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Losses Contained
The significance of intangible goods within the value-added chain is steadily growing. The protective rights systems for intellectual property are correspondingly important as an element of an optimal framework for the economy. This is particularly true for Switzerland as a resource-poor country. Our Institute is responsible for the design and administration of these systems, and we have to continually question and improve the quality of them if we are to fulfill our role properly.

To this end, we need to recall our strengths. Strengths which Swiss companies prove, for example, by making our small country third within the European ranking of countries with the most patent applications – in absolute numbers. Per capita, Switzerland is still first, as before. A very important element of our strength is Switzerland’s membership in the European Patent Organisation. The European Patent Office offers us an examination authority with the best reputation worldwide, and guarantees that patents designating Switzerland are of the highest quality. Equally important, however, is our autonomy because it allows us to implement customised solutions that correspond to the specific interests of our economy. The key is to be well networked and respond agilely, which leads to continual improvement in respect to the changing environment and needs of our users. For instance, we were able to implement a pioneering regulation in human resources management system ourselves – the usual problems of such projects notwithstanding.

Autonomy is challenging. Anyone who chooses this path cannot simply lean back, but rather must be willing to meet resistance, take responsibility, make greater efforts and take risks. Only those who know how to exploit their strengths can remain independent. Our strength lies in an optimal combination of a tight network and the ability to help ourselves when needed. We must guard this ability and never stop moving forward.

Von Fälschung und Piraterie bleibt grund-\textit{sätzlich} kein Wirtschaftszweig verschont.\textbf{Während Fälscher bis anhin in erster Linie mit gefälschten Luxusgütern handelten, tun sie dies heute darüber hinaus auch mit gefälschten Alltagsprodukten: Vermehrt werden gefälschte Arzneimittel, Spielzeuge und Ersatzteile für Autos oder Maschinen beschlagnahmt.\textbf{Der Handel mit gefälschten Waren nimmt nicht nur zu, sondern er birgt zudem mehr Risiken für Sicherheit und Gesundheit von Verbrauchern.}}

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\textbf{Vielfältiges Engagement}

\textbf{Das Institut setzt sich auf zahlreichen Ebenen aktiv gegen Fälschung und Piraterie ein: Auf nationaler Ebene werden die Aktivitäten der Privatwirtschaft und der Behörden koordiniert und im Rahmen der laufenden Revision des Patentgesetzes neue Massnahmen auf Gesetzesebene eingeführt (siehe Tätigkeitsbericht auf Seite 29). Auf internationaler Ebene engagiert sich die Schweiz, vertreten durch das Institut, im Rahmen bilateraler Kontakte und internationaler Organisationen. Um den Kampf noch wirksamer zu gestalten, hat das Institut gemeinsam mit betroffenen}}
Patent Map of a Technology Sector

The graphic shows the technology sector “Folding paper webs or sheets” using a “Thomson Innovation” patent map. Over 5,000 patent abstracts from the Derwent World Patents Index database were evaluated by means of semantic text analysis. Each document is assigned a place on the map, with documents of similar content near each other. The frequency of documents is represented by the height profile as in a topographical map. The documents of companies A and B are marked. The represented word groups, which characterise the content on each site, show that Company A offers solutions for folding thin material for large web presses while Company B is active in sheet-fed printing machines and image processing.

Who can use patent landscape analyses and for what?

Users are interested in an independent, different view of a business situation. The results must be formulated in a readily understandable, non-patent technical language. Patent landscape analyses can answer the following types of questions for various user groups:

- **Management**
  - Overview of technological developments, market trends and competitors
  - Identification of business partners, potential licensees and licensors
  - Basis for evaluating patents in the context of controlling, accounting and sales

Here, results must be clearly and concisely summarised for management decision-makers. Management is often under a strict code of secrecy when it comes to strategic preliminary planning; even company internally.

- **Research and development**
  - Overview of technological developments
  - Rapid familiarisation with new technical areas
  - Identification of developmental gaps and unique technical features
  - Finding alternative technical solutions to a problem

A stepwise approach to arrive at an optimal, informative result is particularly useful for this group of users. Raw data should, if possible, be further processed by users themselves.

- **Patent and legal divisions**
  - Identification of potential infringements of foreign and own IP rights
  - Finding workarounds and defence strategies
  - Analysis of opposing party’s patent portfolio in patent litigation

For this group of users, the reliability of the facts and the completeness of the data is most crucial. Detailed information about the legal status must be integrated into the evaluations.
Advising and representation in patent matters requires a high degree of expertise and professional experience. Until now, however, the professional titles of “patent attorney” or “European patent attorney” were not protected in Switzerland. The patent law reform, which has been implemented in stages beginning in 2007, establishes protection for the title of patent attorney, which provides more transparency among service providers.

First patent attorney examination to be held in 2012
Effectuated as of 1 July 2011, the enactment of the PatAA requires a patent attorney to be registered in the Swiss Federal Patent Attorney Register in order to use the professional title patent attorney. The new register will be administered by the Institute. Registration requires specific professional qualifications: a natural science or engineering degree, sufficient professional qualifications and the passing of a patent attorney examination. The Swiss Federal Patent Attorney Examination will be conducted by an examination board comprised of the three patent attorney associations in Switzerland. The first examination will take place in autumn 2012.

Transitional regulations for those with extensive professional experience
For those patent attorneys who are already practicing, a two-year special transition regulation will apply: They may be entered into the register without passing the patent attorney examination if they have proven, extensive, professional experience. The professional title of “European Patent Attorney” will also be newly protected. It will be limited in Switzerland to those who have been admitted as representatives at the European Patent

Lenders and consultants
- Basis for evaluation of patents as collateral
- Identification of strengths and weaknesses of a company in the technology sector
- Identification of strategic options and potential partners for a company

Who can create patent landscape analyses, and what is important?
Larger industrial companies already use patent landscape analyses systematically and usually have the necessary tools and expertise. The infrequent need of SMEs, lenders and consultants hardly justifies the big investment needed for purchasing tools and training staff to internally develop such analyses.

