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November 2020



## Catherine Chammartin, Director General

In the 2019 winter session, Parliament submitted a motion for a modern Swiss patent to the Federal Council. The parliamentary procedural request aims to create an additional route for small and medium enterprises to obtain a legally valid and fully examined patent. The Federal Council's preliminary draft was submitted for consultation in autumn. Meanwhile, the consultation on the revision of the customs assistance procedure has already been closed and evaluated. The revision aims to simplify the procedure for destroying small consignments. Both projects, the expansion of the routes to patent protection as well as increased efficiency in the fight against product piracy, will strengthen both the competitiveness of Swiss companies and the attractiveness of Switzerland as a business location. The wide support the initiatives are receiving demonstrates to me that those involved are taking their responsibility seriously. In regard to the IP rights system, too, everything is being done to bring the economy back up to its pre-crisis level.

The coronavirus crisis challenged the IPI and not only as the federal government's 'attorney's office' for intellectual property. During the 'extraordinary situation', it was still necessary to provide reliable services that expressly involve personal exchanges between our experts and stakeholders – for example, assisted patent searches for innovative SMEs, start-ups and higher education institutes.

It was important to us to signal to Swiss entrepreneurs, engineers and inventors that we would still be there for them in times of distancing rules and travel restrictions. The Executive Board underlined this willingness to help by making the decision to offer searches online and free of charge during the months of April and May.

Mid-March marked the start of a new chapter for my colleagues – 'home office', microphones and headphones, shared screens and video conferences became the new normal. This was made possible by our IT department. They made the necessary digital tools available virtually overnight.

Speaking of IT, the electronic IP rights administration system is the digital backbone of the IPI. The fact that the platform withstood the extreme lockdown conditions gives us security for the next big step in digitalisation. The name of this project is eGovernment. My colleagues Stefan Fraefel and Mirko Galli explain what it's all about in an interview on page 26.

The IPI is using modern communications technology to be able to better address the needs of our customers and partners in the future. The digitalisation of the assisted search service demonstrated the potential of this strategy – the number of search requests tripled. Between the beginning of April and the end of May, our experts guided over 400 inventors, researchers and company representatives through the patent literature.

Some of the virtual visitors were interested in the state of the art in their field, while others browsed through neighbouring technology fields, looking for inspiration. However, they all had one thing in common. They viewed the crisis as an opportunity and broke new ground. The IPI will continue to support them in their endeavours in the future.



## Envisioned. Created. Protected.

Anyone who has a brilliant idea, persistently develops it and turns it into practical reality, should be able to protect it as their own intellectual property. This is why individuals and companies can register their innovations and creations at the Swiss Federal Institute of Intellectual Property (IPI).

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Inventions are patented, shapes are registered as designs, and names or logos are registered as trade marks to protect them from being copied by others. Then there are geographical indications of source, which identify a product or service as originating from a certain place or region (e.g. Zug cherry cake).

Copyright, however, is a special case. The moment a work is created, the rights to the work arise automatically, which means that they do not require any registration. To better exploit these rights, copyright owners of certain categories of works (e.g. literature, music, film) team up with special organisations called collective rights management organisations (CMOs). The IPI is responsible for supervising these CMOs together with the Federal Arbitration Commission for the Exploitation of Copyrights (FACO).

### Research first, then register

Inspiring ideas are like a source of light. From the perspective of inventors, designers and authors, they expand our knowledge of the known. But what happens if someone else got there before you and the IP rights have already been secured? In this case, you need to weigh up whether there is any scope left for applying for a trade mark, patent or design, or in the case of a geographical

indication, registering it. Since there is no examination as to the novelty of an invention under patent law in Switzerland, it is up to applicants to clarify whether their invention is novel and as such meets this criterion for patent protection. The IPI provides trade mark and patent searches, which ensure, for example, that a trade mark or patent application does not infringe any existing third party IP rights.

Although intellectual property knows no frontiers, patent, design and trade mark protection only apply in those countries in which IP rights have been applied for and registered – and are in force. However, there are international organisations such as the European Patent Organisation (EPO) and the World Intellectual Property Organization (WIPO), which provide harmonised application procedures. It is possible, for example, to apply for patent protection in up to 42 different countries via the European Patent Office. The IPI is actively involved in shaping international developments in intellectual property, too.

### Protection grants exclusivity

Patents, trade marks, designs and geographical indications of source, which are known as IP rights, grant their owners the right to prevent third parties from using their intellectual property.

However, this does not imply that the protection IP rights provide is absolute. Because IP rights – just like any other rights – can be infringed. Rights owners must therefore take responsibility and decide themselves if they want to exercise their claims and, if necessary, enforce them. For companies, intellectual property can make up a significant share of their market value. A patent allows a potentially ground-breaking technology to be exclusively marketed, while the degree of recognition of a trade mark facilitates the sale of existing and new products. This is why companies actively manage their intellectual property and integrate how they will handle it in their strategic development processes. The IPI provides information on learning about the advantages and dis-

advantages of different possibilities of protection, in particular to inexperienced IP users such as SMEs.

### **The IPI as an institution**

The IPI, as it is known today, was founded as the Federal Patent Office in 1888. It was granted the status of an independent entity under public law on 1 January 1996. Since then, it has been operating autonomously and is a legal entity in its own right. It is financed by the fees it collects, keeps its own accounts and is independent of the federal budget in every way. This means that taxes are not used to administer IP rights, and fees for IP rights are not used for the construction of motorways. The IPI is respon-

## The Swiss Federal Institute of Intellectual Property



sible for all issues concerning intellectual property in Switzerland and employs around 270 staff at its headquarters in Bern.

The topic of digital transformation is an issue at the IPI, too. The renewal and expansion of the electronic IP rights administration and eAdministration systems is currently a key project at the IPI. Its economic business autonomy enables the IPI to respond to such a changing environment in an agile way.

As part of its public relations work in the field of intellectual property, the IPI also supports organisations and programmes such as the Swiss Innovation Forum (SIF), the SEF4KMU programme and the Swiss Youth in Science foundation (SJf).

The IPI is also involved in an extensive international development collaboration with the State Secretariat for Economic Affairs (SECO). It works together with selected countries with the objective of establishing a well-functioning, national intellectual property protection system. This is also intended to adequately protect the international investment and sales markets of the Swiss economy abroad.

## **The federal government's 'attorney's office'**

The IPI also has a political mandate. It is responsible for drafting legislation and advising the Federal Council and other federal authorities on matters concerning intellectual property. At the same time, the IPI also has the mandate to represent the interests of Switzerland in international organisations such as the EPO, WIPO and the WTO (World Trade Organization). This makes the IPI the federal government's 'attorney's office' for intellectual property matters.

Another task that stems from the IPI's function as an independent centre of competence is that of advising decision-makers in politics and administration, as well as providing specialist support to Swiss trade delegations at international level.

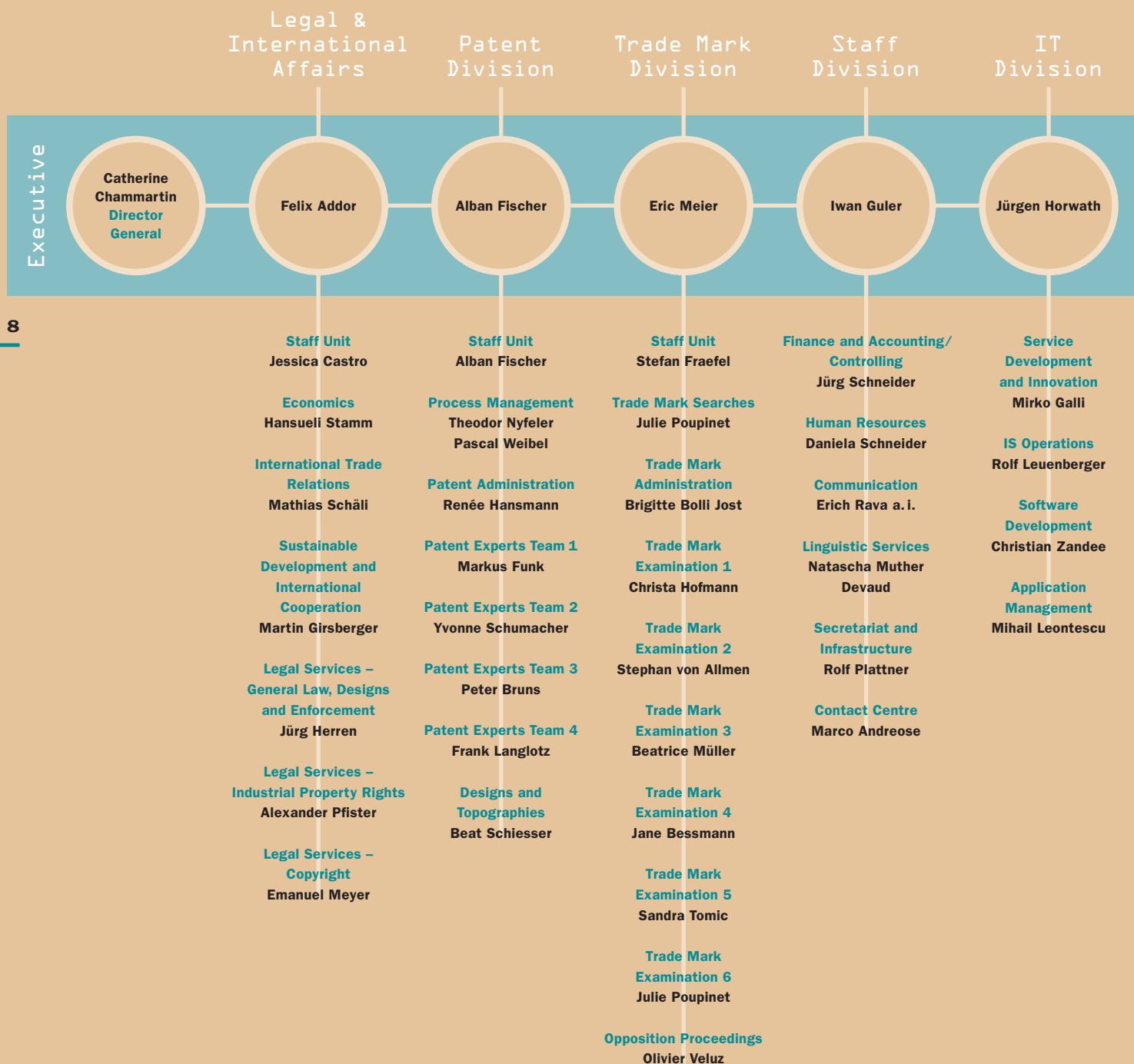
The IPI also provides information to artists, creatives and representatives of the Swiss economy about the IP rights system and the latitude that it offers. For this purpose, the IPI conducts courses and seminars on these topics as well as cooperates with Swiss higher education institutions.

