



The European IPR Helpdesk

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As the European Commission rightly points out, the fashion industry - being one of the most vibrant and creative sectors in Europe - acts as an ambassador of European values, such as cultural heritage, creativity, innovation, craftsmanship and expertise.

Fashion being an IP-intensive sector, we have decided to dedicate this new bulletin issue to the importance and the role played by IP in the fashion industry.

Firstly, an introductory article on the topic presents the different IP tools available to protect fashion designs while the next contribution by Matej Michalec, Lawyer at V4 Legal in Bratislava, develops the topic of IP protection tools in the European Union for the fashion industry, highlighting the issue of design protection and its overlap with copyright.

Axel Ferrazzini, Managing Director at 4iP Council, gives some useful hints on how to protect inventions in the fashion field, revealing that patent protection of fashion items is far from being a recent topic.

Then, EUIPO provides an article on the increased prevalence of counterfeiting practices in this sector, and the Federation of the European Sporting Goods Industry (FESI) focuses on the rise of online counterfeiting in

the sporting goods industry and the measures available to tackle this problem.

In addition, we have interviewed Claudia G., a Spanish fashion designer who provides us with an insight into the work of designers and how they address IP matters.

As per usual, the Bulletin reports information about the European IPR Helpdesk's past and future events together with the latest updates from our Helpline service.

Finally, we invite you to test your knowledge on patent searching with our usual patent quiz and to solve our brand-new IP and fashion crossword.

Wishing you an inspiring read!

Your Editorial Team

Introduction to IP in the fashion industry

The European IPR Helpdesk

The fashion industry is driven by creativity and by the intellectual capital invested in it. Protecting that intellectual capital by means of IP tools serves to boost the income of IP holders through sale, licensing or commercialisation of differentiated new products and to reduce the risk of free-riding on the IP rights of others. A sound management strategy of IP assets incorporated in a business or marketing plan helps to enhance the value of an enterprise in the eyes of investors and financing institutions.

The two main IP protection tools available for fashion designs in the EU are copyright and registered/unregistered Community design rights (RCD or UCD). Registering a design helps the owner to prevent third parties from exploiting the new or original ornamental or aesthetic aspects of the design, which may relate to a three-dimensional feature, such as the shape of a hat, or a two-dimensional feature, such as a textile print. However, clothing is meant to fit the human body and conform to accepted dress codes which usually

leads to uniformity. Thus, few new designs on the market are truly exceptional in form. Nevertheless, since the only decisive criterion for design protection is the degree of visual difference from pre-known designs, resulting from one-to-one comparisons and examined from the perspective of an informed user, differences between two designs which are of minor importance to a casual observer - such as the arrangement of buttons - or a single distinguishing feature - such as an oversized zipper - may be enough to produce a unique overall impression in the eye of an informed fashion consumer and justify the protection either of the extraordinary feature or of the whole item.

On the other hand, certain creations have been deemed original enough to be protected by copyright and therefore, where the national copyright laws allow for protection of fashion items, they are protected as works of applied art. In France or Belgium, for instance, the protection is cumulative, which means that fashion designs protected by copyright may be protected by registered/unregistered design rights too. In France, the threshold for the originality requirement is very low, e.g.

a simple stripe pattern can be protected. As a result of this low standard, an RCD may be invalidated by the competent administrative body or court on the basis of an earlier French copyrighted work. By way of example, the well-known French fashion house Yves Saint Laurent (YSL) brought an action for copyright infringement after spotting a Ralph Lauren dress in a French fashion magazine and, despite the differences between the garments, YSL won the case based on its prior copyright.

Another important point to take into account is that fashion seasons usually last a few months, as a result of which fashion designers may prefer to spend their resources on creating new designs rather than on registration. Nevertheless, for ephemeral fashion designs unregistered design protection is an effective alternative to registration both for fashion designers or businesses with limited budgets, and for all those that wish to test new designs in the market before deciding on which one(s) to register.

Contrary to the frequently short life span of fashion trends, some last, and many items





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become classic pieces, such as the Hermès Kelly Bag, the Chanel suit, the Vera Wang wedding dress or Dr. Martens boots. If that is the case, filing an application for a registered industrial design may be the best way to prevent others from using the iconic design in the short and long term. At the time of filing, not after, it is possible to request that the publication of the application be deferred for up to 30 months. This is a particularly useful feature, offered under the Hague System (the international system for design registration managed by the World Intellectual Property Office), the Community Design System, and many national systems, for those who may want to keep their design secret until it comes to market.

In conclusion, registered design rights tend to be a suitable means of protection for exceptional designs or features, or those which might be expected to become long lasting icons. They are mainly used to protect handbags, jewellery or sunglasses. Furthermore, if a design is counterfeited, the endless numbers of designs on the market make it hard to detect violations. Consequently, most fashion designers rely more on their fashion labels, applied directly on their products, and often protected under trade mark law facilitating the detection of

imitations. Trade marks help consumers to identify preferred items and most fashion houses use them to transmit a particular style, quality or exclusiveness, developing a bond with their customers who tend to be brand-driven and willing to pay more for clothes bearing their trade mark.

Technical innovation can equally put a fashion business ahead of the competition. A portfolio of patents may, for example, reflect technical superiority in inventing new fabrics that do not crease, are softer, water-resistant (e.g. Gore-Tex), etc. Examples of companies that use patents are, inter alia, the Danish biotech company Novozymes that developed and patented a technology for the treatment of “stone washed” denim jeans based on an enzyme. Their technology has been licensed worldwide, holding more than 4,200 active patents and patent applications. Another example is Grindi Srl., the Italian company that invented and patented Suberis, an innovative fabric made of cork which is now used in, among other things, the manufacture of clothing, footwear and sportswear. Furthermore, Israel’s textile industry keeps inventing ways to improve clothing with patented products such as suits that can be cleaned in a standard washing machine or sports socks that always remain dry.

In some fashion businesses, core trade secrets serve to protect, for instance, the computer-implemented, software-based business models, which underpin an entire business strategy to quickly supply fashion products. A good example of the use of trade secrets in the fashion industry is ZARA, the Spanish retail fashion chain that uses a proprietary information technology system to shorten their production cycle to a mere 30 days thanks to daily streams of e-mail from store managers signalling new trends, fabrics and cuts; new styles quickly prepared by designers; the selected fabric being immediately cut in an automated facility and sent to work shops; and a high-tech distribution system ensuring the finished items are shipped and arrive in stores within 48 hours.

Altogether, IP tools are of great importance for the fashion industry, whose success strongly depends on technological innovation, innovative designs and creative expression. The strategic protection of fashion items through adequate IP tools can play a critical role in establishing and consolidating a company’s market position and, by protecting intangible capital through specific IP rights, fashion houses may increase profit margins and improve their market share.

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IP protection tools in the fashion industry

Matej Michalec

Lawyer at V4 Legal, Bratislava

Origins of the old French word for “fashion” can be traced back to the 13th century. However, human understanding of the term has changed considerably ever since. From a purely utilitarian concept, under which the sole purpose of clothes was to cover and keep the body warm, and bags served as a carrier, people have developed a wider comprehension of fashion, which is appreciated and purchased for aesthetic appeal as well as, and sometimes disregarding, functionality. The influence fashion has on people’s lives, in terms of self-confidence and self-realisation, has transformed the industry into a huge commercial success. In the EU, the fashion and high-end industries are responsible for employment of 6 million people, thereby providing an important contribution to the EU economy¹. Moreover, high-end industry’s export account for 10% of all EU exports².

Without a doubt, the fashion industry is an intellectual property (IP) intensive industry, overflowing with creative ideas and innovation. On the other hand, due to its status-conferring capability and the resulting commercial demand, and along with the rapid technological development, copying and free-riding on the works of fashion has become increasingly easy and profitable. It is estimated that small and medium sized enterprises (SMEs) lose around €110,000-560,000 in revenues annually as a result of IP leakage (copying, misappropriation of brand name, loss of licensing opportunities, etc.)³.

Protecting fashion through IP in the EU

Large scale, low-cost copying can be damaging to the fashion industry because it could prevent fashion designers from recouping their investment. A copier does not have to put any effort into development of a line,

which can take months and tens of thousands of euros to finish. IP law provides a system of remedies which can help fashion designers to stop the unwarranted interference with their rights.

Considering the main forms of IP rights (patents, trade marks, copyright and design), patents confer the biggest monopoly, but are largely inapplicable in respect of fashion works (exceptions could be a particular wash on denim or a bra construction).

Trade marks (TM), on the other hand, do have a major impact on the fashion industry. Some established fashion brands, such as Louis Vuitton, have adopted a strategy of making the TM central to its bags and apparel.

Another example could be seen in Christian Louboutin’s famous red sole (although a case relating to the validity of the red sole TM is currently pending before the EU Court of Justice (CJEU)). A big advantage of “trade mark law” in the EU is the stage of its harmonisation. There are two parallel systems coexisting; namely, the EUTM, which is a pan-European right regulated by the [EUTM Regulation](#), and national trade marks harmonised through the [Trade mark Directive](#).

However, in terms of fashion works, the aforementioned TM strategy is only useful for established fashion brands. TMs of starting designers and SMEs probably lack such market recognition, and they might not have sufficient budget to engage in extensive advertising. In short, TMs can be invaluable in protecting a brand’s image in the long-term, but they are not effective in protecting fashion goods that might only last a season.