Working with an external provider allows these companies to benefit from the advantages of patent landscape analyses. When choosing a provider, consider the following:
- Competencies in the field of intellectual property, research and data analysis
- Availability of a high-quality underlying dataset and the analysis tools
- Confidence in the provider
- Secrecy must be absolutely assured

For this purpose, the Institute is an ideal partner.

In May 2011, the Federal Council decided to bring the Patent Attorney Act (PatAA) and the Patent Court Act (PatCA) fully into force on 1 July 2011 and 1 January 2012, respectively. Introducing protection for the professional title of patent attorney in Switzerland and establishing a national specialty court for patent litigation enabled the third stage of the patent law reform to be successfully completed.
Patent Law Reform

Office, meaning they have passed the challenging European qualifying examination. Advising and representing in patent matters on a commercial basis is still open to all people. However, if the PatAA criteria are not met, such persons may not be entered into the patent attorney register and must offer their services under a different professional title. These people will also not fall under the newly introduced professional secrecy for patent attorneys. Professional secrecy protects the confidential interests of a client by imposing an oath of secrecy on the patent attorney.

The national special court does away with the idea of federalism The third stage of the patent law reform is to ensure that patent protection can be effectively implemented in practice. To achieve the goal of reform, not only does the professional title of patent attorney need to be protected, but a qualified specialised court, which is in a position to judge patent litigation quickly and competently, is also needed. With the full enactment of the Patent Court Act (PatCA) on January 1, 2012, this goal will also be attained. On this date, the Federal Patent Court will take up its duties. As a national special court, it will hear patent litigation as first instance instead of the 26 cantonal special courts currently responsible.

Judges with expertise and user-appropriate procedures The new Federal Patent Court is made up of both legally and technically trained judges. The already enacted partial implementation of the organisational and institutional provisions in the PatCA made it possible to elect about 40 non-permanent and two permanent judges for the Court prior to its opening. Composing the court with mostly non-permanent judges ensures the requisite flexibility, which is necessary due to the expected volume of work. On the other hand, thanks to their diverse expertise, the sitting panel of judges can be modified according to the type of dispute. This will allow the individual particularities of patent cases, which are frequently very complex and require solid technical expertise from the sitting judges, to be well accounted.

Patent attorneys as representatives Patent disputes also place high demands on the parties’ representatives. Now, patent attorneys will also have the right of power of attorney in nullity proceedings, in addition to the general right to represent and participate in hearings before the Federal Patent Court. This is particularly justified in view of the fact that nullity proceedings are primarily concerned with technical issues. The power of attorney, however, is restricted to patent attorneys who are authorised to use this title in Switzerland under the PatAA.

The Federal Patent Court is also of interest to foreign firms The Federal Patent Court will open in St. Gallen. It can also sit at different locations in Switzerland, if the circumstances warrant it. The cantons provide the infrastructure free of charge. Another novelty is the language of the proceedings: The parties may mutually agree to conduct proceedings in any of Switzerland’s three official languages or in English and submit evidence in these languages. With its flexible seat and language regulation as well as a judges panel consisting of proven experts, the Federal Patent Court should also be of interest to foreign businesses as a first instance for European patent litigation.

Both of these new laws help strengthen Switzerland as a place for innovation: The PatAA does so by bringing transparency to the services landscape and protecting innovative companies and individuals from unqualified advising, while the PatCA provides more legal certainty and effective legal protection in patent litigation. With this step, the third milestone has been reached.

Applicants domiciled abroad no longer need to appoint a representative With the enactment of the PatAA on July 1, 2011, the requirement to appoint a representative, contained in the Patent Act, the Trade Mark Protection Act and the Designs Act, will also no longer be valid: Until this change, applicants without a residence or a principle place of business in Switzerland had to appoint a representative domiciled in Switzerland. Now, they may only indicate a correspondence address in Switzerland (Art. 13, para. 1, PatA; Art. 42, TMPA; Art. 18, para. 1, DesA). This change reflects a harmonisation of legal requirements in administrative procedures as well as implements the Institute’s practice which relies more on a correspondence address.

The ‘GENE’ unit

What does a patent applicant in Switzerland need to consider when his invention is based on the active substance in a tropical plant? How can the traditional knowledge of an indigenous community be protected? What is the role of patents, if environmentally-friendly technologies are to be promoted? How can intellectual property contribute to food security? Since 2009, these and other questions have been the focus of the Institute’s “GENE” unit. This unit aims to explore the ways in which intellectual property, biodiversity and traditional knowledge can contribute to environmental sustainability and food security. As part of the policy services of the Institute, GENE works in various national and international forums in which the issues of biodiversity, intellectual property and traditional knowledge are discussed. GENE’s activities range from the elaboration of strategic positions to concrete solution proposals for the implementation of existing laws and international agree-
ments to the negotiation of new multilateral instruments. In these activities, various issues arise. One example, in the context of climate negotiations, is the debate about whether patents increase the cost of the transfer of environmentally sound technologies to developing countries, or if strong intellectual property rights are much more a prerequisite for such technologies to be researched and developed. The protection of intellectual property and thus also the promotion of innovation in agriculture is also an issue, especially in the development of new plant varieties. At the same time, access to research results and new plant varieties for small farmers and developing countries should be safeguarded. A key issue here is the breeders’ and farmers’ privilege built into the plant varieties and patent protection laws which allows purchased seed to be used for further breeding, respectively, harvesting for resowing on a private farm.

**Breakthrough in biodiversity**

The 193 Contracting Parties to the Convention on Biological Diversity (CBD) have been negotiating the access to genetic resources and traditional knowledge as well as the fair and equitable sharing of benefits arising from their use (so-called “Access and Benefit Sharing” or ABS) within this framework for numerous years. Intellectual property was also an important topic in these negotiations, which is why GENE participated as part of the Swiss delegation at the conferences. Discussions included whether a requirement for disclosing certain information about genetic resources should be introduced into the patent system, which would increase transparency in the ABS (see Switzerland’s regulation in Art. 49a PatA). The question of whether patent offices should be used as check points was also discussed. Negotiations could be successfully completed during the Conference of the Parties in Nagoya, Japan in October 2010 through the adoption of a legally binding protocol to the CBD. The new provisions are to govern the ABS globally and promote the conservation and sustainable use of biodiversity.

