Dear reader,

With this eleventh issue we arrive at the end of the Bulletin cycle of this European IPR Helpdesk contractual service period. It was a pleasure to see the level of satisfaction among our readers about the newly focused content of our three-monthly publication. This last three-year series, in fact, was more concentrated on concrete aspects of the management and exploitation of intangibles, whether they belong to the assets of research organisations or small businesses.

Indeed, the Bulletin articles, interviews and reports analysis have been given a more practical cut, thanks mainly to the outstanding collaboration of the respective authors and to our Editorial Board members, who contributed in order for this publication to be successful.

Almost three years have passed since the first Bulletin of the European IPR Helpdesk was issued under the current consortium. In the meantime, the intellectual property landscape has changed considerably and so did the EU policy in the IP field. Accordingly, the European IPR Helpdesk Bulletin will certainly adapt its content to the specific IP challenges stemming from cross-cutting issues (e.g. open access, crowdsourcing, finance etc.) and linked to the new research framework programme Horizon 2020 (i.e. clarification of the corresponding agreements and exploitation of project results) in the future.

All the above will always be carried out in line with the overall mandate of the service, which is to give support to SMEs and research organisations in the management of IP aspects in research projects as well as in their daily business activities.

We really wish to thank you for your responsiveness and positive feedback on this specific publication and hope to meet you again in January 2014, to continue to provide useful suggestions and advice so as to motivate your practices and behaviour vis-à-vis IP.

Yours faithfully!

Your editorial team
Open access can be defined as the practice of providing on-line access to scientific information that is free of charge to the end-user. In the context of R&D, “scientific information” can refer to either peer-reviewed scientific research articles (published in academic journals) or scientific research data (data underlying publications, curated data and/or raw data). Open access is not a requirement for whether to publish open access documents or not, nor does it interfere with the decision to exploit research results commercially e.g. through patenting. Indeed, the decision on whether to publish open access documents must come after the more general decision on whether to go for a publication directly or to seek first protection using Intellectual Property Rights. This is illustrated by the graph here below.

**Potential benefits of open access**

All research builds on previous work and depends on scientists’ ability to access and share scientific information. The advent of the Internet and electronic publishing has resulted in unprecedented possibilities for the dissemination and exchange of information. In today's “information economy” where knowledge is a source of competitive advantage, open access can potentially realise a variety of benefits, including:

- Acceleration of the research and discovery process, leading to increased returns on R&D investment;
- Avoidance of the duplication of research efforts, leading to savings in R&D expenditure;
- Enhanced opportunities for multi-disciplinary research, as well as inter-institutional and inter-sectorial collaborations;
- Broader and faster opportunities for the adoption and commercialisation of research findings, generating increased returns on public investment in R&D and the potential for the emergence of new industries based on scientific information.

One study estimated the overall economic benefit from increased access to scientific information for the EU 27 at €5 billion a year. This implies potential economic benefits from increased access to the scientific information emanating from public funding at €1.8 billion a year.

The effect of limited access to scientific information on the competitiveness of SMEs was documented by a Danish Ministry for Research and Innovation report on access to scientific and technical information for innovative SMEs. It illustrates the difficulties that SMEs in Denmark face in accessing research articles, patent information, scientific and technical standards, technical information, and market intelligence. The report states that it takes 2.2 years longer to develop or introduce new products without speedy access to up-to-date scientific research. For new products, a delay of 2.2 years means an average revenue loss of about 36 million DKK (around €4,825 million) for Danish SMEs.

The report concludes that there is a need for easier and cheaper access to research articles, patents, laws and regulations, and market information.

The potential benefits of better access to scientific information should be seen in the context of the high investment in R&D across the EU. This reached €245,673 billion in 2010 (2% of GDP), a rise of 43.5% in ten years. A large part of investment in research in the EU is

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1. More information on this issue is available in the European IPR Helpdesk fact sheet “Publishing vs. patenting”, available in the library
publicly funded (35%)\(^5\), which gives the public sector an important say in determining how results should be disseminated for the benefit of economic growth and the society at large\(^6\). It is therefore crucial for public authorities to define ways to improve public access to the results of publicly funded research, in order for the maximum benefit to be drawn from Europe’s investment in science.

A recent report by Science Metrix\(^7\) suggests that open access has grown faster than expected with around 50% of the papers published in 2011 being available for free in 2013. This study looked at the availability of scholarly publications in 22 fields of knowledge in the EU, Brazil, Canada, Japan, and the United States. Free availability of the majority of articles has been reached in the fields of general science and technology, biomedical research, biology and mathematics and statistics.

**The activities of the European Commission**

The European Commission sees open access not as an end in itself but as a tool to facilitate and improve the circulation of information in Europe. Open access will also increase openness and transparency and thereby contribute to better policy making and ultimately benefit society and citizens.

The Commission is concerned with open access in its capacities as a policy maker (proposing legislation), a funding agency (the FP7 and Horizon 2020 framework programmes for research and innovation) and a capacity builder (through funding of specific projects for open access infrastructure and policy support actions). The dossier is shared between the Directorate-General for Research and Innovation and the Directorate-General for Communications Networks, Content and Technology.

Open access to scientific peer reviewed publications is backed by a growing number of universities, research centres and funding agencies across the continent. However, national initiatives and practices are still fragmented, thus preventing the European Union from realising its full research and innovation potential. This is why open access is taken up in the policy context of the European Research Area (ERA), a unified research area open to the world based on the Internal Market, in which researchers, scientific knowledge and technology circulate freely. One of the key actions foreseen to achieve the ERA is to optimise the circulation, access to and transfer of scientific knowledge.

In a wide-ranging online public consultation on scientific information in the digital age, which was conducted in 2011, respondents identified a strong need for better access to scientific publications and data in Europe. 90% of respondents supported the idea that publications resulting from publicly funded research should, as a matter of principle, be in open access mode and that data from publicly funded research should be available, for reuse, free of charge, on the Internet. Furthermore, 83% called for policy formulation at the EU level.