The third, and much more viable, option of protecting fashion works is through copyright. Generally speaking, copyright laws of the EU Member States will protect an original idea once it is put down on paper or otherwise made into something tangible, e.g. a sketch of a dress, pattern or a logo. Nevertheless, a disadvantage of copyright is that it has not



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been sufficiently harmonised across the EU, leaving the scope of protection afforded to fashion works to individual copyright laws of Member States.

At the EU-wide level, certain parts of copyright are harmonised in the Term Directive (with regard to photographs), the Software Directive and the Database Directive. In order to confer copyright protection, all of these legal instruments require a work to possess “originality” in the sense of the “author’s own intellectual creation”. Many commentators argue that the notion of originality, as in author’s intellectual creation, has been effectively extended to any work meeting this requirement through several CJEU decisions. Yet it is still possible that the notion of what meets the criteria of a copyrighted work can differ from country to country.

EU Design Law and fashion

Probably the most effective option available to fashion designers stems from EU design law. Similarly to trade marks, there are two parallel systems currently coexisting at the EU level.

Firstly, national registered design laws have been harmonised through the [Design Directive](#). Secondly, the [Design Regulation](#) created two unitary design rights covering the whole EU, namely the registered Community

¹ [Fashion and high-end industries in the EU](#).

² Id.

³ Centre for Fashion Enterprise – Intellectual Property in the Fashion Industry – Design Rights, 2012.

design (RCD) and the unregistered Community design (UCD). The applicability of the latter two rights in the fashion circles is foreseen in the Regulation's recitals, which state that some sectors producing a large number of possibly short-lived designs will find advantage in protection without registration formalities (UCD), as they will have time to commercially test the product and ascertain its value prior to registration, which can be sought for pieces requiring long-term protection (RCD). The Regulation and the Directive define design as the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation. It is clear that works of fashion would meet the requirements of the definition of the design, whereby such a design would be protected to the extent that it is new and has individual character.

A big advantage of both the RCD and UCD is their unitary character. It enables fashion designers to protect their works through a single application filed at the European Union Intellectual Property Office (EUIPO) in a single language (or following a disclosure within the EU in the case of a UCD), and enforcing it for the whole of the EU in a single court action, with the ability of a court to issue an EU-wide injunction.

Concerning the RCD, once registered, it provides instantaneous protection in all of the EU's 28 Member States for an initial period of 5 years as from the date of filing of the application, which may be renewed in 5-year periods up to 25 years. It is therefore very convenient and cost-effective, as opposed to getting a separate national protection in various Member States. Applications can be submitted online through the EUIPO webpage.

However, as Coco Chanel once famously put it, "fashion is made to become unfashionable".

Fashion designs are produced seasonally with an expected lifespan of 6-12 months. Therefore, many designers might find it more suitable to avail themselves with the protection afforded by the UCD, a right arising as a result of the first disclosure within



the EU, and thereupon lasting for 3 years, providing protection without formalities and maintenance costs. Similarly to copyright, there is no need to register an UCD, however, unlike copyright, this right is fully harmonised.

The scope of protection of the UCD is the same as that of the RCD, but the UCD only protects if the alleged infringement arose from copying, whereas the scope of protection of the RCD will also include similar designs (designs producing the same overall impression).

All in all, as witnessed above, there are several rights that could pertain to works of fashion and can coexist or cumulate. In particular, Community design law provides fashion designers with a cost-free method in the form of the UCD complemented by copyright protection subject to the laws of the EU Member States. More long-term or iconic designs could be protected also through an RCD.

Overlap of copyright and design protection

Both the Design Regulation and the Design Directive expressly mandate an overlap with other intellectual property rights. Firstly, Community design rights could be seen as additional, i.e. existing besides other IP rights, such as unregistered designs, trade marks, or other distinctive signs, patents, utility models, typefaces, civil liability and unfair competition. In addition, a fashion design protected by an RCD or UCD shall also be eligible for protection under the copyright laws of Member States. This means that Member States cannot exclude copyright protection for the works already enjoying protection under design laws, although they are free to establish the extent of copyright protection and the conditions under which such protection is conferred.



Matej Michalec
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Patents in the fashion industry

Axel Ferrazzini

Managing Director at 4iP Council¹

The role of patents in the fashion industry: from a steady to a quickly accelerating growth

Amongst the broad range of intellectual property tools available, history shows that the fashion industry has always been predisposed to use industrial design rights and trade marks. Trade marks are of course the most commonly infringed intellectual property rights in the fashion industry. In that industry, companies of all sizes have been registering the design of their creations to prevent competitors and copycats from exploiting their original characteristics, such as shapes and prints. However, the complementarity of the intellectual property tools allows for better and more efficient protection of the fashion industry goods. An industrial design right² protects only the appearance or aesthetic features of a product, whereas a patent protects an invention that offers a new technical solution to a problem that an industrial design right cannot protect. The varied multiple functions of patents make this intellectual property tool remarkably efficient and versatile³.

As a reminder, for an invention to be patentable, it must⁴:

- be novel (at least some aspect of it must be new),
- involve an inventive step, and,
- have an industrial application.

A classic illustration of this is the first zipper system that was patented in 1851 by Elias Howe, who was also the inventor of the sewing machine. The zipper evolved and was enhanced to become the version that has been used for more than a century called the modern zipper system, which was patented in

1917 by Gideon Sundback.

Another, more recent, illustration where fashion meets innovation is found in Geox, a shoe and clothing manufacturer that considers itself a “high-tech” corporation⁵. The history of this company is a clear example of how finding a technical solution to a common problem, patenting it and associating it to a registered trade mark, could be the best choice to develop a successful business project.

The creation and use of patented technologies by the fashion industry in the last two decades has been spectacular. Innovations have not only been limited to new fabrics (e.g. softer, thinner, better insulated, water-resistant, etc); they now cover embedded connectivity, smart textiles (providing groundbreaking advantages such as thermal regulation, heated clothing, electronic moisture management) or even fabric with embedded on-demand illumination. The convergence of smart textiles and nanotechnology opens up endless possibilities and huge patenting opportunities.

The fashion industry spans many activities, clothes and accessories and it seems to be more responsive to this trend than other industries. For example, as in other industries and sectors, innovation and the use of patents have been of tremendous help for innovative players in the textile and apparel industry to stay relevant and grow, in the face of stiff competition.

Why and how patents are used in the fashion industry

The fashion industry is a highly competitive environment. Differentiating products is paramount in developing a competitive advantage to stay ahead. Innovating is not an option.



Axel Ferrazzini
Managing Director, 4iP Council

Fashion industry leaders have consistently used the patent system to protect their research and development investment and maintain such differentiation. Unlike some other industries that may license their patents to competitors, most stakeholders of the fashion industry use patent protection to keep the exclusive right to use their inventions. And as patent policies evolve, the protection of industrial property rights is increasingly respected in regions of the world engaged in the manufacturing of garments and apparel. The growing respect for patents in those jurisdictions means that patent strategies must be global.

Given technology convergence, the fashion industry is learning how to live in the digital world. This can be disruptive; for example, market analysts have claimed that more Apple Watches are shipped than “the whole of the



Rigorous empirical
research on
intellectual property

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¹ 4iP Council is a European research council dedicated to developing high quality academic insight and empirical evidence on topics related to intellectual property and innovation. Our research is multi-industry and cross sector. More information at www.4ipcouncil.com.

² http://www.wipo.int/designs/en/faq_industrialdesigns.html

³ https://www.4ipcouncil.com/download_file/100/243

⁴ http://www.epo.org/applying/european/Guide-for-applicants/html/e/ga_b.html

⁵ <http://www.protectia.eu/en/patents/fashion-meets-innovation-the-geox-patents-case>

Swiss watch industry combined⁶. Yet the fashion industry can leverage and integrate technologies in their creations and combine their more classic creativity with the highly resource-intensive research and development technology process.

The use of patent protection in the fashion industry is not limited to the big players. The small and medium enterprises are agile and can quickly innovate in niche markets. They can protect their inventions using patents and, if they do not wish to manufacture, can license their inventions to bigger fashion industry players. The latter can then differentiate their products, and focus on their core business while the former can benefit from a fair return on their research and development investments. Collaboration between larger and smaller enterprises is key to succeed in the stiff competitive environment, enabling the sector to leverage specialised knowledge of smaller players in areas that are not the core business of the larger companies.

The role of patents in the fashion industry will continue to increase in the coming years as everything is becoming “smart”

At present, not enough research is available to identify a definitive trend; more empirical studies are required to make sound analysis of these trends⁷. However, it is worthwhile looking at some analytics such as the luxresearch survey on “Evaluating the Patent Activity in Smart Textiles”⁸. We can learn from their research that 2016 saw the most-ever patents granted, with a total of 377.

Most of the patent publications coming from China have been from smaller innovators, while the majority of larger companies that are innovating in smart textiles are based in the United States, Korea or Europe.

