.
- Although **only 9% of small businesses own IPRs, the firms that do have almost 32% more revenue per employee** than firms that do not.
- <https://oami.europa.eu/ohimportal/en/web/observatory/ip-contribution>

The Study on IPR Management

- L. Alkaersig, K. Beukel, T. Reichstein. **Intellectual Property Rights Management. Rookies, Dealers, Strategists and Strategic Dealers.** Palgrave Macmillan: 2015.

Methodology and Results of the Study

- Survey of ~3,5 thousand Danish companies (compulsory questionnaire in 2007-2010) in combination with data from IP registers.
- Four types of companies: **Rookies, IP Dealers, IP Strategist, IP Strategic Dealer**
- **Strategic approach to IP causes a better financial performance at company level.**

Searches of National Applications

- No substantial examination for national patents
- Searches for national applications available in cooperation with the EPO from 2014
- The request for a search needs to be submitted to the SPB after the filing date and number granted.
- The EPO prepares a search report in ~9 months after the filing date if no priority is claimed.

Searches of National Applications

- Advantages of a search:
 - ✓ perspectives of **further investment** into the invention;
 - ✓ **search report could be re-used** in European patent proceedings if European patent application was filed.

Searches of National Applications

- A search fee for LT applicants is 2683 Eur, but could be reduced by 50 %.
- Reduction may be applied on for **natural persons, very small, small and medium companies, higher education and research institutions, non-profit organizations.**
- Applicant pays a full search fee to the SPB account. The SPB pays to the EPO.
- If a fee reduction was requested, the EPO reimburses the SPB respectively, then SPB reimburses the applicant.

Searches of National Applications

- An **applicant may request financial support of MITA**: instead of applicant, MITA pays the search fee to the EPO.
- Therefore, a **search for a national application is practically free.**

EU Trademark System Reform

- The reform comprises **Regulation for Community Trademark** and **Trademark Directive**.
- Reform finalized this year and Regulation should enter into force at the beginning of 2016.
- Directive should be transposed in 3 years.

EU Trademark System Reform: Regulation on EU Trademarks

- OHIM is recalled into EU Intellectual Property Agency.
- Community Trademark recalled into European Union Trademark.
- Refusal of graphical representation requirement of a trademark.
- EU certification mark introduced.

EU Trademark System Reform: Regulation on EU Trademarks

- Strengthening enforcement: “transit” rule, right to prohibit preparatory acts.
- Mediation center introduced.
- Fees reduced. Each class of goods and services has a fee
- Changes in governance of EU IP Agency, strengthening cooperation between EUIPA and national offices.

EU Trademark System Reform: Trademark Directive

- Trademark Directive comes closer to Regulation.
- Basically mirroring the changes in the Regulation on Trademarks.
- Not only substantive but also procedural law harmonized.

EU Trademark System Reform: **consequences in general**

- **More uniform, more predictable trademark system** in EU: both at national and EU level.
- **Better enforcement of trademark rights.**

EU Trademark System Reform: **consequences for Lithuania**

- Part of uniform trademark system.
- Significant changes in national Law on Trademarks:
 - ✓ Restructurization of procedural rules for processing of national applications („going closer“ to Regulation);
 - ✓ Introduction of cancellation proceedings at the SPB?
 - ✓ Introduction of certification and guarantee trademarks?

Unitary Patent and Unified Patent Court

- Patent package finalized in 2012.
- System enters into force after 13 Member States have ratified the UPC. **8 ratifications so far.**
- **Preparatory work ongoing:** Preparatory Committee and Select Committee

UPC Structure

- The Court comprises a **Court of First Instance**, a **Court of Appeal** and a Registry
- The Court of First Instance comprises a **central division as well as local and regional divisions**
- The **central division** shall have its seat in **Paris**, with sections in **London and Munich**
- A local division could be set up in a Contracting Member State upon its request

UPC structure

- Regional division shall be set up for two or more Contracting Member States, upon their request.
- **Only one regional division so far: Sweden, Lithuania, Latvia and Estonia.**
- **Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court (4 March 2014)**

UPC structure: Regional Nordic-Baltic Division

- **The seat** of the Nordic-Baltic regional division will **in Stockholm**.
- **Cases will be heard in multiple locations** to the greatest extent possible. Each Contracting State shall designate facilities in their respective State for hearings.
- Hearing should take place in the Nordic or Baltic state **where the defendant has its residence or place of business**.
- Notwithstanding this the Presiding judge may, when designating the location of the hearing, take into account all relevant circumstances such as **(i) any request of the parties regarding the location of the hearing**, **(ii) the applicant's grounds (such as limited or insufficient financial resources)** for requesting that the hearing takes place in the Nordic or Baltic state where the applicant has its residence or place of business or **(iii) the place where the actual or threatened infringement** has occurred or may occur.