Therefore, in July 2012 the European Commission adopted a policy package containing a series of measures to improve access to scientific information produced in Europe:

- Firstly, the Communication "A Reinforced European Research Area Partnership for Excellence and Growth"\(^8\) and the joint agreements with some of the biggest research stakeholder organisations aiming at completing the European Research Area and optimising the circulation, access to and transfer of scientific knowledge.
- Secondly, the Communication, "Towards better access to scientific information"\(^9\), which set out the action that the Commission intended to take with stakeholders and Member States to improve access to scientific information and to boost the benefits of public investment in research.
- Thirdly, a Recommendation to European Union Member States\(^10\) calling for improved policies and practices on open access to scientific publications and research data, preservation and re-use of scientific information.

Follow up activities in the ERA have focused primarily on three groups of actors: (i) Member States, (ii) Stakeholder Organisations and (iii) the European Commission itself.

**Member States** are putting strategies in place

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\(^6\) Publicly funded research refers to research undertaken by the government itself, or through grants to academic and other researchers outside the government.


\(^8\) COM(2012)392

\(^9\) COM(2012)401

\(^10\) Commission Recommendation on access to and preservation of scientific information (C(2012)4890).
regarding access and dissemination, but their approaches vary considerably, with the recent ERA progress report noting “gradual yet visible progress”\(^{11}\). Therefore, Member States were asked to nominate a national Point of Reference to facilitate exchange of information and enable mutual learning. The EC will continue to follow up on this activity and organise a first meeting of the National Points of Reference for exchange of lessons learned and best practice.

As for Stakeholder Organisations, there is significant interest in the subject and a variety of events have been organised by the community itself in a “bottom up fashion” (the Commission has participated and contributed to many of those, for instance the LERU Conference of 2012, the Nordforsk Open Data Workshop, a COST workshop, and the Science Europe ERA Europe High Level Workshop). Open access is also one of the topics for regular discussion in the ERA High Level Stakeholder Platform and the associated doers network.

Since 2008 the European Commission has been running the Open Access Pilot in FP7 (with the adoption of the “green” model), which concerns peer-reviewed scientific publications from research funded in seven themes of the cooperation programme. It is implemented in the Grant Agreement through the Special Clause 39, which asks grantees to make their “best effort” to provide open access to peer-reviewed publications with embargo periods of 6 to 12 months. Open access publication costs (where the “gold” model is used) are eligible in FP7 during the length of the grant agreement as part of the total grant. Open access to scientific research data is not addressed in FP7 (except for ERC Guidelines, which address open access to primary data). The e-Infrastructure project OpenAIRE (Open Access Infrastructure for Research in Europe) provides technical support to the Pilot and is a useful source of statistical information.

The Commission will continue to lead by example and will implement open access in Horizon 2020: open access to scientific publications will be anchored as an underlying principle in the Regulation and the Rules of Participation and consequently implemented through relevant provisions in the grant agreement. As is the case in FP7, Horizon 2020 will include both “Green” and “Gold” open access measures. The Commission will also continue to fund relevant open access projects (research, coordination and support) and infrastructure support. As for open access to scientific data, the Commission will launch a limited pilot. However, data related to privacy, trade secrets, national security, legitimate commercial interests and intellectual property rights shall not be requested in open access mode.

Further information
The Commission provides updated information and background documentation on its website. The open access team can also be contacted at RTD-OPEN-ACCESS@ec.europa.eu

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1 The Innovation Union initiative is an integral part of the Europe 2020 strategy, aiming at creating smart, sustainable and inclusive growth in the European Union. The Innovation Union, in particular by strengthening the access to finance for research and innovation, will guarantee that innovative ideas will become products and services that create growth and jobs.


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**Intellectual Property in Horizon 2020 – overview with a focus on comparison with FP7**

**Jakub Ramocki**
European IPR Helpdesk

Horizon 2020 is the European Union’s (EU) new programme for research and innovation for the period 2014-2020. Running with a budget of €80 billion, the successor to the Seventh Framework Programme (FP7) will implement the Innovation Union\(^1\) and therefore be one of the driving forces to create growth and jobs in the EU.

With the clear goal of simplifying the access to EU funding, Horizon 2020 will merge all research and innovation funding currently provided through FP7, the innovation-related activities of the Competitiveness and Innovation Framework Programme (CIP) and the European Institute of Innovation and Technology (EIT). This means that from 2014 on, you will be able to work with a single programme with a single set of rules.

With the presentation of Horizon 2020, the European Commission has also made available to the public a proposal for new Rules for Participation where you can already take a look at the rules on intellectual property that will probably govern the projects under Horizon 2020. By the end of this year, the legislative acts concerning Horizon 2020 will be adopted by the Parliament and Council and therefore at the time of publication of this article the intellectual property framework is still not final and can change.

According to the European Commission, the rules concerning intellectual property, exploitation and dissemination “have been modelled on the widely acknowledged Seventh Framework Programme provisions with further improvements and clarifications.” The FP7 provisions had in fact been judged as adequate by the respondents in a public consultation launched by the European Commission at the preparation of Horizon 2020 and therefore in general the main changes are small improvements or mere clarifications.\(^2\)

However, many stakeholders in the consultation expressed support for open access and stressed the importance of proper dissemination and exploitation of the project’s results. In fact, in the proposed new intellectual property...
framework, you can see that open access to research publications has gained a strengthened role in EU funding and the door has been open to test the use of open access with other kinds of results, such as research data.

Another important change in the rules concerns the inclusion of access rights to the European Union, and in some fields also to Member States.

Let us have a closer look to the proposed intellectual property rules in Horizon 2020 and see the main differences from FP7:

1. Changes in terminology

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<th>Background</th>
<th>FP7</th>
<th>Horizon 2020</th>
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<tr>
<td>&quot;Background means information which is held by participants prior to their accession to the grant agreement, (...) copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to the grant agreement, and which is needed for carrying out the indirect action or for using the results of the indirect action&quot;</td>
<td>&quot;Background means any data, know-how and/or information whatever their form or nature as well as any rights such as intellectual property rights which are (i) held by participants prior to their accession to the action and (ii) identified by the participants in accordance with Article 42&quot;</td>
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Main difference:
In FP7 the information and/or intellectual property rights must be necessary for carrying out the project or for using the project’s results. Participants therefore have the possibility to define in concrete what is considered to be needed for their project, i.e. their background, in a written agreement. This is usually performed in the consortium agreement under the form of positive and/or negative lists of background. In Horizon 2020, the Rules for Participation are more demanding and establish that participants have the obligation to identify the background in their project in any manner in a written agreement.