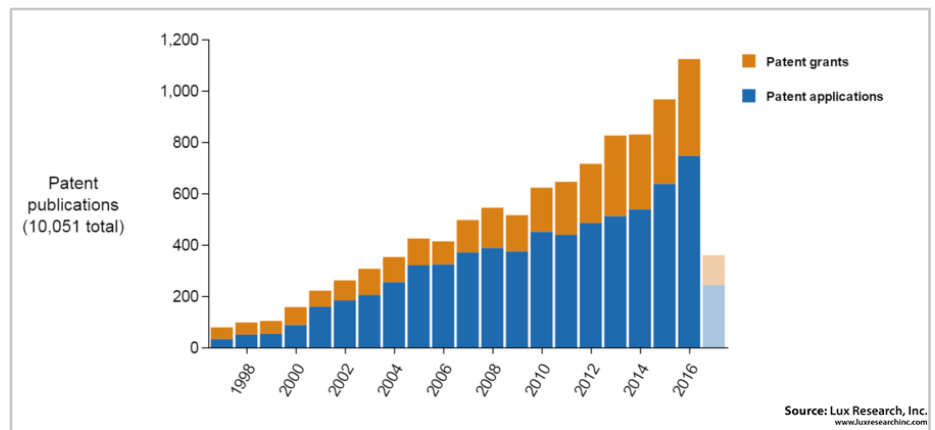


Figure 1: Patent publications by years separated into applications and granted patents

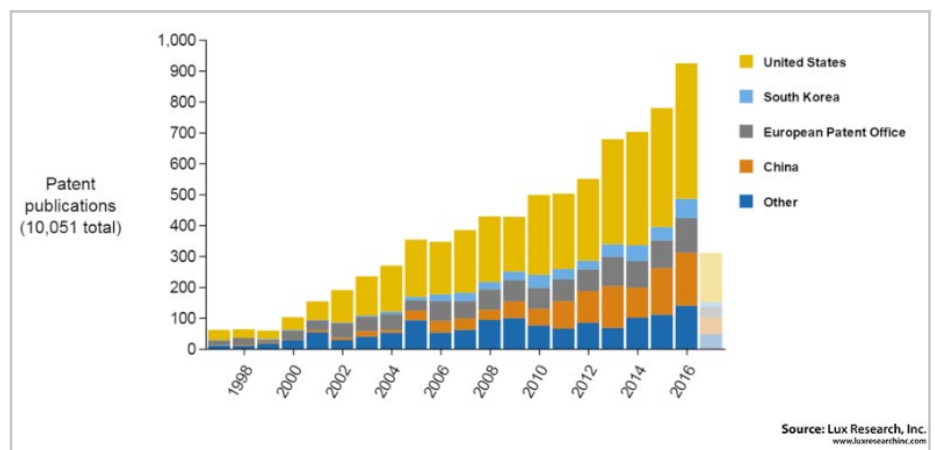


Figure 2: Patent publications by geography, separated into the four biggest innovation regions

Conclusion

The fashion industry is not immune to the disruption brought by technology nor by the digital world. On the one hand, the fashion industry needs to embrace the opportunities provided by the patent system to protect inventions, create a level playing field and enable differentiation. On the other hand, the fashion industry needs to leverage the

convergence of one sector bringing the ‘cool’ factor of creativity and the other bringing the “smart” factor of technology, in order to create great opportunities and benefits for the consumers as well as growth in Europe.

Who will be the next fashion industry leaders and from which part of the world is still a pending question. But what is certain is that those leaders will be patent owners...

The views expressed herein are the views of the author alone and do not necessarily represent the views of 4iP Council or its members.

⁶ <https://diginomica.com/2018/02/14/fossils-digital-push-avoid-fossilisation-time-smartwatch>

⁷ <https://www.4ipcouncil.com/research/our-research-principles>

⁸ <http://blog.luxresearchinc.com/blog/2017/06/evaluating-the-patent-activity-in-smart-textiles>

Counterfeit fashion items in the EU – The utility of the EUIPO databases to combat counterfeiting of fashion products in the EU: The ACIST database

Over half of all seizures at the EU external borders were either shoes, clothing or personal accessories in 2016. Many more were found circulating within the Union.

European Union Intellectual Property Office (EUIPO)

The word fashion is associated with an almost measureless range of products and industries in Europe and beyond, and nearly all brands that are linked to fashion in the EU are highly IPR-intensive, frequently because they need to protect the creative and innovative products that are the basis of their ever-changing product portfolios.

The fashion industry is the victim of counterfeiters largely because of the ease and low cost with which illegal manufacturers can copy existing designs and trade marks and bring them to market. What's more, counterfeiters can be sure that their goods will be desirable because the demand and profile has already been established by the legitimate brands.

The quantity of fashion items and product groups that are counterfeited is as diverse as those produced legitimately and it is therefore challenging to define a select group of products that could be definitively described as "fashion items" and form the basis of a productive analysis¹.

IPR infringements in the European Clothing, Footwear and Accessories sector cost the industry €23.3 billion annually, or 8.1% of the sector's yearly sales, according to the EUIPO, and IPR crime targeting these items leads to the loss of approximately 278,000 jobs and an ultimate loss of €6.5 billion in European government revenue².

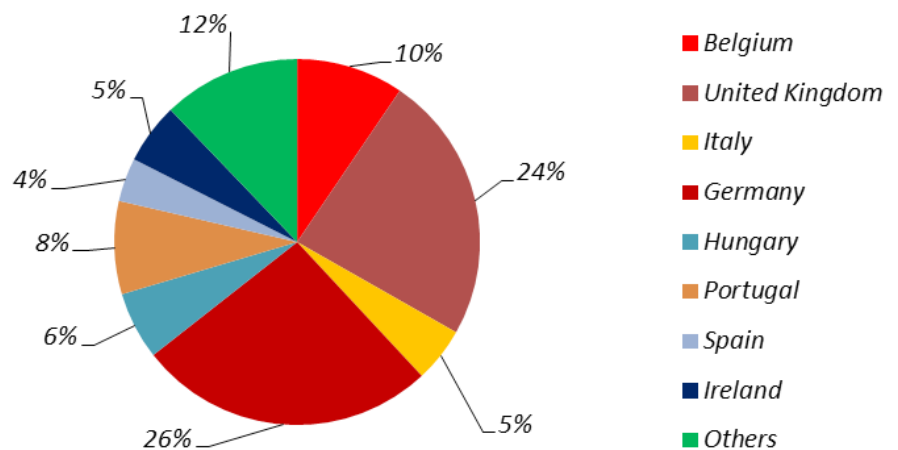
Customs reported 29,937 individual seizures of infringing clothing, footwear and accessories at the external borders in 2016, resulting in these products constituting 51.4% of the entire Customs IPR caseload for that year and demonstrating the extent to which fashion brands are targeted by counterfeit

manufacturers from territories outside the EU.

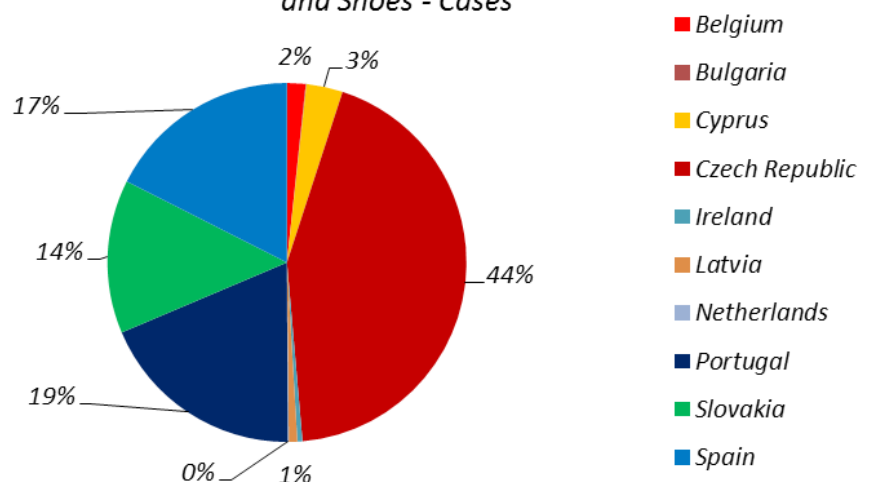
In 2016, the majority of the external border infringements in this product category were reported by Germany, followed by the UK and Belgium, possibly indicating that these Northern European countries are key entry points for foreign imports. Shoes and accessories accounted for 72% of the cases



External Seizures of IPR Infringing Clothing, Accessories and Shoes - Cases



Internal Seizures of IPR Infringing Clothing, Accessories and Shoes - Cases



¹ The European Commission [lists fashion and creative industries](#) as the textiles, clothing, footwear, and leather sectors. Other sources reference just the clothing and textile industries as being representative of the fashion industry.

² EUIPO through the EU Observatory has produced a series of sectorial reports into the economic impact of intellectual property violations in various sectors, including one document titled [The Economic Cost of IPR Infringement in the Clothing, Footwear and Accessories Sector](#). The 2018 update is soon to be published.

in this product group, with articles of clothing accounting for the remainder.

China and Hong Kong in combination were given as the point of export for 86% of all clothing, footwear and accessories cases encountered at the external borders in 2016 and the main IPR infringement was Trade mark violation (99.37% of detentions).

2,527,737 individual items of clothing, footwear and accessories were recovered at the external borders in 2016, which equates to as little as 8% of all IPR infringing units detained in that year. This indicates a propensity towards low volume, high frequency traffic, such as postal or courier consignments.

