In the context of Horizon 2020 Marie Skłodowska-Curie Actions (MSCAs) Intellectual Property (IP) rules have a crucial importance both for public and private sector participants. Therefore, the European IPR Helpdesk focused the first article of this Bulletin on some new aspects of the rules on dissemination and exploitation under MSCAs.

This issue also brings you useful information related to counterfeiting and IP enforcement in Europe with two articles. The first one is an overview of the results of a study published by the Office for Harmonization in the Internal Market (OHIM) on the economic impact of counterfeiting and piracy in the cosmetics and personal care sector. The study focuses on the negative impact of counterfeiting for these industries sectors. The second article presents the advantages of the IP customs action as an effective tool against counterfeiting within the European Union. This action allows right holders to prevent the entry into the European Union of goods suspected of infringing their IP rights following a fast and cost-effective procedure. Expensive and long IP enforcement actions are indeed one of the major problems for SMEs facing counterfeiting.

The Bulletin also features an article presenting Effective Dispute Resolution (EDR), an active case management tool guiding the parties of a proceeding before the OHIM’s Board of Appeals in the resolution of their disputes to ensure that these are resolved in the most effective way.

Then, Prof. Dr Alexander Wurzer describes us the importance of developing an IP protection strategy at the earlier stage of the conception of business models.

And finally, the last article illustrates the functioning of WIPO Translate, a useful tool developed by the World Intellectual Property Organization (WIPO), allowing users to easily and quickly consult the results of any search within the PATENTSCOPE database and to choose among a broader variety of translation languages.

As always, you will find a little patent quiz and information about past training and events.

In addition, this issue also has some fresh news on the Helpline service. Therefore, if you want to find out which are the hottest topics at the Helpline, do not miss this Bulletin issue.

Wishing you inspiring reading!

Your editorial team
From Marie Curie to Marie Skłodowska-Curie actions

European IPR Helpdesk

The launch of the new EU Framework Programme for Research and Innovation Horizon 2020 (H2020), replacing the former Seventh Framework Programme (FP7), placed a fresh emphasis on innovation and increased the drive towards supporting the competitiveness of innovative SMEs and entrepreneurs within the EU and internationally.

Due to the increased market-driven funding approach and the consequent accentuated interest in turning research outcomes and technological developments into value-creating products and services, the proficient management of the intangible assets generated in research projects becomes crucial to ensure that investments made at EU level in H2020 are fully valorised into patents and innovative products.

Although the rules concerning Intellectual Property (IP), exploitation and dissemination of project outcomes have been modelled on the widely acknowledged FP7 provisions, further improvements and clarifications have been provided in relation to the H2020 research projects.

Among these projects, the so called Marie Curie Actions are not an exception and, in order to give an overview of the main changes involved after the launch of Horizon 2020, we will outline the most relevant amendments and improvements in the rules governing these projects with a special emphasis on IP related issues.

Main changes

As of January 2014, with the move to Horizon 2020, Marie Curie Actions are now called Marie Skłodowska-Curie Actions (MSCAs). The new denomination, better reflecting the Polish roots of the scientist who inspired the programme, marks indeed the difference between the actions funded under the former FP7 (Marie Curie Actions - MCAs) and those funded under the Horizon 2020 Framework Programme (Marie Skłodowska-Curie Actions - MSCAs). It is to these last actions that the amended rules will apply. These rules can be found in the Horizon 2020 Rules for Participation and are reflected in the model grant agreements for MSCAs.

The amendments and improvements of IP related rules reflect the main principles inspiring the management of IP rights under Horizon 2020 and, as it will be explained in the following paragraphs, they mostly regard access rights to background and dissemination. The major part of IP rules applicable to MSCAs follows what was already in place in FP7 MCAs: rights of ownership for each beneficiary generating a result, default joint ownership regime, minimum access rights to background and results, obligations to protect and exploit the results, and so on. The next paragraphs therefore focus on the main IP provisions which have changed from MCAs to MSCAs, and more generally from FP7 to H2020.

A) Identification of the background

As illustrated in the chart below, the definition of “background” in H2020 MSCAs did not change substantially from the wording used under the FP7 Framework Programme. Within the definitions, a difference in terminology can be found in the alternative word “Results” used to identify the outcomes generated during the project that has substituted the term “Foreground” in all the actions under H2020.

Nevertheless, as regards the identification of background, while in Marie Curie Actions (under FP7) there was no obligation to agree accurately on the available background, in MSCAs under H2020 the beneficiaries must agree in writing on what constitutes background within the action (in order to be able to give access to it). The written agreement may take any form (e.g. positive list, negative list). It may be a separate agreement or may be part of the consortium agreement (e.g. by way of an annex).