<table>
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<th>Foreground</th>
<th>FP7</th>
<th>Horizon 2020</th>
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<td>&quot;Foreground means the results, including information, whether or not they can be protected, which are generated by actions. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection&quot;</td>
<td>&quot;Results means any data, knowledge and information whatever their form or nature, whether or not they can be protected, which are generated in the action as well as any attached rights, including intellectual property rights&quot;</td>
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Main difference:
In FP7 the term used is foreground, whereas in Horizon 2020 it is referred as results.

<table>
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<tr>
<th>Affiliated Entity</th>
<th>FP7</th>
<th>Horizon 2020</th>
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<td>&quot;Affiliated entity means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant (...)&quot;</td>
<td>&quot;Affiliated entity means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant, or is directly or indirectly controlling a participant&quot;</td>
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Main difference:
The definition of affiliated entity has been extended. The definition of affiliated entity in Horizon 2020 additionally comprises legal entities that have direct or indirect control over participants (parent companies), potentially enlarging access rights.
2. Ownership, protection and licensing of results

Regarding ownership of results, there is not much difference with FP7. The principle that participants own the results they generate is maintained, as well as a default joint ownership regime. Identically to the FP7 framework, transfers of results are allowed in Horizon 2020, as well as exclusive licensing of results.

Concerning the protection of results, Horizon 2020 is built on the FP7 rules. However, in the proposed rules of Horizon 2020, the obligation is expressly stated of participants to inform the European Commission or other funding body of their intention:

- to abandon the protection of results (for instance by deciding not to pay the patent renewal fees), or
- not to seek extension of the protection (for example when deciding not to extend patent protection to countries other than the priority application) for reasons other than the lack of potential for commercial exploitation.

3. Use (exploitation) and dissemination of results

As in FP7, under Horizon 2020 participants have the obligation to exploit their own results, either commercially and in further research, or by establishing licensing deals, assignments or other partnerships to allow exploitation by another entities. However, a reservation is made that additional exploitation obligations may be laid down in the grant agreement. Moreover, it is clearly established that participants must use their best efforts in the exploitation of their own results.

The general rule in terms of dissemination does not change as well: each participant needs to ensure that the results which it owns are disseminated as soon as possible and through appropriate means. However, dissemination is subject to the restrictions resulting from intellectual property protection, security rules or legitimate commercial interests.

Nevertheless, significant improvements are made in terms of dissemination in Horizon 2020. In fact, open access is meant to be a general principle in the case of dissemination through research publication. However, in the case of other results (including research data), the open access will be mandatory only if specific clauses of the grant agreement state so, opening the door to the use of open access to results other than publications in certain projects. What actually is open access and what will participants be required to do is dependent on the model grant agreements, which are yet to be published.

4. Access rights

Regarding access rights to background and results for other participants, again there is not much difference with FP7.

An improvement can be found in terms of access rights for the affiliated entities established in a Member State or associated country. Due to extension of the definition of affiliated entity in Horizon 2020, “parent” companies also have minimum access rights to results or background under the same conditions of the other affiliates if such access is needed to exploit the results generated by the participant to which it is affiliated and unless the participants have agreed otherwise in the consortium agreement.

One new feature of Horizon 2020 concerns the granting of access rights to a project’s results, not only to the European Union, but also in specific cases to Member States.

Access rights for the European Union’s institutions and bodies will be granted on a royalty-free basis, limited however to non-commercial and non-competitive use since their purpose relates merely with the development, implementation and monitoring of EU policies and programmes. In the case of projects in the framework of “Secure societies” (specific objective “inclusive, innovative and secure societies”), not only the European Union’s institutions and bodies, but also Member States’ authorities, enjoy access rights to the results.

As we can see, the new rules of Horizon 2020 are built on the proven regulations of FP7, which will certainly ease the participation of small and medium-sized enterprises, universities and any person involved in this new framework. There are however important changes with impact on the implementation and management of projects in Horizon 2020. The application of the open access principle to research publications is certainly one of them, promoting further dissemination of knowledge developed with public funding. It also seems that the exploitation of results gains a stronger role in projects since participants in Horizon 2020 are expected to use their best efforts to exploit their own results, in this way also ensuring that Horizon 2020 funds directly create industrial leadership, growth and employment in the EU.

For more information, please visit: http://ec.europa.eu/research/horizon2020/index_en.cfm
IP owner were to develop a similar IP asset at today’s prices.

This approach is a useful benchmark for value. A crucial point, however, is that there is no direct correlation between cost of development and the future income potential of IP. Simple low cost ideas can generate income, just as expensive developments can often fail.

Market-based approaches

The assumption behind market-based approaches is that the market decides the accurate price and, therefore, the value of the IP. Observing the prices of similar IP assets bought and sold between independent parties, or comparing the royalty rates of similar licensed IP assets gives a value for the IP asset. As tangible assets (e.g. buildings) are mostly valued in this way, this type of approach is familiar to all. However, as there are limited formal markets for IP and the relevant pricing information is not usually public, it can be difficult to find comparative IP transactions.

Income-based approaches

The most basic definition of IP asset “value” is based on the ability of an IP asset to generate future economic benefits. In income-based approaches these benefits (discounted for risk) are assumed to be the value of the IP. As part of the valuation, the valuation expert will need to estimate the stream of economic benefits attributed to the IP, the duration of the IP’s useful life, and an understanding of specific risk factors related to the use of the IP asset.

The principal IP valuation methods under the income approach are:

- relief-from-royalty method, sometimes referred to as royalty savings method,
- premium profits method, sometimes referred to as incremental income method,
- excess earnings method.

The key difference between these methods is the way that the income directly attributed to the IP is identified and separated from the total income attributed to a product or a process. From a practical point of view, income-based methods are the most relevant and widely used methods for valuing IP. However, the methods often involve using assumptions about the future use of the IP. Input data must be available and accurate for the valuation result to be correct.

