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## Germany

# Contribution of IP rights to economic performance in Germany: a prototype?

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IP practitioners have known this for a long time, but it is now official: IP rights, particularly in Germany but also in the European Union as a whole, are one of the most important contributing factors to the economy.

In September 2013 the European Patent Office (EPO) and the Office for Harmonisation in the Internal Market (OHIM), in cooperation with the European Commission, published a study entitled “Intellectual property rights intensive industries: contribution to economic performance and employment in Europe”. An earlier report of the US Patent and Trademark Office was the first study on this issue.

The EPO and OHIM study examines the key factors behind the economic importance of IP rights, and refutes the theory that IP rights are impeding economic development, which in particular has been raised recently by parties involved in IP disputes.

The essence of the study is that about 46% of all economic activity in Germany (and 39% of total EU economic activity) is generated by IP rights-intensive industries. These industries account for 27% of employment in Germany (26% in the European Union). When the employees of subcontractors who work in non-IP rights-intensive industries are included, the EU employment rate is about 35%. The premium on wages in IP rights-intensive industries is more than 40%: the copyright and patent-intensive industries have the highest premiums on wages at more than 60%.

Companies investing in IP rights can remunerate their employees at a higher rate than in other industries, and thus make economic contributions beyond their share of employment.

The study defines and analyses five types of IP rights-intensive industry: trademark, design, patent, copyright and geographical indication-intensive industries. Other types of IP rights beyond those (eg, know-how) are obviously relevant, but due to a lack of available data they are not considered here.

‘IP rights-intensive industries’ are defined in the study as industries that use more IP rights per employee than other industries. The study compares industries, not companies. The clear definitions of IP rights-intensive industries set out in the study are based on the compilation of many different types of data from well-known institutions, and the methodology of the study is not outlined in this chapter. What can be said about these industries is that most patent, trademark and design-intensive industries involve manufacturing activities – for example:

- the manufacture of power-driven hand tools (patents);
- the manufacture of basic pharmaceutical products (trademarks); and
- the manufacture of watches and clocks (designs).

The most copyright-intensive industries are in the service sector – for example, book publishing.

Beyond the usual suspects, industries such as the manufacture of flat glass (patents), the rental and operation of owned or leased real estate (trademarks), the manufacture of motorcycles (designs) and radio broadcasting (copyrights) are identified as IP rights-intensive industries. It is particularly important not to identify IP rights only with so-called ‘high-tech’ industries, but rather to bear in mind that the concept and significance

of intellectual property extend to many varied sectors of the economy.

It comes as something of a surprise that the bulk (around 90%) of EU imports are products made by IP rights-intensive industries. Such a high proportion of imports are IP rights intensive because the industries that produce commodities (eg, the energy industry) are IP rights intensive, whereas many non-IP rights intensive activities are also not tradable. Unsurprisingly, nearly the same amount of EU exports can be attributed to IP rights-intensive industries.

Part of the study is an analysis of the contribution to IP rights made by member states. Countries are grouped together in the results. Germany, together with Hungary and Ireland, has the largest share of patent-intensive industries, whereas in the employment share rankings it takes the lead alongside the Czech Republic and Finland. Concerning trademark and design-intensive industries, Germany is a member of the top four in terms of gross domestic product, together with Hungary, Slovakia and Ireland. With regard to copyright, the variation between countries is small – but Ireland leads with a factor of around two.

Nevertheless, the groupings are challenged by some of the other findings. For example, in the list of EU member states with the most jobs in IP rights-intensive industries attributed to foreign companies, Germany is ranked quite low, especially compared to, for example, Hungary, the Czech Republic, Slovakia and Ireland – these countries tend to ‘import’ jobs through branches of foreign companies. However, Germany’s IP rights-intensive companies clearly lead the way in terms of the share of jobs attributed to companies from EU member states in other countries, with a figure of 30%, followed by France (15%), the Netherlands (12%) and the United Kingdom (11%). Other major EU member states such as Italy (5%) and Spain (2%) lag far behind in this regard.

So is the contribution that IP rights make to economic performance and employment in Germany a prototype for the rest of Europe? The answer is unclear. The study does seem to provide some confirmation of the German tradition of strengthening IP

rights. In the early 20th century, Germany transformed from an imitation economy – ‘Made in Germany’ was introduced as a way to discredit products copied in Germany – to an innovation economy. In particular, the way in which IP rights and their enforcement are kept affordable has been vital for the rise of German small and medium-sized enterprises.

The report identifies the key task going forward as being to promote the generation of IP rights, and acknowledges that fostering the generation of IP rights will help to build up a vibrant economy. This is the common understanding and any attempts to obscure this picture are likely driven by particular interests.

There is still room for broader coverage of this study in order to shed further light on this crucial economic factor. A company-level analysis comparing individual IP rights-intensive companies in specific industries with non-IP rights-intensive companies in the same industries is already underway. It will be interesting to compare this to the present analysis and to see whether and how the statistics change from industry to industry.

In terms of employment share and gross domestic product, trademarks clearly claim first place. The next most represented field is patents, followed by designs and copyright. It would be an interesting endeavour to extend the study to a historic analysis covering the interplay between copyright, patent and design activities and their contribution to trademark-intensive industries and companies. *iam*

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Gottfried Schüll is a prominent and highly renowned patent litigator. He has handled various high-profile cases for global clients, both as lead counsel and as part of an international legal counsel team, at all levels of jurisdiction, including the German Federal Supreme Court. The Düsseldorf Appeals Court has appointed him as an independent court expert.

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