

| | (EPO/EUIPO) Europe | DE (Germany) | NL (Netherlands) | FR (France) | UK (Great Britain) | CN (China) | JP (Japan) | KR (South Korea) | US (United States) | CA (Canada) |
|---|---|---|---|--|---|--|---|---|--|---|
| A. Trade Secrets | | | | | | | | | | |
| Are there laws or case law protecting against theft of Trade Secrets? | National law already provides many legal options, but details and possibility not currently harmonized. However, all EU states are currently amending their national law to comply with the EU Directive 2016/943 before July 2018: | | | | | Law Against Unfair Competition | Unfair Competition Prevention Act | Yes, Unfair Competition Prevention & Trade Secret Protection Act. | Yes, but laws vary depending on State law. Most states have adopted own modified version of Uniform Trade Secret Act (UTSA). | Yes, but no provincial or federal statutes - owners can sue under common law (e.g. unjust enrichment, breach of confidence or contract). Trade secret ownership successfully enforced in Supreme Court. |
| Criteria? | EU Directive 2016/943: 1) Not generally known or readily accessible to people who normally deal with this sort of information 2) Have commercial value because it is secret 3) Subject to reasonable steps to keep it secret | | | | | 1) Unknown to public 2) Can bring about economic benefits to the right owner 3) Has practical utility 4) Right owner has adopted secret-keeping measures | (1) production method, sales method, or any other technical or operational information (2) useful for business activities that is controlled as a secret (3) not publicly known | 1) Unknown to public 2) The subject of reasonable efforts to maintain its secrecy 3) Must have independent economic value | 1) Information, including formula, program, device, technique, process 2) Derives independent economic value from not being generally known 3) Subject of reasonable efforts to maintain secrecy. | Not defined by statute, but factors generally considered: 1) Information not generally known to public 2) Confers economic benefit on holder 3) Subject of reasonable efforts to maintain secrecy. |
| B. i-DEPOT | | | | | | | | | | |
| Are there services to create evidence or to register secrets? | Possible online at Benelux Office for IP (BOIP) | No information. | No | No information. | No information. | No information. | No | Yes. | No | No |
| Is using a notary accepted? | Yes - local notary may be used | Yes | Yes | Yes | Yes | Yes | | No. | | |
| Anything on-line? | i-DEPOT (from EUR 12.50 per depot) | | | | | Commercial website may be available | | Yes. At the website of the Korean IPO. | | |
| Any limitations? | i-DEPOT: max. 100MB for description and/or representations. i-DEPOT's may be used by anyone in world. | | | | | No information. | | No information. | | |
| C. Right of Continued Use | | | | | | | | | | |
| Is a Right of Continued Use accepted as an infringement defense? | No official EU harmonization - based on each state's national law. Often called "Prior Use" defense. | Yes | Yes | Yes | Yes | Prior User right is available | Prior User right (Japanese Patent Law Article 79) is available | Prior User right is available (Article 103 of Patent Act) | Yes, but it is weak. Prior User right available under 35 U.S. Code § 273 (Defense to infringement based on prior commercial use). | Yes. Patent not to affect previous purchaser. Section 56 (1) of Canadian Patent Act. |
| What do you have to prove? | | Use in good faith (e.g. no earlier knowledge of invention) for business purposes (or preparations for use) before priority date in Germany. | Use in good faith (e.g. no earlier knowledge of invention) for business purposes (or preparations for use) before priority date in The Netherlands. | In possession of patented invention in good faith, at the Patent filing or priority date, on territory where French Patent Law is applicable | Did or made effective & serious preparations to do before the priority date of an invention and which would otherwise be an infringement of a Patent for the invention. Acts in good faith. | Must prove that before filing date, already made identical product, used identical process, or made necessary preparations for its making or using. "Necessary preparations": (1) main technical drawings or process documents necessary have been completed; (2) main facilities or raw materials necessary for implementing made or purchased. | Person who: (1) without knowledge of invention claimed in Patent Application, (2) made identical invention or learned from a person who made identical invention, and (3) has been working invention or preparing for working of invention in Japan at time of filing of Patent Application. | (1) Practicing or preparing to practice patented invention in Korea before filling of Patent Application, (2) Did not know that invention filed for Patent by other party; (3) Invented invention by himself or came to know the invention from inventor(s) thereof, and (4) Practice does not exceed scope he was doing before Application filed. | Person entitled to defense for process, machine or composition of matter that would otherwise infringe if: (1) acting in good faith, commercially used subject matter in United States; and (2) such commercial use occurred at least 1 year before the earlier of — (A) effective filing date; or (B) date disclosed to public that qualified for exception from prior art. | Person who, before claim date, has purchased, constructed or acquired subject matter of claim, has right to use & sell to others article, machine, etc. patented without being liable for so doing. No requirement that Prior Use > 1 year before Patentee filed. Not clear whether processes / methods covered (some case law suggests that they are). |