Access to genetic resources – which can serve important purposes, for example, in research and development for pharmaceuticals, cosmetics or chemicals – is now regulated in greater detail. In addition, it incorporates central concerns of developing countries and indigenous peoples, where much of the genetic resources and traditional knowledge is located.

**Progress in traditional knowledge**

The protection of genetic resources and the traditional knowledge of indigenous and local communities is also being debated in another forum, the Intergovernmental Committee of the World Intellectual Property Organization (WIPO-IGC) is looking for ways to protect genetic resources and traditional knowledge using measures and provisions in the field of intellectual property. The aim is to negotiate one or more international agreements. In the past financial year, solid progress was made at the content level. The WIPO General Assembly will decide on the continuation of negotiations in autumn 2011. However, it is not easy to find consensus on such complex issues because of the diverging interests among industrialised and developing countries, private sector, civil society and indigenous peoples. What is valid, for example, when a Swiss inventor is inspired by a particular plant from the Amazon region and the knowledge of indigenous people living there? What role should intellectual property play in this case?

The seeds of Achiote are used by the indigenous peoples of Latin America for spiritual purposes, as a dye, a spice and as protection against sunburn and insects. The leaves also serve as a remedy against bronchitis and eye infections, among others. Patented inventions which are based on medicinal plants often invite accusations of ‘bio-piracy’. At the same time, it can be argued that patents are an important basis for the allocation of profits (the “benefit-sharing”).

**The Achiote: an Indigenous Medicinal Plant**

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**GENE Dossier Overview**

- **Traditional knowledge** – e.g., WIPO
- **Disclosure requirements / Access & Benefit-Sharing** – e.g., World Trade Organization, WIPO and CBD
- **Environment** – e.g., climate negotiations
- **Sustainable development in general** – e.g., UN World Summit 2012
- **Sustainable development**
- **Food and agriculture** – e.g., UN Food and Agriculture Organization

**Sustainable development**

According to the Brundtland definition, development is sustainable if it meets the needs of the present without compromising the ability of future generations to meet their own needs; in addition to this temporal dimension, there is also the North–South divide to consider. Sustainability includes economic, ecological and social aspects.

**Biodiversity / biological diversity**

The term refers to variability among living organisms from all origins. With that, it refers to the diversity within species (genetic diversity), diversity among species (diversity of species), and the diversity of ecosystems.

**Genetic resources**

According to the CBD, this term refers to genetic material of actual or potential value. “Genetic material” refers to any plant, animal, microbial or other origin material which contains functional hereditary units (DNA).

**Traditional knowledge**

There is still no internationally accepted definition of this term. Generally, it can be described as the knowledge, innovations and practices of indigenous and local communities in developing and developed countries which have been created over generations by these communities and improved and adapted to changing needs and environmental influences, and passed on to following generations, often in oral form.
Early trade mark examination – quickly and easily

The early trade mark examination has become an important process for the rapid dispatch of straightforward Swiss trade mark applications. The early examination is for online applications with a list of goods and services consisting entirely of terms accepted by the Institute’s e-trademark and classification tool (http://wdl.ipi.ch). The applicant benefits from a very short procedure in which straightforward applications are examined and registered within a period of 10 working days after fees are paid.

To provide the broadest service for applicants, the databases accessed through e-trademark and the classification tool are regularly supplemented with additional terms. In mid-2011, 42% of all applications filed online received early examination processing.
**Trade mark hotline – customised and customer-oriented**

Since 1 July 2010, a team of experienced trade mark examiners and attorneys are now available to give trade mark information over the phone (known as the trade mark hotline). Ongoing training ensures that clients are informed in a customised and competent manner. For over two months, a survey was conducted regarding customer needs and any suggestions for improving the new hotline service. The many positive responses confirmed that the improved access to information is appreciated by the public.

**Trade mark guidelines – updated and now also available in Italian**

As of 1 January 2011, the Institute’s trade mark guidelines were updated and expanded. In so doing, the latest court decisions could be incorporated. In addition, Section 10 of Part 4 (“Acquired Distinctiveness”) was expanded to make practices, in particular the modalities of the implementation of a customer survey, more transparent. The guidelines were also translated into Italian and made available as of 1 July 2011. This increases the predictability of Institute decisions and work efficiency for applicants and representatives from the Ticino.

**Federal Supreme Court decisions**

Between 22 September 2010 and 6 April 2011, the Federal Supreme Court (FSC) issued statements in the decisions on MADONNA, V, PROLED and ZACARA relating to absolute grounds for refusal, in other words, to the protection of public interests which prevent the registration of a trade mark. In these cases, the trade mark applicants had appealed the decisions of the IPI and the Federal Administrative Court (FAC). The FSC dealt with diverse topics such as respect for religious feelings, simple signs and descriptive indications which belong to the public domain as well as the protection of geographical indications under international treaties.

**The case of MADONNA – a shocking trade mark?**

In its judgement of 22 September 2010 (BGE 136 III 474), the FSC held the opinion that the term MADONNA, in the sense of the “Virgin Mary”, was likely to shock some of the Swiss public if it were to be registered as a trade mark for goods such as cosmetics, watches, clothes or toys. It subsequently refused registration as a trade mark, thus upholding the earlier decisions.

The appellant claimed that the word MADONNA could also be understood as the first name of the famous singer. The small number of people who might have their religious feelings offended by the commercial use of the term MADONNA did not justify exclusion from registration. The highest court stated, however, that the sign does not lose its religious significance only because a singer uses this name. Furthermore, particularly for people with Italian as their mother tongue, the meaning “Virgin Mary” directly intrudes. The court held that the use of religious names and symbols as trade marks in general, and regardless of the offered goods and services, should be prohibited. However, it mentioned two exceptions: If the commercial use of the sign is generally accepted by custom, for example, the use of the names of saints for alcoholic beverages, or if the goods have a clear religious reference (see examples in box).

**In the case to be decided, however, these exceptions were not evident. The court further argued that in the examination, the religious feelings of minorities must also be taken into account. Religious tolerance and religious freedom are among the fundamental values enshrined in the constitution.**

**The Case of V – too simple?**

With its judgement of 5 October 2010 (4A_261/2010), the FSC upheld the decisions of the IPI and the FAC and refused to register the mark “V”, particularly in connection with clothing in Switzerland. It held that it is not sufficiently distinct from elementary signs and therefore belongs in the public domain.

