

MIPLC LECTURE SERIES

MUNICH, 12 DECEMBER 2013

“The right IP Mix – How to choose a good balance between patents and trade secrets”

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MIPLC LECTURE SERIES

THE RIGHT IP MIX

- I. Setting the context:** IPR intensive industries in the global economy
- II. IP protection strategies:** Patents vs. Trade Secrets
- III. Conclusions:** The right balance

THE RIGHT IP MIX

IP INTENSIVE INDUSTRIES IN THE US

INTELLECTUAL PROPERTY AND THE U.S. ECONOMY:
INDUSTRIES IN FOCUS

PREPARED BY
ECONOMICS AND STATISTICS ADMINISTRATION
AND
UNITED STATES PATENT AND TRADEMARK OFFICE

MARCH 2012

THE RIGHT IP MIX

KEY FINDINGS OF USPTO REPORT

35% of economic activity

28 % of all employment

42 % higher remuneration

**COMPANIES CHOOSE
MULTIPLE IPR TO
PROTECT INNOVATION**

Source: "Intellectual Property and the US economy: Industry in Focus" (March 2012), prepared by the Economics and Statistics Administration and the USPTO, pages vi-viii

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IPR INTENSIVE INDUSTRIES IN THE EU



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Intellectual property rights intensive industries:
contribution to economic performance and employment
in the European Union

Industry-Level Analysis Report, September 2013

THE RIGHT IP MIX

KEY FINDINGS OF EU REPORT

39% of economic activity

25% of all employment

40% higher remuneration

**COMPANIES CHOOSE
MULTIPLE IPR TO
PROTECT INNOVATION**

Source: "Intellectual Property Rights intensive industries: contribution to economic performance and employment in Europe" (September 2013), joint study from the EPO and the OHIM, pages 6-10

THE RIGHT IP MIX LEGAL FRAMEWORK

IP framework improves/evolves:

INTERNATIONAL

Free trade agreements/TTIP

IP5

IP3

EU

Trade Secrets Directive

UPC

Unitary Patent

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THE RIGHT IP MIX

PATENTS: IP5 STATISTICS

**At the end of 2011, 7.9 million patents were in force
in the world + 6.6%**

**89 % of these patents were valid in one of the IP5
Offices jurisdictions**

**In 2012, 1.876 million patent applications were filed
at the IP5 Offices +11 %**

Source: IP5 Statistics Report 2012 Edition, page 1

THE RIGHT IP MIX

PATENTS: EPO STATISTICS

EPO: A record number of 257 744 patents filed in 2012

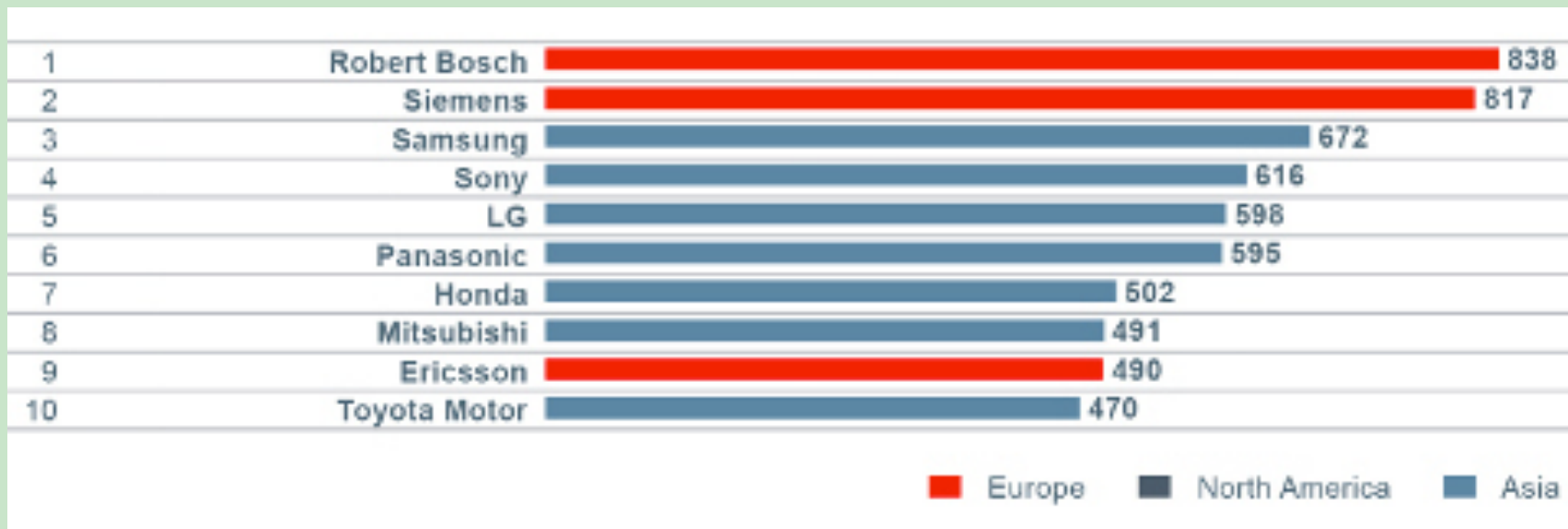


Source: EPO Statistics Report 2012, available under www.epo.org

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PATENTS: EPO STATISTICS

EPO: A record number of 65 687 patents was granted



Source: EPO Statistics Report 2012, available under www.epo.org

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PATENTS IN THE CORPORATE WORLD

**COMPANIES
CHOOSE
PATENTS TO
QUANTIFY
INNOVATION**

Patents
filed
in fiscal
2013

57

Patents
granted
in fiscal
2013

287

Current
patents
owned by
Cargill

1,862

**Cargill
innovation**

Source: Cargill Annual Report 2013

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WHY SO MANY PATENT FILINGS?

SUBSTANTIAL COST

PATENT DJUNGLE

DISCLOSURE

IP = CORPORATE BUDGET

PORTFOLIO MANAGED BY COUNSEL

SILO OR INTEGRATED APPROACH

CENTRAL IP DEPARTMENT

INTEGRATION INTO BU

FASTER PRODUCT CYCLES

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PATENTS IN THE CORPORATE WORLD

**HOW TO
VALORIZE
PATENTS?**

PROTECTING REVENUES

LICENSING

ENFORCEMENT

COMPETITIVE WEAPON

DEFENSIVE TOOL

NOT USED AT ALL

THE RIGHT IP MIX HOW TO VALORIZE PATENTS?

SUCCESS DEPENDS ON MANY FACTORS

**DETECTABLE/
ENFORCEABLE**

**DESIGN
AROUND**

LICENSE BASE

EADS | Technology Licensing



AND MARKETING IS KEY

Source: EADS, <http://www.eads.com/etl/int/en/What-we-offer/the-licensing-process.html>

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DETECTABILITY AND VALUE CREATION

LATEST 20 EUROPEAN PATENT
APPLICATIONS FILED BY
THYSSEN KRUPP AFFILIATES

THEORETICALLY AND PRACTICALLY
DETECTABLE?

Submarine

Submarine

Method for controlling a header valve on a snorkel of a submarine

Steel for the production of a steel component, flat steel product comprising same, component comprised of same and method for producing same

LEVELING BOX OF A COKE OVEN CHAMBER

PROCESSING SYSTEM FOR CONSTRUCTION UNITS

BALL NUT BEARING WITH WAVE SPRING

Storage unit for conveying systems

Storage device in a military watercraft

APPLICATION-SPECIFIC WELDABLE COMPOSITE METAL SHEET

ELECTRICALLY SWITCHED WATER DRAIN VALVE

METHOD FOR BENDING A COMPOSITE SHEET AND SUCH A BENT COMPOSITE SHEET

DRIVE UNIT FOR A CRUSHER FOR THE COMMINATION OF BULK MATERIAL

CAMSHAFT WITH ADJUSTABLE CAMS WHICH CAN BE OILED WITH SPRAY OIL

CAMSHAFT HAVING ADJUSTABLE CAMS THAT CAN BE OILED BY MEANS OF PRESSURE OIL SYSTEM AND METHOD FOR HEAT TREATMENT OF GRANULAR AND LUMPY MATERIAL

