

Introduction to Intellectual property rights

Introduction Law & Ethics – 28.10.2025



Astrid Pilottin

1. Definition of Intellectual property

2. Different types of IP rights

3. Focus on patents



Definition of Intellectual property

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. (WIPO)



Plantu se mobilise pour la Journée internationale de la propriété intellectuelle

26 avril 2016

Role and function of intellectual property

Stimulation of innovation

Financing of innovation

Access to innovation (technology,
works of arts)

TRIPS Agreement

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

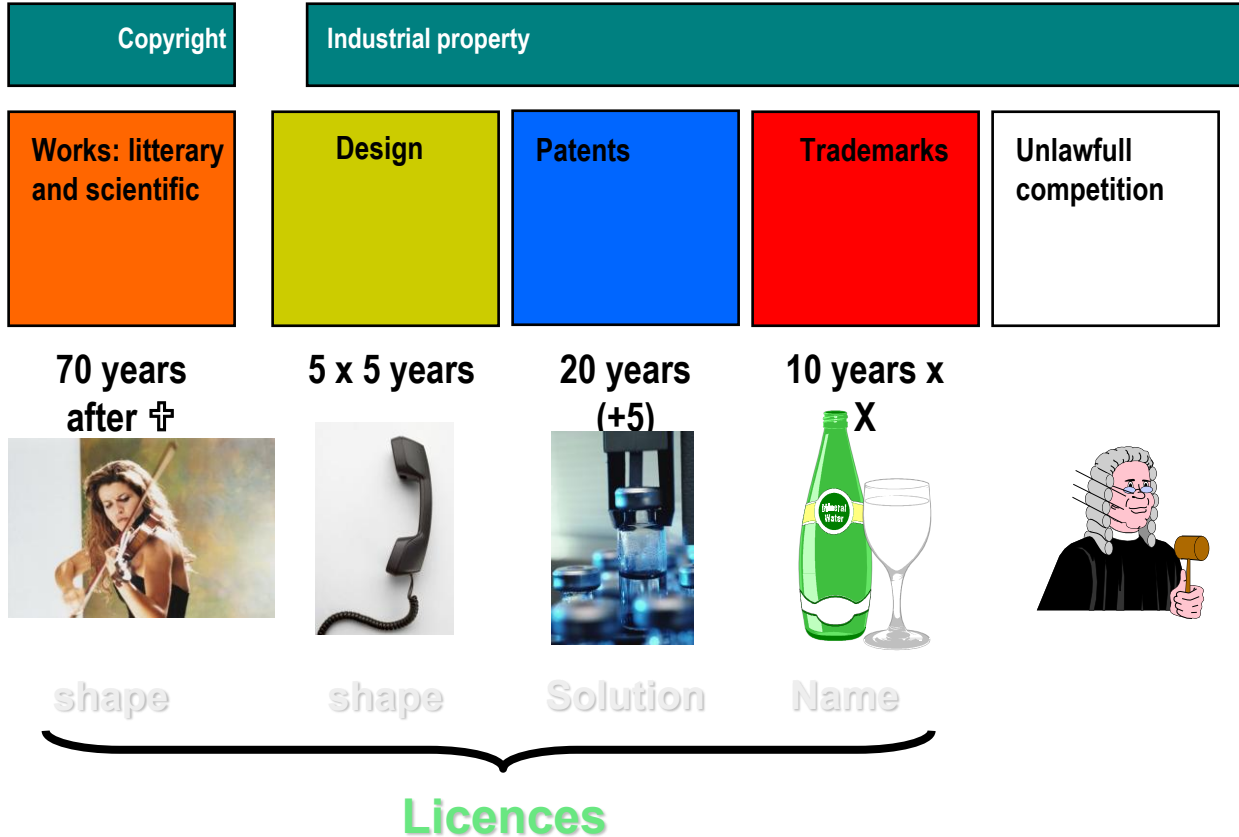
Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.



