

FICPI WORLD CONGRESS

“One day, my child, this will be yours”
Centralised IP: Where is the profession going?

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THE PAST

PATENTS

- Time of filing: 12 months from priority date
- Examination: 12/18 months
- Definition of the rights: In local language
- Reasonable number of rights

TRADE MARKS

- Examination of
 - Absolute grounds: by local authority
 - Relative grounds (ex officio)
- Reasonable number of rights (only national registrations & Madrid Agreement with few countries)

PREDICTABILITY

THE PRESENT

UNPREDICTABILITY

PATENTS

- Time of filing: 30/31 months PCT from first filing
- Examination EPO: 5/6 years on average. With possibility of opposition/appeal
- Increasing number of rights
- Uncertainty of scope of protection (London Agreement)

TRADE MARKS

- Examination of absolute grounds by OHIM (open to be contested at enforcement stage)
- No examination of relative grounds (5 years of acquiescence)
- Broad scope of protection (class headings cover all)
- Increasing number of rights (CTM, Madrid Protocol, low fees)

THE FUTURE

INCREASED UNPREDICTABILITY

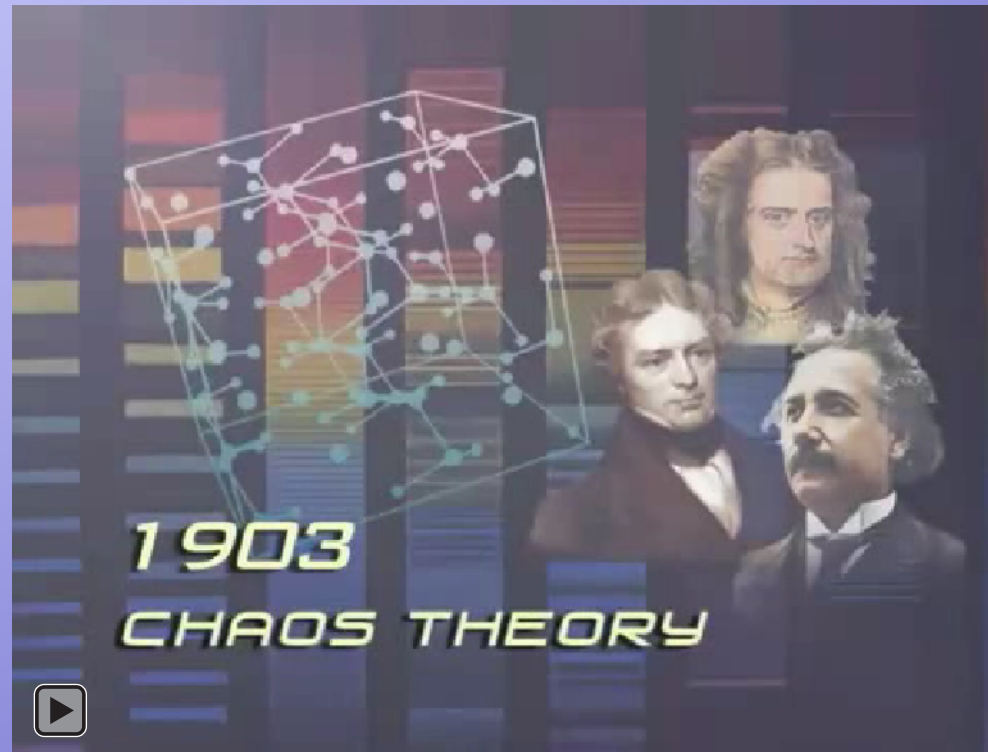
PATENTS

- Increase of rights due to lower filing and prosecution costs
- Probable increase of prosecution time by EPO
- Uncertainty of scope of protection (machine translations)
- Forum shopping at litigation, difficulties of right of defence (language), high increase in litigation costs

TRADE MARKS

- Increase of benefits of CTMs versus national TMs (proposal by EC)
- Increase of enforceable exclusive rights (interpretation of use requirements for CTMs, reputation in the EU, etc.)
- Increase of legal uncertainty in EC new proposals