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### Trends in the Area of Trade Marks

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<th>Year</th>
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<td>2010</td>
<td>200</td>
<td>20</td>
</tr>
</tbody>
</table>

**Federal Supreme Court decision BGE 136 III 474 on the issue of public morality**

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**Federal Supreme Court decision 4A_261/2010 on elementary signs for leather goods, clothing and toys**

In the case to be decided, however, these exceptions were not evident. The court further argued that in the examination, the religious feelings of minorities must also be taken into account. Religious tolerance and religious freedom are among the fundamental values enshrined in the constitution.

**Federal Supreme Court decision 4A_648/2010 on the descriptive character for lamp fixtures and lighting components**

The highest court stated, however, that the sign does not lose its religious significance only because a singer uses this name. Furthermore, particularly for people with Italian as their mother tongue, the meaning “Virgin Mary” directly intrudes. The court held that the use of religious names and symbols as trade marks in general, and regardless of the offered goods and services, should be prohibited. However, it mentioned two exceptions: If the commercial use of the sign is generally accepted by custom, for example, the use of the names of saints for alcoholic beverages, or if the goods have a clear religious reference (see examples in box).

**Registration number CH 560490: for leather goods, clothing and toys**

**Registration number CH 547762: SAINTE-ANNE for alcoholic beverages (excluding beers)**

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**Activity Report 10/11**
The Financial Year

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The Calendar Year

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<tr>
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The Case of PROLED – a descriptive indication for lamps?

With its judgement of 28 February 2011 (4A_648/2010), the FSC upheld the decision of the IPI and the FAC which refused to register the trade mark PROLED for light fixtures and products for lighting purposes. According to the court, a term can describe the characteristics of goods and services, even if it is novel, unusual or in a foreign language. Also decisive is whether the term under consideration follows the linguistic rules of the language and is perceived as descriptive. In this case, it could not be registered as a trade mark.

In the case to be decided, the FSC ruled that the word PROLED would be understood as “professional” or “for” without any particular indication for lamps? The FAC, as the first instance of appeal, held that the argument was not valid. It took the contrary view that such a line would be seen as a seam in connection with clothing and not as an original, but rather a purely functional element.

The highest court emphasised that the name of the sign – whether a letter of the alphabet or an isosceles triangle – was not decisive. Only the perception of consumers should be considered.
quality, the nature and the purpose of light fixtures and goods for lighting purposes, the application was rejected without any further possibility for appeal.

The case of ZACAPA – a geographical indication protected by the TRIPS Agreement?

With its judgement of 6 April 2011 (4A_674/2010), the FSC upheld the decision of the FAC, and therefore the opinion of the IPI, that the term ZACAPA is a geographical indication of source protected under the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement). According to the highest court, registration as a trade mark for this sign for rum and rum-containing alcoholic beverages which do not come from Zacapa in Guatemala must be rejected.

The appellant claimed that Zacapa is an unknown geographical indication to Swiss consumers who would not expect the goods being claimed to originate from that region. Additionally, the geographic origin of the rum does not determine its quality or reputation. The FSC, however, held the opinion that the characteristics and reputation of rum clearly depended on its geographical origin and that the word ZACAPA thus constituted a geographical indication of source in the sense of the TRIPS Agreement. If the name of a place is protected under this agreement, registration as a trade mark for wines and spirits must be refused, whether or not it is familiar to the Swiss public.

The appellant also maintained that the name does not need to be protected in Switzerland because the trade mark was registered in Guatemala. In the opinion of the highest court, this fact does not exclude that the geographical indication is protected in Guatemala, because the grounds for the registration there are unknown.

The case of the Swiss Hotel Association versus GastroSuisse – Star wars

On 12 January 2011, the FSC ruled in favour of the association GastroSuisse in its conflict with the Swiss Hotel Association (SHA) and thus upheld the judgement of the Commercial Court of Zurich. The SHA had sought to prohibit its competitor GastroSuisse from using its trade mark because it was too similar to its own. The highest court dismissed the appeal against the cantonal judgement on the grounds that there was no danger of the public confusing the two trade marks. In addition, GastroSuisse could use stars like any other lodging establishment in the country to classify hotels into categories.

The highest court thus confirmed that stars in connection with hotel services are perceived by consumers as a sign describing the quality level of the hotels and public sees this as a reference to a particular company. After ruling that the name “RADIO SUISSE ROMANDE” (4A_434/2009) did not need to be freely available for competitor broadcasting services in the western Swiss radio market, the court again recognised the need for free availability in the question of “stars” used by professionals in the hospitality industry to describe their services.

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Revenue stabilised at just under one million Swiss francs, and cost recovery was clearly positive. These good results are mainly due to the favourable economic situation and a precise cost management in connection with the trade mark searches.

By reintegrating trade mark searches into the trade mark division, the exchange of expertise was increased and the search specialist team reinforced. Several new employees, including two experienced trade mark examiners, completed intensive training for work as trade mark researchers. With these measures, the IPI wants to position itself as THE specialist for trade mark searches in Switzerland. In particular, it wishes to continue guaranteeing very short processing times and reliable search results with an optimal number of registered trade marks.

Due to the good financial results, the IPI can continue to invest in the quality of its services, especially in training, optimising the database and improving the user-friendliness of the online search reports.

Training event in Geneva

In May 2011, the seminar “Recent Developments in Trade Mark Law”, already in its ninth year and jointly organised by the Institute and the CH-LES (Licensing Executives Society), was held in Geneva. This year again, over 50 participants were at the event. The main themes of the event were peculiarities of contracts which impact trade marks, the new Civil Procedure Code (CPC), the case law of the Boards of Appeal at the Office for Harmonisation in the Internal Market (OHIM) and the use of trade marks on the Internet.

ip-search trade mark searches

The Institute’s trade mark searches were able to show a positive balance for their first year under the trade mark division. Revenues stabilised at just under one million Swiss francs, and cost recovery was clearly positive. These good results are mainly due to the favourable economic situation and a precise cost management in connection with the trade mark searches.