Different types of IP rights

Different types of intellectual property rights



Purpose of patent rights



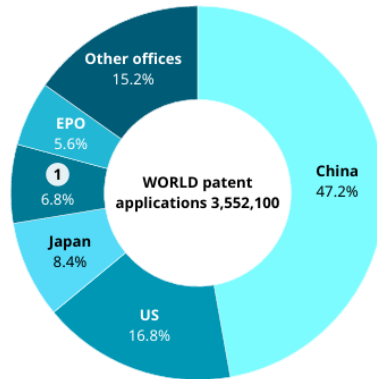
Stimulating innovation to ensure socioeconomic well-being

- Protection of new inventions resulting from inventive activity and applicable industrially.
- Patents stimulate innovation and the development of knowledge.
- Exclusive rights: the inventor enjoys exclusive rights to exploit the invention for 20 years from the date of filing the patent application. After this period, the patent falls into the public domain.
- Main users: industry. Over the past 20 years, there have been numerous patents in the fields of agriculture and biotechnology.

Patent applications in 2023

The combined share of the top five offices constituted a substantial 85% of the world total

4. Percentage shares of total patent applications by the top five offices, 2023



1 Republic of Korea

Note: EPO is the European Patent Office.

Source: WIPO Statistics Database, August 2024.

<https://www.wipo.int/web-publications/ip-facts-and-figures-2024/en/index.html>

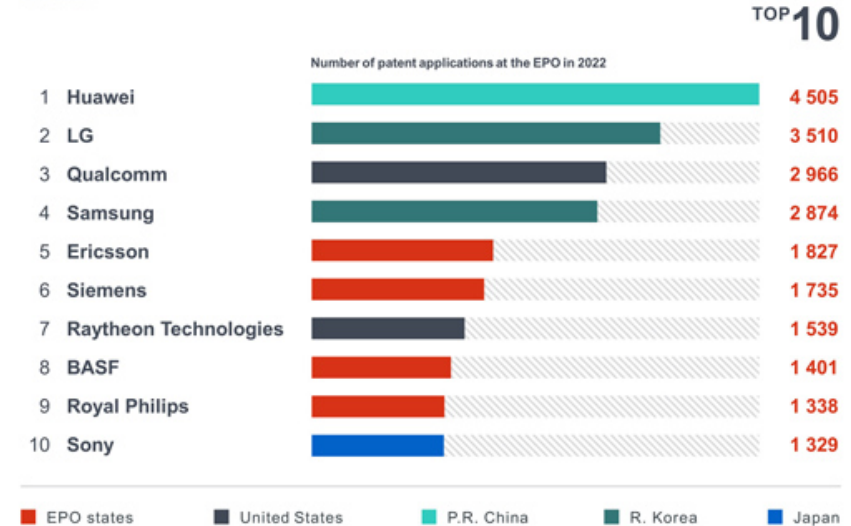
Patents applications

Top technical fields for European patent applications 2022



European Patent Office 2022

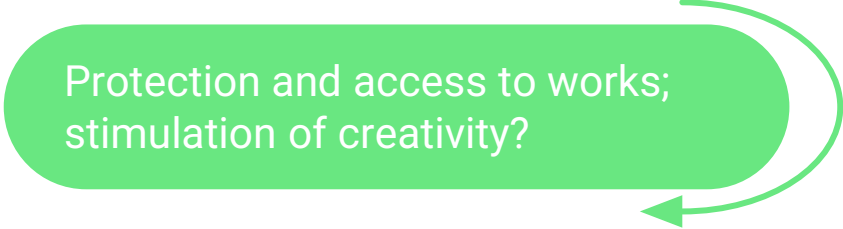
Top applicants for European patents 2022



European Patent Office 2022

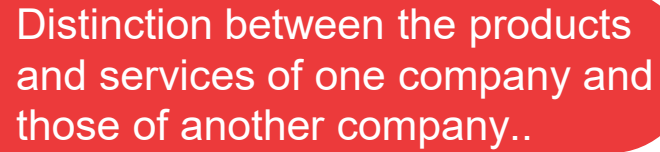
<https://report-archive.epo.org/about-us/annual-reports-statistics/statistics/2022/patenting-trends.html>

Purpose of copyright and related rights



Protection and access to works;
stimulation of creativity?