Beneficiaries may agree to exclude specific background. Such an exclusion may be temporary (e.g. to permit the adequate protection of the background prior to providing access) or limited (e.g. to exclude only one or more specific beneficiaries). Nevertheless, when background is considered needed for the project implementation and/or the exploitation of results, the consequences of such exclusion should be carefully examined beforehand.

Furthermore, beneficiaries are strongly advised to agree on background before the Grant Agreement is signed, to ensure that they have access rights to what is needed to implement the action (and then to exploit their results).

B) Dissemination: Open Access to Publications

In projects funded under FP7, there was no general open access obligation in relation to scientific publications. Nevertheless, certain Grant Agreements contained a special clause on open access.

Background in MCAs under FP7

Information and knowledge held by the participants prior to their accession to the Grant Agreement, as well as any intellectual property rights which are needed for carrying out the project or for using the foreground.

Background in MSCAs under H2020

Any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:

- is held by the beneficiary before its accession to the Agreement, and
- is needed to implement the action or exploit the results.
On the contrary, open access to peer-reviewed scientific publications has been anchored as an underlying principle in the Horizon 2020 Rules for Participation, and it is implemented through relevant provisions in the relevant model grant agreements.

In particular, in MSCAs each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results. In line with the main principles inspiring the Horizon 2020 framework programme, this provision aims at speeding the scientific progress and the return on R&D investment (in particular on publicly-funded investment) which has enormous potential for boosting productivity, competitiveness and growth. It has to be pointed out that open access will not affect the IP linked to research results, because the decision on whether to publish open access documents comes after the decision on whether to first seek protection for IP rights. At the same time the author (or the beneficiary, in case of the author’s rights contractual assignment) will retain copyright on the publication, despite the work being made available in open access. Furthermore, considering that the vast majority of academic journals support open access, this obligation does not impose strong restrictions on the researchers/institutions, who can still publish in the journals that they consider most appropriate.

c) Dissemination: Open Access to Research Data

Another novelty of MSCAs under H2020, is the Open Research Data pilot (hereinafter the “Pilot”) which aims to improve and maximise access to and re-use of research data generated by projects.

Therefore, within the actions taking part in the Pilot, beneficiaries must deposit the research data needed to validate the results presented in the deposited scientific publications, ideally in a data repository.

The reason for this obligation relates to the fact that publications increasingly include the data underpinning the results presented therein, also referred to as “underlying” data. These data are needed to validate the results presented in the open access scientific publication and they are therefore seen as a crucial part of the publication and an important ingredient enabling scientific best practice.

Not all projects automatically fall into the Pilot. For the 2014-2015 H2020 Framework Programme, only projects covering specific research areas will be automatically encompassed in the Pilot. However, other projects will be able to join the Pilot on a voluntary basis.

Conclusion

Although the rules concerning IP in MSCAs have been modelled on the widely acknowledged FP7 provisions, the amendments and improvements provided after the launch of H2020 reflect the main inspiring principles of the new innovation framework programme: the increased market-driven funding approach and the accentuated interest in the return on R&D investment in terms of productivity, competitiveness and growth.

As outlined above, the changes made to IP provisions governing the MSCAs mainly relate to the identification of the background and to the open access obligation.
The Economic Cost of IPR Infringement in the Cosmetics and Personal Care Sector

Office for Harmonization in the Internal Market (OHIM)

OHIM, acting through the EU Observatory on Infringements of Intellectual Property Rights, has already published two major studies on different aspects of IP.

The first, the IP Contribution Study, carried out in conjunction with the European Patent Office, looked at the economic contribution of IP to the EU economy. The second, the IP Perception Study, examined how EU citizens viewed IP.

Now the Observatory is working to complete the picture by assessing the economic impact of counterfeiting and piracy in a number of different industry sectors.

The first sectorial study, released in March 2015, quantifies the scope, scale and impact of IPR infringement in the cosmetics and personal care sector.

The economic cost of IPR infringement in the cosmetics and personal care sector study looks into the direct and indirect industry revenue losses and job losses due to the presence of counterfeit products.

This sector is one which produces things that we all use every day. Soaps, shaving cream, perfume, make-up, shampoos, deodorants, toothpastes and sun cream are just some of the products in this category. Based on official data, it’s estimated that the total consumption of the EU of products in this sector was €60 billion in 2011 – that’s around €120 per capita. The study’s findings are stark. Sales of counterfeits in this sector throughout the EU mean that legitimate manufacturers, retailers and distributors lose €4.7 billion of revenue each year.

That equates to 7.8% of the total sales in the cosmetics and personal care sector throughout the EU-28.

That lost revenue translates into 50,000 lost jobs, as the legitimate industry sells less than it would have done in the absence of counterfeiting, and therefore employs fewer workers.