Countries such as Germany recorded high caseloads but low numbers of unit recoveries, indicating small consignments, most likely the result of electronic commerce.

Hungary reported the highest number of units seized in 2016, followed by Italy and Malta.

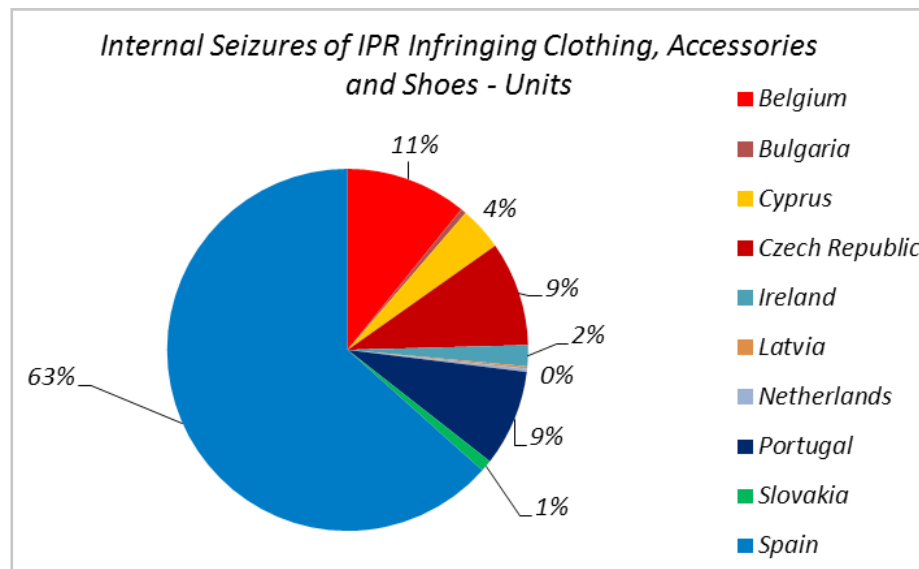
65.5% of the articles recovered were items of clothing and accessories with the remainder being made up of shoes.

Once more, the main IPR infringement by units recovered was Trade mark (96%).

Looking at the internal market, clothes, shoes and accessories also represented a high percentage of enforcement actions in 2016, with nearly half of all IPR cases reported to ACIST by those authorities participating in that year pertaining to these goods³.

3,050 individual seizures of IPR infringing shoes, clothing and accessories were reported internally in 2016, with the product group in combination representing 43% of all reported IPR enforcement actions in that year. 1,959 of these cases pertained specifically to clothing. Nearly half of seizures were reported in the Czech Republic, followed by Portugal and Spain.

The Czech Republic saw the highest number of individual enforcement actions (44% of the EU total) and recovered 9% of total units,



indicating that authorities may be tackling lower volume cases, possible at resale level.

The reverse is true of Spain, where 17% of enforcement actions resulted in the recovery of 63% of the overall goods, suggesting that authorities here may have identified larger distribution or potentially manufacturing facilities.

When it comes to the number of individual items recovered internally in 2016, 817,788 units of footwear, accessories and clothing were seized overall, with Spain being responsible for nearly two thirds of the total, followed by Belgium and the Czech Republic. 72% of the units recovered were items of clothing and accessories, and 22% pertained to footwear.

The IPR infringements recorded internally were found to be mostly Trade mark-related (98%), although instances of Design Right Infringements and Copyright violation were also recorded.

Whilst the biggest threat still appears to emanate from abroad, the high number of internal seizures could be an indication of domestic manufacture on some scale.

For the above analysis, the EUIPO, through the European Observatory on Infringements of Intellectual Property Rights has used data made available through its [Statistical Tool ACIST](#) - the EU database that gathers statistics

on detentions of articles that are suspected of infringing intellectual property rights at the EU border and in the internal market. The tool created on the basis of Regulation (EU) No 386/2012 is already at the disposal of all EU enforcers as a reporting and analysis tool for the purpose of enabling the shaping of effective IP enforcement policies.

ACIST joins the border detentions information reported by DG TAXUD on detention data at all 28 EU Member States' borders under Regulation (EU) No 608/2013, with internal market detention data reported on a voluntary basis by the corresponding enforcement authorities in the different EU Member States.

The current scenario for the internal market in the EU shows a remarkable variety in the inland detention data by every Member State. ACIST permits the standardisation and harmonisation of this existing variety of information stemming from the Member States.

While being still relatively young as a tool, ACIST is already covering internal market data from authorities in 20 Member States. A recent upgrade in the tool will allow the gathering of consistent statistics from all the EU Member States, at the border and in the internal market, by 2020 allowing the EU Observatory to prepare analytical reports on a regular basis.

Find further information about [ACIST here](#).

³ The analysis of the 2016 internal market seizure data for items of clothing, footwear and accessories has been based on data submitted by certain authorities in the following Member States: Belgium, Bulgaria, Cyprus, Czech Republic, Ireland, Latvia, The Netherlands, Portugal, Slovakia, Spain.

The problem of increased online counterfeiting in the sporting goods industry

Federation of the European Sporting Goods Industry (FESI)

IP crime affecting the European Union continues to represent a cause of serious concern. It is a growing and worrying trend that contaminates and damages legitimate economies, puts citizens' health and safety at risk, and contributes to reduced revenues, decreased sales volumes and job losses. Most importantly, counterfeiting has been established as being one of the easiest revenue streams for criminal and terrorist groups that continue to thrive on the selling of these products¹. Counterfeiters frequently use child and other illegal labour, participate in identity theft, fail to deliver goods that were paid for and have been connected to gang activity and terrorism, among other crimes².

This rising trend now accounts for 5% of imports into the EU – EUR 85 billion worth³. The growing presence of counterfeits online ultimately risks tainting the e-commerce practice and allowing criminal activities to flourish online. An unsafe online environment, coupled with the instant global reach of e-commerce, has enabled counterfeiters to develop a parallel illicit supply chain.

The sporting goods sector is one of the victims of this growing phenomenon. Clothing, accessories and footwear sectors are affected by 9.7% of counterfeits which account for EUR 26.3 billion of lost annual revenue⁴, while counterfeit sporting good articles make up 6.5% of sales⁵.

Sporting events on the ground – FESI Action

Counterfeiting of sporting goods is rising in particular during large-scale sporting events. In this context, FESI has contacted enforcement authorities and stakeholders in advance. For example, on the occasion of the 2016 UEFA Euro Cup, FESI joined forces with Europol to carry out a seizure operation targeting counterfeit sporting goods. A similar operation was conducted during the FIFA World Cup 2014 in Brazil in conjunction with the World Customs Operation. The so-called GOL14 operation resulted in 743,076 counterfeit articles being intercepted, of which 510,487 were directly related to the sporting goods industry.

Changing trend – online sales

Although operations on the ground have yielded positive figures in sporting goods seizures, counterfeits continue to increase. Right holders have noted that, while the sale of counterfeited articles used to take place outside of stadiums or in market stalls, in recent years counterfeiters have modernised and moved their business online.

Counterfeiters have adapted their commercial practices to fully take advantage of the anonymity and global reach offered by the online environment. As noted by the new study of the OECD⁶, a new global trend is the growing number of counterfeits shipped in small parcels. Online sales of products



have boosted this trade in small shipments as consumers can easily purchase articles directly from suppliers, in small, individualised quantities. Between 2011 and 2013, 88% of seized shipments of global counterfeit footwear contained between 1-5 items⁷.

The new online business model can be illustrated by a recent social media study on football jerseys that shows how, while not abandoning the larger e-commerce websites, counterfeiters are diversifying their sales channels. The number of counterfeit detections on social media, particularly Facebook and Instagram, has tripled in the last three years (see figure 1 below)⁸.

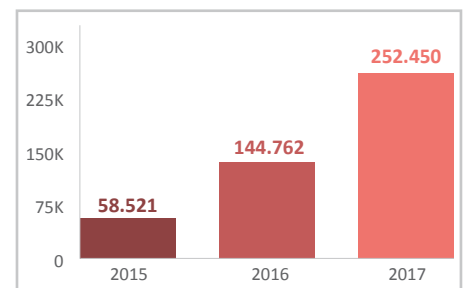


Figure 1⁹: Number of Detections on Facebook and Instagram

¹ https://www.keepeek.com/Digital-Asset-Management/oecd/governance/governance-frameworks-to-counter-illicittrade_9789264291652-en#page1.

² *ibid*

³ https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Mapping_the_Economic_Impact_study/Mapping_the_Economic_Impact_en.pdf.

⁴ https://euiipo.europa.eu/ohimportal/en/web/observatory/ip-infringements_clothing-accessories-footwear

⁵ https://euiipo.europa.eu/ohimportal/en/web/observatory/ip-infringements_sports-goods

⁶ OECD EUIPO report - http://www.keepeek.com/Digital-Asset-Management/oecd/governance/trade-in-counterfeit-and-pirated-goods_9789264252653-en#.Wow4c6jwZPY

⁷ *ibid*

⁸ Counterfeit Football Shirts Move to Social Media. Red Points, 2017, Counterfeit Football Shirts Move to Social Media, www.redpoints.com/portfolio-posts/counterfeit-football-shirts-move-to-social-media/

⁹ *ibid*

Proposed ways to tackle online counterfeiting succesfully

In parallel to the growth of online counterfeiting and piracy, the European Commission has progressively proposed a number of measures, both of regulatory and self-regulatory nature. While the European Commission's recent '*Recommendation to tackle illegal content online*', that includes the request for online intermediaries to step up efforts to fight counterfeiting, is welcome, the adoption and implementation of measures should be faster and their scope broadened. A holistic, efficient approach at all levels and involving all the operators is essential.