## **Commercial services**

Patent and trade mark registers are the telephone directories of intellectual property rights and contain a wealth of information. Together with international technology databases, they can pro-

vide information such as on the state of the art in a specific market, on competitors, or on new technology trends. The IPI's experts are able to extract such information and prepare it for their customers. These search services offered by the IPI are also in demand abroad and are marketed under the label ip-search.

# Organigram







Corina Eichenberger-Walther, President

**The Institute Council** – which is elected by Switzerland's Federal Council – is the IPI's supreme supervisory body with regard to the operational management of the IPI.

**Corina Eichenberger-Walther**

Attorney-at-Law and Mediator,  
President

**Beatrice Renggli**

lic. iur., Vice President

**Luc-E. Amgwerd**

lic. iur., CEO Gjosa SA

**Yves Bugmann**

lic. iur.

**Oliver Gassmann**

Prof. Dr., Full Professor of Technology  
and Innovation Management,  
University of St. Gallen

**Barbara Hübscher Schmuki**

lic. rer. pol.

**Sara Stalder**

Swiss Consumer Protection  
Foundation Manager

**Peter Walser**

Dr. sc. nat. ETH, Patent Attorney

**Evelyn Zwick**

Dipl. Phys. ETH, Patent Attorney

**Auditing:** The Federal Finance Administration in Bern has been appointed by the Federal Council to audit the IPI's accounts and report to the Institute Council.



Catherine Chammartin, Director General

**The Executive Board** is appointed by the Institute Council, with the exception of the Director General, who is elected by Switzerland's Federal Council.

**Catherine Chammartin**

Director General

**Felix Addor**

Deputy Director General, General Counsel of the IPI and Head of the Legal & International Affairs Division

**Alban Fischer**

Vice Director General and Head of the Patent Division

**Iwan Guler**

Vice Director General and Head of the Staff Division

**Jürgen Horwath**

Vice Director General and Head of the IT Division

**Eric Meier**

Vice Director General and Head of the Trade Mark Division

# An Overview of the Year at the IPI

## September

### 1 September 2019

#### Better international protection for quality Swiss products



The agreement between Georgia and Switzerland on the protection of geographical indications and use of the 'Switzerland' designation of origin came into force on 1 September 2019. The agreement protects important geographical indications and designations of source of both countries. For Switzerland, this specifically concerns indications such as *Tête de Moine*, *Gruyère*, Swiss chocolate and Swiss watches. The designation of origin 'Switzerland', the Swiss cross, as well as the names of the Swiss cantons are also protected under the agreement. For Georgia, the agreement contains designations for specialities such as *Kakheti* (wine), *Sulguni* (cheese) and *Borjomi* (mineral water). The agreement contributes to maintaining the long-term reputation of quality Swiss products. The high level of protection negotiated makes the agreement an international model. Georgia is the tenth country with which Switzerland has been able to conclude an international treaty on the protection of Swiss quality products.

### 11–13 September 2019

#### Conference on the future of intellectual property

From 11 to 13 September, IP experts from around the world gathered in Zurich for the European Policy for Intellectual Property Conference (EPIP). Visitors took part in lectures, panel discussions and workshops on IP rights at the ETH Zurich. As one of the conference sponsors, the IPI organised an IP, Policy and Politics panel. It focused on how to ensure that scientific findings find their way to policy makers, which ideally complemented the other academic presentations. The IPI was also involved in a panel discussion with chief economists from the various IP offices represented. The IPI's chief economist, Hansueli Stamm, concluded at the end of the three-day conference: "Given the wide range of presentations, we do not need to worry about the future of intellectual property, at least from an academic perspective".

### 16 September 2019

#### After seven years of work, the revision of the Copyright Act is finished

On Monday 16 September 2019, the National Council deleted the final difference from the draft of the new Copyright Act during its third reading. The revision of the Copyright Act was thus successfully concluded following a report by the Federal Council, two years of AGUR12, and seven years of intensive work by the IPI. The photograph shows the view from the colloquially known 'naughty bench' (the bench reserved for the administration) in Parliament.



### 19 September 2019

#### Event on protecting computer-implemented inventions

The European Patent Office (EPO) and the IPI held an event, Patent Procedures for Computer-Implemented Inventions, on 19 September in Bern. Its focus was on the issue of the patentability of software in Europe. Computer programs are protected as such by copyright, but thousands of patents are also granted for computer-implemented inventions (CII) in which software controls the technology – for example, a navigation device. However, CIIs are now penetrating into 'unrelated' fields such as chemistry and biotechnology, which is leading to complex, interdisciplinary patent applications. The participants learned everything about the EPO's and the IPI's current practice, the challenges of CII, and the points an applicant should be aware of. Open questions in this field could also be discussed with patent attorneys and examiners of the EPO and the IPI.

# Events in the Year under Review that Effectuated Change

## October

### 1 October 2019

#### **Tailor-Made IP Strategy for SMEs & Start-Ups – a networking lunch in Etoy, Vaud**

Patent protection and IP strategies are only something for large companies that operate globally – or so think many SME and start-up leaders. But think again! At the SEF4KMU networking lunch on 1 October 2019 in Etoy in the canton of Vaud, attorney-at-law and Lawyer of the Year 2019, Bernard Volken, showed why even smaller companies should also pay more attention to the topic of intellectual property. SEF4KMU is an initiative of the Swiss Economic Forum (SEF), which is aimed at Swiss SMEs and start-up companies with ambitions for growth. The IPI offered interested parties free participation in an exclusive networking lunch as a main partner of SEF4KMU.

### 2 October 2019

#### **Project contract signed with the Iranian Intellectual Property Center**

The IPI and the Iranian Intellectual Property Center (IPC) signed a Memorandum of Understanding (MoU) at the WIPO General Assembly on 2 October 2019. The MoU was signed by Catherine Chammartin and Felix Addor on behalf of the IPI, and on behalf of the IPC by its Director, Mr Mohammad Hassan Kiani. The MoU contains guidelines for implementing the Iranian-Swiss Intellectual Property Project (IRSIP), which is financed by the IPI. Implementation of the project will start in early 2020 and will run for four years. The IRSIP's goal is to strengthen the Iranian intellectual property system in order to improve economic com-



petitiveness and commercialise intellectual property assets. The aim of the project is also to have a positive impact on Iran's economic development.

### 17–18 October 2019

#### **Switzerland discusses the role of intellectual property in innovation at the WTO**



Switzerland made a submission with like-minded WTO members at the WTO/TRIPS Council of 17–18 October called IP and Innovation: Public-Private Collaborations in Innovation – IP Commercialisation. The Swiss delegation, led by the IPI, opened the discussion in the Council under this agenda item. It also organised a panel discussion on the same topic on the sidelines of the TRIPS Council meeting with Japan and the USA. The purpose of this event was to bring in voices from outside of the WTO discussion, in particular from academia and private companies. Olga Dubey, CEO of AgroSustain, a start-up company based in Nyon, which she founded after discovering a natural fungicidal active ingredient during her doctorate at the University of Lausanne, gave a presentation as a panellist from Switzerland. Dubey explained AgroSustain's IP strategy, which initially wanted to protect its intellectual property as a trade secret. After a visit to the IPI and an assisted patent search, the company decided to seek patent protection.

## November

### 1 November 2019

#### **IP rights – an overview of court decisions in Switzerland**

The Swiss courts regularly deal with cases concerning intellectual property law. The IPI now compiles statistics on these court decisions. The figures on IP rights in 2018 show, for example, that the most court decisions by far were to do with trade mark law (57%). This was followed by copyright law (27%) and patent law (9%).

### 29 November 2019

#### **Corina Eichenberger-Walther takes over the presidency of the IPI's Institute Council**

The Federal Council elected Corina Eichenberger-Walther as President of the Institute Council of the Swiss Federal Institute of Intellectual Property within the framework of the elections of the extra-parliamentary commissions and federal management bodies. Also elected to the Institute Council was Prof. Dr. Oliver Gassmann, while the other members of the council were re-elected for the 2020–2023 term of office. Succeeding Dr. iur. Felix Hunziker Blum, who gave up his office due to a 12-year tenure limitation, Corina Eichenberger-Walther took up her position as President of the Institute Council of the IPI on 1 January 2020. She is the first woman to head the highest supervisory organ of the IPI. Eichenberger-Walther has had a wide range of experience in management positions as a partner and



## December

consultant in a law firm in Basel. She has also held various political mandates over many years, including most recently as a long-standing member of the National Council.

Also leaving the IPI's Institute Council following 12 years in office was Prof. Dr. Roman Boutellier. His seat was taken by another representative from the field of science, Prof. Dr. Oliver Gassmann. Gassmann is a professor of Technology Management at the University of St. Gallen, with a particular focus on innovation management. This focus on innovation and technology transfer ensures valuable competencies with regard to the interdisciplinary composition of the collegial body.

### 3 December 2019

#### **Symposium on Creative Approaches to Improving Access to Medicines Globally**

The symposium Creative Approaches to Improving Access to Medicines Globally – Ideas from the Hepatitis C Experience was organised by the IPI together with the Graduate Institute of International and Development Studies and the Federal Office of Public Health. Its aim was to discuss new ways of promoting innovation and improving access to medicines worldwide, with Hepatitis C (Hep C) medicines serving as a case study. Three panels of leading experts examined the different aspects of the issue: national strategies for Hep C treatment, models for promoting innovation, new approaches to public health, as well as their impact on access to medicines and health policies. Felix Addor from the IPI gave an introductory presentation which looked at the history of access to Hep C medicines and the interaction between public and private research and development.

### 4 December 2019

#### **Ticino start-ups benefit from assisted patent searches**

At the Boldbrain Startup Challenge on 4 December in Lugano, start-ups presented their innovations, with first place going to the software start-up Orchestra. The winners received 40,000 Swiss francs and a scholarship worth 45,000 francs. The Boldbrain programme supports start-ups in the various stages of developing a business idea. The programme is organised by the Fondazione Agire/Tecnopolo Ticino and focuses on technological innovations. The IPI has been working with Agire since autumn 2018 and has been offering assisted patent searches at Agire's location in Manno since January 2019 as part of this collaboration.