The report, the first in a series of economic studies assessing the economic impact of counterfeiting in the EU economy, also found that when the knock-on effect on suppliers are taken into account, legitimate businesses across the EU lose €9.5 billion of sales revenue because of counterfeiting, with around 80,000 jobs lost.

Furthermore, €1.7 billion of government revenue is lost due to the presence of counterfeiting, reflecting income taxes, social contributions and VAT that are not paid by the producers and sellers of counterfeits.

Carrying out the analysis of this sector proved very challenging from a methodological point of view. Counterfeiting and piracy are by their very nature secretive activities, and are largely hidden from view.

As a result, the research team in the Observatory had to develop a step-by-step approach to evaluate the negative impact on counterfeiting and its consequences for legitimate businesses, governments and consumers, and ultimately society as a whole.

All the data used in the analysis came from official sources, including Eurostat, and the Observatory team prepared the definition of a workable methodology and tested it. Once that was done the analysis work began, and the report itself was released at the beginning of March 2015.

It’s important to point out, though, that this is just the first of several sectorial reports. Over the next few months, a number of other studies will be rolled out.

The Quantification of IPR infringement study series, as the research work is officially known, comprises a dozen of specialised studies in other sectors such as clothing, footwear and accessories; medicines; tobacco; luggage and handbags; alcoholic beverages, as well as the sectors of games and toys, computers and automotive parts, watches and jewellery.

Taken together, these studies are complementary and provide a complete and objective picture of the negative impact of counterfeiting and its consequences for legitimate businesses, governments, consumers, and ultimately society as a whole. The studies all focus on key results such as lost sales, revenue and employment, as well as on knock-on effects on other industries and on government revenue.

In parallel, the Observatory has embarked on two different joint studies. One with the Organization for Economic Cooperation and Development (OECD) aims at estimating the value of counterfeit goods in international trade and the second one is being carried out with the support of the Joint Research Centre of the European Commission to study infringements in the music, film and e-book industries.
EU IP customs action: a cost-effective weapon against counterfeiting

European IPR Helpdesk

Countless Small and Medium-sized Enterprises (SMEs) experience nowadays the introduction in the market of copies and counterfeits of their products. The harm caused by counterfeiting and piracy cannot be underestimated. Every sale made by a counterfeiter is a sale that a legitimate business will never make. Furthermore, because the counterfeiter is unlikely to have access to the same quality raw goods, the resulting counterfeit product is often inferior in quality compared to the genuine product. As a result, an introduction into the market of a single fake product has the potential to undermine and potentially damage years of building a business’ goodwill and reputation.

Accordingly, all businesses incorporating valuable brands, appealing designs and/or innovative products should develop and implement anti-counterfeiting and piracy strategies and build them into their everyday business practices.

In this regard, one of the most effective tools offered by European legislation is represented by the EU customs action, enabling right holders to request customs authorities to prevent the entry into European Union Member States of goods infringing their rights.

This efficient economical weapon has been strengthened thanks to the entry into force of a new customs regulation in January 2014 (Reg. No 608/2013). The new regulation, replacing the previous regulation No 1383/2003, provides specific rules aiming to improve operational performance and to expand the range of Intellectual Property (IP) rights covered, thus responding also to the problem of Internet sales.

EU customs action in a nutshell

a) Broad scope of rights protected

IP right holders can rely on the EU custom enforcement as a tool to protect a broad range of IP rights. Indeed, under the new regulation, additional types of intellectual property rights have been included within the scope of the customs action. If under the previous regulation (Reg. No 1383/2003) these rights were limited to trade marks, copyright, design rights, patents, plant varieties and designations of origin, now they also include:

- trade names (if protected under national law);
- utility models (in countries where protection is available);
- topographies of semiconductor products;
- circumvention devices.

The inclusion of these additional IP types will give rights holders new bases to seek assistance from customs authorities. This is very significant, for example, in relation to circumvention devices, considered that videogames, software or audio-visual pirated products nowadays are not only distributed in physical form, but they are downloaded from the Internet and used on digital devices through the employment of “circumvention devices”.

Nevertheless, unregistered trade marks and unregistered design rights are excluded. Rights holders should take it into account when deciding whether to register or not their distinctive signs and design. In fact, although the registration of IP rights imply costs, it constitutes a pre-requisite to apply for custom protection.

b) The application for action

In order to obtain the regular intervention of the customs authorities in a specific territory, it is necessary to file an application for custom action. It must be submitted to the competent customs departments designated by the Member States, using a specific application form.

There are two types of applications:

- National application: an application submitted in a Member State requesting its customs authorities to take action in that Member State.
- Union application: an application submitted in a Member State requesting the customs authorities of that Member State and the customs authorities of one or more other Member States to take action in their respective territories.

