

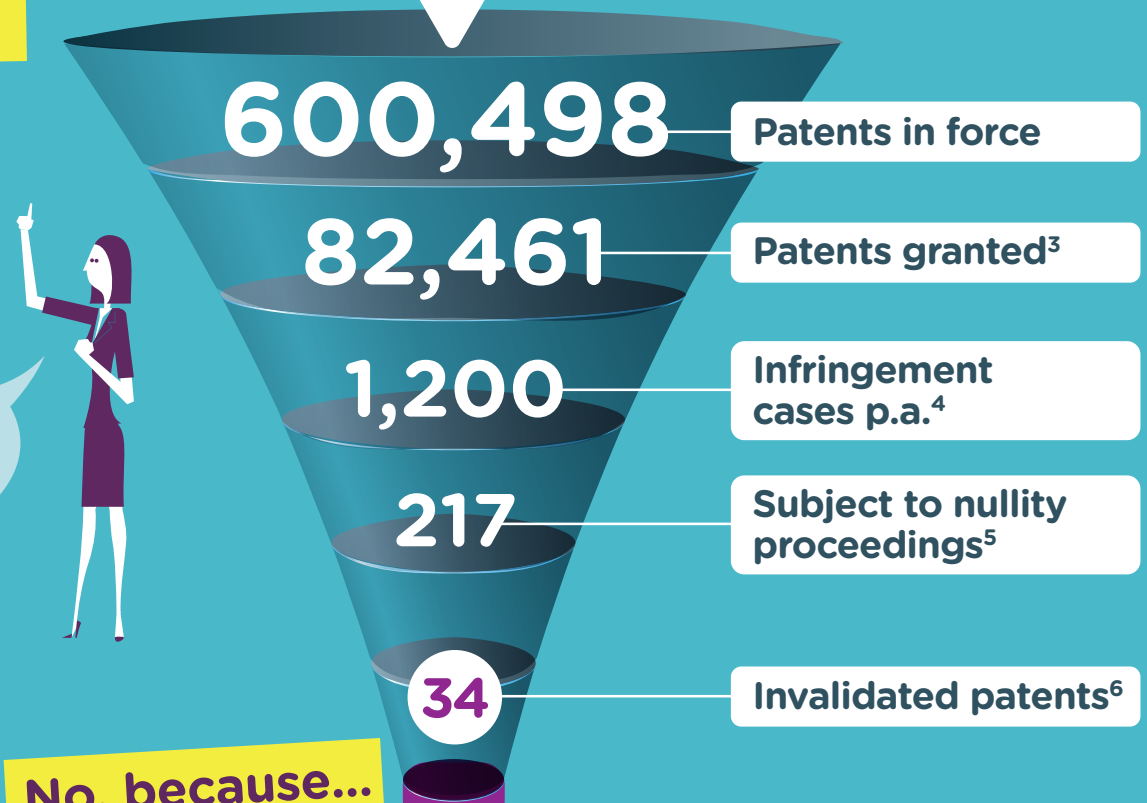
High quality of patents in Europe

Do these provocative statements withstand scrutiny?

Most patents (75-82%) are invalid.¹

High invalidity rates in German Federal Patent Court suggest shortcomings in patent quality and granting process²

Data for Germany 2015



No, because...

In 2015 only 1 in 17500 (0.006%) of all patents in force in Germany were declared invalid by a court

Research findings show similar results for patents in other jurisdictions⁷

1. Henkel/Zischka, predict an average of around 82% invalidation rate in Why most patents are invalid, 16 December 2015, at https://www.tim.wi.tum.de/fileadmin/w00bcy/www/Research/Publications/Henkel/Henkel_Zischka_2015-12_Patent_Validity.pdf; Hess/Müller-Story/Wintermeier, Are Patents merely "Paper Tigers"? Mitt. 2014, 439, available at http://www.bardehle.com/uploads/files/Patent_Papiertiger.pdf
2. Henkel/Zischka make policy recommendations on the basis that many patents are latently invalidity. Available at https://www.tim.wi.tum.de/fileadmin/w00bcy/www/Research/Publications/Henkel/Henkel_Zischka_2015-12_Patent_Validity.pdf
3. Patents granted in Germany in 2015: 14,795 German patents and 67,666 EP patents validated in Germany
4. See German Federal Patent Court 2014 Annual Report, at https://www.bundespatentgericht.de/cms/media/Oeffentlichkeitsarbeit/Veroeffentlichungen/Jahresberichte/jahresbericht_2014.pdf, at p.126
5. BIPMZ 2016, German Patent and Trade Mark Office, at p.86. This does not include patents pending in opposition.
6. Ibid
7. See Ann, Patent Invalidation and Legal Certainty - What Can Patent Holders Expect?, July 5, 2016; Cremers, Gaessler, Harhoff and Helmers, Invalid but Infringed? An Analysis of Germany's Bifurcated Patent Litigation System. Working Paper, August 1, 2014; Helmers and McDonagh, Patent litigation in the UK. LSE Law, Society and Economy working papers 12/2012; Hüttermann, Patents - Paper Tigers or Real Tigers? Mitteilungen der deutschen Patentanwälte 2016, 101, May 2, 2016; Kuhnen and Claessen, Die Durchsetzung von Patenten in der EU - Standortbestimmung vor Einführung des europäischen Patentgerichts, GRUR 2013, 592-597; Tapia, Assessing the quality of European patents, IAM Magazine, Issue 80, 2016.