ROLL MILL

Submarine

PROCESS GAS COOLER HAVING LEVER-CONTROLLED PROCESS GAS COOLER FLAPS

METHOD FOR PRODUCING CUSTOMIZED LIGHTWEIGHT METAL SHEETS

Source: European patent register

THE RIGHT IP MIX

PATENT ENFORCEMENT

INFRINGEMENT STATISTICS SHOW

GERMANY

900 CASES/YEAR

FRANCE

350 CASES/YEAR

NETHERLANDS

50 CASES/YEAR

UK

50 CASES/YEAR

< 1% OF ALL PATENT FILINGS GET ENFORCED

Source: FAZ vom 28.02.2012, Cabinet Véron et Associés 2012

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ADDRESS PATENT DJUNGLE PERCEPTION

e-Licensing

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Source: Syngenta, www3.syngenta.com/global/e-licensing/en/e-licensing/Pages/home.aspx

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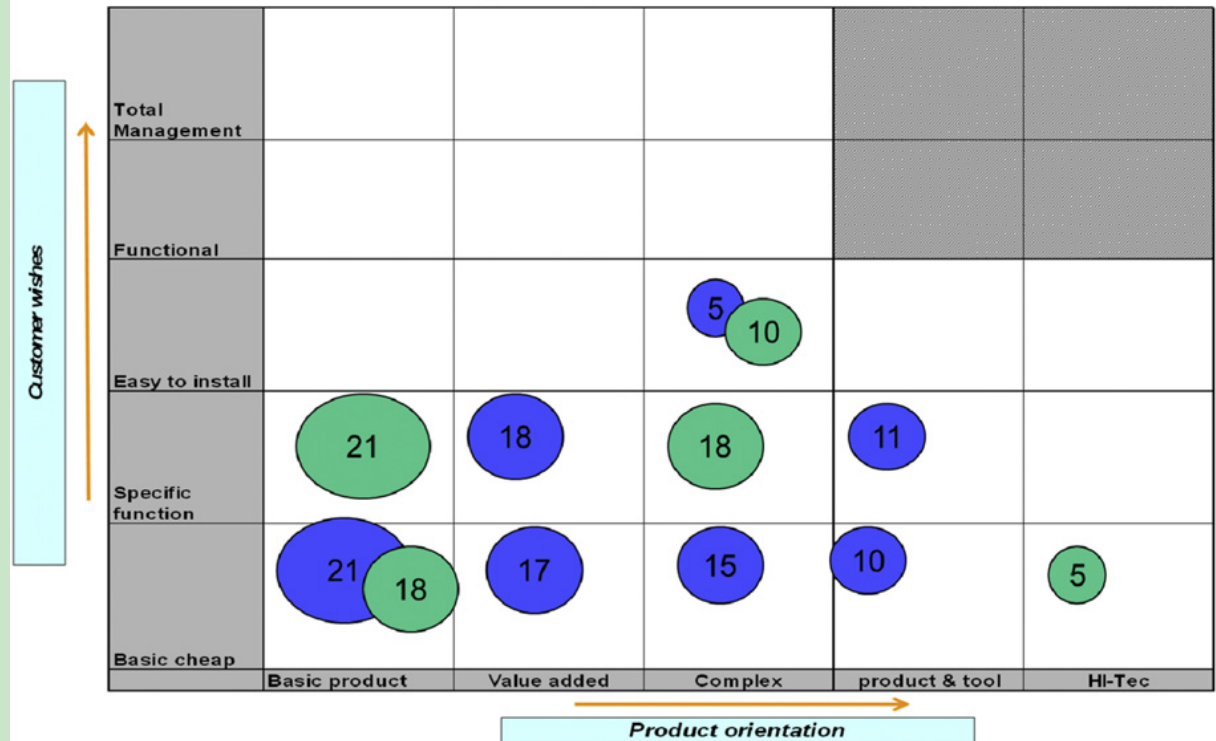
PATENTS DISCLOSE PROPRIETARY INFORMATION

**HOW TO
TEACH YOUR
COMPETITOR?**

**POWERFULL
MAPPING
TOOLS**

**BUSINESS
STRATEGY
DISCLOSED**

Positioning the patent documents



Source: Ase Damm, Competitor and Technology Mapping to Support Strategic Business Decision. 34 World Patent Information 124-127, June 2012

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PATENTS IN THE CORPORATE WORLD

**WHY SO MANY
PATENTS?**

**Only few cases go to court and
are actively enforced**

Litigation is lengthy and costly

**Patent applications get published and
proprietary knowledge gets disclosed!**

AUTOMATIC IPR FILING = RIGHT STRATEGY?