The Union application presents obvious advantages because it allows rights holders to file a single application asking for customs enforcement in any of the Member States of the European Union. Nevertheless, only community IP rights owners (i.e. Community trade marks and/or Community designs owners) can file a Union application. This circumstance should be taken into consideration in defining the IP portfolio registration strategy.

Apart from the IP rights to be enforced, the application form must be completed, inter alia, with specific and technical data on the authentic goods, including markings such as bar-coding and images where appropriate along with any information needed to enable the customs authorities to readily identify the goods.

c) The simplified procedure

Once the application is successfully filed and granted, the customs authorities will proceed...
to the seizure of any suspected infringing goods in the relevant territory.

After the seizure of the goods, customs authorities have the power to destroy infringing goods at the expense of the right holder, provided that the owner or the declarant of the seized goods does not oppose the destruction within ten working days from the notification of the seizure (3 days for perishable goods). Under the new regulation Member States are obliged to implement this simplified procedure that allows the destruction of the seized goods in presence of consent or even silence of the owner/declarant of the goods.

On the contrary, if the counterparty objects to the destruction, the right holder must negotiate a settlement agreement, and according to the applicable national law enforce its IP rights in civil and/or criminal proceedings.

The simplified procedure implies several advantages for IP rights holders in terms of costs and time saving. In fact, it does not require anymore a judicial declaration on the counterfeit nature of the goods in lack of the owner’s explicit opposition to the destruction. As a consequence, in such circumstance, preventing the introduction of infringing goods in the market through their destruction becomes:

- fast - it can last ten days or less;
- simple - it only requires the owner/declarant’s authorisation (or his silence) to destroy the infringing goods;
- cost effective - it does not imply the significant costs of a judgement.

In order to have a schematic overview of the procedure you can refer to the chart above.

d) Ex officio action procedure

Customs authorities can also discretionally detain goods suspected of infringing an IP right that is not covered by a valid application for action. In this case, they will try to locate the person or entity entitled to submit an application (“ex officio action”). Once the person or entity is notified, this can submit a national application within four working days from the notification. Once the application is granted, the same procedural rules, as above illustrated, will apply.

e) Small consignments

Small consignments are defined as postal or express courier consignments that contain three units or less or that weigh less than two kilograms. Under the new regulation, customs authorities have the right to seize and destroy small consignments, provided that:

- the right holder has authorised customs to take such action in its customs application; and
- the recipient of the seized goods does not object to the destruction within ten working days.

This new procedure is a key benefit for right-holders considering the massive rise in Internet shopping and the resultant increase in small consignments.

f) Goods in transit

Goods in transit are goods that, even in transit in the territory of the European Union, are destined to be placed on the market of non-EU countries.

In this regard, the new regulation (like the previous one) does not provide any plain rule. The lack of clear rules has led to a situation where the customs of some Member States seize goods in transit and some do not.

As a consequence, right holders are strongly encouraged to refer to the relevant national customs regulations and/or legislation in order to assess the practice adopted in the territory of interest.

USEFUL LINKS

- Manual for the Completion of Applications for Action and Extension Requests
- Contact Details for Submitting Applications for Action by the Customs Authorities against Goods Suspected of Infringing Certain Intellectual Property Rights
- Form of the application for action
- Office for Harmonization in the Internal Market (Trade Mark and Design)

1 Right-holders may opt-in or opt-out of participation in the new small consignments procedure through a simple tick-box on the application form.
Practical tips for rights holders

Due to the obvious advantages offered in terms of time, costs and procedural simplicity, custom actions provide an efficient economical weapon that IP rights holders are encouraged to consider in setting a proper strategy for the protection of their intangible assets.

However, in order to take advantage of such tool, the following tips have to be taken into consideration.

1. Register your IP rights

Given that unregistered IP rights are not encompassed in the scope of the regulation, in order to take advantage of the IP custom protection, it is important to secure your IP right with a registration. Moreover, in defining your registration strategy, it’s worth taking into account that the registration of Community trade mark and Community design will allow you to file a Union application and to obtain custom protection in any of the Member States of the European Union. In order to have more information on Community trade mark and Community design consult the OHIM website.

2. File an application for action

In order to ensure the regular intervention of the custom authorities against the introduction into the market of fake products, it is extremely important to file an application before a national custom authority. If you are the owner of a Community trade mark and/or design, keep in mind that filing a single Union application will allow you to obtain a broader territorial protection.

3. Fill in the application form with all the relevant information

To allow custom authorities to effectively intervene, it is important to insert in the application form all the relevant information that could be useful for the custom agents in order to identify suspected infringing information. Such information should not be limited to the IP rights to be enforced but should encompass specific and technical data on the authentic goods including bar-coding and images where appropriate.