Indeed, with the quick sophistication of counterfeiting and piracy, and with technology making it easier for rogue operators to place illegal products online, some of the tools that were useful in the past are no longer efficient and have become obsolete. This is for instance the case of the long-used Notice & Takedown actions, which are typically an ex-post tool for removing illegal products from the market and which should only survive provided they can be coupled with automated, technology-generated proactive and preventive measures (PPM). These PPMs detect and eliminate counterfeit goods and fake products even before they have any possibility to be commercialised.

In fact, the recent Commission evaluation report on the Memorandum of Understanding on the Sale of Counterfeit Goods Online has shown the impact of proactive takedowns by intermediaries on the amount of illicit content removed¹⁰.

In addition to the efforts that brand owners in the sporting goods industry and other industries make to fight against counterfeiting online, online platforms could supplement those efforts and strengthen their commitment with other, complementary measures.

Most of these measures, outlined below, are either already implemented by platforms in other areas and/or would not entail extra costs.



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Measures which online platforms could proactively take in order to reduce counterfeiting

1. Outline clear Terms of Service prohibiting the use of a site to sell or otherwise trade in counterfeit or infringing intellectual property.
2. Encourage stronger enforcement of the Terms of Service between site owners and traders.
3. Implement due diligence checks by e-commerce site owners to ensure a basic understanding of who is trading on their site.
4. Adopt appropriate, automated risk management tools to identify high-risk behaviours and potential red flags.
5. Increase cooperation and coordination between platforms and brand owners: sharing information on methodology and tools as a preliminary and fundamental discussion.
6. Use the capacity of platforms to access relevant background information to identify the sellers even before their offers are made available to consumers. With the technology available today, it becomes progressively easier for online platforms to link counterfeiters (sometimes, repeated infringers) using various accounts, track locations and freeze the stocks of counterfeiters and other rogue operators.
7. Adopt more sophisticated and updated technological solutions including big data analysis, filters and other technology tools. These tools, including anti-fraud systems, are sometimes developed by the platforms themselves in the framework of some of the fight against terrorism, child pornography and hate speech and could thus be extended to counterfeiting.
8. Proactively seek data from IP owners to support the intelligent use of filters and other technologies.

¹⁰ The report showed that 97.4% of listings removed by online platforms who have signed the MoU are taken down proactively, compared to 2.6% as a result of a notification from a right holder (source: Commission Staff Working Document. *Overview of the functioning of the Memorandum of Understanding on the sale of counterfeit goods via the internet*, COM(2017) 707 final, p.4).

INTERVIEW

“Having a trade mark strategy is common, both among big fashion companies and independent designers. The trade mark strategy must be developed before designing a collection.”

In this issue we have interviewed Claudia G. a Senior Fashion Designer from Spain.



Could you tell us about yourself and your work as a fashion designer?

I am a senior fashion designer specialised in womenswear. I love to play with different textures in my designs and am passionate about many things that serve me as inspiration when it comes to the process of creating new designs. I get inspired, for instance, by art, nature, different cultures and new faces.

As a fashion designer, what does originality mean for you? What makes a fashion design original?

Designers generally consider originality as a priority in their work. Designing original pieces is a difficult creative exercise. Firstly, we try to eliminate the visual saturation we are often exposed to in order to be able to design in the most independent and free way. Secondly, we select existing elements we are interested in and try to imagine new shapes, new volumes and new combinations to create something new and different. The good choice and right balance of these elements make a piece original, in the sense that it looks different from previous designs, it is new and catches the public's attention.

How do designers make sure that their design has not already been designed by someone else?

This is very difficult and one can never be totally sure. Starting from this premise, when fashion designers start working on a design, they keep in mind the following considerations. Firstly, clothing pieces have a practical function – they are made to be worn – so there are some technical limitations we need to adapt to. Secondly, we usually get inspiration from elements or even entire designs from any time in history. Unless a design has been completely copied from another one, most of the time we believe

that this inspiration is not considered as an act of infringement.

Considering the above, our priority is to create a piece which is different from previous ones and which, at the same time, is in line with current trends. Furthermore, when designers work for a brand, they have to fulfil an additional aim: to achieve an exclusive benefit for the brand by creating a piece that has a singular character.

When joining a company, is it a common practice for designers to get instructions on how to avoid infringement?

This depends on the company but one can say that it is common to receive some basic notions of intellectual property law, mainly on copyright, trade mark and design matters.

Any particular guidelines on where to draw the line between copy and inspiration?

Usually each designer is their own master on this. It is very important for designers to know their market and their product.

Designers should keep themselves up to date with current trends and the collections of different fashion houses by, for example, following the fashion shows and reading fashion magazines and blogs. Designing fashion pieces exclusively based on the above would be, in my opinion, a copy exercise with no added value.

A good designer who is able to create something in line with current trends but which is at the same time new and different from previous designs will usually start the process of designing by integrating current trends, as described above, and later adding their personal touch. This personal touch aims at creating something new, which is able to portray a sensation or an idea. The necessary inspiration to complete this process

can be obtained from multiple sources, such as listening to a song, observing a piece of art or simply contemplating a sunset. The combination of these two processes make a design different and new, while in line with current trends.

Do designers keep a record of their designs? How do they prove that a certain item was designed at a particular date in order to enforce their rights if necessary?

We keep a record of our designs. Every fashion company has its own record system where each design has a unique reference number. This allows us to prove the date in which the design was created against copycats.

What makes a design unique or with a clear potential of becoming iconic and therefore worth registering as a registered Community design (RCD)?

A simple detail can make a design an iconic and unique piece. Some designers opt for experimenting with the materials, others put more effort on pattern making and others see fashion design as a way of expressing themselves and not as a way of making functional pieces. There are no rules on this, which is the fun part!

However, we could say that a perfect design is like a good cooking recipe: the ingredients should be combined in a particular way to obtain the best of results. When this is achieved, registration as a RCD may be worthwhile.

At what stage do designers usually start thinking of a trade mark strategy? At an early stage or only when there are some clear prospects of business growth?

Having a trade mark strategy is common, both among big fashion companies and

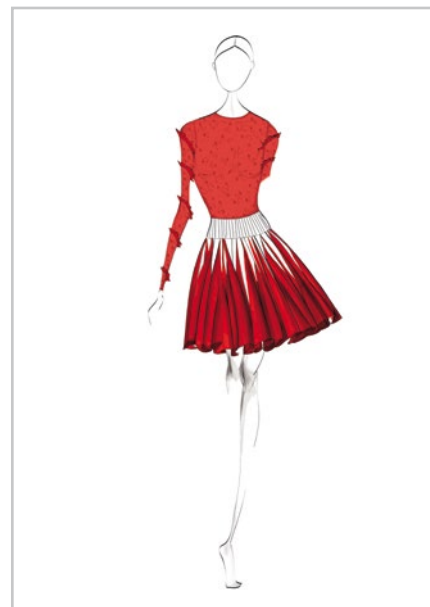
independent designers. The trade mark strategy must be developed before designing a collection. These are some of the points to be studied at this stage: the market, the type of product, the message to be sent to the target customer, how this message will be sent or who are the competitors. Once all these aspects are covered, the designing process would start, which should always be in line with the company's trade mark strategy and the image the company wishes to portray.

Trade mark strategies can be static or dynamic. Some companies are comfortable with the product they sell and their target customers, while others change their strategy at certain moments in order to achieve a different market position. In this

scenario, if, for instance, a company aims at targeting a younger public, it is common to modify the collections little by little every year so as to attract younger customers while keeping the existing ones.

Designers are artists so, often, while working for a company, they keep creating "at home". What are the rules that designers are usually asked to respect by their employers – when working for a company - in this scenario?

Designers are usually allowed to design "at home" provided that they do not use the company's resources. Doing that would not only be a breach of the employment contract but also unethical. Apart from this, we are usually free to create as much as we want.



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, and free-of-charge, first-line support directly from our IP experts.

If you are curious about the type of IP queries that the Helpline has recently been dealing with, these are shown in this illustration.

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

EU SMEs involved in transnational activities

IP in EU-funded projects

Can I apply for a trade mark registration for the name and the logo of my new company separately?

Would a utility model registered in an EU member state be enforceable across the whole EU?

Is registering an individual EU trade mark with multiple ownership possible? Is the number of owners limited? How can I verify if a logo is liable to be protected?

I have a European Union trade mark. Will the UK's exit from the EU affect my trade mark protection in the UK?

We are a partner in an Erasmus+ project and are to develop a training curriculum for police officers – with deliverables, such as handbooks and training materials, which are subject to IPRs. We are also obliged to subcontract translations of the above-mentioned materials into several EU languages. I understand the translation has its own IPRs. How can we ensure the IPRs remain with the consortium?

Can a department within a legal entity be regarded as a "linked third party" if they do not want to be an active participant in an H2020 project?