EVERY INNOVATION STARTS WITH A TRADE SECRET!

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TRADE SECRETS IN THE CORPORATE WORLD

**MAJOR INNOVATIONS
ARE PROTECTED BY
TRADE SECRETS!**

RECIPES

SOFTWARE

Google



© Coca-Cola Ltd.

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TRADE SECRETS IN THE CORPORATE WORLD

ADVANTAGES

Proprietary knowledge = secret

No prosecution related costs

DOWNSIDE

Protecting confidentiality

Limiting access

Controlling information flow

Redress against misappropriation is difficult to obtain essentially due to lacking proof of use

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KEEPING TRADE SECRETS IS KEY

SUPPLY CHAIN

CONFIDENTIALITY

NON-COMPETES

LIMIT SUPPLIER BASE

EMPLOYEES

TRAINING

EMPLOYMENT CONTRACTS

ACCESS CONTROL

CUSTOMERS

TRUSTED RELATIONSHIPS

CONTRACTS

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KEEPING TRADE SECRETS IS KEY

COMPETITORS

TRADE FAIRS

SMALL WORLD

**CYBER ATTACKS
AND CRIMINAL
ACTIVITY**

IT SECURITY

CROSSFUNCTIONAL TEAMS

**FAILURE TO
PROTECT
SECRETS CAN
LEAD TO PERIL**

SMEs

AGC CASE

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CONCLUSION: SITUATIONAL EVALUATION

PATENTS

DETECTABLE INVENTION

PRACTICALLY ENFORCABLE

**TRADE
SECRETS**

UNDETECTABLE

UNENFORCEABLE

UNPATENTABLE

**PROACTIVELY PROTECTING TRADE SECRETS IS
KEY – IMPLEMENT SECURITY MEASURES!**

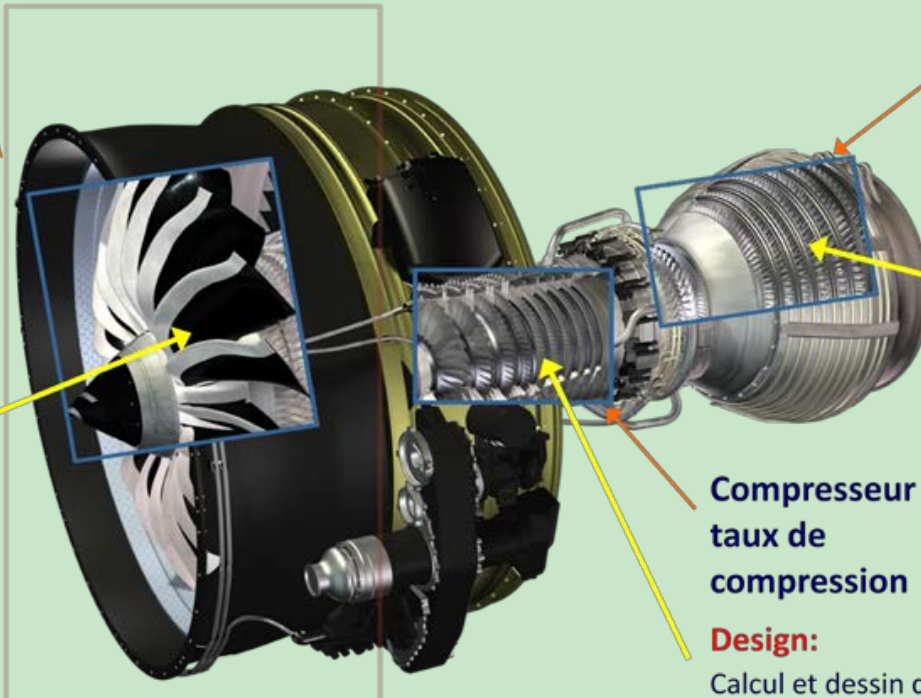
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SITUATIONAL EVALUATION

Soufflante à aubes composites de large diamètre

Brevets:

Procédé de fabrication 3D des aubes composites.



Turbine haute pression à refroidissement optimisé

Knowhow:

Refroidissement des aubes de turbine.

Compresseur à fort taux de compression

Design:

Calcul et dessin du compresseur.

Source:  SAFRAN
AEROSPACE - DEFENSE - SECURITY

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Merci!