Further information regarding the completion of applications for action can be found in the official Manual published by the European Commission on the following link.
Effective Dispute Resolution at OHIM’s Boards of Appeal

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The Boards of Appeal hear cases on appeal from the first instance departments of OHIM. The decisions taken at first instance involve ex parte absolute grounds, relative grounds at both opposition and cancellation level (inter partes proceedings), register (transfers, licences, conversion, seniorities, etc.) and design matters. Last year alone, the 18 members of the Boards received 3,284 new appeals. There is thus an obvious need to deal with this significant volume of work as efficiently as possible for the benefit of the Office and its users. The solution that the Boards have devised to deal with this challenge is Effective Dispute Resolution (‘EDR’).

EDR is effectively a product of active case management and is a process by which the member acting as rapporteur guides the parties, as case manager, to the most suitable mechanism for resolving their conflict. EDR strives not only to decide a specific case before the Boards but also to try to offer a solution for parallel disputes involving the same parties.

The current EDR options are as follows: Single member decision, full panel decision, Grand Board decision, conciliation and mediation.

Single Member Boards: A decision may be taken by one member of the Board, thus saving time and resources, where the case:

- is a straightforward absolute grounds case confirming the first instance decision;
- closes the proceedings following an agreement between the parties;
- fixes the amount of costs or reviews the amount of costs determined by the Registry;
- only concerns the admissibility of the appeal.

Full panel decision: This is the normal appeal mechanism before the Boards of Appeal in which three members sit on a panel and decide the case, following deliberation, by a simple majority. In the past, when the volume of appeals was significantly smaller, all cases were decided efficiently in this way. Many cases are still satisfactorily resolved in this way, but given the rising number of appeals, the Boards is taking a closer look at each case to decide whether this is the most efficient mechanism.

Grand Board: The Grand Board consists of nine members. Cases may be referred to the Grand Board if the legal difficulty, or importance of the case, or other special circumstances, justify such referral. For example, if individual Boards of Appeal have issued diverging decisions on a point of law arising in a particular case, that case may be referred to the Grand Board. Referral may be made by the rapporteur (acting through the Chairperson of an individual Board) or the Presidium (the Board of Appeals’ administrative organ).

While full panel and Grand Board proceedings are usually in writing, in a limited number of cases, it may be appropriate and most efficient to hold an oral hearing at which the parties and Board-appointed experts have the opportunity to elaborate more fully on facts and arguments.

Conciliation: In appeals involving inter partes proceedings, the Board may, through the Rapporteur handling the case file, encourage the parties to put an end to the dispute and, if appropriate, submit proposals for a friendly settlement. The Rapporteur may, amongst other things, call the parties individually, set up a conference call, or write to the parties, to explore the possibilities of friendly settlement and to ask them to supply information or particulars which may help to come to a friendly settlement. In so doing, the Rapporteur remains bound by the principle of impartiality and must guarantee the principle of adversarial proceedings. Such initiatives do not bind the Board in any way and nor must they be seen to do so. In communicating with the parties, the rapporteur will thus refrain from expressing any personal opinion on the outcome of the case (were a decision to be taken) and will keep the content of the Board’s deliberations secret. The Rapporteur may propose that the parties request a suspension of the proceedings in order to negotiate a settlement agreement, with or without the assistance of the Board. Should the conciliation fail, the appeal proceedings will resume. The conciliation procedure is not part of the appeal proceedings and any documents exchanged are dealt with confidentially, i.e. they are not made available externally.

Mediation: It is, in its purest form, a process whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. Mediation is structured, confidential and, as already stated, purely voluntary. It differs significantly from conventional legal procedures. Whereas conventional litigation revolves around setting out the differing positions of the parties and their respective merits with respect to the law, mediation focuses on resolving the dispute by making the parties’ interests – particularly their business interests – pivotal to the process and by reconciling their differences. For parties involved in a dispute, mediation is clearly a valuable tool. Intellectual Property is often a strong source of cross border disputes due to its increasingly global nature. The high cost of litigation and its often lengthy process are off-putting for many, particularly for small businesses who have neither the time nor the money to devote to a long court battle which no one can be certain of winning.

It should be noted that any guidance offered by the rapporteur, acting as case manager, is not obligatory or binding on the parties. The default solution will always be a written decision.

EDR seeks to empower the parties in the resolution of their dispute under the guidance of the Board. Choices are available to the parties in the way their dispute may be settled and they need to be aware of this fact to ensure that their dispute is resolved in the most efficacious manner possible. By offering these possibilities, OHIM’s Boards of Appeal endeavour to be at the cutting-edge of 21st century dispute resolution.
IP protection of business model in SMEs - Case Study Stöbich Fire Protection

Prof. Dr Alexander Wurzer
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It is a common practice for the big technology oriented corporations to use intellectual property in order to prevent others from using the whole business model. This results in high profits and even higher barriers for other companies to enter the markets of interest. We all know the following big players and their products: Apple, Siemens, Dell, Google or Samsung, etc.