### 6 December 2019

#### **The IPI becomes a partner of WIPO GREEN**

WIPO GREEN is an online platform that helps to accelerate the adaptation, adoption and dissemination of green technologies by connecting suppliers and customers of such technologies. The platform consists of a database with a list of green technologies, a network of key players and their projects. The IPI entered into a partnership with WIPO GREEN in order to contribute to the dissemination of green technologies, for example by participating in analysing specific technologies. The IPI is free to choose in which areas and to what extent it wishes to contribute. Thanks to the partnership with WIPO GREEN, the IPI's cooperation with other federal agencies in achieving these sustainability goals can also be strengthened.

### 10 December 2019

#### **Strengthening the IPI's presence in Asia – new cooperation project with Myanmar is all set**

The Myanmar-Swiss IP Project (MYSIPP) is the IPI's second cooperation project, after Laos, active in the challenging field of least developed countries (LDCs). Myanmar, which after decades of isolation has only recently opened up to international investment and world trade, has great potential for bilateral relations and trade. Unlike the situation in most other project countries, Myanmar's IP system is quite rudimentary. The IPI will



## January

contribute expertise about the still little known world of intellectual property to Myanmar, for example by creating and updating Myanmar's legal basis for intellectual property. The project was approved on 10 December 2019 by SECO and the IPI's Executive Board for a period of three years.

### 12 December 2019

#### **'In favour of a modern Swiss patent' motion approved**



The National Council, as second chamber, approved the motion 'In favour of a modern Swiss patent' by Councillor of States Thomas Hefti. The motion has three objectives: a full patent examination for Swiss patent applications, the introduction of an unexamined utility model, and an extended opposition procedure. The IPI, as the competent federal authority, will now prepare a preliminary draft and explanatory report on the revision of the Patents Act.

### 1 January 2020

#### **New online service for trade marks – digital delivery of IPI correspondence**

From January 2020, the IPI offers trade mark clients and applicants the possibility of receiving letters in trade mark proceedings electronically. In future, they will not only receive the correspondence from the IPI more quickly, but will also be able to process them efficiently, archive them digitally, and forward them to third parties at the touch of a button. In addition, they will no longer have to carry out manual steps such as scanning. Electronic delivery has been available since summer 2020 for international registrations based in Switzerland.

### 6 January 2020

#### **Elves and dogs are public domain**

On 6 January 2020, the Federal Supreme Court dismissed an appeal against a Federal Administrative Court judgment of August 2019. It marked the end of a trade mark dispute that had been ongoing since 2012. At that time, a company had applied to the IPI to extend protection to Switzerland of a number of trade marks already registered abroad. The IPI refused to extend protection on the grounds that the depicted objects were in the public domain and that the images were devoid of distinctive character. The trade mark owner challenged this decision before the Federal Administrative Court (FCA), which the court partially upheld. However, in the case of three images – the depictions of an elf and two dogs – the FCA accepted the IPI's arguments. The trade mark owner then went to the Federal Supreme Court and filed an appeal, but was defeated. The decision of the highest Swiss court supported the IPI's interpretation of the concept of public domain and more generally the strict trade mark registration practice in Switzerland.

### 15 January 2020

#### **Greater efficiency in the fight against counterfeiting**

From counterfeit watches to handbags – it may soon be easier for the Federal Customs Administration (FCA) to destroy fake products in small consignments. A new procedure aims to reduce the administrative effort and give the authorities more leeway for their checks. These checks are essential – the importation of small consignments from Asia into Switzerland increased sixfold between 2014 and 2018. Swiss companies are particularly affected by counterfeiting. The Federal Council opened the consultation on the introduction of the simplified procedure on 15 January 2020.



# An Overview of the Year at the IPI

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## February

28 January 2020

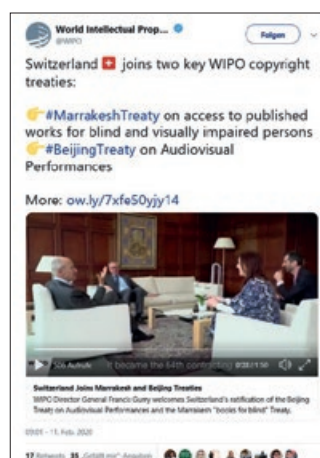
### Swiss innovation partnership

SMEs and start-ups should be given the best conditions to start well on the market. This is why the IPI and Switzerland Innovation are working together – by connecting universities and innovative companies at five locations in Switzerland with a comprehensive platform. The exchange between science and industry helps to develop ideas in such a way as to create products and services that can be marketed successfully. It is important that start-ups are able to assess the potential of their idea or invention at an early stage of their development. This is why the IPI is offering companies supported by Switzerland Innovation an Assisted Patent Search and an Assisted Patent Landscape Analysis within the scope of the partnership. After such a search, companies will know whether their invention is patentable and what the market is like in which they want to operate.

11 February 2020

### Switzerland ratifies two international treaties in the field of copyright

Switzerland ratified two treaties of the World Intellectual Property Organization (WIPO) on 11 February 2020. The Beijing Treaty improves protection of actors and performers at international level. It enables them to defend themselves against any unauthorised use of their performances. Actors already have this level of protection at national level. The Marrakesh Treaty improves access to copyright-protected works for people with visual disabilities. For example, to make books accessible to people with visual disabilities, the books have to be converted into specific formats (e.g. published in large print, in Braille, or as an audio book). The Marrakesh Treaty allows for the production and cross-border exchange of such copies of works. Swiss law already contains a provision for people with disabilities. With the implementation of the Marrakesh Treaty, this provision has been extended and now permits copies of works that were produced in a contracting state in accordance with a legal regulation to be imported into Switzerland.



## March

4 March 2020

### Trade marks in Switzerland still at a high

Trade marks in Switzerland continue to be popular. Trade marks serve as a means of differentiation and are an important part of a company's capital. Registering a trade mark gives companies security by protecting their trade mark from free riders. In 2019, the IPI received more than 17,000 applications for trade marks, which was slightly more than the previous year. There are now more than 500,000 trade marks in force nationally. Applications for design rights, on the other hand, have remained stable, while the number of patent applications have increased significantly. More than 130,000 patents are currently in force in Switzerland. Demand for assisted patent searches is also encouraging. This is a service that makes it possible to find out whether an invention is patentable.



# Events in the Year under Review that Effectuated Change

## April

**1 April 2020**

### **Fit for the digital age – the modernised Copyright Act comes into force**

The revised Copyright Act strengthens the rights of creative artists and the cultural industry. Research will be facilitated and the relevant legislation will be adapted to technological developments with the revision. There are also important changes for consumers under the modernised Copyright Act. Whether an artistic photograph, an amateur snap, or a standard product photo, all photos are now protected – whether analogue or digital, whether taken by an amateur or a professional. This applies whether the photographs have individual character or not. This extended protection for photographs is one of the main changes in the new Copyright Act. The amendment, which had been passed by Parliament, was put into force on 1 April 2020 by the Federal Council at its meeting of 26 February 2020.



**1 April 2020**

### **The IPI expands its digital offerings due to the 'extraordinary situation'**

The measures to limit the pandemic hit many companies hard: revenue losses, liquidity bottlenecks and short-time working. It was precisely in this period that ideas were in demand, not only to develop crisis-proof business models in the short term, but also to optimally shape the new start after the crisis in the longer term. During this challenging period, the IPI supported innovative and creative people with

a broad digital offering. To support SMEs and start-ups in Switzerland, the IPI carried out assisted patent searches and assisted patent landscape analyses free of charge from 1 April to 31 May 2020, and after that at a greatly reduced fee until the end of the year. The searches, which proved to be very popular, took place via an online meeting solution.

**25 April 2020**

### **Young researchers convince experts with their projects**

The final of the Swiss Youth in Science national competition was held virtually for the first time due to the COVID-19 situation. Against all odds, 136 young researchers presented their work to the jury of experts by showing their research results and ideas via video call on 23 and 24 April. They were then honoured for their outstanding achievements on 25 April. The finalists, who came from 20 cantons, had been carrying out research and work on their projects for at least a year. The IPI's experts support young people in the various phases of the competition and teach them the basics of intellectual property. In addition, the IPI offers participants assisted patent searches and donates the special prize for a particularly successful idea.



## May

**20 May 2020**

### **US recognition for the partial revision of Swiss copyright law**

In response to criticism from the US entertainment industry, the United States Trade Representative (USTR) placed Switzerland on a so-called Watch List in its annual report on countries that insufficiently protect American intellectual property interests (Special 301 Report) back in 2016. The USA argued that copyright was being inadequately enforced on the internet in Switzerland. In its Special 301 Report 2020, the USTR removed Switzerland from the Watch List in recognition of the relevant amendments to the revised Copyright Act that came into force on 1 April 2020.

# An Overview of the Year at the IPI

June

4 June 2020

## **The IPI actively participates in the WIPO discussion on intellectual property and artificial intelligence**

Artificial intelligence (AI) is at the heart of the fourth industrial revolution. It has already had a global impact on daily life and also affects intellectual property. The World Intellectual Property Organization (WIPO) published a summary document on intellectual property and artificial intelligence policy. As part of a process open to all, this document lists the impact of AI on intellectual property policy and addresses the questions that decision-makers need to ask themselves. The IPI had the opportunity to comment on the first version of this document and was pleased to welcome the participation of interested Swiss parties, in particular the Association of Swiss and European Patent Attorneys in Private Practice (VESPA/ACBSE), the Digital Law Center of the University of Geneva, and the Chair of Innovation Law of the University of Neuchâtel. A total of 250 comments were received from Switzerland and the rest of the world. The IPI works closely with the Center for Intellectual Property and Competition Law (CIPCO) at the University of Zurich in the fields of AI and intellectual property.

5 June 2020

## **Better international protection for Swiss geographical indications**

Swiss producers will in future be able to register geographical indications in several states simultaneously via a simple procedure. The Federal Council adopted the dispatch on the approval and implementation (amendment of trade mark law) of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications for submission to Parliament at its meeting on 5 June 2020.



# Trade Marks, Patents, Designs and Copyright

The design of a teapot or the contents of a detective novel cannot be held or touched – they are intangible goods. This means that they are easy to imitate. But because they can also have great monetary value, they can also be protected as intellectual property, which ensures that only those who actually own the 'property' are allowed to use it. Two of the IPI's core tasks are the administration of the different intellectual property rights and the supervision of the copyright collective management organisations.

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### Patents

The application for a patent is not an end in itself. It is usually one of the first steps on a path that leads to further investments in technology, personnel and marketing. It was therefore feared that the outbreak of the corona pandemic, the government-ordered lockdown, and the slump in economic activity would lead to a significant decline in patent applications. Nevertheless, this bleak scenario did not come to fruition. In fact, contrary to the long-term trend, more domestic patent applications were filed in the year under review than in the previous year, with the total figure rising from 1,658 to 1,666 compared to 2018/19.