The project has delivered a mobile and web app to collect clinical data and I am wondering who is the owner of the data collected in the trial?

Does the European Commission have a contractual relationship with all parties participating in a H2020 project, or merely with one (the Coordinator)? Does the Grant Agreement bind all parties?

FREQUENTLY ASKED QUESTIONS

I am currently working on a project on fashion technology. It is a bag. I want to know how I can protect my intellectual property. I intend to sell worldwide via an e-shop. Is the IP Office in Greece the way to do that? What about the CE mark? Do I need one?

Where a fashion item does not involve a specific new technological innovation, there are two main and complementary ways of protecting a bag before putting it on the market:

INDUSTRIAL DESIGN RIGHTS

The outward appearance of your bag and of its ornamentation (e.g. its shape, contours, texture, colours) may be protected by industrial design rights if it is new and has individual character. A design is regarded as new if, on the date on which the application for registration has been filed, no identical design has been made available to the public. You should therefore perform preliminary design searches to find out whether this is the case. A design is considered to have an individual character if the overall impression it produces on an informed user differs from the overall impression made by any design available to the public before the date of filing of the application for registration.

Please note that these are only the general principles: further requirements for design protection may vary in different countries.

If you think your bag's design is new and has individual character, you may therefore take steps to protect it. Industrial design rights are territorial, meaning that your bag's design will be protected only in the countries where you file for protection. Your protection strategy and the choice of countries of registration will thus depend on your intended markets. You may register your bag's design:

- Nationally (in Greece, through your national IP office) – for a Greek industrial design right. This is relevant if you plan to target primarily, or only, the Greek market (which does not seem to be the case).
- If you plan to market your bag abroad, you may then register your design at EU level (through the EU IP Office – EUIPO). In this case you will be able to protect

your design, as long as all conditions are met, over the whole EU territory at once via a registered Community design. A registered Community design will grant you protection for 5 years (renewable for up to 25 years) and will give you the exclusive right to use it and to prevent any third party from using it without your consent. The aforementioned use covers, in particular, making, offering, putting on the market, importing, exporting or using a product into which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

- Still at EU level, besides the protection for registered Community design, the Council Regulation (EC) n° 6/2002 of 12 December 2001 on Community Designs provides a shorter-term form of protection for unregistered industrial designs. Registration is in that case not required. Protection lasts for a period of three years and starts when a new design with an individual character is made available to the public in such a way that the interested circles within the European Union could be aware of its appearance. Unlike a registered design, it is not necessary to file an application to obtain protection. The unregistered design grants you a right to prevent the commercial use of your design only if the use results from copying. In other words, the protection offered is weaker and shorter in time (only three years) but is used frequently in the fashion industry – where trends evolve quickly. It is up to you to decide (with the help of your lawyer) whether it is more strategic for you to file for a registered Community design, or whether the unregistered one grants you enough protection in the EU.
- Since you plan to sell your bag worldwide through an online shop, you may also consider registering your design internationally – at least, in the countries which you plan to target most. In order to do so, you may contact each national IP office separately and file for separate industrial design rights. If you plan to do so in more than a few countries, the task will prove time-consuming. For this reason, you may alternatively use the Hague System for the International Registration of Industrial Designs. This system provides a mechanism for registering a design in several countries

by means of a single application, filed in one language, with one set of fees. The system is administered by WIPO. Here, you would then have a single international application designating certain countries – as a result, if successful, you will be granted national design rights in each of the countries designated. Once granted, such industrial design rights will usually give you a scope of protection similar to what we described above: the exclusive right to use your design and to prevent any third party from using it without your consent, in the countries concerned.

As you can see, there are several routes and scopes to consider when seeking to protect your bag's design. Ensuring protection (at least, ensuring that it is protected in the EU via unregistered design rights, or actively filing for registration in the EU and/or abroad) will allow you to ensure that third parties cannot reproduce your design or sell/manufacture similar bags copying your design. As explained above however, industrial design protection may only protect the appearance of your product. For this reason, it is usually recommended to file in parallel for trade mark protection.

TRADE MARK PROTECTION

You may wish to market your bag under a specific, distinctive name and/or logo. In this case, you should register the name/logo as a trade mark, in order to ensure that third parties cannot sell similar goods (bags) under the same or a similar brand. This will help you build a distinctive image on the market – consumers will link your bag's design (protected as explained above) and its name/logo to you, and to you only. In a nutshell, in terms of registration, trade mark protection follows the same principles as those governing industrial designs – that is to say, it is territorial. Your name/logo will only be protected in a given country insofar as you have registered it there. Once again, you should therefore consider where you want to market your bag, and plan your trade mark protection strategy accordingly. It would usually be logical to choose the same countries for trade mark and design registration, to ensure that your bag is fully protected in the same jurisdictions (both the design and the brand). Depending on

FREQUENTLY ASKED QUESTIONS

your strategy, you will thus have the choice between:

- A national trade mark registration – in Greece only for example, through the Greek Trade mark office;
- An EU trade mark, which you can register through EUIPO (you can do so online) and which (if the application is successful) will be valid for the whole territory of the EU;
- An international registration procedure via the Madrid System, administered by WIPO. Once again, this is equivalent to a bundle of national registrations, for each of the countries designated in your international application.

The conditions surrounding trade mark registration may vary depending on the route chosen and on each jurisdiction. Generally speaking however, you can register as a trade mark any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of your undertaking from those of other undertakings. Such signs (e.g. name, logo) should not be descriptive (e.g. “bag”), should be distinctive, and should not deceive customers as to the nature or quality of your product. They should also, simply, be available (i.e. not already registered by someone else in the territories of your choice) – for this reason, you should perform preliminary trade mark searches to check the availability of your mark before filing your application.

If your application is successful, you will be granted a trade mark title in the jurisdiction(s) where you applied. Trade mark protection is usually valid for 10 years, renewable indefinitely, and will allow you to prevent others from using the same mark, or a similar mark, for identical or similar products.

We would like to know if there is any legal regulation in EU relative to the obligation or not to designate a registered trademark with the symbol ® or ™ in a fashion product protected under a registered trademark, either on the product itself, or in the product marketing - namely advertisements, products package, catalogues, specification

charts, brochures, websites, or any other marketing or promotional materials featuring our product.

Symbols ® and ™ are used by the right holders merely for informative and preventive purposes. It is common practice to attach such symbols to signs used in the course of trade in order to inform third parties of the existence of protection. Put simply, the mentioned symbols in connection to a sign leave a clear message: “beware, this sign is trade mark protected”.

Symbol ® is usually used in connection with registered trade marks. In some jurisdictions it might be unlawful to use it with signs which have not been officially registered.

Symbol ™ attached to a sign means merely that the sign is used as a trade mark. It does not specify what kind of protection (if any) is provided.

There exist no strict unified rules in terms of use of the symbols ® and ™. Definitely there is no obligation to use them - it is up to you whether to incorporate such symbols into your logo or not.

We are an Italian Company, producing eyewear. Our brand is correctly registered as an EU trade mark. Our dealers reported to us that some companies, mainly in Poland, started selling copies of our products with our name, made in China. Last year we reported it to the Customs, but with no results because these people import the copies, without logos, and once the merchandise is there they put our logo on it and sell their products under our brand. What can we do?

First of all, we suggest that you register with the Enforcement Database of EUIPO. The Enforcement Database (EDB) contains information on products that have been granted intellectual property rights protection, such as trade marks or designs. After that you may file a customs application for action (AFA) electronically to protect your products. Although the tool will NOT replace any of the legal customs procedures, it will create alerts, providing a direct communication channel between you and enforcement authorities.

The information entered into the EDB can be accessed by customs authorities and police across the EU in their own respective languages. You can choose what information

to upload and to whom you want this information to be available.

As of the 1st of October 2017, the EU Regulation 2015/2424 allows trade mark holders to prohibit preparatory acts in relation to the use of packaging and labelling. In other words, the customs authorities are now able to seize containers that arrive and include either labels not yet affixed to any product or products that do not have any distinctive sign on them but they are suspected to be used in infringement acts. Very often companies that infringe IP rights send the labels and the products in different containers and they affix the labels at a later stage after the goods have left the customs premises. With the new legislation the customs have the authority to seize both containers even if the goods do not have the distinctive mark on them yet.

We also suggest that you send a letter of demand to the alleged infringer, also known as a cease and desist letter. A letter of demand is commonly used to approach a person who is supposedly infringing your IP rights. The letter should advise the alleged infringer that a court action may be taken if the infringing activities do not stop within a certain period of time. Together with this firm intention, the letter should specify the IP rights violated and the supposed infringing action. It is vital to be aware that when sending the letter, you should avoid threatening the other party or including false statements, as this may lead to your legal liability. In order to avoid such risks it is advisable to check the content of such letter with an IP lawyer.

If the other party does not stop the import of the infringed goods and the customs do not act, you may start court proceedings. IP litigation may however be time-consuming and extremely expensive. Civil actions aim to stop the infringement activity, e.g. through preliminary and permanent injunctions, and allow a compensation through the award of damages. Other relief measures may be confiscation as well as destruction of illegal goods. In some countries it is also possible to bring criminal actions for some types of infringements, with the imposition of more severe sanctions by courts such as criminal fines, confiscation, destruction and even imprisonment.

