The EU Patent may need new filing and enforcement strategies

Many like it, many not, but the EU Patent is coming – and with it a Unified Patent Court.

Patentees seeking patent protection in multiple EU countries may benefit significantly from a unified EU Patent, in terms of reduced portfolio costs (no validation will be required), and simplified central enforcement against infringers. However, patentees who need to validate their patents in many EU countries are few. The majority has learnt to validate their patents in a handful of countries, on average merely four countries.

EU vs EP

In many cases, using the EU Patent will not result in a significant reduction in administration because it will have to be used in parallel with the EP Patent, to cover states like Italy and Spain (not participating) and non-EU countries, e.g. Switzerland and Turkey. This means the need to administer a couple of IP rights originating from the same Patent Office (EPO) filing will still remain.

Annuities present another potential problem. The level of annuities for the EU Patent is expected to be on the level of five to six national parts of an EP Patent, which is above the average number currently validated. Hence, the EU Patent will result in higher annuities for many.

Furthermore, this penalty is even more significant considering the fact that one or more national parts of an EP-patent may be dropped after some years.

Accordingly, for the majority of patentees, including those who only validate in three or four countries, the EP Patent is the cheaper alternative.

National Patent Applications vs EU/EP

Based on the fact that patentees validate their EP Patents in fewer and fewer countries, a bundle of national patent applications may make more sense than an application filed with the EPO, in future.

When comparing the accumulated costs of filing and prosecuting four national patent applications (DE, FR, GB, IT) with the costs of prosecuting an application with the EPO then validating in these four countries and then again with choosing the EU Patent, the costs are similar to the costs of an EU Patent, exceeding the costs for the EP Patent, mainly because of translation costs and the attorney fees associated with four separate applications.

Accordingly, looking purely at cost, national patent applications barely constitute an alternative to an EP Patent. However, there are other factors that have to be taken into account regarding for Europe, e.g.:

- **Specific benefits offered by national offices**
- **Complexity for competitors to design around**
- **Choice of courts to enforce**
- **In which countries do I usually drop my patent before 20 years are out?**
**Specific Advantages of National Patent Applications**

**Germany** has a patent system with substantive examination and is a system consistently credited with delivering good quality patents. The regime as to what amendments are allowable within the original disclosure is more liberal than it would be through the EPO.

The German patent system allows one to request substantive examination for anything up to seven years after the day it was filed. The deferred examination allows the patentee to finalize their claims when they know precisely what protection is necessary.

**France's** patent system does not offer substantive examination. The validity of the patent is checked during infringement proceedings, which maintains a certain level of uncertainty for potential infringers.

**Great Britain’s** system offers substantive examination but the level of inventive activity is generally lower than with the EPO or the German Patent and Trademark Office.

**The Netherlands’** system is similar to the French system in not offering substantive examination, but the quick registration process allows patents to be enforced within about 20 months after filing.

**Italy** also has a system without substantive examination. Italian patent applications are not available online, making it hard for competitors to identify exactly where there may be a potential problem.

**Sweden’s** system is similar to the German’s but the registration process is quicker with lower costs.

**Prosecution of National Patent Applications**

The prosecution of a patent application with the EPO is becoming a more and more formulaic process. Punitive claims fees are being charged and the case law regarding support in the original disclosure is becoming stricter, etc.

The same cannot be said of national patent applications, where a more generous approach exists.

---

**Broad Scope of Protection**

Approximately 50% of all patent litigation within Europe is heard before German courts. This is largely because German courts are known for fast, high quality decisions. It’s also because the court proceedings involve reasonable costs, a significant portion of which the prevailing party can recover from the losing party.

It has to be said the courts in the other countries involved in a significant amount of litigation are also known for high quality decisions, but the costs associated with litigation are often high, which makes Germany a more attractive option for many patentees.

The **Unified Patent Court** will offer a new option in the future. The Court will allow patentees to enforce both an EU Patent and existing or future EP Patents with a single action throughout the EU countries in which the EU Patent or the EP Patent is valid. This will clearly be preferable in most situations compared to having to litigate in each country, but it very much depends on the cost level. If high, as many expect it may lead to a new era with increased national filings.

From this perspective, we believe national filings in Sweden will soon increase drastically. Why? Yes, because the SEPTO works extremely quick and cost efficient. And it is also because Sweden is at the top regarding innovation rate.
Unique Sunscreen that Measures UV Radiation

Summer is one of the most celebrated times in Sweden - just about everybody would love to stay in the sun and enjoy as much as it lasts. Although many of us are aware that sunscreen or sun lotions are needed to protect our skin from sun damage, it is often difficult to know how strong the sun is and how long a sunscreen works.

It is common to underestimate the degree of sun exposure. Out with our client’s invention, UV radiation level can now be read on the Sun Control UV sensor.

“Despite having sunscreen, you can only stay in the sun for a limited time before the skin at risk of damage”, says Martina Richter, Founder and President of SkinPlan AB.

Skin Plan, has launched a sunscreen product, patent pending with a UV sensor on the bottle.

By facing the bottle UV sensor towards the sun for five seconds and checking the reading, it will tell if the sun exposure is weak, medium, strong or extreme. Based on your skin type, you can read the table on the backside of the bottle to learn how long you can stay in the sun without risk of burning.

**Skin Plan** is a Swedish company that offers skin analysis and a wide range of third-generation skin care products. Skin Plan is designed to treat 27 different conditions of the skin as dry, sensitive, irritated, eczema, acne, and combinations such as both dry and oily skin at the same time. SkinPlan also serves to promote anti-aging. SkinPlan has a research institute and two clinics. More information is also available online at www.skinplan.se.

---

**SHARP INCREASE IN DESIGN REGISTRATION AMONG SWEDISH COMPANIES**

<table>
<thead>
<tr>
<th></th>
<th>SI index</th>
<th>3 mon</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent</td>
<td>118</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>Trademark</td>
<td>158</td>
<td>12%</td>
<td></td>
</tr>
<tr>
<td>Design</td>
<td>173</td>
<td>5%</td>
<td></td>
</tr>
</tbody>
</table>

Swedish companies are at the peak of filing patent and trademark applications globally. Now, even the number of design application has reached new height over the past year.

SEPAF announced the Index of Design in March had reached 173, which almost doubles the number of patent application recorded index 118, corresponding to 993 applications since 2007, as the base year for the index.

"There are three explanations to the increase of design protection registration at large. It is not only a sign of an increased awareness of the importance and value to protect their designs within Sweden, but in particular foreign markets as well. It is also an indication that design has an increased significance on the value of the companies’ products and services. A third explanation, which the other two indicators confirmed, is the increased optimism among Swedish companies," said Thomas Randes, spokesperson at SEPAF and CEO of IPQ.

"Design is many times easier to copy than proprietary innovation. The companies have been well aware of "the hard way".

A monthly report released by (SEPAF) (www.sepaf.se) shows exclusive statistics of patent, trademark and design applications. The figures reflect how active the Swedish company is in filing applications in Sweden and around the world. The statistics also shows the intellectual activity in Sweden in total including both Swedish and foreign companies.

Sepaf's innovation index projects an overall picture that is not available anywhere else. Swedish companies are working with intellectual property internationally to a greater extent. Therefore, the international figures are more relevant to reflect actual events in Swedish industry. The idea of the index is to help policy makers and analysts to quickly identify and understand trends.