Non-monetary value indicator based approaches

Non-monetary methods provide a value guide for an IP asset through the observation and scoring of different factors related to the IP. These factors or “value indicators” can influence
the value of the IP asset either positively or negatively. The indicators can include aspects related to the IP such as legal and IP protection background, the technology and development level, the market for products utilising the IP, financial factors and the management competencies of the organisation that will use the IP. Other types of indicators may include information about the IP asset sourced from patent or trade mark documents, such as the number of citations and the number of existing rights in similar fields.

The result of the valuation will be a descriptive analysis and/or a score for the IP asset. This can be useful for management purposes, to assist with decision making and to communicate the significance of the IP asset.

**Complexity level and quality of methods**

The methods used for the valuation of IP can be used at different levels of complexity. The valuer will use judgement to decide what level of complexity is required for each specific valuation. This will depend on the quality and type of results required to fulfil the valuation purpose, the availability and accuracy of input data, and the resources (human, financial, time) available for the valuation.

In some cases an “initial valuation”, using a scoring or rating system and focussing only on the quality aspects of IP, is sufficient for the valuation purpose. This could be for the valuation of an early stage technology development or when monitoring IP quality over a period of time.

At other times, for example when licensing IP to a partner or applying for a loan, a more in-depth monetary valuation is required. This type of higher complexity valuation is investigative in nature and will yield a higher quality of results. Valuation experts think of this as being similar in many respects to the way that a legal opinion is given.

When considering the complexity level of the valuation, there will always be a constant trade-off between the need to have the highest quality results and the data and resources available.

**Choice of methods**

The valuation of IP is an opinion, and the result is a value within a particular context and at a particular point in time. Considering that each valuation is context-specific, a valuer must be able to select the most appropriate method, combination of methods, and levels of complexity and adapt it to the specific circumstances.

The IP being valued must be clearly specified. While IP such as an individual technology can be identified and separated, in most cases it will be supported by complementary intangible assets. These complementary assets are often significant in generating benefits. If there are complementary assets these are valued together with the IP asset in an “IP bundle". Unless a specific reason exists, the focus of an IP valuation is on a bundle of income-generating assets, with the subject IP asset at the core.

A valuation will in all cases fulfil some specific set of objectives. Usually the valuation results will provide information in order to better accomplish a specific task with the IP asset. Some examples of valuation purposes are estimating the commercial prospects for early stage technologies, making decisions related to investment into IP commercialisation, pricing an IP licence, quantifying the equity allocations in the formation of a joint venture where one party contributes IP, estimating the value of IP used as collateral, and measuring economic damages in IP infringement claims.

**Combinations of methods**

To increase the accuracy of an IP valuation, an IP asset may be valued using two or more independent valuation methods. Having more than one set of results from different methods can give a more robust range of values and can bridge some obstacles in the availability and accuracy of data. The combination of methods in an IP valuation is regarded as good practice.

**Standards**

IP valuation practitioners are assisted in their work by the development of standards in the last 5 years. IP valuation standards are related to the specific task of performing IP valuations. Valuation experts can refer to a number of standards which, although not binding, set guidelines for the valuation of different IP assets according to the context of the valuation. Standards applicable to the valuation of IP assets include international standards for valuation of intangible assets (IVS 210) and for the valuation of brands (ISO 10668) as well as country specific standards for example for the valuation of patents in Germany (DIN 77100) and in Austria (ÖNORM A6801).

**Next steps**

Those interested in finding out more about the process of IP valuation and methods in general can consult numerous general and context specific publications on IP valuation. Some of the valuation standards mentioned above are also available to download and these can give a good insight into the methods used in practice.

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Sections of this article were adapted from the 2013 publication “IP asset valuation at the Hungarian Intellectual Property Office”.

...)
How your SME can effectively use the Madrid System: ten Frequently Asked Questions

Giulio Martellini
Trade mark attorney

As a successful European small and medium-sized enterprise (SME), you have decided to take the next step and market your products or services abroad. But you may be wondering, "How can I seamlessly protect my trade marks internationally in several countries at once?"

Is there an international trade mark system similar to the Community Trade Mark (CTM) System in the EU?" In fact, there is. It is called the Madrid System. Governed by two treaties, the Madrid Agreement and the Madrid Protocol, the Madrid System is administered by the World Intellectual Property Organization (WIPO). Following are some of the most frequently asked questions about the Madrid System and some practical tips to help your SME effectively use the system to enhance your global trade mark portfolio.

1) What is the Madrid System?

The Madrid System is an international trade mark registration system that at present is available in more than 90 member countries, including all the member states of the European Union. Its purpose is to facilitate the simultaneous registration of a trade mark in multiple countries. The Madrid System can be used by a business that is established in a member country and that has already filed an application for registration of the same trade mark, for the same goods or services, in its own home country. For example, a CTM application can serve as the home application, and the subsequent filing through the Madrid System will provide an international registration for the same trade mark. Using the Madrid System, the applicant can select the member countries in which it would like to register a trade mark, subject to the payment of fees and, in some cases, substantive examination by the local trade mark authorities.

2) How does the Madrid System differ from the CTM System?

Trade mark protection under the CTM System is limited to the member states of the European Union. Under the Madrid System, protection can be extended to all member countries of the Madrid Union. The Madrid Union is composed of the states that are party to the Madrid Agreement and/or contracting parties to the Madrid Protocol.

Viewed simply, the Madrid System provides administrative support to the trade mark office in each member country, with the intention of making it easier and faster for businesses and organisations to register their trade marks in the countries they choose. Unlike the CTM System, it does not establish the scope of the trade mark owner's rights obtained through registration or determine how and before which courts these rights can be enforced. Under the Madrid System, these important legal issues remain under the jurisdiction of each designated member country.

Who can file also differs. Whereas almost any EU-based person or entity can file a CTM application, only those that can demonstrate a relationship — such as a business establishment, domicile, or nationality — to a Madrid Union member country are eligible to file under the Madrid System.

Protection under each system is different. A CTM registration is a unitary right; it offers protection throughout the European Union and cannot be partitioned to individual countries. The Madrid System, on the other hand, is expressly designed to offer protection only in the countries selected by the applicant. Moreover, the registration in each country remains independent of the registration in other countries (with some limitations).