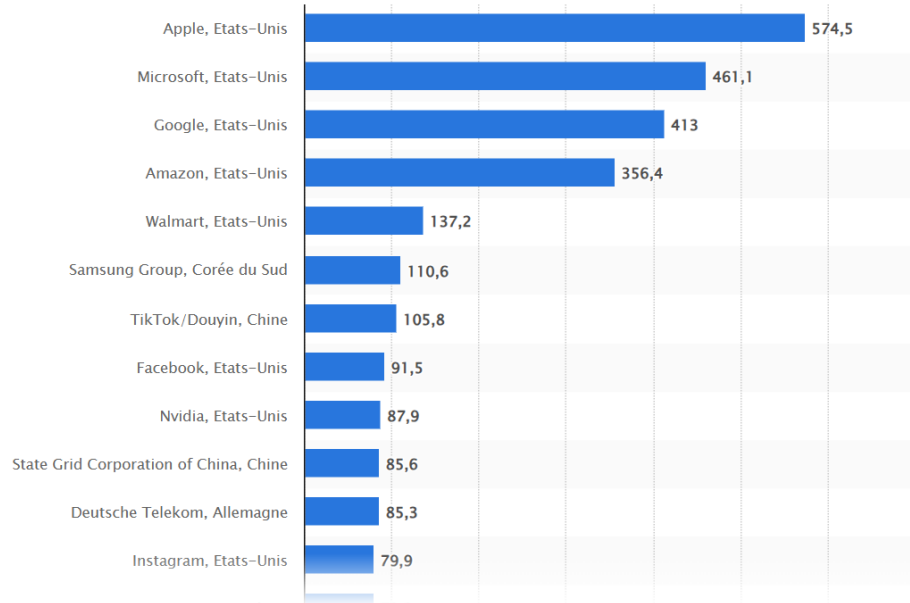
Purpose of trademark law



Distinction between the products and services of one company and those of another company..

The 10 most valuable brands in 2025 worldwide

<https://fr.statista.com/statistiques/540853/marques-les-plus-valorisees-monde/>



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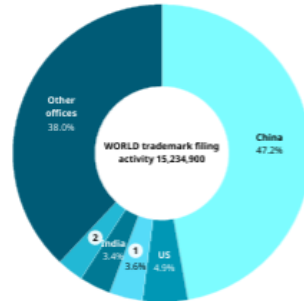
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International applications filed in 2023

62% of all trademark filing worldwide was concentrated at just five offices in 2023, reflecting a significant increase from about 45% held by the top five offices a decade earlier in 2013

11. Percentage shares of total trademark filing activity by the top five offices, 2023



1 Russian Federation 2 EUIPO

Note: EUIPO is the European Union Intellectual Property Office.

Source: WIPO Statistics Database, August 2024.

<https://www.wipo.int/web-publications/ip-facts-and-figures-2024/en/index.html>

Purpose of design law





Focus on patents

01 Introduction

Interests involved

The role of patent law is to stimulate innovation while making it accessible.

It must strike a fair balance between the interests of patent holders and third parties (users).

A monopoly over the invention?

→ Right to exclude others from using the invention without the holder's consent.

→ Limited in time: 20 years (from the filing date).

Art. 8 PatA

02



Patents : Sources of National and International Law

Sources of National and International Law

International law

- TRIPS
- Patent Cooperation Treaty (PCT)
- Paris Convention

Regional

- European Patent Convention (esp. Art. 52 ff.)
- EU law with the unitary patent

Swiss law

- Federal Act on Patents for Inventions of 25 June 1934, [RS 232.14](#) (PatA)
- Ordinance on Patents for Inventions of 19 October 1977, [RS 232.141](#) (OBI)

Art. 27 TRIPS – Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, **whether products or processes**, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

03 Patents- conditions of protection

The Patent Act (PatA) does not define “invention,” but it defines what qualifies as patentable and the criteria for patentability.