The European IPR Helpdesk on tour: Take a look at a selection of our recent events

In the last three months the European IPR Helpdesk Team participated in a number of IP events all over Europe, and provided several IP workshops building capacities in IP management among SMEs and researchers.



*IP&Coffee - IP Commercialisation
Brussels (Belgium)
07 February 2018*

*RIGA! IPforBusiness
Riga (Latvia)
26 February 2018*

*MCAST - Annual Water Conference
Paola (Malta)
02 March 2018*

*ROME! IPforBusiness
Rome (Italy)
14 March 2018*

*Patents, trade marks and licences
Bratislava (Slovakia)
15 March 2018*

Meet us at these upcoming conferences

- 21-22 June 2018: Southampton, UK
UKRO Annual Event

Upcoming IP training events

- 03 May 2018: Berlin, Germany
Workshop: Freedom to Operate in Horizon 2020
- 23 May 2018: Brussels, Belgium
IP&Coffee training session: IP Management in H2020 - focus on Marie Skłodowska Curie Actions
- 24/25 May 2018: Prague, Czech Republic
IP in H2020 for the NCP Academy
- 31 May 2018: Berlin, Germany
BERLIN! IPforBusiness

- 08 June 2018: Prague, Czech Republic
PRAGUE! IPforBusiness
- 15 June 2018: Brussels, Belgium
Societal Challenge 2, Coordinators' Day by EC

Upcoming webinars

- 02 May 2018: Consortium Agreements
- 09 May 2018: Webinar Series "IP as a business asset", session 2: IP Management under an Open Innovation Paradigm
- 23 May 2018: IP Management in H2020 - focus on Marie Skłodowska Curie Actions
- 28 May 2018: Webinar Series "IP as a business asset", session 3: The 10 Pitfalls of Accounting for IP

- 29 May 2018: Effective IP and Outreach Strategies Help Increase the Impact of Research and Innovation
- 13 June 2018: Basic IP toolkit for SMEs – hacks and common pitfalls

For further information, please have a look at our [online event calendar](#).

Check-out our new brochure: Making the Most of Your Horizon 2020 Project

Why should beneficiaries of Horizon 2020 projects care about communication, dissemination, and exploitation? What are contractual obligations, and how can effective outreach strategies be put into practice? These are only some of the questions addressed by a new brochure recently published by the European IPR Helpdesk. It complements the already existing portfolio of training and supporting material on maximising impact in Horizon 2020 projects, putting a particular spotlight on the role and interplay of communication, dissemination and exploitation.

The brochure responds to the increased need for information on how effective IP management and outreach strategies can help increase the impact of Horizon 2020 R&D initiatives. As witnessed during our training sessions, there still exists some confusion about the terms communication,

dissemination and exploitation. Despite existing manuals, a concise document was missing that tied the three concepts together on the one hand, but also helped to better define the individual terms on the other.

Therefore, this new publication aims to clarify the terminology by illustrating the differences between communication, dissemination and exploitation, and point out the areas they have in common. It is intended as an introduction, and will provide a helpful overview to beneficiaries when developing outreach and exploitation strategies for their projects. Obviously, questions related to IP and IP management are highly significant in this whole context, and are thus addressed at various points throughout the document.

The brochure is part of a [Thematic Special](#) including a dedicated [webinar session](#) scheduled for 29 May 2018.



You may download the brochure [here](#).

Fancy a Little Quiz?

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

PATENT QUIZ

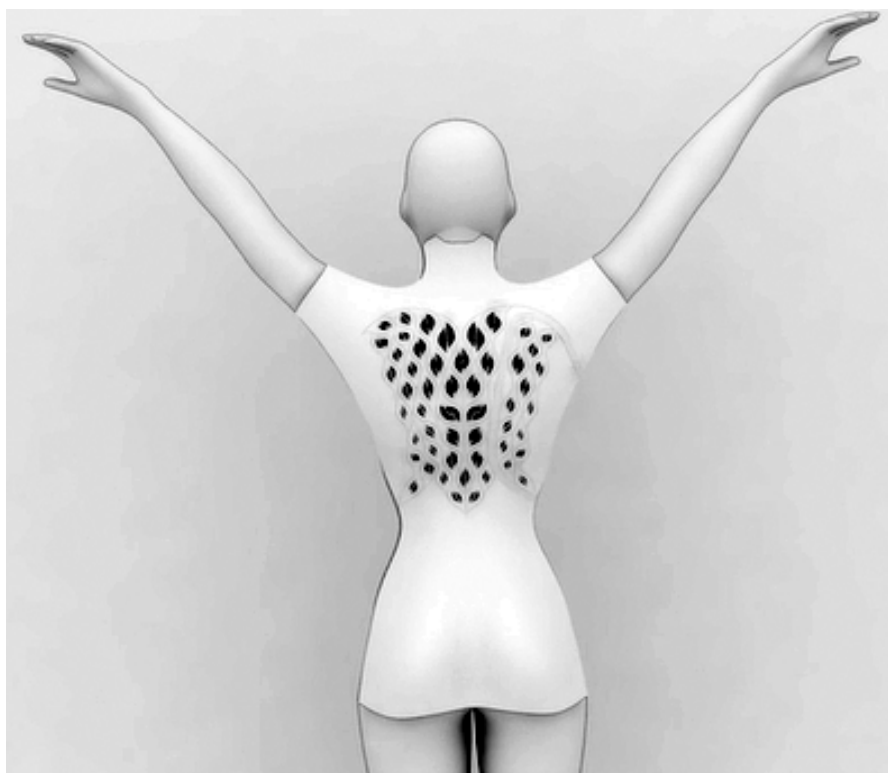
The breathing shirt

A team of researchers from MIT has developed a sport suit which incorporates microbial cells into flaps that allow it to self-ventilate. This new fabric combines biological systems and engineering.

The clothing is made from latex and is covered with ventilating flaps that open and close depending on how much heat your body puts out. What is controlling the flaps is not something you'll find woven into your usual workout gear – it's bacteria. Strain of E. coli are printed onto ventilating flaps in the workout suit. These flaps open and close in reaction to the heat and sweat generated by an athlete's body.

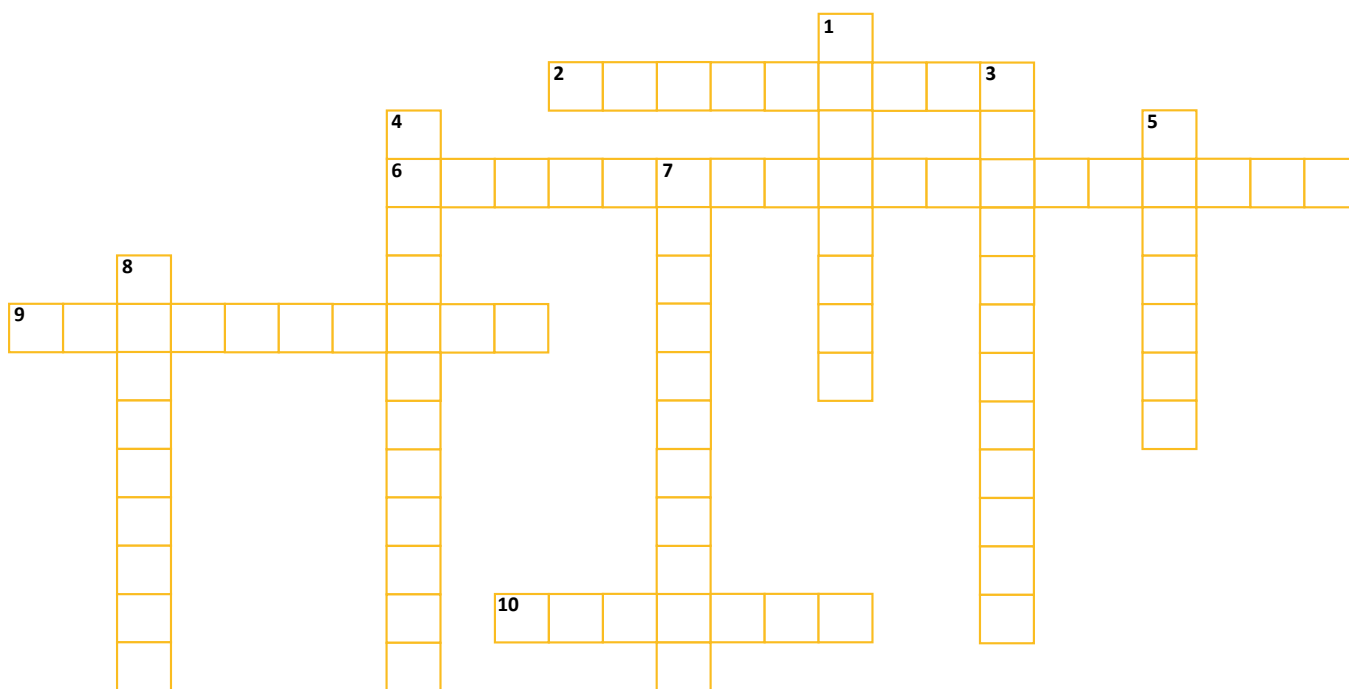
Watch [this film](#) to know more about this invention.