Contributing to the slight increase were Swiss entrepreneurs, inventors, engineers and researchers, who (also) saw the pandemic as a technical challenge. As a result, patent applications for protective masks, respirators and pharmaceutical preparations for the diagnosis and therapy of COVID-19 increased from March onwards.

Another striking feature in the year under review was the increased number of requests for an accelerated patent examination. Intellectual property law gives a patent applicant several years to refine and develop their idea. Only then does the inventor have to decide whether they want to pay the examination fee and seek patent protection.

However, the applicant also has the possibility of bringing forward and accelerating the examination process, for example if they want to legally defend their intellectual property or allow third parties to use it in the form of a licence agreement.

Although the percentage of accelerated patent examinations rose from 14 to 18% in the year under review, this is likely related to the adoption of the Swiss tax reform and AHV financing (TRAF). This new national framework legislation allows Swiss cantons to separate income generated from granted patents and tax it at a reduced rate with what is known as a 'patent box'.

## Trade marks

*Virus Stop, Coviddistancing, Swiss Mask* and *Postcorona* – this is just a small selection of trade marks making specific reference to the corona pandemic that were registered with the IPI during and post-lockdown. They highlight how the Trade Mark Register mirrors social interests and circumstances.

From a purely statistical point of view, the ‘extraordinary situation’ declared by the Federal Council in March 2020 led to a short-term decline in trade mark applications. Calculated over the entire year under review, however, the number of national applications rose to a record high of 17,310. A further 16,604 trade marks subsequently claimed protection in Switzerland in the year under review after initially being registered abroad.

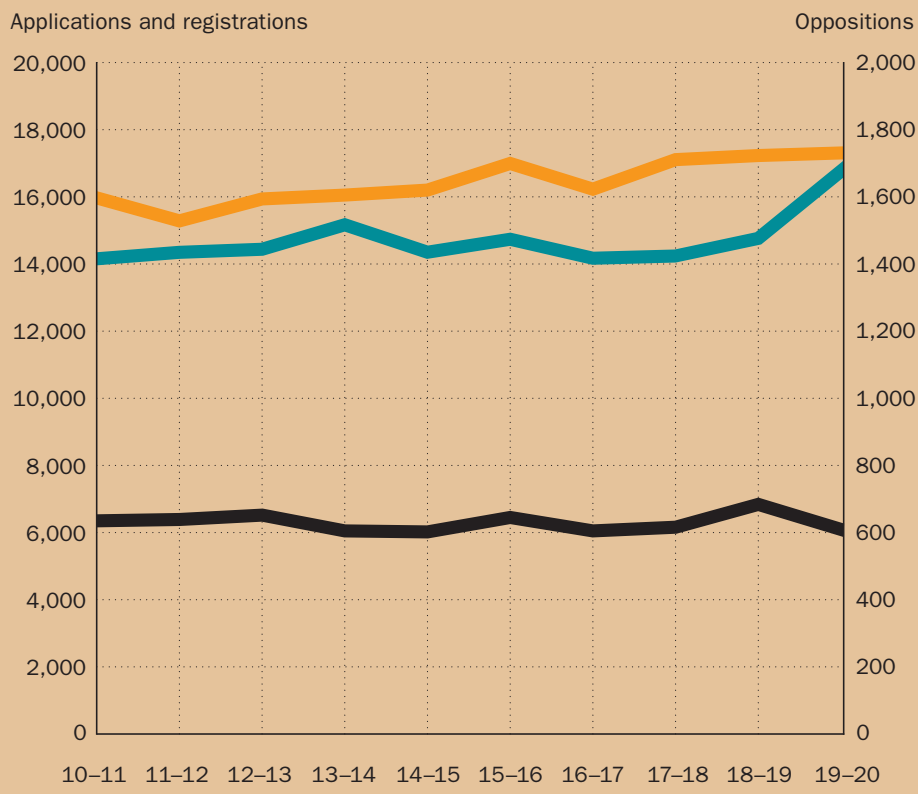
National trade mark applications are examined by the IPI in terms of content and form. If all the goods and services are correctly classified in the application for registration, and they correspond to those in the IPI database, it is then possible to request what is known as an ‘early’ trade mark examination.

The number of applications that were subject to such an examination rose from 41 to 58% compared to the previous year. As a result, one fifth of all trade marks applied for could be registered directly.

A good 40% of national applications went through the ordinary examination procedure. The processing period for this examination procedure, which begins with the payment of the filing fee, was typically between four and five months. The IPI has set an objective to successively shorten this period considerably in the coming years.

## Trade Mark Trends

Trade mark applications show a slight increase in the reporting year.



- National applications
- National registrations
- Oppositions filed

## Financial Year

### Trade Marks

	2019/20	2018/19	% change from previous year	2017/18	2016/17	2015/16
<b>National</b>						
Trade mark applications	17,310	17,231	0.5	17,109	16,229	16,995
– expedited service	1,496	1,461	2.4	1,114	992	931
– e-filings	16,789	16,663	0.8	16,554	15,663	16,447
Registrations	16,017	14,763	8.5	14,238	14,172	14,683
Pending applications	8,621 <sup>1</sup>	9,106	–5.3	8,307	7,129	6,705
Renewals	11,699	10,914	7.2	11,519	10,847	10,443
<b>Oppositions</b>						
New cases	607	684	–11.3	616	605	645
Closed cases	699	664	5.3	606	661	620
Pending cases	667 <sup>1</sup>	757	–11.9	705	695	751
<b>International</b>						
International registrations designating Switzerland	16,604 <sup>2</sup>	16,840	–1.4	15,631	15,342	13,191
Renewals	13,513 <sup>2</sup>	13,652	–1.0	13,863	13,821	12,597

### Patents

#### National patent applications and patents

Patent applications submitted	1,666	1,658	0.5	1,591	1,795	1,819
– Swiss origin	1,382	1,285	7.5	1,305	1,464	1,440
– foreign origin	284	373	–23.9	287	331	379
Patents granted	651	615	5.9	718	646	639
Processed patent applications	1,983	2,048	–3.2	2,238	2,200	2,002
Pending patent applications	5,761 <sup>3</sup>	5,969	–3.5	6,271	6,820	7,110
Patents in force	6,904 <sup>3</sup>	7,127	–3.1	7,304	7,371	7,368

#### European patent applications and patents

Submitted to the Institute and forwarded to the EPO	32	30	6.7	39	36	46
European patents granted designating Switzerland and Liechtenstein <sup>4</sup>	135,473	136,472	–0.7	107,728	96,065	76,878
European patents paid designating Switzerland and Liechtenstein	127,443 <sup>3</sup>	121,695	4.7	111,172	106,007	100,617

#### International patent applications (PCT)

Applications submitted to the Institute and forwarded to WIPO	50	59	–15.3	93	128	195
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### Designs

Number of filings	631	671	–6.0	780	866	842
– number of objects	2,398	2,687	–10.8	2,888	2,752	2,635
Number of second term renewals	518	408	27.0	556	514	516
Number of third term renewals	303	333	–9.0	374	418	360
Number of fourth term renewals	240	218	10.1	169	114	88
Number of fifth term renewals	74	84	–11.9	86	81	89
Annulments	787	822	–4.3	839	835	856
Designs in force	9,346 <sup>5</sup>	9,500	–1.6	9,649	9,723	9,689

Changes in the methodology of data collection possible.

<sup>1</sup> Figures as of 30.06.2020   <sup>2</sup> Sources: EPA, WIPO; figures as of 24.08.2020   <sup>3</sup> Figures as of 16.07.2020   <sup>4</sup> Sources: EPA, WIPO   <sup>5</sup> Figures as of 30.06.2020

## Designs

The number of design rights registered in the year under review fell by 6% from 671 to 631. One of the reasons for this was the outbreak of the corona pandemic and the subsequent lockdown in mid-March. What was noticeable was that the number of design rights that could not be granted due to fees not being paid increased greatly despite extended time limits. The sudden drop in economic activity appears to have severely restricted job opportunities for self-employed designers in particular.

Parallel to the decline in registrations, the number of telephone enquiries that the IPI received increased. The design team was faced with a veritable flood of questions, often about ideas on designing masks and other protective devices.

The sudden keen interest in design rights came as a surprise to the four-member team, because the lockdown-related decline in design right registrations did not mean a reversal of the trend – unlike for trade marks – but instead accentuated a development that had been in evidence for some time. Since the 2015/16 reporting year, design applications have fallen by around 25%.

An online survey by the IPI in autumn 2019 provided some possible explanations for this. The difficulty of enforcing the design right in the market was, in particular, highlighted as an issue. The feedback also revealed a lack of information. Although the IP right for two and three-dimensional designs has existed since 1888, it is not well known enough. The IPI is therefore planning to intensify its training and awareness-raising activities in the coming years, especially at Swiss higher education institutions specialised in art and design.

At international level, design protection is regulated by the Hague Agreement. Switzerland and 57 other countries have also ratified the 1968 Locarno Agreement Establishing an International Classification for Industrial Designs.

The design experts from the Locarno contracting states meet every two to three years at the headquarters of the World Intellectual Property Organization in Geneva to adapt the classifications to changing economic circumstances. At its meeting from 18 to 22 November 2019, they reviewed approximately 600 proposals, not least with regard to cultural aspects.

## Monitoring Office for Technological Measures

Rights owners may use technological measures such as copy and access barriers to control the use of their works and other protected subject matter. The Monitoring Office for Technological Measures (OTM) is the specialist authority of the federal government for determining the effects of such measures on legal uses of copyright-protected content.

As the OTM did not receive any reports about the misuse of technological measures in the year under review, it mostly concerned itself with the cross-border portability of content. This is a long-term task resulting from the Digital Switzerland Action Plan. The OTM is focusing on audiovisual online content and is examining the extent to which Swiss consumers can access this content while staying abroad.

## Supervision of the collective management organisations

In general, a copyright owner manages their own property rights and negotiates with users on an individual basis. However, individual management is not always possible and sometimes not even wanted. In such cases, the law provides for collective management. This means that collective management organisations (CMOs) take over the management of copyright for composers, singers, authors and filmmakers. This permits the use of protected content, whilst ensuring the copyright owner is appropriately compensated. Currently, there are five CMOs in Switzerland (SUISA, SUISSIMAGE, ProLitteris, SSA and SWISSPERFORM).

Together with the Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights (FACO), the IPI is responsible for the supervision of the Swiss collective management organisations. The IPI is therefore in regular contact with the CMOs.