By reintegrating trade mark searches into the trade mark division, the exchange of expertise was increased and the search specialist team reinforced. Several new employees, including two experienced trade mark examiners, completed intensive training for work as trade mark researchers. With these measures, the IPI wants to position itself as THE specialist for trade mark searches in Switzerland. In particular, it wishes to continue guaranteeing very short processing times and reliable search results with an optimal number of registered trade marks.

Due to the good financial results, the IPI can continue to invest in the quality of its services, especially in training, optimising the database and improving the user-friendliness of the online search reports.

This innovative system has proven to be a resounding success. Within months, electronic submissions caught up in volume with the paper submissions or even surpassed them. In spring 2011, the IPI was already receiving 75% of its submissions for designs online. In the area of trade marks, submissions via e-mail were around 62%, which does not include the online Swiss and international trade mark applications or filings for opposition procedures. In fact, for patent procedures as well, over half of the requests used the simple email submission process. In developing this option for submissions, great emphasis was particularly placed on providing users with a very simple and easy-to-use system. At the same time, it needed to meet legal requirements. Modern security requirements were also taken into account. Submissions to the aforementioned email addresses can be digitally signed and encrypted with a certificate from the IPI as needed. It is also possible to file submissions over an SSL-encrypted Web page, which assures transmission to the Institute (ekomm.ige.ch > WebMailer).

Due to the broad acceptance by our users, the IPI has decided to make simple online submissions via e-mail available in two additional areas: Filing oppositions for trade marks and opposition procedures for patents.

The submission process for simple online submissions by e-mail is very easy: The order is sent to the appropriate IPI e-mail address in a simple e-mail. The incoming e-mail is checked and a reply confirmation is sent containing the legally binding date of receipt. At the same time, the submission is forwarded to the proper IPI recipient. If the submission contains blocked or problematic attachments (e.g. executable files), the sender is notified. The submission itself is deleted for security purposes.
Growth at record pace
The reporting year was marked by a strong and steady upward trend in all areas. After experiencing a recession-related slump, mostly in the area of commercial orders, during the global crisis year of 2008, the Patent Division was able to show a consolidation of their services in the second half of 2009. National patent applications showed a similar trend. This trend continued during the reporting year to the point that the existing staff could no longer cope in the long term. This led to a decision at the end of 2010 to recruit four new patent experts by June 2011—a first since the institute-wide personnel cutbacks. This measure should prove to be farsighted and prudent and above all necessary, as income from commercial services have risen to record highs since the beginning of 2011. Orders for prior art searches for a Swiss application have also increased sharply.

This development made it necessary to again adopt measures so that orders could be fulfilled with the usual high quality and by the requested delivery date. To this end, all work was newly prioritised with dispensable work systematically dropped and postponable work postponed. In March, it became apparent that even this was not enough. It was decided to suspend the reclassification work which the IPI has been doing for the European Patent Office since 2009. In May, paid overtime hours were approved and the non-fulfilment of certain standards accepted. The final result was that the anticipated sales target of 3.6 million francs in the commercial services was massively exceeded while other goals in the Patent Division were barely met, or not at all.

In particular, some employees could not complete the desired number of examination files. The public training event offered by the EPO, “Written Opinion”, was successfully completed by the selected employees, as planned. However, implementing and applying the newly acquired expertise to orders carried out for the World Intellectual Property Organization (WIPO) is in arrears.

Currently, the workload for many employees has reached too high a level. However, it is assumed that the new patent experts will be able to increasingly handle the core tasks after they have completed the necessary intensive training phase this autumn. This will enable the Institute to complete all patent tasks with the required concentration.

Development potential in the Swiss patent system
In the first half of the reporting year, an interdepartmental team of experts drafted a strategy paper on the development potential of the Swiss patent system. In particular, the emergence of the EU’s unitary patent, which, after decades of being blocked, is now seemingly on a fast-track, offers an opportunity to do some fundamental thinking on this topic. One model looks particularly advantageous: It envisions a fully examined patent, on the one hand, and an easy to obtain patent which does not include a material examination, on the other. This would be feasible by introducing an optional complete examination, which could be initiated by the applicant or a third party. Another option would be to create a utility model and simultaneously upgrade the Swiss patent by the addition of an examination as to novelty and inventive step.

Patent examination
In the reporting year, the number of national patent applications increased from 2,072 to 2,222 (+7.2%). This increase is within the fluctuation range of recent years. Due to the aforementioned lack of resources, which were primarily needed for the search service, the 644 examined patent applications this year were under the anticipated number. This led to an increase in the time limit for the first technical notification. Today, the examination work in the majority of fields begins within 32 months. This is a reasonable term by international standards, especially since all of the accelerated applications were handed on time. This development led to a resurgence of pending applications, so that in the near future our patent experts will have more patent applications to examine.

Since there was less examination during the reporting year, maintaining the examination routine has become a recurring theme. To preserve the high quality of the material examinations, the examination process was newly structured and a co-examination introduced, following the European Patent Office model, during the last financial year. This measure was consolidated during the current financial year.

Patent and technology searches
After a marked decline in commercial services during the financial crisis and the resulting high revenue losses, a record revenue of 4.17 million francs was achieved during the reporting year. Profits were just under one million francs. Crucial to this development is the economic recovery as well as a certain pent-up demand and the ever-increasing importance of IP in strategic management. The trend towards high-quality, complex and extensive searches continues to grow. For a high-priced provider such as the IPI, consistent implementation of high-quality standards and close customer interaction are still key success factors.
Legal & International Affairs

The Legal & International Affairs Division is primarily responsible for the preparation of policy on behalf of the Swiss Federation. The following report provides an overview of the most important developments in this area. The current status of all business can be found at the Institute’s (IPI) website (www.ipi.ch > Legal Info), in the e-newsletter (which can be subscribed to at the website) or on the “Institute’s page” in the “sic!” journal for intellectual property, information and competition law.