German Small and Medium-sized Enterprises are rather reluctant to believe that someone can use patents in such manner: “Is it possible to protect a whole business model?” That was exactly the reaction of Dr Stöbich, the founder of Stöbich Brandschutz GmbH, a medium enterprise of 360 employees from Goslar. Nowadays, the modern IP strategies do not only consider protecting the innovative technical solution from being copied. They should rather provide long lasting differentiation advantages over competitors and thus improve the return on their innovative activities.

Dr Stöbich got the point immediately. The idea of patents as prohibitive rights must deal with optimizing the exclusivity from the economic point of view. In other words, the business model shows what shall be prohibited to others. How it works in practice can be shown on the example of Stöbich’s fire protection for lithium-ion batteries.

The fire security experts duly investigated the lithium-ion batteries installed in electric cars or buildings in terms of fire safety. The Stöbich’s idea was to find a solution to the “burning” problem of the batteries and thus to develop the whole new business segment, efficiently patenting its components.

Initially, the technical problem was identified: despite the introduction of modern battery management systems, overheating related breakdowns were common. This happened, among others, due to external influences, ageing or manufacturing defects, and might result in spontaneous combustion and explosion.

At this point, the usual procedure would be to develop a technical solution to the aforementioned problem by, for example, preventing the chain reaction in case one single battery cell breaks down. Once such a solution is found, a patent protection would be sought in order to prevent copycats. On the other hand, there would always be the risk that competitors could develop workaround solutions to the “burning” problem and offer them on the market even at a cheaper price. This would have caused negative consequences for the Stöbich’s business model and its return.

Having in mind the aforementioned, Stöbich, with the help of IP experts from Wurzer und Kollegen, decided to follow a more market oriented approach by choosing the correct IP strategy for his business. Bearing in mind that patent planning does not start subsequently to an invention, but already at the point of conceiving the future business model, he analyzed the potential product value for the future customers, potential competitors and a value-add structure of a future battery fire prevention market.

Based on an extensive experience in fire prevention some critical areas of a possible market interest were detected, such as e.g. ignition risk reducing conduction of toxic gases or filtration of hot particles.

All these technical ‘gateways’ enabling potential competitors to develop the batteries fire prevention sector were detected, duly described and secured with patents for respective innovative solutions.

The company followed in this case the “prohibitive” approach while using the patent system. The question about economic benefits originating from such a prohibition can be only answered in the light of the business model of an enterprise.

Hence, the answer was clear for a technology leader like Stöbich: a comprehensive protection for fire protection for lithium-ion batteries - definitely a future business with good margins and high market entry barrier - is essential.

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**WIPO TRANSLATE: overcoming language barriers in patent information**

**World Intellectual Property Organization (WIPO)**

WIPO is committed to developing and making free-of-charge multilingual tools available for public good in order to contribute to the enhancement of access to technical knowledge. Therefore, WIPO has invested in machine translation and decided, in 2010, to investigate building its own machine translation tool, called WIPO Translate, using open source software ('Moses, developed in the University of Edinburgh').

The quality of machine translation was evaluated as adequate to offer this automatic translation to users on our search engine PATENTSCOPE. The evaluations showed that the quality is better than Google Translate and Bing Translate for patent applications. In February 2011, WIPO Translate became available to PATENTSCOPE users for the automatic translation of title and abstracts.

Over the years WIPO has trained new models and new languages and is now able to translate the following languages: German, Spanish, French, Russian, Chinese, Korean, Japanese and Chinese.

**Why machine translation?**

A lot of information on PATENTSCOPE is written in languages that users do not necessarily master. One of WIPO's mandates is to make this information available to all (including those who do not master the English language). PATENTSCOPE offers the possibility to search for patent applications written in a different language, thanks to its unique CLIR (Cross Language Information Retrieval) search. Then there is a crucial need to offer the possibility to understand an application written in a language he does not master.

In addition to WIPO Translate (title and abstracts) PATENTSCOPE includes the possibility to access translations of description and claims Google translate, Microsoft translate and recently Baidu translate. A recent study shows that, every day, about 5 million words are automatically translated through one of the machine translation tool available on PATENTSCOPE. This clearly indicates the need for such tools in the intellectual property domain.

**How does it work?**

WIPO Translate relies on a model called “phrase-based statistical machine translation”. This method creates a new translation model by “learning” from a set of translated sentences. In the patent domain, we take advantage of having a huge amount of translated documents to create accurate translation models. These models are very specific to the patent language, while WIPO Translate is inadequate for general texts it provides accurate translation in this domain.