The spread of the coronavirus, which began in the second half of the reporting year, is posing major challenges for Switzerland. The IPI anticipates heavy losses in the cultural sector in 2020. The supervisory authority has therefore been exchanging ideas with the CMOs on how to support creative artists. For example, SUISA is establishing an emergency support fund for composers, lyricists and publishers of music.

## Overview of the Swiss Collective Rights Management Organisations

Collecting Society	SUISA	SUISSIMAGE	PROLITTERIS	SSA	SWISSPERFORM
Year founded	1923	1981	1974	1986	1993
Repertoire	Non-theatrical musical works	Audiovisual works	Literary and dramatic works, as well as visual works of art	Spoken, dramatico-musical, choreo-graphic and audio-visual works	Related rights
Members	Composers, writers and music publishers	Script writers, directors, producers and other rights holders of the film branch	Writers, journalists, visual artists, photographers, graphic artists, book, newspaper and periodical publishers as well as art publishers	Dramatists, composers, script writers and directors	Practising artists, producers of sound carriers and audio-visual carriers as well as broadcasting companies
No. of members including principals	39,347	4,019	13,575	3,328	18,166
Gross revenue from the management of rights in Switzerland and abroad in millions of CHF					
2018	152.6	59.6	36.4	23.3	58.5
2019	155.2	108.7	35.2	25.3	58.3



## Legally Compliant and User-friendly

One of the IPI's core tasks is maintaining the IP rights registers. Over the last few years, the IPI has digitised many internal processes, which stakeholders have also been able to benefit from since the beginning of 2020. The new Trade Mark Database has an optimised register search and gives users the option of modifying their trade mark entries themselves. The experts discuss in the following interview the challenges and achievements of this eGovernment project.

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Mirko Galli, eGovernment Project Manager

**Many companies and organisations have harvested the fruits of their digitisation strategy during the corona crisis. Is the IPI one of them?**

*Stefan Fraefel, expert in charge of the eGovernment project:*  
We introduced our 'electronic delivery' service last February and noticed that interest in it increased already during lockdown.

**What is this new service?**

*Mirko Galli, eGovernment Project Manager:* The IPI sends out documents with legal validity, such as office decisions about the rejection of an application for registration, on a daily basis. The IPI can now also deliver these documents electronically if the customer so wishes. Documents can be received via two electronic delivery platforms that the Swiss government has tested and classified as being secure: the Swiss Post's IncaMail and PrivaSphere from the Zurich software company of the same name.

**So this is for outgoing mail. What about incoming mail?**

*Stefan Fraefel:* We also want to digitise incoming post as part of the eGovernment project. Can I go back a few years to help explain?

### Yes, of course.

*Stefan Fraefel:* For around the last ten years, efforts have been underway at the IPI to simplify communication with the authorities. As a result, many existing regulations have been modified, such as the signature requirement for trade mark applications being abolished. Once these obstacles had been removed, the IPI set up an email channel called eKomm for incoming correspondence from customers. This submission channel is widely used, but from our point of view, it has a major disadvantage: the emails we receive are unstructured, which causes a lot of additional work for us in terms of reading the documents, interpreting them, checking them, and finally processing them.

### What type of volume are we talking about?

*Mirko Galli:* The Trade Mark Division is responsible for the majority of communication with the public at the IPI, which is one of the reasons why we started gradually introducing eGovernment initially for trade marks. For the 250,000 registered and active trade marks, there are around 33,000 amendments each year.

### What changes can be made to a registered trade mark?

*Stefan Fraefel:* The trade mark itself – the terms, colours, representations or sequences of sounds – is sacrosanct. What can be changed, however, are the name and address of the trade mark owner or their legal representative, which is something trade mark owners can now do themselves.

### So with eGovernment, it's possible to transfer a trade mark from one owner to another with the click of a mouse?

*Stefan Fraefel:* Yes, it is. In some respects, you can compare the trade mark register with the land register. An entry has constitutive effect with regard to the existence of the IP right, as a lawyer would say. That's why we make sure that a trade mark assignment agreement or other appropriate deed is provided for a trade mark transfer, either for the trade mark or for the legal entity under which it is registered.

*Mirko Galli:* Checking the request is still a manual process, but all other processes are fully automated. For example, the system automatically generates a confirmation of the changes made.

*Stefan Fraefel:* We allow stakeholders to interact with our internal systems under clearly defined legal and technical conditions.

*Mirko Galli:* This is an important aspect for understanding the eGovernment project. Previously, the IPI's IP rights administration was grouped under the individual registers, i.e. trade marks,



**Stefan Fraefel, expert in charge of the eGovernment project**

patents and designs. Now we are guided by processes that are the same for all IP rights – receipt of an application, formal and substantive examination, possible opposition proceedings and invoicing. We have digitised these process steps in such a way that they can be linked to specific cases. The result of this is called the Electronic IP Rights Administration System. Harmonising these processes is the foundation for digitising customer communication further.

### The IPI launched a new IP rights portal in mid-August as part of the eGovernment project. What is the difference compared to the existing online database [www.swissreg.ch](http://www.swissreg.ch)?

*Stefan Fraefel:* The IPI's official organ of publication remains [www.swissreg.ch](http://www.swissreg.ch) for the foreseeable future. The three-month opposition period after the registration of a trade mark still starts with its publication on Swissreg. However, you can only make changes to register entries via the Trade Mark Database. As a registered user, you can search in the Trade Mark Database for your trade mark and click on the relevant button to amend it (incidentally, this is only possible in the French, German and Italian languages).

**You have created a completely new user interface for the Trade Mark Database. How did you ensure that you were meeting a real customer need with this?**

*Stefan Fraefel:* We worked with interested stakeholders from almost the beginning of the project. We regularly created videos in which we presented and explained eGovernment solutions including only partial ones. Representatives from various associations such as Economiesuisse, from corporations such as Nestlé and Novartis, as well as from specialist law firms then had the opportunity to express criticism or make suggestions.

**Such rounds of feedback sometimes lead to surprising results. Was this the case with the eGovernment project?**

*Stefan Fraefel:* Definitely. The trade mark consultants who were involved said, for example, that the printable list showing the results of an online search should also show the date and time that the search took place. We would never have thought of that, even though it's something obvious from the point of view of a law firm. The results of a patent or trade mark search are always only valid up to and including the time and date they were created. Beyond that, the lawyer carrying out the search cannot assume any responsibility towards his or her client.

**Are those who use the IP rights system the most intensively also the ones who primarily benefit from eGovernment?**

*Stefan Fraefel:* They certainly benefit more than one-time applicants, simply because they interact with us more frequently. More than half of all requests that the Trade Mark Division receives come from several dozen corporations and law firms. Also, two parties are always needed for seamless communication. eGovernment benefits above all those customers who themselves have paperless processes in place. This is more the case with professional users than with private individuals or companies that don't have a lawyer to represent them. But of course, we also had this customer group in mind.

**What has improved for them?**

*Mirko Galli:* The biggest advantage for one-time users is that we have improved the usability of the IP rights database. Here I'd like to highlight three points: the Trade Mark Database offers a simple and extremely powerful search function – the 475,000 trade marks entered in the register can be retrieved within seconds. Secondly, the hit list can be filtered according to criteria such as trade mark category or type. And finally, the help function is integrated within the search, so the system provides inexperienced users with context-specific support.

**Anyone who wants to change their register entry via the trade mark database needs an account with IncaMail or PrivaSphere and has to register for electronic communication with the IPI. Is this worth it for sporadic users?**

*Mirko Galli:* The IPI isn't the only institution that uses these recognised delivery platforms. We therefore assume that some customers already have an account with one of these providers. For customers who don't, we are keeping the existing eKomm submission channel open for the time being.

**The Trade Mark Database has now been online for four months. What's on the timetable for the future?**

*Mirko Galli:* At the moment, a user can't make any changes without registering for electronic communication with the authorities. We're going to lift this restriction, though. We also want to give registered users the possibility of amending multiple register entries simultaneously. And long term, we also want to make it possible to pay fees online.

**There's still the question of patents and designs. When will it be possible to make changes to these register entries online?**

*Stefan Fraefel:* This next important step is planned for mid-2021. The IPI made a conscious decision for a step-by-step approach. Firstly, because it allows us to continuously learn, and secondly because the IP rights system is a pillar of Switzerland as a location for business and innovation – the tolerance for error is therefore small.



## The 'Confederation's Attorney's Office'

The IPI is the national centre of competence for all issues concerning patent and trade mark protection, indications of source, design protection and copyright. As the federal government's 'attorney's office' in the field of intellectual property, the IPI has numerous tasks in the fields of legislation and international cooperation.

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### COVID-19 – access to vaccines and protecting IP

The emergence of the coronavirus crisis led to intense international debate and efforts with regard to the research, development and distribution of a possible vaccine or medicine against COVID-19. The IPI has been contributing its expertise in the field of intellectual property, innovation and public health in discussions at administrative, national and international level. The objective is to highlight that IP protection is an important incentive for innovation and therefore plays a supportive role in the search for a treatment against the coronavirus. Finding effective vaccines and treatments against COVID-19 and producing them in sufficient quantities to meet global demand poses an immense challenge. This can only be overcome if researchers, developers and industry work in close collaboration. The IP system ensures that all parties are fairly and lawfully compensated and rewarded.

### Revised Copyright Act comes into force

“Does Switzerland need a law against the illegal downloading of music?” asked Council of State Member Géraldine Savary from Vaud in a postulate submitted to the Federal Council. That was on 19 March 2010. Savary’s question triggered a political process that came to a close almost exactly ten years later on

1 April 2020 when the revised Copyright Act (CopA) came into force. Essentially, the aim of the revision was to adapt copyright law to the realities of a society in digital transformation and to protect intellectual creations in the age of the sharing economy and social media.

The copyright working group convened by the then Head of the Federal Department of Justice and Police, Simonetta Sommaruga, paved the way for the current regulations. Known as AGUR12 for short, this committee, under the direction of the IPI, brought together the interest groups directly impacted by copyright law – authors, producers, consumers as well as publishers and media companies as cultural intermediaries. The AGUR12 drafted a compromise, which was also upheld in the parliamentary deliberation.

The discussion on the downloading of audiovisual content attracted attention beyond specialist circles. Switzerland had been referred to as an unregulated ‘pirate’s paradise’. The US government even put Switzerland on a watch list until it was eventually removed from the list in February 2020 once it had been established when the partial revision was to come into force.