Swissness

On 18 November 2009, the Federal Council approved the dispatch on the revision of the Trade Mark Protection Act and a new Coat of Arms Protection Act and referred them to Parliament. The “Swissness” bill was a focus for the Institute’s policy services during the last financial year as well. The bill is intended to strengthen the protection of the designation of origin “Switzerland” and the Swiss cross in the interests of manufacturers and suppliers of Swiss goods and services as well as consumers and to maintain its long-term value. The core of the bill establishes precise rules in the Trade Mark Protection Act concerning the conditions under which a product or service may be labeled as “Swiss”. If these rules are kept, it will allow goods as well as services to be labeled with the Swiss Cross; the Swiss coat of arms, however, will remain reserved for the Commonwealth.

The possibility of also registering a non-agricultural geographical indication of source in a new register, and based on that, register it as a geographical trade mark (for instance, “Geneva” for watches) allows interested industries to obtain an official IP right in Switzerland. This significantly simplifies obtaining and enforcing protection in the future, particularly abroad. The parliamentary consultation began in the National Council Commission for Legal Affairs as first council in January 2010. On 14 October 2010, the Commission unaniously agreed to debate the bill. However, it is of the opinion that the regulation needs to be flexible and care must be taken that no conditions are introduced which could make it impossible or overly difficult for certain branches of commerce to use the “Swiss” brand. The Commission therefore decided to appoint a sub-committee to carefully examine the bill. The sub-committee began its work in November 2010 and present its report to the Commission for Legal Affairs in the autumn of 2011. At this point, the unicreversal strategic direction of the bill and the various viewpoints regarding the origin criteria, in particular, are sufficiently known. The challenge for Parliament will be to find a political compromise that is practical and feasible, and, at the same time, meets the parliamentary mandate for an adequate increase in protection.

Overview of the Swiss Collecting Societies

<table>
<thead>
<tr>
<th>Collecting society</th>
<th>SUISA</th>
<th>SUISSIMAGE</th>
<th>PROLITTERIS</th>
<th>SSA</th>
<th>SWISSPERFORM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repertoire</td>
<td>Non-theatrical music works</td>
<td>Audiovisual works</td>
<td>Literary and dramatic works</td>
<td>as well as visual arts works</td>
<td>Word-dramatic, music-dramatic and audiovisual works</td>
</tr>
<tr>
<td>Members</td>
<td>Composers, writers and music publishers</td>
<td>Script writers, directors, producers and other rights holders of the film branch</td>
<td>Writers, journalists, visual artists, photogaphers, graphic artists, book, newspaper and periodical publishers as well as art publishers</td>
<td>Dramatists, composers, script writers and directors</td>
<td>Practising artists, producers of sound carriers and audiovisual carriers as well as broadcasting companies</td>
</tr>
<tr>
<td>Total membership</td>
<td>28,677</td>
<td>2,582</td>
<td>10,116</td>
<td>2,582</td>
<td>9,198</td>
</tr>
<tr>
<td>Income from the use of rights in CHF</td>
<td>113,859,000</td>
<td>49,409,000</td>
<td>29,330,000</td>
<td>19,816,000</td>
<td>43,031,000</td>
</tr>
</tbody>
</table>

Access to literature for people with visual impairments

The international debate on access to culture is receiving more and more national attention. Mr. Luc Recordon of the Council of States requested information by way of an interpellation about Switzerland’s position on the Draft Treaty of the World Intellectual Property Organization (WIPO) for better access to literature for people who are blind or have other print impairments. Worldwide, only 5% of all books are available in a format that is perceivable for the visually impaired (Braille, large print or audio format). National laws often ensure the use of rights in CHF ...
hamper a cross-border exchange of such formats, which leads to costly duplications in production. The aim is to provide help at the international level. Argentina, Brazil, Ecuador, the European Union, Mexico, Paraguay and the United States have submitted a draft proposal in addition to the recommendation by the committee chair-
man. The latter includes comments by various delegations, including Switzer-
land which seeks to ensure that the standard of this instrument is in harmony with Swiss legislation. Swiss legislators have already been active in this under-
taking during the last partial revision and created a corresponding provision for exceptions and limitations in the Copyright Act with Art. 24c.

The fight against counterfeiting and piracy

The STOP PIRACY association, which is supported by the Institute, carried out a timely public awareness campaign regard-
ing counterfeiting and piracy at Geneva airport at the beginning of the summer holi-
day period. An information booth placed at a central location confronted travellers with the issue of product piracy and showed why purchasing counterfeit products never pays. On 28 October 2010, the “STOP PIRACY DAY” took place for the third time. An information campaign, “Piracy is ruth-
less”, was launched at Bern-Belp Airport in the presence of numerous media repre-
sentatives. The association also was able to expand its membership and to fortify its position as the foremost Swiss network for businesses, trade groups, consumer advocacy groups and federal agencies in the fight against counterfeiting and piracy during the reporting year. At international level, negotiations on a plurilateral agreement designed to combat counterfeiting and piracy (Anti-Counterfeiting Trade Agreement – ACTA) were com-
pleted. The aim of ACTA is to combat

large-scale, commercially-oriented counterfe-
ting and piracy. To this end, ACTA
envisons minimum standards of effective measures for enforcement as well as customs measures. The Swiss delegation, led by the Institute, was able to represent Switzerland’s interests in the negotiations. The agreement is now open to signature for two years beginning 1 May 2011.

Supervision of the copyright collecting societies

The IPI could again approve the annual reports of all five collecting societies. At the direction of the Institute, SUISA clari-
fied its distribution regulations in light of the statutory requirement for remuneration according to fixed regulations, and sub-
mitted it to the IPI for auditing. The partially revised distribution regulation was approved. The partial revision of SSA’s distribution regulation was also approved. The auditing of the comprehensive revision of the distribution regulations for ProLitteris could be completed and the requested changes were mostly approved. Several claims were again filed with the Institute which was able to close some of the cases during the reporting year. The Institute approved a complaint against SuISA as the representative for all the collecting societies regarding royalties for radio and television use in hotels and hospital rooms as well as in holiday homes and apartments (Commun Tariff 3a). The case is now before the Federal Adminis-
trative Court.

European Patent Organisation

On 27 June 2011, the Competiveness Council endorsed two proposals for a “uni-
tary patent” (a regulation establishing uniform patent protection and a second regulation regarding translations) in an “enhanced cooperation” from 25 EU Mem-
ber States. Switzerland will definitely not participate in this new system. It is, however, in the interest of Switzerland that the costs of the corresponding tasks for the European Patent Office (EPO) can be covered through the group of 25 par-
ticipating EU countries in such a way that no direct financial burden occurs for non-participating countries such as Switzer-
land. This position is also represented by the president of the Office.