Finally, businesses can use one system to facilitate registration in the other system. For instance, an applicant based outside the EU can designate the European Union as a whole when registering a trade mark in the EU under the Madrid System. Similarly, a business established in the European Union can use a CTM application as the basis for obtaining an international registration under the Madrid System.

3) I run an SME in an EU country, and I want to register my trade marks in the Spanish-speaking countries of Latin America. Can I do that via the Madrid System? Where do I start?

Territorial coverage of the Madrid System is growing globally, but not every country is a member of the Madrid Union. Several Latin American countries are members, and more still are considering membership.

Currently, an EU-based business wishing to obtain protection in Latin America through the Madrid System can do so in Antigua and Barbuda, Cuba, Colombia, and Mexico. The trade mark application may be filed before the Office for Harmonization in the Internal Market (OHIM) or through the national trade mark office where the business is based, followed by a request for international registration in one or more of the above countries. For the remaining Latin American countries, the business will have to submit its application directly to the national trade mark office of each country.

The governments of Costa Rica and the Dominican Republic are now considering Madrid Union membership. Significant progress has been made toward membership in Brazil, where the Chamber of Foreign Trade recently approved Brazil's accession to the Protocol. The legislation is currently due for consideration by the Brazilian Congress.

A complete list of Madrid Union members can be found here.

4) How much does it cost to apply for an international registration?

The basic fee for applying for an international registration is CHF 653 (around €527) for up to three international classes. The supplementary fee for each additional class is CHF 100 (around €81). In addition, there is the national fee for each designated country of interest. This varies by country and currently ranges from CHF 100 (€81) to CHF 1,111 (€904) (for one class).

A "class" is a category of goods and/or services adopted as an international standard in most countries. WIPO administers the treaties establishing international classifications. See here.

You should also take into consideration that the overall cost of using the Madrid System will depend on other factors as well, such as the number of countries you've targeted for registration of your trade mark, and whether you'll need to retain local counsel, especially if
your trade mark is subject to opposition.

5) Apart from being cost-effective, how can the Madrid System help my business?

Besides streamlining the registration process and lowering the cost of filing fees, the Madrid System provides trade mark protection abroad through a single filing as opposed to a separate filing in each country. This spares you the need for professional assistance in each country, again saving you both time and money.

Furthermore, the Madrid System allows for far easier management of a trade mark portfolio, often without the need for outside professional assistance, and substantially reduces the red tape and administrative burden traditionally linked to trade mark filing and maintenance.

6) How long does it take to register an international trade mark under this system?

If there are no formal objections or irregularities, an international trade mark is recorded in the International Register held by WIPO within approximately three months from the date of filing with the applicant’s office of origin.

However, although already called a “registration” at this stage, an international trade mark cannot be considered completely and officially registered in the designated countries until the period allowed for possible notices of refusal has expired. This period ranges between 12 and 18 months, depending on the choice made by the designated country upon joining the Madrid System.

7) What are the disadvantages or risks of using the Madrid System?

For the first five years of your Madrid registration, you have to ensure that your “home” trade mark application/registration remains valid so that the corresponding Madrid registration is valid too. Therefore, you must carefully assess all possible objections to your home application.

This is why the Madrid System is more suited for trade marks that are strong in the home market or have undergone thorough, accurate trade mark searches, and therefore are not at risk of facing opposition, as well as for trade marks that are not at risk of being refused in your home country on the ground that they are not distinctive.

A “trade mark search” is a review of existing trade marks (registered or not) owned by others to determine whether the mark may be registrable and whether adoption and use of a mark might pose a risk of infringement liability. A search can be either preliminary (“screening” or “knockout” search) or comprehensive (“full” search).

In addition, an international registration filed under the Madrid System can be assigned only to a person or entity that can be legally defined as an “applicant” under the System. For example, currently an international registration cannot be assigned to a Brazilian or a Canadian business because Brazil and Canada are not members of the Madrid System.

8) Will registering my trade marks via the Madrid System in one or more countries reduce the risk of my products being counterfeited in those countries?

Registering a trade mark is the first and most important step to protecting your trade marks from counterfeiters. An international registration obtained under the Madrid System has exactly the same level of protection as a national trade mark registration, no matter which country the trade mark is registered in.

9) What impact does the Madrid System registration have on licensing?

From a purely administrative point of view, licensing trade mark registrations obtained via the Madrid System is less complicated than licensing individual national registrations. Most member countries have centralised record keeping, which saves the time and cost of recording licences locally on a country-by-country basis. This, in turn, makes the establishment and maintenance of a licensing structure more efficient. For example, a licence involving a Turkish trade mark registration, a Swiss trade mark registration and a trade mark registration in the Philippines would be subject to three separate recordal procedures before each national office. However, the recordal of a licence involving an international registration covering the above three countries would be effected through one single procedure before WIPO, without the need of local legal assistance.

1) I already understand the basics of the Madrid System and have registered trade marks internationally. What other practical tips do you have for SMEs seeking to optimise use of the Madrid System?

- Work to reduce the risk of rejection of your home application while selecting a new mark, by performing full and accurate trade mark searches before making a final choice.
- Apply for an international registration in the markets you are potentially interested in long before your products or services are being exported to those markets. This will allow you promptly to assess possible local opposition deriving from competitors’ prior rights without needing to engage in costly comprehensive trade mark searches.
- Prioritise designating those countries where trade mark infringement (such as counterfeiting) is pervasive.
- Be proactive in selecting the countries to designate. The less costly filing fees allowed by the Madrid System often make it possible to file earlier in countries that are usually considered only prospective markets.

The International Trademark Association (INTA) is a not-for-profit association with over 6,300 members in more than 190 countries, dedicated to supporting trade marks and related intellectual property in order to protect consumers and to promote fair and effective commerce. INTA offers free information and resources on various trade mark topics of interest to SMEs. Visit INTA website here.

Contact
Giulio Martellini
Member of the Trademark Office Practices Committee - Madrid System Subcommittee of the International Trademark Association (INTA) and trade mark attorney at law firm IP Skill, Italy.