**Access to WIPO Translate**

WIPO Translate is included in PATENTSCOPE and offers a “gist” translation for any text from any of the above mentioned languages to English, or from English to any of these languages.

In addition, WIPO Translate allows anybody to translate any small text (usually title/abstract or short paragraph) at the following address: http://patentscope.wipo.int/translate.

As translation requests could potentially contain confidential information, WIPO Translate uses the secure “https” protocol and ensures users that all information (including the IP address) is never disclosed (a clear advantage in comparison to other publicly available translation services).

**Translation of claims and descriptions**

A newly developed extension allows the interactive translation of claims and description (for the time being being only in Chinese language). This appears as a “Widget” on the PATENTSCOPE page.

This widget allows users to see an online translation of Chinese claims and descriptions (more languages to be added soon).

**Quality**

Machine translation quality evaluation is a tedious task, however we take care to

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1. [http://www.statmt.org/moses](http://www.statmt.org/moses)
2. [http://patentscope.wipo.int](http://patentscope.wipo.int)
evaluate each of our translation models prior to publication. Ideally we should evaluate the quality of WIPO Translate as perceived by our users. Practically this would require too many resources, so we decided to use a well-known automatic metric called “BLEU”\(^3\) (score between 0 and 100 based on the similarity of words and phrases between human and machine translated sentence). The main advantage is that we can automatically compare quality between various versions of our models.

On the following table we list the BLEU scores for WIPO Translate on test sets from the patent domain in different language pairs, for comparison we include the same BLEU score computed on a Google Translate automatic translation. We can note that on these test sets, WIPO Translate always obtain a better score than Google Translate.

WIPO Translate is now fully integrated with our search engine PATENTSCOPE in many languages and provides a tool that helps users better understand the content of patent applications. We have showed that it already provides results with competitive quality.

It is notable that WIPO Translate technology has been deployed successfully in other United Nations agencies\(^4\), trained on their own corpus and has also obtained better BLEU scores than generic machine translation engines. WIPO Translate is used at WIPO and other United Nations agencies not only for “gist” translation but also, integrated in CAT (Computer Assisted Translation) tools, to facilitate the work of professional translators. We will continue to investigate ways to improve the obtained translation quality in the future.

Contact: patentscope@wipo.int

<table>
<thead>
<tr>
<th>From language into English</th>
<th>WIPO Translate</th>
<th>Google Translate</th>
</tr>
</thead>
<tbody>
<tr>
<td>German title &amp; abstract</td>
<td>46.11</td>
<td>37.94</td>
</tr>
<tr>
<td>Spanish title &amp; abstract</td>
<td>36.00</td>
<td>33.07</td>
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<tr>
<td>Japanese title &amp; abstract</td>
<td>22.10</td>
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<td>Chinese title &amp; abstract</td>
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<td>Chinese claims</td>
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<tr>
<td>Chinese descriptions</td>
<td>38.03</td>
<td>32.40</td>
</tr>
</tbody>
</table>

Automatic evaluation of English texts from the patent domain. The evaluation is always done on 1,000 sentences randomly taken from newly published patent applications.


Your IPR queries matter to us: Ask the Helpline

The European IPR Helpdesk Helpline answers your questions concerning intellectual property (IP) within three working days. You get practical first-line support directly from our IP experts and free-of-charge.

If you are curious about the type of IP queries the Helpline is currently dealing the most, these are shown in the illustration on the right.

If you would like to talk to one of the IP experts of our helpline, please dial +352 - 25 22 33 – 333

www.iprhelpdesk.eu/helpline

Frequently Asked Questions received at the Helpline

**How do I get design rights protection?**

There are different ways to acquire design protection at national, European or International level.

At national level, you can obtain design protection by filing an application before the relevant national Industrial Property Office. In this case, the protection is limited to the territory of the country where it has been granted. Furthermore, national legislation in some countries (e.g. the UK) provides protection for unregistered designs. In order to have information on the conditions of such protection, you are strongly advised to check the relevant national legislation.

At European level, you may obtain a Community design protection valid in all member states through a single application, which can be filed (on-line or on paper) before the Office for Harmonization in the Internal Market (OHIM) in Alicante (Spain) or through any of the EU national Industrial Property Offices. Registered Community designs are protected, for a period up to 25 years, against similar designs even when the infringing design has been developed in good faith. Furthermore, throughout the European Union a new design with an individual character is automatically protected as an unregistered Community design. Compared to registered Community designs, this type of protection is less extensive (only against intentional copy) and shorter-term (3 years). For more information on the Community design, please visit the OHIM website.