Since 1 April, the ‘stay down’ rule applies for platforms that distribute copyright protected content. It obliges the hosts of internet platforms, which pose a particular risk of infringement, to prevent the re-uploading of films or music after they have already been notified about an initial breach of copyright. The legislators argued that this was enough to prevent the emergence of business models based on illegal downloads.

Another point of discussion was how to deal with digital photographic material. The Copyright Act now includes protection for photographs. It says that photographs are protected by copyright in all cases – and not only if they have individual character. Anyone who uses supposedly freely available photographs from the internet, even if for private purposes, should read the small print or get the photographer’s permission. You can find practical tips on using photos at [www.ipi.ch](http://www.ipi.ch).

How the revised Copyright Act affects the everyday lives of creative artists, producers, intermediaries and consumers remains to be seen. The Science, Education and Cultural Committee (SECC) mandated the IPI to examine the law’s effectiveness.

As part of the analysis, a comparison will also be made with copyright practice in the EU. The main point of interest is the European ancillary copyright for press publishers, which will come into force across the EU in mid-2021. The rule obliges platform operators such as Google and Facebook to financially compensate publishers for the reuse of their press publications.

### **Will a full examination be introduced for Swiss patents?**

On 12 December 2019, the National Council, as the second chamber, approved the motion ‘In favour of a modern Swiss patent’, submitted by Councillor of States Thomas Hefti. The Federal Council – and thereby the IPI – were mandated to present a draft of a partial revision of the Patents Act to include an “attractive patent examination procedure that meets international standards” as well as a utility model. The IPI immediately started working on the project and submitted a preliminary draft for office consultation in June 2020. The external consultation procedure on the preliminary draft will take place in the next reporting year after the opinions from the office consultation have been evaluated and the draft has been revised.

### **Plant patentability – the next phase(s)**

In a decision issued on 14 May 2020 (G 3/19 Pepper), the Enlarged Board of Appeal of the European Patent Office concluded that the Administrative Council of the European Patent Organisa-

tion did not exceed its powers in revising Rule 28 (2) of the Implementing Regulations to the European Patent Convention. This means that, under the European Patent Convention, plants which are bred by means of an essentially biological process cannot be patented. However, according to Councillor of States Maya Graf from Basel-Landschaft, there is still substantial legal uncertainty. She therefore submitted the motion on “Adapting intellectual property rights in the field of plant breeding” on 17 June 2020. The procedural request aims to adapt the Patents Act, and where necessary the Plant Varieties Protection Act, in order to improve transparency in relation to IP rights and to simplify further breeding. This launched a discussion on the patentability of plants in Switzerland. Parliament will examine Graf’s motion in the coming business year.

### **Greater efficiency in the fight against counterfeiting**

The OECD and the European Union Intellectual Property Office (EUIPO) estimate that in 2019, global trade in counterfeit products reached 500 billion Swiss francs, which corresponds to 3.3% of world trade. Switzerland is particularly affected by this due to its large proportion of innovative companies. The Federal Customs Administration (FCA) plays a central role in combating the importation of counterfeits into Switzerland. This is why the procedure for assistance provided by the FCA with regard to intellectual property is to be simplified. On 15 January 2020, the Federal Council submitted a bill drafted by the IPI for consultation. The planned changes primarily concern small consignments with a maximum of three counterfeit items. These minor cases make up 90% of goods withheld at the border and the aim is to make it easier to take these out of circulation. Streamlining the administrative process will noticeably relieve the burden on the Customs Administration and create more time for them to carry out actual control activities. The vast majority of the consultation participants welcomed the strategic direction of the revision. The IPI will now prepare a legislative draft and a dispatch for submission to the Federal Council.

### **The IPI enforces the ‘Swiss’ indication of source nationally and internationally**

In 2019, the IPI intervened in 66 cases (78 in the previous year) in Switzerland and was able to reach a mutual agreement with each party involved. The IPI also did not have to initiate any criminal proceedings. The work of the IPI also bore fruit abroad – in key markets such as the EU and the USA, the number of trade mark applications which unlawfully used the Swiss cross significantly decreased as a result of the IPI’s interventions. However, enforcing the ‘Swiss Made’ brand abroad remains a challenge for

the Swiss authorities and the business community. The IPI has therefore initiated the foundation of a public-private partnership in the form of an association. The intention is to combine the strengths of the interested trade associations, companies and governmental agencies, to make information available and to coordinate measures.

## Multilateral activities

In May, the member states of the World Intellectual Property Organization (WIPO) elected a new Director General. Australia's Francis Gurry, who has served as the head of WIPO for 12 years and two terms of office, will be succeeded in autumn 2020 by Daren Tang, the current Chief Executive of the Intellectual Property Office of Singapore. Mr Tang was chosen from a wide range of candidates as a representative of a small innovative country which, like Switzerland, relies on innovation and IP protection for its economic success. Singapore has long-standing connections with both Asia and the West. Therefore, hopes are high that Daren Tang will act as a builder of bridges between the East, West, North and South. The consultation procedure on the planned accession of Switzerland to the Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which was concluded in September 2019, was met with wide approval. The IPI, mandated by head of the FDJP Simonetta Sommaruga, subsequently prepared a corresponding dispatch for submission to Parliament. It was approved by the Federal Council in spring. If Parliament approves the bill, Switzerland will become a member of the Geneva Act in mid-2021.

Within the World Trade Organization, Switzerland organised a panel event together with Japan and the USA on IP & Innovation: Public-Private Partnerships, with a focus on commercialising IP. The IPI invited Ms Olga Dubey to represent Switzerland on the panel. She is the CEO of the Vaud-based start-up AgroSustain and specialises in the research and production of fungicide agents for foodstuffs. AgroSustain uses patent protection for its research results and their commercialisation.

## Bilateral activities

Free trade agreements break down trade barriers such as customs duties or non-tariff barriers. Given that Switzerland has a high proportion of trade mark and patent-protected exports, it is nearly always of central importance that intellectual property is protected in the partner country. Together with the other EFTA States (Iceland, Liechtenstein and Norway), Switzerland concluded negotiations with the four Latin American MERCOSUR states of Argentina, Brazil, Paraguay and Uruguay. The IPI's rep-

resentatives led the discussions on the extensive chapter relating to IP protection. Switzerland and the four partner countries also negotiated an agreement on the mutual protection of their geographical indications.

Switzerland continued free trade negotiations with Malaysia and Vietnam and began the process of revising the existing agreement with Chile.

In Beijing, the annual exchange with the responsible Chinese authorities took place in autumn as part of the Swiss-Chinese bilateral dialogue on intellectual property. The IPI held discussions with Brazil, Singapore and the United Kingdom about strengthening bilateral relations in the area of intellectual property. Initial projects have been launched and contact has been made with experts.

## International cooperation

International cooperation in the field of intellectual property is part of the IPI's legal mandate. With regard to the IPI's self-funded project with Iran, on 2 October 2019, a Memorandum of Understanding was signed with its Iranian partner, the Intellectual Property Center. The implementation of the project began on 1 January 2020. The IPI's first project mission to Iran has taken place since then. In addition to this, initial activities in the fields of copyright and geographical indications have been carried out.

On behalf of the State Secretariat for Economic Affairs (SECO), the IPI plans and implements technical collaborative projects in the field of intellectual property. Several project plans were finalised during the reporting year. The IPI is currently carrying out SECO-funded projects with Albania, Ghana, Indonesia, Colombia, Myanmar, Peru, Serbia and South Africa. They cover a wide range of topics including developing IP-specific strategies and laws, advising authorities such as customs agents and courts as well as training mostly small and medium-sized enterprises, patent attorneys and producers of agricultural products. The aim of the projects is to further the economic development of the countries by improving IP protection.

Unsurprisingly, the coronavirus pandemic also impacted the IPI's cooperation activities. Project missions, for example, had to be postponed. However, some project activities could be carried out; various meetings and training courses took place in the form of video conferences.

**Sustainable development**

In 2015, the United Nations adopted the 2030 Agenda for Sustainable Development Goals. These goals are designed to ensure that the economic, social and environmental dimensions of sustainable development are respected equally and that no one is left behind. The goals are universal and apply for all government agencies. The IPI has participated in national efforts for the 2030 Agenda, for example, by developing the Federal Council's new sustainable development strategy. The IPI was also actively involved in international efforts as part of various World Intellectual Property Organization (WIPO) committees, for example. At the end of 2019, the IPI became a partner of WIPO GREEN, an initiative which facilitates the development of environmentally-friendly technologies and their transfer to developing countries. Innovations and sustainable technologies contribute to the achievement of the sustainable development goals. These also require sufficient IP protection.

# Searches, Combating Counterfeiting and Piracy, and Training

As the federal government's centre of competence for patents, trade marks, designs and copyright, the IPI also carries out tasks in the areas of public awareness raising, training and information services. These services include commercial patent and trade mark searches for national and international business.

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### Commercial searches

A patent is a kind of deal. The state offers the inventor an exclusive right of use in exchange for the disclosure of the invention. This is to help ensure that individuals, companies and higher education institutes do not invest time and money in developing processes and products that have already been patented.

Patent databases do not just depict the state of the art, however. As it requires effort to keep a patent in force, an active patent portfolio in various countries always shows what intellectual property the owner sees as important and valuable; this is before any products based on this IP are even on the market.

According to the Head of Patent and Technology Searches, Theodor Nyfeler, “the analysis of a patent portfolio is nothing more than a glimpse into the development pipeline of a company.” If the portfolio owner – a competitor, for example – is known by name, the patent register is an open book for a technically versed reader.

It is more difficult if first trying to identify a potential competitor or if determining whether anyone is even working on the technology in question. Then the patent register becomes a comprehensive library of countries, language regions and continents.

Here are a few figures which illustrate what this means. There are currently over 12 million patent families in force worldwide. Added to this are the annual new applications – in 2019, there were around one million in China alone. And each patent specification contains drawings, lists, representations and descriptions.

It is very time-consuming for even IP specialists to obtain useful information from this volume of data and it calls for extensive search expertise. This is why the IPI offers tailor-made searches to suit customers' needs under the brand name 'ip-search'. In the year under report, the IPI generated a turnover of just under five million Swiss francs with this service for national and international customers.

For their searches, the IPI's patent experts use many electronic tools and software platforms. For example, EPOQUE, the EPO's search system, helps to search millions of data records to find the key document – the proverbial needle in the haystack.

A strategic patent analysis is about screening the whole haystack. The crux of the analysis is not the individual invention, but the technology field. Where and how active are the stakeholders? Who uses which technology? Who is dependent on whose technology via licensing? What trends can be observed?