UPC structure: Regional Nordic-Baltic Division

- English as the language of proceedings.
- The use of interpretation facilities in court hearings provided in accordance with the UPC Agreement.
- UPC Agreement:
 - ✓ *At the request of one of the parties, and to **the extent deemed appropriate**, any division of the Court of First Instance and the Court of Appeal **shall provide interpretation facilities** to assist the parties concerned at oral proceedings.*

Judges

- Panel of a **regional division** shall sit in a composition of **two legally qualified judges** (nationals of the Contracting Member States concerned), **and one legally qualified judge** (not a national of the Contracting Member States).
- Panel of the **central division** shall sit in a composition of **two legally qualified judges who are nationals of different Contracting Member States** and **one technically qualified judge**.
- Panel of the **Court of Appeal** shall sit in a composition of **three legally qualified judges** who are nationals of different Contracting Member States and **two technically qualified judges**

Judges

- **Legally qualified judges** shall possess the qualifications required for appointment to judicial offices in a Contracting Member State.
- **Technically qualified judges** shall have a university degree and proven expertise in a field of technology. They shall also have proven knowledge of civil law and procedure relevant in patent litigation.

Unitary Patent Fees

- No final agreement, but preliminary decision on TOP-4 model: the sum of fees for the four most frequently validated countries (DE, FR, GB and NL):

2nd year:	35 EUR	11th year:	1 460 EUR
3rd year:	105 EUR	12th year:	1 775 EUR
4th year:	145 EUR	13th year:	2 105 EUR
5th year:	315 EUR	14th year:	2 455 EUR
6th year:	475 EUR	15th year:	2 830 EUR
7th year:	630 EUR	16th year:	3 240 EUR
8th year:	815 EUR	17th year:	3 640 EUR
9th year:	990 EUR	18th year:	4 055 EUR
10th year:	1 175 EUR	19th year:	4 455 EUR
		20th year:	4 855 EUR

In comparison national patent fees in LT:

3rd year:	81 Eur (77 %)
4th year:	92 Eur (63 %)
5th year:	115 Eur (36 %)
6th year:	139 Eur (29 %)
7th year:	162 Eur (25 %)
8th year:	185 Eur (22 %)
9th year:	208 Eur (21 %)
10th year:	231 Eur (19 %)

Court Fees

- Consultation ended at the end of July: <http://www.unified-patent-court.org/consultations>

I. Fixed fees

Actions	Fixed fee
Infringement action [R. 15]	11.000 €
Counterclaim for infringement [R. 53]	11.000 €
Action for declaration of non-infringement [R. 68]	11.000 €
Action for compensation for license of right [R. 80.3]	11.000 €
Application to determine damages [R. 132]	3.000 €
Appeal pursuant to Rule 220.1 (a) and (b) [R 228]	16.000 €
Other counterclaims pursuant to Article 32 (1) (a) UPCA	11.000 €

II. Value-based fees

Value of action	additional value-based fee
Up to and including 500.000 €	0 €
Up to and including 750.000 €	2.500 €

Value of action	additional value-based fee
Up to and including 1.000.000 €	5.000 €
Up to and including 1.500.000 €	10.000 €
Up to and including 2.000.000 €	15.000 €
Up to and including 3.000.000 €	20.000 €
Up to and including 4.000.000 €	25.000 €
Up to and including 5.000.000 €	30.000 €
Up to and including 6.000.000 €	35.000 €
Up to and including 7.000.000 €	40.000 €
Up to and including 8.000.000 €	45.000 €
Up to and including 9.000.000 €	50.000 €
Up to and including 10.000.000 €	55.000 €
Up to and including 15.000.000 €	70.000 €
Up to and including 20.000.000 €	85.000 €
Up to and including 25.000.000 €	115.000 €
Up to and including 30.000.000 €	150.000 €
more than 30.000.000 €	220.000 €

Court Fees: Lithuania

- In comparison, court fees in LT are calculated in the following way:
- 3 % of the value of the action if the value is up to 28963 Eur;
- 868 Eur + 2 % of the value of the action in case this value exceeds 28963 Eur
- 2027 Eur + 1% of the value of the action exceeding 86886 Eur

Total fee might not exceed 12555 Eur

Thank you!

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www.vpb.gov.lt

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