| How successful is it? | | Some success. Proof issues. | Some use. Proof issues. | Frequently tried. Often fails due to lack of proof. | Some irregular use. | No information. | It is usually successful when the evidence of working or preparing of the invention is sufficient. | No information. | Little to no success - unpopular because infringement may have to be conceded, may not dispose of all asserted claims, may risk award of attorneys' fees, and invalidity defense may be preferable. | Not very effective because the law after NAFTA favors Patent applicants over prior good faith users. |
| Any restrictions on use? | Narrow protection (right does not always include all improvements). Some differences in opinion whether export activities would be permitted. | Right to continue to use invention as planned during preparations. Right of Prior Use may only be transferred with company holding right of Prior Use. | Right to continue to use invention as planned during preparations. Right of Prior Use may only be transferred with company holding right of Prior Use. | Right to personally exploit invention despite existence of Patent. Right can only be transmitted with business assets, company or part of company to which it relates. | Right to continue to do act or, as case may be, to do act, notwithstanding grant of Patent; but this right does not extend to granting a license to another person to do act | 1) For illegally acquired technology or Design, Prior User right is not supported 2) Make or use within original scale only | Shall have a non-exclusive license on Patent right, only to extent of invention and purpose of such business worked or prepared | Shall have non-exclusive license of Patent having resulted from Patent Application within scope of his actual practice or his preparation to practice. | Defense not general license for all claims of Patent, but extends only to specific subject matter for a commercial use. Defense extends to variations in quantity or volume, and to improvements that do not infringe additional specifically claimed subject matter. | User may not expand his use by increasing production or sales of patented product, build another machine to increase his output, or expand his or her process. |

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| D. Industrial Designs / Design Patents | | | | | | | | | | |
| Are Industrial Designs available? | Yes: European Industrial Designs through EUIPO office. | Yes, a Design | Yes, a Benelux Design | Yes, a Registered Design | Yes, called a Registered Design | Yes. It is called a Design Patent | Yes. It is called a Design. | Yes, it is called a Design. It is not a Patent, but protected by a separate law. | Yes. They are known as Design Patents under 35 U.S.C. § 171. | Yes. In Canada, they are available under Industrial Design Act. |
| Increase in court cases over last years? | No information.. | No information. | No information. | No information. | No information. | No information. | No. It is decreased | No information. | No - actually a decrease over recent years. But, percentage of total Patent litigation cases including Design Patents has increased. | No. |
| Are infringement cases successful? | Yes, slightly more than half | Yes | Yes | Yes | Some | There are successful cases | There are successful cases | There are successful cases. | Yes, relatively high success rate for Design Patent claimant compared to Utility Patent cases. | Rarely successful. |
| Are compensation values similar to Patents? | Varies | Claimant may choose between: lost profits, infringer's profits, or reasonable royalty | Varies | Varies | Varies | Yes | Yes | Yes. | Yes. Compensation can in some cases exceed Utility Patent infringement, because infringer can be liable for disgorgement of total profits rather than lost profits of Patent owner. | Issue is still open but courts indicate similar considerations apply for damages in Industrial Design cases. |
| For filing: is there a grace period? How long? | 12 months (National law has been harmonized to comply with European law) | 12 months | 12 months | 12 months | 12 months | 6 months for limited scenarios: (1) first exhibited at an International Exhibition sponsored or recognized by Chinese government (2) first made public at a prescribed academic or technological meeting (3) disclosed by any person without consent of applicant. | 6 months for limited scenarios: For Design which has lost novelty (1) as a result of an act of person having right to obtain Design registration or (1') which has been disclosed by any person without consent of applicant, (2) filed within 6 months from date on which Design first lost novelty. | Yes. 6 months from date of disclosure of any cause. However, if Design was disclosed in an Application Gazette or a Registration Gazette (for Patent, Utility Model, Design or Trademark) of Korean IPO or a foreign IPO, no grace period is available. | Yes, 1-year grace period for disclosures made by inventor or by another who obtained Design from inventor. | Yes. If Design has been published, inventor must file for registration within next 12 months. |