To be able to answer these questions, the IPI's experts use the platform PatentSight. PatentSight has prepared the patent portfolios of thousands of medium and large enterprises in such a way that they can be displayed and analysed in a technology field defined by the user.

The quality of the individual patent families is measured by two indicators. Market Coverage™ refers to the number of countries in which a patent family is maintained, i.e. is active. Technology Relevance™ is determined based on the number of citations in other patents. The product of both parameters is what is known as the Competitive Impact™ of a patent family. The Patent Asset Index™ is the sum of these patent portfolio values. If this is calculated for several key dates, the change in quality of the patent portfolio over time can be ascertained.

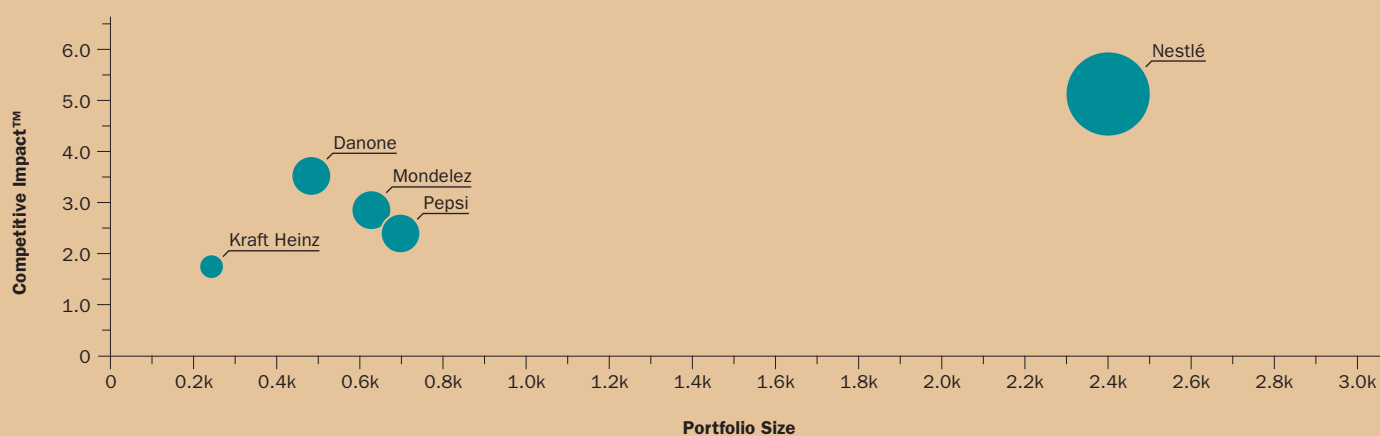
Based on this PatentSight method, the graph below shows the quality and quantity of the patent portfolios of five of the biggest food corporations in the world. The corporations (including subsidiaries) were examined to find out how strong their portfolios are in direct comparison. Nestlé topped the analysis. The corporation from Vevey in Switzerland not only has considerably more patents, but also has better patents on average compared to the American Kraft Heinz Company.

A closer look at Nestlé's portfolio could show details on the areas in which its research and development department is creating particularly valuable IP assets. However, the bird's-eye-view depicted is still insightful, particularly if you incorporate the economic indicators of the companies being compared, such as events on the stock market.

For example, since June 2015, the price of shares in the Kraft Heinz Company has fallen by 50%, while in the same time period, the value of Nestlé shares has doubled. It is therefore clear to Theodor Nyfeler that "the quality of a patent portfolio can be used to draw conclusions about the long-term competitiveness of a company."

## PatentSight — Five of the Largest Food Companies in Comparison

**Bubble Area: Patent Asset Index™**



Owner (bubbles) shows items 1-5 of 5, sorted by Patent Asset Index™ desc. Analysis based on 4,409 patent families active on 11.6.2020.

15.6.2020

In large globally operating companies, it is standard practice to use PatentSight and other tools. Their results provide important insights for the long-term management of research and development activities and for business development.

However, having the necessary software licences and building internal user know-how come at a price. “It is not worth the effort just to carry out a strategic analysis every two years,” says Nyfeler. SMEs, start-ups and higher education institutes would therefore be better served by having the information prepared by a service provider. The IPI offers the Assisted Patent Landscape Analysis for this purpose.

### Assisted searches

About ten years ago, the IPI launched a new service – the Assisted Patent Search. Since then, inventors, researchers, start-ups and SME representatives have had the opportunity to come to the IPI for half a day and comb through the parts of the global patent literature of interest to them with an expert. The standard fee is 300 Swiss francs. The remaining costs are covered by the IPI through fulfilling its statutory mandate to provide information.

The ‘extraordinary situation’ announced by the Federal Council on 16 March directly impacted the assisted search service. The visits arranged for the subsequent days had to be cancelled and the question arose as to whether patent searches should even be offered at all during the health crisis. The IPI’s management felt that they should. They were convinced that many SMEs, start-ups and higher education institutes would use the abrupt halt in daily business to advance innovation projects that had been put on the long finger. The Executive Board therefore decided to offer assisted searches online and to waive the fees for the months of April and May.

One of the people to make use of this offer was physicist Tommaso Carzaniga of Swan Isotopen AG. This SME based in Bern produces radiopharmaceuticals for the diagnosis and treatment of tumours. Mr Carzaniga is working on an innovation project based on his doctoral thesis at the Laboratory for High Energy Physics of the University of Bern. Essentially, it involves a new process for producing Gallium-68, the radioactive component of key radiopharmaceuticals.

Up until now, the globally scarce Gallium-68 had been imported from abroad. Tommaso Carzaniga’s ideas would give Swan Isotopen AG the possibility to set up its own independent production site in Bern. To protect planned investments, Mr Carzaniga combed through the patent literature with an expert from the IPI.

“We wanted to find out if our invention was really novel, who our competitors are and what they are working on,” explained Mr Carzaniga, who was born in Milan. Together with the IPI patent expert, out of 4,000 relevant patents, he selected the 25 that were most important for his project. They showed that it could be worth applying for patent protection for his invention. This information also encouraged him to apply for funding from the national innovation agency Innosuisse.

From the IPI’s perspective, the switch to online meetings and the investment in the fee waiver paid off – the number of assisted patent searches tripled. Before the corona pandemic, two or three searches took place in a working day. Up to ten took place in a day in the months of April and May.

Since the end of June, the patent experts have been welcoming their guests back to Stauffacherstrasse in Bern. However, the online option is still available. In addition, a fee reduction of 100 Swiss francs applies until the end of 2020.

### The fight against counterfeiting and piracy

Anything that is popular and sells well is counterfeited. Counterfeits can also be found on seemingly legitimate online market places. Counterfeiting and piracy are increasing worldwide. In the last five years, the number of small consignments coming from Asia into Switzerland has increased sixfold. The STOP PIRACY Association is therefore appealing to consumers to be responsible. So-called bargains should also be looked at with a critical eye and consumers should not let themselves be dazzled by online advertising and cheap prices.

STOP PIRACY sees its main task as raising awareness among the general population and in cooperating with intermediaries. For example, the association carried out awareness-raising work last autumn at the Zuger Messe trade fair from 19 to 27 October. Over nine days, experts from Swiss customs, Swiss border

guards and a representative from STOP PIRACY informed the attendees about where counterfeits are sold on holiday and how to recognise counterfeits. Additional information services and trade fair appearances are being planned.

Due to the undiminished relevance of the topic, the special exhibition 'Beguiling appearance – murky shadows?' was hosted for an additional season in the Swiss Customs Museum in Cantine di Gandria. Although it was the fourth season of its run, the special exhibition was visited by over 6,000 people as well as numerous school classes.

late national prosperity. In Yogyakarta, know-how about the PCT application procedure was shared with professors, students and industry representatives.

## Training

The IPI conducted around 90 training events during the year under review. By organising in-house events and speaking at events by external organisers, the training team reached over 2,000 course participants. Among the training courses offered were both general introductions and in-depth subject-specific courses. During the lockdown, the team successfully offered their awareness-raising and informational services via popular online channels.

The French and German language courses for IP specialists and the Swiss Patent Attorney Examination also took place online from mid-March. Thanks to the speakers' and participants' flexibility, the IPI was able to conduct all 14 course days as planned by the end of June.

The IPI is now a national partner of the YES (Young Enterprise Switzerland) Company Programmes. As part of this collaboration, an IP trainer visited apprentices who established a mini-company within one year. The trainer made them aware of the importance of intellectual property protection. In total, the IPI organised three workshops and visited 12 schools. The winner of the IP Management Award, chosen by the training team, was 'Mü-Company'. They proved to have developed the most extensive understanding of IP protection for its product and its company.

To further international cooperation, an IP trainer from the IPI conducted four workshops in the cities of Bandung and Yogyakarta in Indonesia. In Bandung, the focus was on sharing knowledge in the field of technology transfer and the role of intellectual property in the commercialisation of innovative product ideas. 'Swissness' was used as an example to show how the state can stimu-

### Stable Result despite Fee Reduction

In the 2019/20 financial year, the IPI recorded an operating profit of CHF 1.5 million with a net revenue of CHF 60.2 million. The negative effects from the revaluation of pension obligations and pension fund assets amounted to CHF 7.9 million. Equity decreased from CHF 62.6 million to CHF 56.2 million.

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The IPI's income from fees decreased by CHF 2.7 million to CHF 53.1 million in the year under review, which was the IPI's largest revenue item accounting for 87.8% of total revenue followed by revenue from services at 8.6%. At CHF 5.2 million, the latter showed a decrease of CHF 0.7 million compared to the previous year due to the impact of the coronavirus.

Income from annual patent fees showed a decrease of CHF 5.9 million over the previous year, despite a 4.7% increase in the number of European annual patent fees. This was mainly due to the fee reduction that took effect on 1 July 2019, which reduced income by CHF 7.1 million. Income from fees for designs consisted of 61% from application fees (including 28% for international applications via WIPO) and 39% from renewal fees (including 6% for international renewals via WIPO), which is a total increase of CHF 199,000 over the previous year.

There was a significant increase in fee revenues from trade marks, which recorded a plus of CHF 3 million. This was mainly due to fees from trade mark registrations at CHF 2 million, with renewal fees also being up on the previous year at CHF 0.6 million.

Third-party expenses remained at a similar level as the previous year at CHF 2.9 million, while operating expenses were up on the previous year by CHF 2.9 million at CHF 55.7 million. These additional costs were primarily a result of the increase in headcount and employee benefit provisions under IAS 19.

Overall, the IPI posted an operating profit of CHF 1.5 million in its 24th year of business. The revaluation of long-term pension obligations and pension fund assets under IAS 19 led to actuarial losses totalling CHF 7.9 million. The losses on the pension obligations were mainly due to changes in financial assumptions (technical interest rate) and changes in the number of active members and beneficiaries.