For more information on trade mark searches see the European IPR Helpdesk fact sheet here.
The European IPR Helpdesk N°11, October - December 2013

IP app for Small Business

Cyril Dubois, European IPR Helpdesk
Gábor Németh, National Intellectual Property Offices representative, Hungarian Intellectual Property Office

The UK Intellectual Property Office (UKIPO) made available an interesting tool a few weeks ago, in the form of an application for smartphones, aimed at helping SMEs to identify and to understand the potential benefits of Intellectual Property: the “IP for Small Business” application.

"The content of the app has been designed to answer the most common questions and queries that arise around IP, with much of the information gathered from the enquiries received from both businesses and the public by our Information Centre. The app also aims to address the perception that IP is only a registered right, when in fact some rights attract protection to a company or individual at the point of creation, namely copyright and designs" as the UK Intellectual Property Office states. It provides an overview of IP and intends to guide its users in the world of IP and on how to best identify and exploit such assets that exist for all businesses.

This app is structured around three main sections:

a) Get to know your IP
b) Enhance your business with IP
c) IP resources to help you

The first section presents in a very synthetic and understandable way the main elements composing IP: Patents, Trade marks, Registered designs, Copyright and Intangible assets.

The second section focuses more on IP management for SMEs and goes more into details on the first steps to work on with IP when you have a concept or product (what to do and how to do it). What to think about before going to protection, the planning of the IP, the associated costs as well as the value are some of the other points presented. Where to find more information and help is of course also introduced.

The third section introduces links to many useful resources such as the UKIPO IP Booklet, its newsletter, an IP diagnostic tool (called IP Healthcheck), information on how to resolve disputes or choosing an advisor. Tax-related elements are also presented.

This application will be a very useful initiative for business owners and managers that do not have the time to deepen their knowledge on IP, but for whom IP is of potential interest. Even if it is more focused on the UK for some of its aspects (tax issues for example), the content is still valid for the rest of Europe as well.

This app, developed in cooperation with Swansea University and IP Wales, is available in Apple and Android app stores. More information can be found directly on the UK IPO website.

Note also that the UK Intellectual Property Office intends to further develop this application and to incorporate new functionalities into it in the near future.
The Danish Patent and Trademark Office has launched a new website, www.boostyouridea.org. On the website you are introduced to intellectual property rights in a simple and clear way. Through case examples the website provides you with inspiration on how to strengthen your idea through the use of patents, trade marks and design protection.

The aim is to make entrepreneurs, students and teachers aware of IPR and its importance. Videos combined with short, explanatory texts and links to further information highlight the most important points when you use IPR to share and protect your idea.

You can find answers to many of the questions that arise when you have a good idea, such as:

- Has my idea already been invented?
- How much of the idea can I reveal when meeting a potential business partner?
- How can I protect my idea?
- How can I make money from my idea?

Contact
Please contact the Danish Patent and Trademark Office if you have any questions:
Email: pvs@dkpto.dk
Phone: +45 4350 8301

The Enterprise Europe Network develops a set of tools to improve its offer of IP services to businesses

Business Support on Your Doorstep

A key aspect of the Enterprise Europe Network services is to help SMEs to trade and exploit their Intellectual Assets (IA) on an international level.

Enterprise Europe Network partners offer their intellectual property (IP) knowledge as an integral part of their services in order to improve innovation management in SMEs. In order to further develop their capacity to provide advice on IP issues, Enterprise Europe Network partners decided to create a Working Group on “Intellectual Property”. A first working group had worked on the following domains:

1. Definition of the role of IP within the 3 main core activities of the Network (business cooperation, technology transfer, support to FP7 participation);
2. Identification of methods for better implementing the IP support in the current activities of the Network;
3. Building synergies and cooperation with other national/regional public IPR services and/or experts;
4. Identifying/designing a learning plan to develop the capacity of the Network partner to provide basic advice on IP issues;
5. Exchange of good practices and tools on IP to raise SMEs’ awareness on IPR issues;
6. Providing feedback for the future services of the IPR Helpdesk.

As a result, they developed an efficient set of IP awareness raising, enforcement and management tools adapted to the needs of Enterprise Europe Network advisors for the benefit of SMEs. Some of these tools are presented below.

A Methodology for cooperation with IP stakeholders

Building on these results, a second working group was launched. 15 dynamic IP advisors of the Enterprise Europe Network partners coming from 11 European countries and coordinated by Mike Snape, EENN, UK were given the remit to propose:

1) How to deliver solutions for an integrated collaboration with major IP stakeholders;
2) What new and upgraded existing IP tools for Network partners and their client SMEs should be provided and;
3) How to deliver specific and tailor-made training aimed at helping Network Partners to build capacity to provide efficient IP services to SMEs.

As a result, they developed an efficient set of IP awareness raising, enforcement and management tools adapted to the needs of Enterprise Europe Network advisors for the benefit of SMEs. Some of these tools are presented below.
A guide on “Recommended methods for cooperation between Enterprise Europe Network and IP stakeholders” proposes methodologies and instruments for setting up and consolidating an efficient, systematic and mutually beneficial cooperation between the Enterprise Europe Network partners and the European network of National IP Offices (NIPOs), PATLIBs, the European IPR Helpdesk and other IPR Helpdesks. The objective is to foster networking and direct contact with the organisations involved in innovation support and IP services in order to promote a greater use of the intellectual property system and to meet the IP needs of SMEs in Europe.

A comprehensive “IP Journey Map” for Enterprise Europe Network Advisors

An “IP Journey Map” has been created for Enterprise Europe Network advisors to guide their clients through the IP process from idea generation to commercial revenue.

Through the “IP Journey map” Enterprise Europe Network advisors can access a large spectrum of expert tools and guidelines created by various stakeholders like the Network itself, Innovaccess, European IPR Helpdesk, ip4inno, EPO, OHIM, WIPO and USPTO.

A well-detailed and elaborated “Mind Map” to list an “efficient set of IP tools” linked to all possible steps of IP services provided to Enterprise Europe Network clients is of high value for partners.

It facilitates the exchange and share of knowledge. Streamlining the kind of IP services that should be delivered by the Network is crucial, so is identification of IP providers to see the overlapping/complementary parts.