Using [ESPACENET](#), try finding the patent that covers this invention



IP AND FASHION CROSSWORD

How about making a final recap of this Bulletin issue with a crossword puzzle? The answers are hidden in the articles!



Across

2. One of its disadvantages is that it has not been sufficiently harmonised across the EU.
6. Looking at the internal market, clothes, shoes and accessories also represented a high percentage of ____ in 2016, with nearly half of all IPR cases reported to ACIST by participating authorities in that year pertaining to these goods. *(two words)*
9. Can be invaluable in protecting a brand's image in the long term, but they are not effective in protecting fashion goods that might only last a season.
10. Probably the most effective option available to fashion designers.

Down

1. Fashion designs are produced seasonally with an expected ____ of 6-12 months.
3. Serve to protect the computer-implemented, software-based business models, which underpin an entire business strategy, based on stealth and speed, to supply a limited quantity of fashion products. *(two words)*
4. Every fashion company has its own ____ where each design has a unique reference number. This allows designers to prove the date in which the design was created against copycats. *(two words)*
5. In the EU, the fashion and high-end industries are responsible for employment of six ____ people .
7. The number of ____ detections on social media, particularly Facebook and Instagram, has tripled in the last three years.
8. The convergence of smart textiles and nanotechnology opens up endless possibilities and huge ____ opportunities.

SOLUTION PREVIOUS PATENT QUIZ

Not at home, no problem.

One major disadvantage of ordering online for later delivery is that you have to be at home to accept the package. Imagine a

locker system close to your place to which you can have your package delivered and where you can pick it up later.

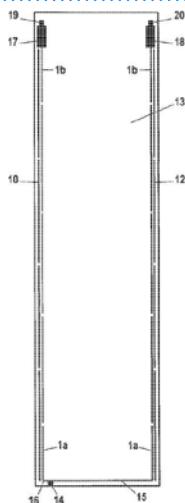
Using [ESPACENET](#), try finding patents covering this concept and its improvement.

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:

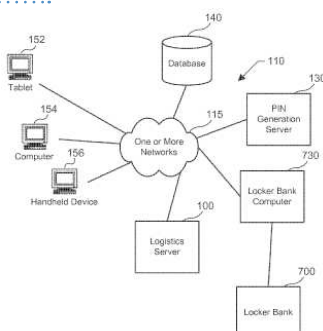
- stor*
- locker*
- deliver*, ship*
- order*
- Goods, parcel*

The combination deliver* locker parcel yields this [list of patents](#) that contains relevant documents as the one listed below:

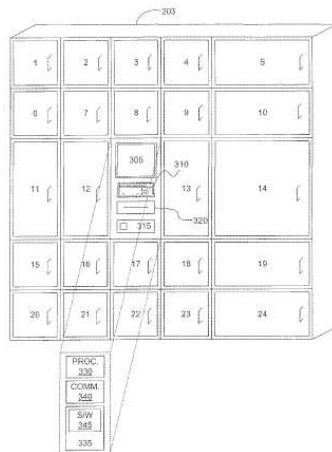
[EP3190541 \(A2\)](#) - [AUTOMATED AUTOVALIDATING LOCKER SYSTEM](#)



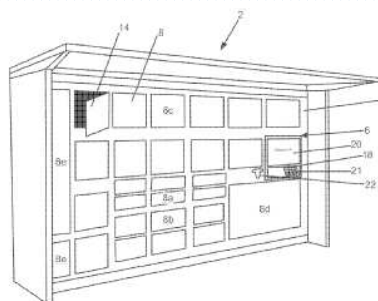
[SYSTEMS AND METHODS FOR FACILITATING DELIVERY OF A PARCEL TO A SUITABLY SIZED LOCKER](#)



[EP1456794 \(A1\)](#) - [DELIVERY OF GOODS TO ELECTRONIC STORAGE LOCKERS](#)



[US2015186840 \(A1\)](#) - [SMART LOCKER SYSTEM AND METHOD OF PARCEL DELIVERY](#)

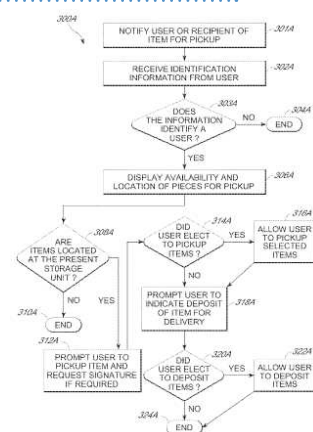


Step two: To continue the search you can use relevant classification symbols assigned to this relevant patent and combine them with properly chosen keywords to cover the concepts that should be present in relevant patents.

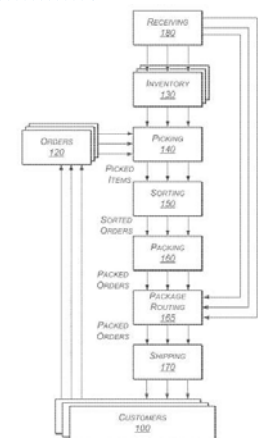
Amongst the classification symbols assigned to the relevant patents found, one covers central recipient pick-up [G06Q10/0836](#) which looks like exactly covering the inventions we are looking for. Using this search symbol as a search key you will obtain [this list](#) containing more than 600 patent documents. You can randomly select some of the patents to realise that the concept has already being subject to many improvement patents like the following ones:

[CN107644492 \(A\)](#) - [METHOD OF CONTROLLING ITEM DELIVERY TO AN](#)

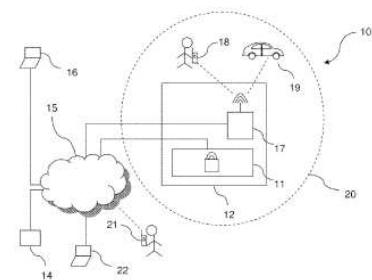
[ELECTRONIC PARCEL LOCKER](#)



[JP2017130228 \(A\)](#) - [CUSTOMER CENTRIC PICKUP LOCATION](#)



[US2017148059 \(A1\)](#) - [System for Promoting Spontaneous Purchases of Goods Using Prestocked Lockers and Proximity Marketing](#)



This list clearly demonstrates that the field is heavily patented. The simple concept of putting delivered goods in a locker when you are absent is more than state of the art.

SOLUTION IP AND RESEARCH QUIZ

*To conclude this learning experience, why not strengthen your knowledge of IP and research with this multiple choice test? Only **one answer** is correct for each question: try to find them!*

1. According to WIPO, what is an institutional IP policy?
 - (a) A formally-adopted document which establishes the access rights regime of the parties participating in a project.
 - ✓ (b) A formally-adopted document which establishes the way an institution intends to deal with the ownership and disposition of its IP.
 - (c) A formally-adopted document which describes the IP owned by an institution.
2. According to OpenAIRE, what is open access?
 - (a) The practice of providing access rights to the IP owned by academic and research institutions under fair and reasonable conditions.
 - (b) The practice of making peer-reviewed scholarly research and literature available online to third parties, under payment or free of charge, depending on the conditions applicable.
 - ✓ (c) The practice of making peer-reviewed scholarly research and literature freely available online to anyone interested.
3. Dr Dragan Indjin, from University of Leeds, explains that IP protection of research results helps universities to obtain funding from industry because:
 - (a) Industry partners are not interested in unprotected research results.
 - ✓ (b) IP protection contributes to background definition; it shows industry partners the university's intention to commercialise the results; it gives universities negotiation power.
 - (c) Industry partners do not have the time and the financial means to evaluate whether the results generated by universities are protectable.
4. According to Claudia Tapia, from 4iPCouncil, what is the main challenge when parties decide to "co-patent" the results of a collaboration?
 - ✓ (a) The main challenge when "co-patenting" is to determine the jurisdiction applicable in case there is a conflict regarding the patent.
 - (b) The main challenge when "co-patenting" is to determine the responsibilities of the parties regarding the patent protection costs.
 - (c) Neither of the above is correct.
5. According to Asier Rufino, from Tecnalia, what can policy makers do to boost research and innovation?
 - (a) Reform the patent system, which is obsolete
 - (b) Create new financial instruments to finance innovation.
 - ✓ (c) Force stakeholders into working or interacting together more often.
6. According to Dr Andreea Monnat, from the Fonds National de la Recherche Luxembourg (FNR):
 - (a) Only big companies, such as Google or Apple, have any chance to do well in R&D.
 - ✓ (b) The FNR advocates public-private partnerships.
 - (c) Neither of the above is correct.
7. According to Professor Littlechild, coordinator of the ERA-net project THERMOGENE:
 - (a) The academic community is always in favour of early publication of their results in open access journals and against IP exploitation.
 - ✓ (b) The definition of background is an important IP measure to implement before entering into a research project.
 - (c) The parties to the ERA-net THERMOGENE project agreed on a joint ownership regime where the results would be commonly owned, irrespective of which party generated them.

GLOSSARY

Smart textiles are fabrics that enable digital components and electronics to be embedded in them; in other words, a smart textile is a cloth that has modern computer-based technology woven into it. These are fabrics that have been developed with new technologies that provide added value to the wearer.

The Anti-Counterfeiting Intelligence Support Tool (ACIST) is the statistical tool of the European Observatory on Infringements of Intellectual Property Rights. It is an EU database that gathers statistics on detentions of articles that are suspected of infringing IP rights at the EU border and in the internal markets.

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