Art. 1 al. 1 et 2 PatA :

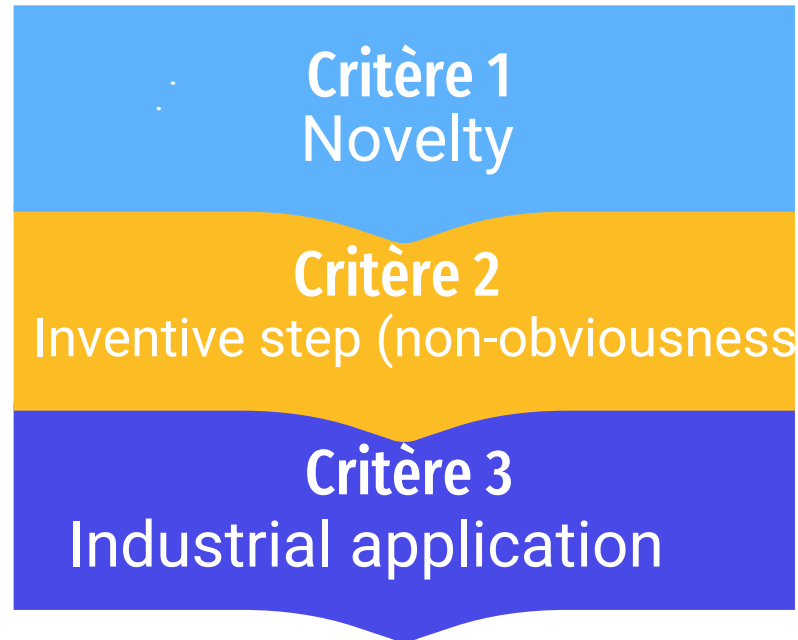
« I. Principle

¹ Patents for inventions are granted for new inventions applicable in industry.

² Anything that is obvious having regard to the state of the art (Art. 7 para. 2) is not patentable as an invention. »

Conditions of protection

Condition 0 : invention \neq discovery



Condition 0 : Invention / Discovery

Invention

- ✓ Creation of something that did not previously exist.
- ✓ Transition from a natural to an artificial state through human action.
- ✓ A legal invention is a **technical solution to a technical problem**.

≠

Discovery

- Revelation of a phenomenon existing in nature or the universe.
- A discovery cannot be patented.

First Criterion: Novelty

Art. 7 al. 1 et 2 LBI

- « 1. An invention is considered to be new if it does not form part of the state of the art.
2. The state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way prior to the filing or priority date. »

ATF 133 III 229 du 28 février 2007, JdT 2007 I 152

The novelty of an invention is destroyed only when all of its features have been published before the filing of the patent application. (consid. 4.1)

Novelty



[Link](#)



Second Criterion: Inventive Step

According to the Swiss Federal Institute of IP: An invention must not be obvious to a person skilled in the art in light of the state of the art.

- **Indicators of inventive activity:**
- Unexpected properties of a product
- Surprising effects of a technical process
- Overcoming a prejudice (“This will never work!”)
- Solving a long-standing need



Inventive Step – The State of the Art

Art. 7 al. 2 PatA :

«The state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way prior to the filing or priority date.»