Creation of IPR guidelines for Enterprise Europe Network advisors

In summary, the "Guidelines for IPR issues for Enterprise Europe Network advisors" aim to:

- Help the Enterprise Europe Network advisors understand key issues on intangible assets, including a subset of these intangibles, i.e. intellectual property rights (IPR);
- Explain why the Enterprise Europe Network advisors should be aware of such intangibles and how appropriate management of such can increase the value of a client’s business;
- Provide a focus on IP issues in day-to-day Enterprise Europe Network practice, such as issuing cooperation profiles on the Enterprise Europe Network databases or brokerage event sites etc.;
- Help advisors capture successes and outputs from IP advice and to cooperate with other IP stakeholders to disseminate details on such successes.

If you are interested and want to know more, you can contact:

- your local Enterprise Europe Network contact point. Find it here: http://een.ec.europa.eu/about/branches
- or directly Mike Snape, the coordinator of the IPR Working Group mike.snape@eenw.org
The European IPR Helpdesk Ambassadors: enhancing the outreach of EU IP support to European SMEs

One of the major objectives of the EU IPR Helpdesk is to raise awareness on the importance of Intellectual Property (IP) and Intellectual Property Rights (IPR), and build IP capacities among European SMEs all across Europe. This is primarily done by providing training events in the different European countries and by developing and disseminating a broad range of publications.

The official language applied in all these activities is English. However, when it comes to addressing SMEs in the specific European regions, a language barrier still becomes evident. Against this background, the EU IPR Helpdesk together with the Enterprise Europe Network has set up a cooperation scheme to foster a strong network of regional IP focal points: the EU IPR Helpdesk Ambassador.

After the recent close of the third open call for applications the European IPR Helpdesk ambassador team currently counts 48 officially approved ambassadors from 22 countries with four more applications still under negotiation. Thus, with more than 50 experts expected to be on board by the end of this year the scheme has proven a big success.

Our ambassadors are highly experienced members of the Enterprise Europe Network with a strong track-record in dealing with IP questions, who will help in promoting the Helpdesk services and providing basic IP training and information directly at their clients’ doorstep.

INTERVIEW

“Thanks to the EU IPR Helpdesk’s already-prepared and reliable sources, I can make use of these ready-made training presentations and publications just by translating them into Turkish, which eases my work.”

Onur Emul from the Istanbul Chamber of Commerce and one of our EU IPR Helpdesk Ambassadors in Turkey shares with us his thoughts on the benefits and opportunities the scheme offers to him and his clients.

Onur, you have been one of the first to join our team of EU IPR Helpdesk Ambassadors. Could you tell us why you wanted to take part in this collaboration scheme?

Today, the world is more global than ever... OK, I know, this sounds a horrible business cliché but, who can say it is not? However, we should admit that language is still an issue. Think about the EU itself... I mean when EU’s multinational and multilingual structure is taken into account, we see that standardizing all the procedures and accessing accurate information would not be that easy for SMEs. Now, think about IP Rights, which is already a complex notion by its nature... Language barriers, incompetent and messy information make this troublesome IP world even more complicated for clients. When I heard the news about the creation of the Ambassador scheme, I thought that it could be utilized as a very helpful tool to create broadened awareness on IP matters, provide precise information without language barriers and localize the events by making use of the world’s largest business network, EEN. So, I shouldn’t have stayed solely as a witness, I thought I should take an active role as an Ambassador.
You know, the motto of Enterprise Europe Network is “business at your doorstep”, but now we have another guest, namely IPR, at our clients’ doorstep. What is more, this guest is speaking your language and you can now easily understand each other!

Could you tell some examples of how your role as an EU IPR Helpdesk Ambassador has helped your daily work?

Actually, I can give you two examples: one from our view and another from our clients’. I am a patent and trade mark attorney in my country and working for Enterprise Europe Network for nearly 5 years. Thus, I have already organized a number of events on IPR and have tried to assist our clients with their IPR issues either by answering their questions or by dissemination of some publications. However, it was time-consuming for me to create content for training or for publications. Thanks to the IPR Helpdesk’s already-prepared and reliable sources, I can make use of these ready-made training presentations and publications just by translating them into Turkish, which eases my work.

Let me also add that the Ambassador Scheme puts me in direct contact with a large number of IPR professionals over its own unique network and I have been introduced to many esteemed Ambassador colleagues all over the world. From the clients’ aspect, the Ambassador scheme undoubtedly provides an invaluable source. As it is not very easy to find information in Turkish, especially when it comes to international protection of IPR or advanced IP strategies such as IP valuation, IP management or IPR in Framework Programmes, it was very hard for us to refer our clients to a reliable Turkish information source. But now, we are able to refer our clients to some of the IPR Helpdesk’s documents in Turkish. Although they are limited for the time being, I can assure you that the number of these sources will increase rapidly in a short time.

In your opinion, what can the European IPR Helpdesk bring to the Ambassadors to help them further assist SMEs?

I believe that it would be very beneficial for us to get together with all Ambassadors at least once a year in a conference-type meeting to share our thoughts, to discuss our clients’ problems, to discuss the latest IP developments and to talk about how we bring this information to our clients in an easier, shorter and simple way. Besides, translated non-English materials can be made available on the IPR Helpdesk’s public website for easier access by our local clients.

Also, specific training can be organized exclusively for Ambassadors about brand new IP developments – for example, IP in Horizon 2020 or EU Patents just to keep us up-to-date.

How can the European IPR Helpdesk have a stronger impact in the Enterprise Europe Network and consequently in SMEs?

The IPR Helpdesk can use Enterprise Europe Network as a tool for accessing local SMEs and for pointing out their needs as the IPR Helpdesk is now even closer to millions of European SMEs through the Enterprise Europe Network. For example, surveys can be conducted to identify SMEs needs in terms of IP with the help of Ambassadors and the results can be employed for developing further services.

Speaking of strengthening the impact of the IPR Helpdesk, we must also be sure that this scheme should cover all Network clients in all countries; thus, in the new contractual term, I believe that it should be a “must” for each country to appoint at least one Ambassador. Moreover, identification of rational key performance indicators for Ambassadors may also help to ensure the quality of services.