IN EUROPE WE MOVE IN IP FROM CERTAINTY TO CHAOS



THE IP WORLD THAT OUR CHILDREN WILL INHERIT WILL BE:

A CHAOTIC ENVIRONMENT WITH:

- Many more rights protected
- Much cheaper to obtain
- Undefined concerning their scope of protection
- With more uncertainty about their validity
- With stronger punishments for infringers
- With litigation costs much higher, particularly for defendants, especially for SMEs

IN THIS SCENARIO WHAT WILL BE THE TASKS OF EUROPEAN IP PRACTITIONERS?

**TO GUIDE CLIENTS TO NAVIGATE IN AN
INCREASINGLY CHAOTIC AND
UNPREDICTABLE SCENARIO WITH MORE IP
RIGHTS, WITH LESS CERTAINTY ABOUT THEIR
VALIDITY AND SCOPE OF PROTECTION**

IN THIS SCENARIO WHAT WILL BE THE TASKS OF EUROPEAN IP PRACTITIONERS?

- More consultation work
- Consultations more complex to analyse
- Opinion work will have to be based on presumptions on long term, and will have to be updated from time to time in light of new developments
- More advice on filing strategies worldwide for domestic clients
- Clearing work will become more expensive and will require more experienced professionals
- Foreign work will dramatically decrease
- In some countries, with little industry, there will be a decrease in experienced IP professionals

PATENT FILINGS, PROSECUTION, OPPOSITIONS

**DOMESTIC
&
OUTGOING
WORK**

**NATIONAL (including drafting)
EUROPEAN (including drafting)
PCT
EUROPEAN/FOREIGN FILINGS**

To be maintained
and eventually
increase

**FOREIGN &
INCOMING
WORK**

**NATIONAL
NATIONAL/REGIONAL
PCT PHASES**

VERY FEW

**- NATIONAL → VERY FEW
- EUROPEAN CONCENTRATION
IN FEW COUNTRIES**

EUROPEAN

**CONCENTRATION IN FEW
COUNTRIES**

VALIDATION EUROPEAN

**CHALLENGED BY { LONDON AGREEMENT
UNITARY PATENT**

CONCLUSION:

Decrease in foreign work (except for few countries)
and increase in domestic work (with uncertainty in
small countries with little industry)

PATENT CONSULTATION

- Freedom to operate searches and opinions
- Patentability searches and opinion
- Invalidity searches and opinion
- Coexistence agreements (licensing etc.)
- Patent translation work

CONCLUSION:

It will increase from domestic clients.

Patent translation work might increase for domestic clients.

It will practically disappear from foreign clients, except for a few countries.

PATENT LITIGATION

- Validity/invalidity opinions
- Infringement opinions
- Technical advice & support in litigation proceedings
- Patent translation work

DOMESTIC - Risk of concentration in a few European countries with proposed new European Patent Court forum shopping

FOREIGN - Concentration in a few European countries

CONCLUSION:

Serious legal uncertainty and increased litigation costs for domestic clients

DESIGNS & TRADE MARKS

- CTM & CD in combination with the Madrid Protocol have drastically diminished the overall amount of work
- It might even decrease depending of how the proposed changes of the European Trade Mark System develops
- Exchange of work between EU Member States has substantially decreased
- Competition between EU firms for foreign work has seriously diminished service fees to ridiculous levels, deteriorating the quality of professional services
- The apparent simplicity of CTM work fosters the use of cheap-low quality professionals

**ONE DAY, OUR CHILDREN WILL INHERIT A CHAOTIC
IP JUNGLE, WHERE ENTERPRISES WILL OBTAIN IP
RIGHTS VERY EASILY, BUT WHERE LEGAL
UNCERTAINTY WILL BE THE RULE, SO THEY WILL NEED
IP PROFESSIONALS THAT
CAN GUIDE THEM AND
PROTECT THEM FROM
THE INCREASING
DANGERS OF THAT
JUNGLE**