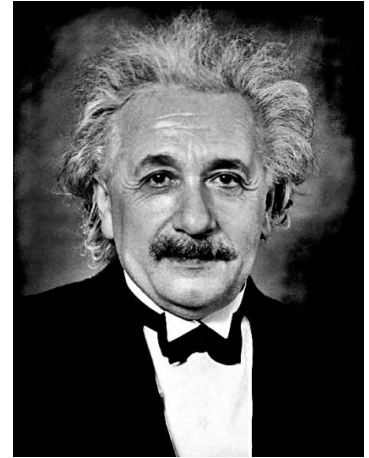
➤ Examples

ATF 133 III 229 du 28 février 2007, JdT 2007 I 152

The prior art includes anything that has been made available to the public before the filing date or priority date of the patent by means of a written or oral description, by use of the invention, or in any other way. (consid. 4)

Inventive Step – The Skilled Person

According to the Federal Supreme Court, a person skilled in the art has received a good education (Federal Supreme Court 4C.52/2005 of May 18, 2005, consid. 2.1, sic! 2005, 825), but is not an expert in the field = neither a scholar nor an ignorant. He or she does not know the state of the art in its entirety.



https://en.wikipedia.org/wiki/Albert_Einstein

Inventive Step – Non-Obviousness

Key cases:

- TF 4C.300/2002: inventive step begins beyond what the average well-trained specialist could develop.
- ATF 138 III 111 (2011): Art. 1 para. 2 PatA; non-obviousness or inventive step. Criteria for assessing inventive step (consideration 2.1). The “problem-solution” approach is one of the methods that can be used to assess non-obviousness.

Third Patentability Criterion: Industrial Application

Art. 1 PatA

¹ Patents for inventions are granted for new inventions applicable in industry.



The invention must be capable of being used, manufactured, and reproduced industrially.

ATF 91 I 152 du 16 février 1965 : invention of a device to protect against cosmic radiation.



And what about AI?

Many questions regarding AI...

(12) INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)	
(19) World Intellectual Property Organization International Bureau	 (10) International Publication Number WO 2020/079499 A1
(43) International Publication Date 23 April 2020 (23.04.2020)	
<hr/>	
(51) International Patent Classification: B65D 6/02 (2006.01) B65D 21/02 (2006.01) B65D 8/00 (2006.01) B65D 1/02 (2006.01) B65D 6/00 (2006.01) A61M 16/00 (2006.01) B65D 13/02 (2006.01) A61M 21/00 (2006.01)	(71) Applicant: THALER, Stephen L. [US/US]; 1767 Waterfall Dr., St. Charles, Missouri 63303 (US).
(21) International Application Number: PCT/IB2019/057809	(72) Inventor: DABUS, The invention was autonomously generated by an artificial intelligence; 1767 Waterfall Dr., St. Charles, Missouri 63303 (US).
(22) International Filing Date: 17 September 2019 (17.09.2019)	(74) Agent: ABBOTT, Ryan; 11601 Wilshire Blvd #2080, Los Angel, CA 90024 (US).
(25) Filing Language: English	(81) Designated States (unless otherwise indicated, for every kind of national protection available): AE, AG, AL, AM, AO, AT, AU, AZ, BA, BB, BG, BH, BN, BR, BW, BY, BZ, CA, CH, CL, CN, CO, CR, CU, CZ, DE, DJ, DK, DM, DO, DZ, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, GT, HN, HR, HU, ID, IL, IN, IR, IS, JO, JP, KE, KG, KH, KN, KP, KR, KW, KZ, LA, LC, LK, LR, LS, LU, LY, MA, MD, ME, MG, MK, MN, MW, MX, MY, MZ, NA, NG, NI, NO, NZ, OM, PA, PE, PG, PH, PL, PT, QA, RO, RS, RU, RW, SA,
(26) Publication Language: English	
(30) Priority Data: 18275163.6 17 October 2018 (17.10.2018) EP 18275174.3 07 November 2018 (07.11.2018) EP	

Attention : inventor ≠ patent holder

<https://www.bvger.ch/fr/newsroom/communique-de-presse/l-intelligence-artificielle-n-est-pas-inventrice-2044>