| What about Unregistered Designs? | Limited protection available, but only for 3 years from public disclosure in European Union | Recognize EU (Community) Unregistered Design | Recognize EU (Community) Unregistered Design | Recognize EU (Community) Unregistered Design | Must prove that competitor copied Design | Not available. | Not available. | No protection afforded. | Not available. | Not available. |
| E. Utility Models / Petty Patents | | | | | | | | | | |
| Are national Utility Models or Petty Patents available? | No official EU harmonization - based only on each state's national law. | Yes: Utility Model, but not for methods or processes | No | Yes: Utility Certificate | No | Utility Model available for products only | Utility Model available for products only | Utility Model available for products only | No. | No. |
| Are they searched or examined? | | Searched. Only DE national Prior Use and publications considered prior art. 6m novelty grace period. | | No | | Not substantively examined but formally examined | Not substantively examined but formally examined | Yes, Utility Model can be registered after full & substantive examination including novelty & non-obviousness. | | |
| What steps are required before rights can be asserted? | | Nothing, unless validity is challenged. | | Proprietor must request establishment of search report by French Patent Office. | | Patent right evaluation report produced by SIPO is usually needed. Lower threshold on inventive step. | Utility Model Technical Opinion produced by JPO is needed | None: registrant can initiate an infringement suit once Utility Model has been registered. | | |
| Time to Grant / Registration? | | 1 - 4 months after filing | | 2 years from filing | | 3-6 months, if no OAs | 3-7 months, if no OAs | Typically, 8 to 11 months after request for substantive examination file (if no OA's). | | |
| Number of years of protection? | | 10 years from filing | | 6 years from filing | | 10 years | 10 years | 10 years from the local Application filing date. | | |
| Are infringement cases successful? | | About 10% of infringement cases are based on Utility Models | | Some | | There are successful cases, e.g. Chint vs. Schneider | There is no successful cases in 3 years. | There are successful cases. | | |
| Are compensation values similar to Patents? | | No information. | | No information. | | Yes | No. It is lower than Patents. | Yes | | |
| Any other comments? | | In practice, inventive step required tends to be about same as for Patents. Simultaneous protection with Patents allowed. | | Not possible to convert to a Patent. May amend claims up to grant but not after grant or during infringement proceedings. | | Same applicant on same day may file Utility Model & Invention Application to extend time period during which enforceable right is available. | Number of Utility Model Applications has largely decreased since 1995. | | | |

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| F. Registration or Examination System | | | | | | | | | | |
| Are national Patent Applications examined or just registered? | Examination System | Examination System | Registration system | Examination after search + written opinion, although Application may not be rejected by Patent Office based on inventive step (court may do this) | Examination system | Examination System (mix of formal and substantive examination) | Examination System (mix of formal and substantive examination) | Yes. Full examination is made. | Examination system. | Examination system. |
| Any difference when using PCT? | No. Direct entry from PCT is possible. | Direct entry from PCT is possible. Other differences? | No direct entry possible from PCT. Must enter EP regional phase, and validate after EP grant. | No direct entry possible from PCT. Must enter EP regional phase, and validate after EP grant. | Direct entry from PCT is possible. Other differences? | No | No | No. | Minor differences exist between filing a US Rule 53(b) Application and a PCT US National Phase Application. | Minor differences exist between filing a Canadian Application and a PCT Canada National Phase Application. |
| If registration, what steps are required before rights can asserted? | | | Non-binding patentability report from national office taken into account if infringement procedure. | | | Patent right evaluation report is needed to enforce Utility Model or Design Patent | Utility Model Technical Opinion is needed to enforce Utility Model | Nothing is necessary. | | |
| Any other comments? | | May convert (national or EP) Patent Application into Utility Model. | National Patents searched and an opinion on Patentability is provided in the file. But not binding, and Patent is always granted. | May convert Patent Application into Utility Certificate | | | | | | |
| G. Incentives to file at national Patent Office | | | | | | | | | | |