World Intellectual Property Organization

2010 saw more constructive dialogue and, as a result, positive dynamics among the various regional groups. This allowed obstacles regarding various major issues to be overcome. However, after the 2010 General Assembly, progress slowed down and various dossiers are again blocked. The recent progress made in the Standing Committee on Copyright and Related Rights (SCCR) with respect to con-
vening a diplomatic conference on audio-
visual performances, the drafting of a pro-
posal for exclusions for people with print disabilities, and a schedule for resuming the substantive work on the protection of broadcasters show that both industrialised and developing countries are interested in further developing a balanced framework for intellectual property and that the differ-
ences often held up to slow progress are, largely, of an artificial nature. The Director General continued the internal reforms in the Secretariat by introducing a results-based management system. This should strengthen the automation of the organisation and increase its efficiency. The positive developments in the use and modernisation of the international reg-
novation systems (PCT, Madrid, The Hague and Lisbon) administered by WIPO continue to be of great importance.

Switzerland continues to participate actively in the work of WIPO and supports the initiatives to strengthen the registration unions and the coherent development of the international legal framework as well as development activities.

World Trade Organization/TRIPS

Agreement

The technical work of the Council on Trade-Related Aspects of Intellectual Prop-
erty Rights (TRIPS) continued with the active participation of Switzerland headed by the IPI. At the same time, negotiations for an early conclusion to the Doha world trade round came up empty again. The new 10-year-old Doha Round thus remains inconclusive. In view of the irreconcilable differences between the large blocks, breaking off negotiations or reducing ambi-
tions to a minimum package for least developed countries is an option. Such a package could be decided at the Minis-
terial Conference in Geneva in early Decem-
ber 2011 and would not include intellec-
tual property issues. The issue of better protection for geographical indications of source in the TRIPS Agreement would thus have to be actively raised in a work program after the Ministerial Conference by Switzerland and its allies.

Other international organisations

Last year, an intergovernmental working group met to discuss the role of WHO in the fight against counterfeit medicines and their relation to IMPACT (International Medical Products Anti-Counterfeiting Taskforce). In the process, the role of IP protection in the fight against counterfeit medicines was discussed. Since the work-
ing group could not provide any concrete results, the 64th World Health Assembly decided to extend the group’s mandate for another year. The Executive Council of the WHO named advisory experts for the coordination and financing of research and development for medicines for diseases which primarily affect poor countries. A Swiss expert will also be involved here. The Institute also participates in interna-
tional negotiations regarding the overlap-
ing area of intellectual property and sustainable development. Particularly of note during this financial year were the negotiations within the framework of the Convention on Biological Diversity (CBD) concerning a protocol over access and benefit sharing, as well as the WHO negotiations on pandemic flu viruses; both negotiations could be completed during the reporting year with the approval of a new instrument.

Plurilateral and bilateral trade agreements

The IPI assures the conduct of negotia-
tions in the Swiss delegation for the intellectual property chapter during the preparation of free trade agreements at both regional and bilateral level. During the reporting year, Switzerland opened negotiations for a bilateral free trade agreement with China. Within the frame-
work of the European Free Trade Associa-
tion (EFTA), free trade negotiations with Hong Kong were successfully brought to a close, and negotiations in the field of intellectual property could be completed with Bosnia Herzegovina and Monte-
negro. New negotiations with Indonesia, Russia, Belarus and Kazakhstan have been opened. The negotiations on a free trade agreement between EFTA and India are continuing.

Bilateral dialogue

Based on a 2007 Memorandum of Under-
standing with China, discussions on the protection of intellectual property with this significant – for the Swiss economy – emerging nation continued. In November 2010, the fourth bilateral meeting with China took place in Bern, which included, among other things, a second workshop on the protection of geographical indica-
tions. In addition, the Institute organised a tour of Syngenta, located in Stein, in col-
laboration with economesuisse, ending with a round table which gave Swiss trade associations and industry representatives an opportunity to directly discuss their con-
cerns with the Chinese delegation. The bilateral dialogue on intellectual prop-
erty with India, which was also begun in 2007, was not continued during the reporting year and will be suspended until the completion of the EFTA free trade negotiations with that country.

In other areas, Switzerland continued various exploratory talks and negotiations with third countries to conclude bilateral agreements on mutual protection of geo-
ographical indications. The bilateral agreement signed with Russia last year was approved by Parliament in the reporting year and will enter into force in autumn 2011.

International cooperation

At the end of the reporting year, the Insti-
tute’s projects on the protection of geographical indications of source from Jamaica and Kenya were completed. The project with Vietnam, funded by the State Secretariat for Economic Affairs (Seco), was also concluded. A project with Ghana dealing with the modernisation of the legal and institutional framework in the field of intellectual property, among other things, was continued. A new project with Laos, also funded by the Seco, was begun. Finally, additional new projects are being planned with other countries.

Training

During the reporting year, the Institute presented 125 courses – the equivalent of about 196 training days – to small and medium-sized enterprises, technol-
gy parks, colleges, universities, schools and associations. A total of about 4,800 people participated. A new module which expands on the basic module was introduced. In addition, all modules
were also offered in French. The Institute ensures a presence at most universities in Switzerland in order to raise awareness of the benefits of a balanced intellectual property protection system.
Institute Council and Auditing

Organisational Chart

The Institute Council
The Institute Council is appointed by the Federal Council of Switzerland and is the highest executive board of the Institute (IPI). It approves the budget, the annual report and the annual financial report. It also determines the IPI’s schedule of fees and defines the composition of the executive management (excluding the director general). The Institute Council consists of the following members:

Felix Hunziker-Blum
President, Dr. iur., attorney-at-law, Schaffhausen

Claudia Bolla-Vincenz
Dr. iur., attorney-at-law, Bern

Roman Bouteller
Prof. Dr., Chair of Innovation and Technology Management, ETH Zurich, Zurich