If you want to obtain protection in different countries, including also extra-European territories, along with the opportunity to file several applications before the relevant national offices, there is also the option to ask for the registration of an International design. In fact, the Hague System for the International Registration of Industrial Designs provides a mechanism for obtaining a bundle of several national design rights by means of a single application. Such application can be filed (on-line or on paper) in one language, with one set of fees before the World Intellectual Property Organization (WIPO), which administers the system. In order to check if the country in which you want to protect your design joined the Hague System, please visit the official WIPO website.

I am a researcher and would like to apply for a Horizon 2020 Marie Skłodowska-Curie grant. What rights will I have over the publications I write in relation to this grant?

In MSCA, the default rule surrounding ownership is that project results are owned by the beneficiary generating them. However, your institution (e.g. your university) will sign the Grant Agreement with the European Commission and will consequently be considered as a beneficiary, i.e. the owner of the project results which its staff generates during the action. The default rule is therefore that copyright over your publications will be vested in your institution. As a researcher, you do not benefit from any automatic ownership rights under the Grant Agreement, but it is always possible to negotiate a transfer of ownership or a licence with your institution. This provision will have to be reflected in the contractual relationship between you and your institution. This means that your institution will most likely include a clause in your contract stating that all project results you develop as part of your Marie Skłodowska-Curie grant will belong to it. As a result, and unless agreed otherwise, you would own neither your project results (publications) nor the intellectual property rights over them (copyright).

In other words, your institution (e.g. your university) will sign the Grant Agreement with the European Commission and will consequently be considered as a beneficiary, i.e. the owner of the project results which its staff generates during the action. The default rule is therefore that copyright over your publications will be vested in your institution. As a researcher, you do not benefit from any automatic ownership rights under the Grant Agreement, but it is always possible to negotiate a transfer of ownership or a licence with your institution. This provision will have to be reflected in the contractual relationship between you and your institution. This means that your institution will most likely include a clause in your contract stating that all project results you develop as part of your Marie Skłodowska-Curie grant will belong to it. As a result, and unless agreed otherwise, you would own neither your project results (publications) nor the intellectual property rights over them (copyright).
A 30-minute delivery for your online orders

Amazon is introducing a super fast delivery method based on drones. Watch this film to see how this works. The use of drones in the supply chain is also expected to drive down delivery costs.

Try finding patents covering this type of delivery method using Espacenet.

SOLUTION TO PREVIOUS QUIZ

Stand straight!

We sit much of our lives, and most of the time in bad posture. This is one of the main causes of back pain. Posture also impacts appearance, confidence, and fitness. In most cases we are unaware of how bad our posture is.

A US company LUMOback found a solution to this problem. You wear a sensor that triggers a gentle vibration emitted by your mobile phone when you slouch or adopt a bad posture and reminds you to sit or stand straight.

Try finding patents covering this invention using Espacenet.

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:

- mobile
- app
- warn, vibrat*, sound*
- posture, back, slouch*
- detect*

The combination body posture detect* mobile phone yields one relevant document.

CN202004844 (U) - Mobile terminal utilizing gravity sensor to identify user’s use habits

The search looks rather difficult using keywords only.

Step two: To speed up the search, we will look for specific patents covering the product mentioned using the trademark.

Combining lumoback and patent in Google we obtain this result where the name of the company who developed this product is mentioned: Lumo Bodytech.

Looking for patents of Lumo Bodytech (applicant) we find this list.

This patent, out of the three obtained, looks like the one covering the product:

US2013015976 (A1) - System and Method of Biomechanical Posture Detection and Feedback

One can notice that the abstract of this patent does not contain the concept mobile phone. This makes its retrieval difficult. One can find additional relevant documents checking the patents cited in this patent.

To continue the search one can use a classification assigned to the retrieved patent that looks like potentially covering similar inventions: A61B5/11 Diagnosis based on Measuring movement of the entire body or parts.

Combining this classification with mobile and posture you obtain additional patents like:

US2013090574 (A1) - MOBILE ELECTRONIC DEVICE AND WALKING POSTURE DIAGNOSTIC METHOD

WO2014169658 (A1) - ALARM METHOD AND DEVICE

This patent is very close to the invention we are searching. Its EP equivalent cites additional relevant documents like:

EP2573696 (A2) - Apparatus and method for assisting user to maintain correct posture

This search cannot be considered as completed at this stage. Getting a comprehensive list of relevant patents may prove being difficult in view of a lack of totally appropriate classification.
The European IPR Helpdesk project receives funding from the European Union’s Horizon 2020 research and innovation programme under Grant Agreement No 641474. It is managed by the European Commission’s Executive Agency for Small and Medium-sized Enterprises (EASME), with policy guidance provided by the European Commission’s Internal Market, Industry, Entrepreneurship and SMEs Directorate-General.

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