| Are any incentives provided to stimulate filings at national Patent Office? | Search reports were prioritized for first filings to give applicant Early Certainty from Search | Filing & Search fee is about 360 EUR. SR with opinion within 8 months. | Filing & search fees kept low at national office. Subsidies sometimes available covering some Patent filing costs (see below). Tax deduction possible for profits from possession of Patents (but only useful if you make profit) | Research tax credit may cover some Patent filing costs | No - R&D tax credits for research, but not for Patent filing costs | Yes. Many incentive programs available from different level of governments & high tech parks. High tech company status: Enjoy preferred tax rate, but must have certain number of Patents as one of the criteria. | No | Only fee reduction is available under specific condition. To be explained below. | Yes, fee reductions are available for qualifying entities (see below). | Yes, fee reductions are available for qualifying entities (see below). |
| Are these incentives also available for foreign applicants? | Yes | Yes | Patent office fees are same for all applicants. Subsidies & tax deduction only for national entities. | No | No | Yes, but Applications must be filed in name of business entity established in China, i.e. Chinese subsidiary | No information. | No information. | Yes. | Yes. |
| H. Fee reductions for small businesses | | | | | | | | | | |
| Fee reductions available for SME's or individuals? | Yes: for individuals, non-profits, public research organizations, SME's, universities | No | No | Yes: for individuals, non-profit education or research institutes, & SME's | No | Yes | Yes | Yes. | Yes, for small and micro entities. | Yes, for small entities |
| Available to non-residents? | No - only for residents, nationals & entities with principal place of business in EPC state | | | No information. | | No | No | Yes, but many different documents required. Almost none have done it. | Yes. | Yes. |
| Criteria? | For SME, < 250 employees and turnover < 150 million and/or balance sheet < 143 million. < 25% of capital held directly or indirectly by another company that is not an SME | | | For individuals, for SME (if < 1000 persons employed and < 25% capital owned by entity that is not SME) and for non-profits in teaching or research. | | 1) Individual: Average monthly income < RMB3,500 (USD530)[annual income RMB42,000 (USD6,360)] in the last calendar year ; 2) Enterprise: Annual taxable income < RMB300,000 (USD46,000) in the last calendar year ; 3) Institutions, social groups & non-profit research institutions | (1) Small & Medium-sized Enterprise : Employee number < 20 (or < 5 in service industry) or founded within 10 years and capitalized < 300,000,000 yen (USD 2.55 million) (2) Individuals started his business within < 10 years etc. (3) Person undergoing welfare protection etc. | (1) Individual (2) Small & Medium-sized Enterprises: Max. annual turnover = USD 150M (agricultural, fishery, mining etc); 100M (manufacture clothing, shoes etc); 80M (printing, beverage manufacture, medical utensil manufacture etc); 60M (professional or science & technological services etc); 40M (restaurants, hotels, educational services etc). Also < 30% of stocks held by Non-SMEs directly or indirectly. | Small: (1) nonprofit or entity with < 500 employees; and (2) has not assigned, licensed or conveyed interest in invention to non-small entity. Micro: (1) not named inventor on > 4 prior Patent Applications; (2) gross income < 3 times median US household income (\$160000); (3) has not assigned, licensed or granted interest in invention to entity that has gross income > amount listed above (unless related to institution of higher education); and (4) meets requirements for small entity. | Entity that employs <50 employees or that is a university, but does not include an entity: (a) controlled directly or indirectly by an entity, other than a university, that employs > 50 employees; or (b) that has transferred or licensed or has an obligation, other than a contingent obligation, to transfer or license any right in invention to an entity, other than a university, that employs > 50 employees. |
| Which fees are reduced and by how much? E.g., filing, search, examination, or maintenance | 30% fee reduction for filing fee & examination fee (max. saving \$ 600) | | | 50% reduction on main procedural fees. Also savings on some maintenance fees. | | Fee reduction by 85% (to 15% of original fees), and in case of joint ownership by 70% (to 30% of original fees), for the following fees: (1) Application Fee (excluding Publication Fee or excess fees) (2) Substantive Examination Fee (3) Annuities up to the 6th year (4) Reexamination Fee (max. saving \$1400) | For above (1) and (2), Fee reduction by 1/3 to 1/2 for the following fees: (a) Request for Examination Fee (b) annuities 1 to 10. For above (3), Fee exemption: (a) Request for Examination Fee (b) Annuities 1 to 3 and Fee reduction by 1/2: (c) Annuities 4 to 10. (max. saving \$2,600 for 10 claims) | 1. Individuals (when applicants same as inventors); 70% deduction of Application Filing Fee, Substantive Examination Fee, and 1st to 3rd Annuities. However, 85% deduction when individual is 19 to 30 years old or older than 65 years. 2 SMEs: 70% deduction of Application Filing Fee, Substantive Examination Fee, and 1st to 3rd Annuities. (max. saving \$800 for 10 claims) | Small: Filing, Examination, Maintenance fees reduced by 50% Micro: Filing, Examination, Maintenance fees reduced by 75% | 50% reduction in government fees. |
| Any other comments? | All applicants must comply | | | All applicants must comply | | Effective as of Sep. 1, 2016 | | | | |