(54) Title: FOOD CONTAINER AND DEVICES AND METHODS FOR ATTRACTING ENHANCED ATTENTION

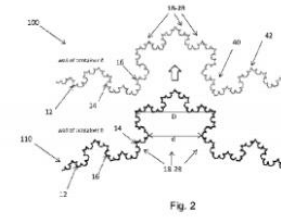


Fig. 2

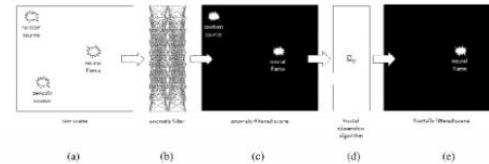


Fig. 15

(57) Abstract: A container (10) for use, for example, for beverages, has a wall (12) with an external surface (14) and an internal wall (16) of substantially uniform thickness. The wall (12) has a fractal profile which provides a series of fractal elements (18-28) on the interior and exterior surfaces (14-16), forming pits (40) and bulges (42) in the profile of the wall and in which a pit (40) as seen from one of the exterior or interior surfaces (12, 14) forms a bulge (42) on the other of the exterior or interior surfaces (12, 14). The profile

04 Exclusions from Patentability

Art. 27 TRIPS – Patentable Subject Matter

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

Art. 27 TRIPS – Patentable Subject Matter

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement

Swiss Patent Act

Art. 1a, 1b et 2 PatA

European Patent Convention (EPC 2000)

Article 53^{40, 41}

Exceptions to patentability

Art. 54, 100, 138

R. 28, 29

European patents shall not be granted in respect of:

- (a) inventions the commercial exploitation of which would be contrary to "ordre public" or morality; such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;
- (c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

And what about computer programs?

European Patent Convention (EPC 2000)

Chapter I Patentability

Article 52^{38, 39}

Patentable inventions

- (1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
- (2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
 - (a) discoveries, scientific theories and mathematical methods;
 - (b) aesthetic creations;
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
 - (d) presentations of information.
- (3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.



Restrictions on patent rights

Restrictions on patent rights

art. 9 PatA

The effects of the patent do not extend to:

- Acts performed in the **private sphere for non-commercial purposes** (domestic and family sphere, must not generate an increase in income).
- Acts performed for **experimental and research purposes**.
- Acts **necessary to obtain marketing authorization** for a medicinal product.
- Use of the invention for **teaching purposes**.
- Use of **biological material for selection or discovery purposes**.
- Biological material obtained in the **field of agriculture** by chance or as a technically unavoidable consequence.

Restrictions on patent rights

Legal restrictions on patent rights:

- Prior user rights (art. 35 al. 1 et 2 LBI)
 - A patent may not be invoked against any person who, prior to the filing or priority date of the patent application, was commercially using the invention in good faith in Switzerland or had made special preparations for that purpose
- Farmers' privilege (art. 35a et 35b LBI)


Restrictions on patent rights

Compulsory licences:

- Dependent inventions (Art. 36 LBI)
- Dependent plant variety rights (Art. 36a LBI)
- Insufficient exploitation of the invention (Art. 37 LBI)
- License in the public interest (Art. 40 LBI)
- Semiconductors technology (Art. 40a LBI)
- Biotechnology research instruments (Art. 40b LBI)
- Diagnostics tools for humans (Art. 40c)
- Export of pharmaceutical products (Art. 40d LBI)



Data bases

IGE | IPIswissreg

ipi.ch > base de données des titres de protection

de | fr | it | en

Page d'accueil | ipi.ch |

Brevets

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Recherche registre

Informations générales sur [cette recherche](#).

Critères de recherche

Type de brevet	<input type="text" value="Tous"/>	?	
No de la publication	<input type="text"/>	?	CH689101, EP00985169
No de la demande	<input type="text"/> / <input type="text"/>	?	CH358 / 1994, EP00109209
Mots dans le titre	<input type="text"/>	?	Isolation thermique
<hr/>			
Recherche par déposant/titulaire (paramètres)	<input type="text" value="Tous"/>	?	
Déposant/titulaire	<input type="text"/>	?	Burri
Inventeur	<input type="text"/>	?	Hugi
Classes CIB	<input type="text"/>	?	A, A61, A61B0005/103

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Thank you for your attention !

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