Alexandra Frei
Patent attorney VSP, Zollikon

Jean-Pierre Maeder
Attorney-at-law, vice-director Nestec AG, Vevey

Vincenzo M. Pedrazzini
MA, iur., Wollerau

Matthias Ramsauer
Secretary general FDJP, Bern

Barbara Schaeer
Dr. iur., attorney-at-law, LL.M., MBA, Director, Federal Office of Personnel

Beat Weibel
Head of Intellectual Property, ABB Asea Brown Boveri Ltd. and ABB Ltd., Zurich

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Vielfältiges Engagement

Das Institut setzt sich auf zahlreichen Ebenen aktiv gegen Fälschung und Piraterie ein: Auf nationaler Ebene werden die Aktivitäten der Privatwirtschaft und der Behörden koordiniert und im Rahmen der laufenden Revision des Patentgesetzes neue Massnahmen auf Gesetzesebene eingeführt (siehe Tätigkeitsbericht auf Seite 29). Auf internationaler Ebene engagiert sich die Schweiz, vertreten durch das Institut, im Rahmen bilateraler Kontakte und internationaler Organisationen. Um den Kampf noch wirksamer zu gestalten, hat das Institut gemeinsam mit betroffenen Wirtschaftszweigen und Behörden die «Public Private Partnership» STOP PIRACY ge gründet. Initiator dieser wegweisenden Zusammenarbeit ist das Eidgenössische Institut für Geistiges Eigentum.
ductivity of the European Patent Office.

The remaining reserves of CHF 64.9 million as of the end of the reporting year still give us some time to achieve balance before they threaten to fall below the acceptable CHF 50 to 75 million. This level of reserves is recommended, particularly in view of the financial risks and costs for the Institute emanating from Switzerland’s membership in the European Patent Organisation and the World Intellectual Property Organization.

The auditors could confirm the correctness of the accounts without reserve.

The detailed, IFRS-compliant financial statements can be seen on the Internet at www.ipi.ch (About Us > Institute > Annual Report) or ordered free of charge using the enclosed reply card.

### Balance Sheet

<table>
<thead>
<tr>
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<tbody>
<tr>
<td></td>
<td>as of</td>
<td>as of</td>
</tr>
<tr>
<td></td>
<td>30.06.11</td>
<td>30.06.10</td>
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<td>Cash and cash equivalents</td>
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<td>69,801</td>
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<tr>
<td>Receivables</td>
<td>896</td>
<td>642</td>
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<tr>
<td>Other receivables</td>
<td>740</td>
<td>535</td>
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<tr>
<td>Accrued receivables and prepaid expenses</td>
<td>2,777</td>
<td>3,457</td>
</tr>
<tr>
<td><strong>Current assets</strong></td>
<td><strong>73,386</strong></td>
<td><strong>74,435</strong></td>
</tr>
<tr>
<td>Tangible assets</td>
<td>28,442</td>
<td>29,297</td>
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<tr>
<td>Intangible assets</td>
<td>8,051</td>
<td>6,702</td>
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<tr>
<td><strong>Fixed assets</strong></td>
<td><strong>36,493</strong></td>
<td><strong>35,999</strong></td>
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<tr>
<td><strong>Total assets</strong></td>
<td><strong>109,879</strong></td>
<td><strong>110,434</strong></td>
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<tr>
<td>Accounts payable</td>
<td>2,680</td>
<td>2,345</td>
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<tr>
<td>Current accounts (amounts due to customers)</td>
<td>5,193</td>
<td>5,868</td>
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<tr>
<td>Other liabilities</td>
<td>4,017</td>
<td>3,762</td>
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<tr>
<td>Accrued expenses and deferred income</td>
<td>7,472</td>
<td>7,296</td>
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<tr>
<td>Short-term provisions</td>
<td>1,336</td>
<td>944</td>
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<tr>
<td><strong>Short-term liabilities</strong></td>
<td><strong>20,698</strong></td>
<td><strong>20,215</strong></td>
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<tr>
<td>Provisions for pension plans</td>
<td>21,794</td>
<td>22,346</td>
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<td>Other provisions</td>
<td>2,472</td>
<td>2,654</td>
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<tr>
<td><strong>Long-term liabilities</strong></td>
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<td><strong>25,000</strong></td>
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<tr>
<td>Loss</td>
<td>-304</td>
<td>-3,846</td>
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<td>Reserves</td>
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<tr>
<td><strong>Equity</strong></td>
<td><strong>64,915</strong></td>
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<tr>
<td><strong>Total liabilities</strong></td>
<td><strong>109,879</strong></td>
<td><strong>110,434</strong></td>
</tr>
</tbody>
</table>
### Income Statement

(in thousands of CHF)  

<table>
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<tr>
<th></th>
<th>2010/2011 from 01.07.10 to 30.06.11</th>
<th>2009/2010 from 01.07.09 to 30.06.10</th>
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<tbody>
<tr>
<td>Fees for statutory activities</td>
<td>47412</td>
<td>46102</td>
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<tr>
<td>Services</td>
<td>5173</td>
<td>4397</td>
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<td>Miscellaneous revenues</td>
<td>2087</td>
<td>1539</td>
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### Cash Flow Statement

(in thousands of CHF)  

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<td>– from services</td>
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<td>– from accruals and deferrals</td>
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<td>Increase / decrease in receivables and other assets</td>
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<tr>
<td>– from services</td>
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<td>Change in cash flows from financing activities</td>
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<td>Change in current accounts</td>
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<td>Cash inflow / outflow from financing activities</td>
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<td>Change in cash and cash equivalents</td>
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<td>Cash and cash equivalents at beginning of year</td>
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### Statement of Changes in Equity

(in thousands of CHF)  

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<td>Beginning balance</td>
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### Protective Rights Areas

Article 13, para. 2 of the Institute's federal statute requires cost recovery for each area of protective rights in a four-year average. It was repealed on 1 January 2006. The institute nonetheless decided to continue showing the results for the protective rights areas. It is not a segment report according to IFRS 8.

All figures in thousands of CHF.

#### Patents

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#### Trade marks

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#### Copyright

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Eidgenössisches Institut
für Geistiges Eigentum
Contact-Center
Stauffacherstrasse 65/59 g
CH-3003 Bern

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Last Name

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