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| I. Subsidies for Patent filing | | | | | | | | | | |
| Are subsidies available to cover filing costs? | Not at European level specifically for Patent filing - only at national level. Subsidies for other research costs and feasibility studies are available. | Legal Aid available from DPMA | Inconsistent policies over the years. Currently one only for International Applications, covering up to 50% of the Patent Attorney hours, up to \$2500. | Research tax credit may cover some Patent filing costs. May also cover some research costs. | No - R&D tax credits for research, but not for Patent filing costs | Yes | Yes | Yes. For PCT Applications or Applications in foreign countries. Further, some district governments have subsidies programs for local Applications as well. | No. | No. |
| Available to non-residents? | No | Yes for individuals (but forms in German). Legal entities must be established in EU or EEA. | No | No information. | No | No | No | No. | | |
| Criteria? | | If "personal & economic conditions" prevent them from paying Application Fee in full ... "if there are sufficient prospects that the Patent will be granted. | Only 1 voucher per SME. | No information. | | Chinese individual or entity, including Chinese subsidiaries of foreign companies. Applications must be filed in the name of the business entity established in China, i.e. Chinese subsidiary. | 1) Japanese individual or foreigner who lives in Japan (Japan Patent Attorneys Association); 2) SME mainly based in Tokyo (Tokyo Metropolitan Government Bureau of Industrial & Labor Affairs) | Korean individuals or SMEs. | | |
| Which costs are covered and by how much? E.g., filing, search, examination, or maintenance | | For Application Fee | Subsidies are also available at national, regional & local level. E.g., national subsidies for some R&D costs up to several hundred thousand Euros. | Expenses incurred for the filing, maintenance and protection of Patents | | National Patents: covering official fees, possibly attorney fees; PCT and Paris Convention Applications: Covering official fees and attorney fees for up to 5 countries with a limit of RMB100,000 (USD15,000) per country The above is from the central government. Local governments/high tech parks may have additional programs The central government program is still in place but funds are no longer available | 1) (Japan Patent Attorneys Association) National Patents: for official fees and attorney fees (all or part); 2) (Tokyo Metropolitan Government Bureau of Industrial and Labor Affairs) PCT & Paris Convention Applications: for official fees, translation fees, prior arts research fees and attorney fees (up to 1/2 of all fees, with a limit of 3,000,000 yen (USD 25,500)). Other local governments or other entity may have additional programs. | A part of filing fees in a foreign country can be reimbursed up to 2 million Korean Won (approx. USD1,700) per case. | | |
| J. Use of English for national Patent filings | | | | | | | | | | |
| May English be used for national Patent filings? | Yes | Yes (also French allowed). Translation required within 12m from filing, no later than 15m from priority. So search report should be available before translation has to be filed. | Yes. Description and drawings may be provided in English - no translation required for search. Claims must be filed in Dutch. | Applications may be filed in any language. | Yes, official language | No | Yes, English and other languages (not recited exactly) | Yes. However, the Korean translation should be submitted before 14 months from the priority date (for a Paris Convention route Application) or 32 months from the priority date (for a PCT national phase Application). | Yes. | Yes. |
| Is a translation required for search? | No | No | Only claims must be in Dutch. | Yes: into French < 2m from filing | | Yes | Yes | No. | Prior art submissions must be explained or translated into English. | When requested by Examiner. |
| K. Experiences with Crowdfunding | | | | | | | | | | |
| Experiences with Crowdfunding for startups who file a Patent? | Not at European level - only at national level | No information | E.g., Kickstarter requires completely thought-out product, which is published on website. So often copied before funding completed. | No information | No information | No | There are a few small projects | No. | Because Crowdfunding often involves significant disclosures to raise funds, entrepreneurs should be wary of filing Patent Applications before 1-year bar. | |
| L. Use of Patent as security | | | | | | | | | | |
| May Patent Application be used as security? | Arranged under national law. However, EPO allows security right to be registered for Applications | No | No | No | Yes | No | No | No. | A pending Application can act as a deterrent to dissuade competition from stealing the invention. Thus, value may be attributed to a pending Application that can be used as security. | |
| ... or must it be granted Patent? | No | Must be granted Patent | Must be granted Patent | Must be granted Patent | For both Applications & Patents | Must be granted Patents | Must be granted Patents | Yes. Must be granted Patents. | A granted Patent is necessary for enforcement, and thus typically provides a greater value. | |
| Information prepared by: | | | | | | | | | | |
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