Can you see already the impact of your participation in this collaboration scheme in the SMEs you give assistance to? Do you have any feedback from them?

This is a relatively new scheme and the activities began just this summer, you know... I mean, the guest has just arrived at the doorstep, and is waiting to be welcomed by our clients to help them in these matters.

Could you tell us what are the most common concerns in terms of IP of your local SMEs?

You know, Turkey is a protracted EU candidate country since 1999 and it seems we have a long way to walk. According to Commission’s Screening Report, our IP provisions are in line with EC law to a large extent. Indeed, IP is among one of the few opened negotiation chapters. However, IP protection is not at the demanded level in our country, which is one of main obstacles in Technology Transfer agreements. SMEs do not widely know how to protect their IP values and hesitate to share their inventions and ideas. If you have a look at some statistics, you will see that Turkey is in the top five countries that have the fastest growing rate in IP applications. But the quality of these applications is, yet, questionable. Do you know that more than half of the applied patent applications are rejected as they do not meet patentability criteria? I am pretty sure that it is more or less the same in many countries, which means we are still stuck on the basics. Thus, without any loss of time, we should solve the problems of awareness and IP basics and thereupon, we must move on other issues and most frequently asked questions such as IPR enforcement, parallel import/grey market, “freedom to operate” analysis and so on... But as I said, the guest just arrived at the doorstep, and is waiting to be welcomed by our clients to help them in these matters.

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**Fancy a little quiz?**

As you know in every issue we include a quiz to help you develop your patent searching skills using Espacenet. Why don’t you try using Espacenet today? Here comes our new quiz:

### TEXTING WHILE DRIVING

As well known and defined on wikipedia: texting while driving is the act of composing, sending or reading text messages or email, or making other similar use of the web on a mobile phone while operating a motor vehicle. The practice has been viewed by many people and authorities as dangerous.

Using Espacenet, try finding patents relating to systems preventing a driver using his mobile in this mode while he is driving his car.

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**Step one:** To find similar patents, identify the most pertinent aspects of the invention – common technical features that may be found in related patents – and for each aspect, define a comprehensive set of synonyms. To perform the search, the following concepts – groups of synonyms covering the different aspects of the invention – can be defined:

- texting, e-mail*, sms, mail*
- driv*, car, vehicle
- mobile, phone, cell*

For this invention, the simple combination driv* and texting yields an interesting list of results. From this list several relevant patents can be retrieved, such as:

- **US2013172018 (A1)** - Restriction Method and Apparatus for Texting Based on Speed
- **US2011223939 (A1)** - System For Tracking Text Messaging While Driving

This is a rather straight forward search that can be pursued using patent classification if you strive for comprehensiveness.

**Step two:** Use the classification assigned to relevant documents to refine and complete the search.

There are many classification symbols possibly relevant to this invention, like:

- **H04M1/66** Devices with means for preventing unauthorised or fraudulent calling
- **H04W4/12** Mobile application service signalling using messaging, e.g. SMS [Short Message Service]
- **H04M1/72547** Mobile phones with interactive input/output means for internally managing multimedia messages
- **H04W4/02** Services making use of the location of users or terminals

As seen here, there is a diversity of classifications that can be assigned to this invention. This makes a comprehensive search difficult as one has to combine all those classifications and maybe more that can be found during the search process with the concept “driving”.

Combining **H04W4/02** with **driv** and **prevent** yields additional results like those ones:

- **WO2012044985 (A2)** - SYSTEM FOR LIMITING MOBILE DEVICE FUNCTIONALITY IN DESIGNATED ENVIRONMENTS
- **GB2495694 (A)** - Limiting information displayed on a mobile device when its speed exceeds a predetermined threshold.

It is clear that there is a high number of relevant patents relating to such systems. If one wants to be comprehensive to know if his product does not infringe a patent held by a third party, this search must be more extensive and also based on professional tools. In any case, the results show that the field is well covered (the basic concept has been patented and is not new). This indication is sometimes sufficient for inventors who simply wanted to patent this basic invention.
This is a rather atypical search that requires some preparatory steps best performed on the Internet to quickly drill down the patent search.

**Step 1:**

The first step can consist in searching the Internet for NERF and Patent. The results show that this Trade mark is currently owned by Hasbro. Based on this first result, a patent search can be limited to Hasbro patents relating to Toy guns.

**Step 2:**

As a second step one can search for patent containing the word gun* and held by Hasbro. By doing such a search you obtain this list. One option is to browse through the whole list and check if the figures of one patent refer to the model hold by the boy. Another option is to add cock* as an additional keyword in the search statement.

This search results in this list of 4 documents. This can be seen by comparing the gun on the picture with this patent figure below:

US2013067787 - COCKING SYSTEM FOR DART LAUNCHER

Toy guns

Many kids are fond of NERF guns. Those are plastic toy guns that shoot foam bullets. They are quite fun to play with – even for parents. The model that the boy is holding has a specific cocking mechanism: the plastic handle can be pulled to cock this toy gun.

The model can also be found in these images.

Using Internet sources and Espacenet try to find a patent relating to this mechanism containing figures exactly matching the model the boy is holding.
The Bulletin is published three-monthly by the European IPR Helpdesk and it is distributed free of charge. All issues of the Bulletin are available at www.iprhelpdesk.eu/library/bulletins.

 Got in touch

Should you have any ideas, comments or suggestions related to topics you would like us to cover in future Bulletin issues, please get in touch with us on LinkedIn: www.linkedin.com/groups/European-IPR-Helpdesk-3834260

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GLOSSARY

Dissemination
in the context of the Seventh Framework Programme (FP7) refers to the disclosure of foreground by participants through any appropriate means and including the publication in any form. The disclosure of foreground that results from formalities for protection (such as the patent application publication) is not considered as dissemination.

Access Rights
are in the context of the EU funded projects, licences and user rights to foreground or background that is held by another consortium partner.

Community Trade Mark
is a trade mark registered with the Office for Harmonization in the Internal Market (OHIM) and valid for the entire European Union. It lasts for 10 years and can be renewed indefinitely.

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