With actuarial losses, this results in a negative comprehensive income of CHF 6.4 million, which decreases the IPI's equity to CHF 56.2 million for the 2019/20 financial year.

The auditors have issued an unqualified audit opinion and confirmed that the IPI's financial statements provide a true and fair view of the entity's financial position and financial performance.

**The detailed IFRS-compliant financial statements are available at [www.ipi.ch/afs](http://www.ipi.ch/afs).**



## Statement of Financial Position

(in thousands of CHF)	2019/2020 30.06.2020	2018/2019 30.06.2019
Cash and cash equivalents	128,513	125,385
Receivables from services	518	664
Contract assets	426	199
Other receivables	1,142	969
Accrued income and prepaid expenses	2,783	1,882
<b>Current assets</b>	<b>133,381</b>	<b>129,099</b>
Tangible assets	21,617	21,269
Intangible assets	1,652	1,893
Leased assets	20,049	0
<b>Fixed assets</b>	<b>43,318</b>	<b>23,162</b>
<b>Total assets</b>	<b>176,700</b>	<b>152,261</b>
Trade accounts payable	1,720	1,648
Contract liabilities	8,941	9,100
Customer prepayments (current accounts)	7,482	6,196
Financial liabilities to third parties	558	32
Other liabilities	9,732	11,698
Accrued expenses and deferred income	3,872	2,984
Current provisions	2,754	2,328
<b>Current liabilities</b>	<b>35,060</b>	<b>33,986</b>
Other provisions	3,933	3,607
Leasing liabilities	19,602	0
Provisions for pension fund liabilities	61,906	52,084
<b>Non-current liabilities</b>	<b>85,441</b>	<b>55,691</b>
Profit (+) / loss (-)	1,482	7,094
Retained earnings	90,301	83,207
Accumulated actuarial losses	-35,584	-27,717
<b>Equity</b>	<b>56,199</b>	<b>62,584</b>
<b>Total liabilities</b>	<b>176,700</b>	<b>152,261</b>

## Statement of Profit and Loss / Comprehensive Income

(in thousands of CHF)	2019/2020	2018/2019
	01.07.2019 to 30.06.2020	01.07.2018 to 30.06.2019
<b>Profit and Loss Statement</b>		
Fees*	53,113	55,792
Services	5,213	5,866
Miscellaneous revenues	2,157	1,499
<b>Gross revenue</b>	<b>60,483</b>	<b>63,157</b>
Other revenue decreases	-274	-292
<b>Net revenue</b>	<b>60,209</b>	<b>62,865</b>
Third-party fees	-954	-955
Third-party services	-1,207	-1,297
Other third-party expenses	-717	-594
<b>Third-party expenses</b>	<b>-2,879</b>	<b>-2,846</b>
Personnel expenses	-46,299	-43,535
IT expenses	-1,899	-1,897
Other operating expenses	-4,041	-4,661
Depreciation, amortisation and impairment loss	-2,326	-2,006
Contributions to the Federal Patent Court	-789	-726
Contributions to the sic! Foundation	-337	0
<b>Operating expenses</b>	<b>-55,691</b>	<b>-52,824</b>
<b>Operating profit</b>	<b>1,640</b>	<b>7,194</b>
Financial income	14	5
Financial expenses	-172	-106
<b>Financial result</b>	<b>-158</b>	<b>-100</b>
<b>Profit (+) / loss (-)</b>	<b>1,482</b>	<b>7,094</b>
<b>Statement of Comprehensive Income</b>		
Actuarial gains / losses**	-7,867	-9,136
<b>Other comprehensive income</b>	<b>-7,867</b>	<b>-9,136</b>
<b>Comprehensive income</b>	<b>-6,385</b>	<b>-2,042</b>

\* Net value after deduction of the EPO's 50% share of maintenance fees.

\*\* Actuarial gains and losses (Other comprehensive income) are not transferred to the Profit and Loss Statement.

## Cash Flow Statement

(in thousands of CHF)	2019/2020 01.07.2019 to 30.06.2020	2018/2019 01.07.2018 to 30.06.2019
<b>Income/(expenditure) from operating activities</b>		
Profit	1,482	7,094
Depreciation of tangible assets	1,562	1,621
Amortisation of intangible assets	323	385
Depreciation of leased assets	441	0
Non-cash income / expenses	5	23
Interest accrued on lease obligations	102	0
Increase / decrease in non-current provisions for long-service awards	326	111
Increase / decrease in non-current pension fund provisions	1,955	-4,929
Increase / decrease in receivables for services	142	-42
Increase / decrease in contract assets	-227	105
Increase / decrease in other receivables	-172	-188
Increase / decrease in accrued income and prepaid expenses	-901	-341
Increase / decrease in trade accounts payable	72	457
Increase / decrease in contract liabilities	-159	2,092
Increase / decrease in other liabilities	-1,966	1,873
Increase / decrease in accrued expenses and deferred income	888	-535
Increase / decrease in current provisions	426	200
<b>Cash flow from operating activities</b>	<b>4,300</b>	<b>7,927</b>
Investments in tangible assets	-1,910	-1,472
Divestments in tangible assets	0	0
Investments in intangible assets	-83	-34
Divestments in intangible assets	0	0
<b>Cash flow from investment activities</b>	<b>-1,993</b>	<b>-1,506</b>
Increase / decrease in financial liabilities to third parties	30	22
Repayment of lease obligation	-496	0
Increase / decrease in customer prepayments (current accounts)	1,287	-626
<b>Cash flow from financing activities</b>	<b>821</b>	<b>-604</b>
<b>Net increase / decrease in cash and cash equivalents</b>	<b>3,128</b>	<b>5,817</b>
Cash and cash equivalents at start of year	125,385	119,567
Cash and cash equivalents at year end	128,513	125,385

## Statement of Changes in Equity

(in thousands of CHF)	Accumulated actuarial gains/losses	Retained earnings	Total Equity
<b>Opening balance on 01.07.2018</b>	<b>-18,581</b>	<b>83,207</b>	<b>64,626</b>
Profit	0	7,094	7,094
Other comprehensive income	-9,136	0	-9,136
<b>Closing balance on 30.06.2019</b>	<b>-27,717</b>	<b>90,301</b>	<b>62,584</b>
<b>Opening balance on 01.07.2019</b>	<b>-27,717</b>	<b>90 301</b>	<b>62,584</b>
Profit	0	1,482	1,482
Other comprehensive income	-7,867	0	-7,867
<b>Closing balance on 30.06.2020</b>	<b>-35,584</b>	<b>91,783</b>	<b>56,199</b>

### Events after balance sheet date

No events have occurred since the reporting period (30 June 2020) that influence the informative value of the 2019/2020 financial statements.



Salman Forster is a procurement buyer (front cover and page 25). Susanne Beiner is a content manager. The whippets, Jara and Mia, live in Thun (front cover). Hats: Coup de Chapeau, Bern



Lucie Bapst is a trade mark examiner (inside front cover).



Alejandra Caballero works in administration in the Designs unit (page 4).



Fabrice Hunziker works in administration in Finance and Accounting (page 9).

## The illustration of your design determines the scope of protection

Protection is independent of the dimensions, i.e. a scale model benefits from the same protection as the original. This is why no measurements should be given on the illustrations in the application. Illustrations should always be of high quality and clearly represent the design. It is best to submit images in black and white so that the design is protected in all colour variations.

## Formerly models – today illustrations

The current Designs Act came into force in 2002. Prior to this, the Designs and Models Act of 1900 was applicable, which only provided for a maximum term of protection of 15 years. Objects up to 40cm could be physically submitted for registration, although not every customer took note of the 'small print'. One day, there was a knock on the window of the IPI's design department. Outside was a lorry with a pivoting arm. Its driver unloaded a snail shell-shaped embankment stone, which he wanted to submit as a model. It was 120 cm high and weighed 90 kilos. An IPI employee explained to him that it was sufficient to submit a drawing of his design.

## Every design belongs to a class of goods

The appropriate class of goods should be stated in the design application. These classes are defined for the applicant by the IPI in accordance with the Locarno Agreement classifications. Only one class is assigned per design. If an applicant has created an entire line of designs, he or she can group them together into one application, provided that they belong to the same Locarno class of goods. Applicants can submit as many designs as they want with this so-called multiple application – from the sixth design onwards, no additional basic fees are due. If a multiple application is not possible because the products belong to different classes of goods, the application must be divided.

## Criteria for protection

The Swiss Designs Act specifies both the requirements for protection (Art. 2 DesA) and the grounds for refusal (Art. 4 DesA) of a design. In order for a design to be protected, it must be new and not yet publicly known. It must also differ sufficiently in essential points from existing designs. Effective design protection requires a careful analysis of the product. Is it a single aspect, such as its shape, colour, material characteristics or decoration, that is new and particularly relevant and which gives the product its individual character? Or is it a combination of the individual aspects or all of them as a whole? The size of the product is not important when evaluating the individual character. What matters is the overall impression. In addition, a design may not be unlawful, contrary to public morality, or only include features which are determined solely by the technical function.



Anna Maria Villa is a patent expert (page 19).



Alexandra Graber is an information and documentation specialist (page 29).



Stefan Szabo is a legal adviser in the Legal Services – Industrial Property Rights unit (page 39).



Georges Bauer is a project manager in the Sustainable Development and International Cooperation unit (page 46).

## The question of the source of inspiration

For a design to meet the requirements for design protection, it must be new. As registrations are not automatically examined for novelty, it is recommended that applicants carry out an independent search before applying to register their design. Does an identical or similar design exist which is already protected or has been made available to the public? Reading specialist literature and visiting trade fairs and specialist shops is recommended. And it is worth considering where the inspiration for the design came from.

## The practical benefits?

Design right owners can prevent others from using products with the same or a similar design for a maximum period of 25 years. This means that others cannot manufacture, store, offer, place on the market, import, export or transit such products, nor are they allowed to be in possession of them. Commercially produced goods, which are intended for private use, can also be prohibited from being imported, exported or transited.

## Alternatives to design protection

If someone does not want to register their design, but at the same time wants to prevent someone else from protecting it, they can publish it on a publication platform or in an article in a magazine, for example. Once published, the design is considered to be known and no one can legally protect it any more. The designer can still use their design – but so can his or her competitors. A design can also be protected by copyright or as a trade mark (i.e. as a three-dimensional figurative mark), provided that the requirements for copyright or trade mark protection are met.

## A tangible law for a tangible product

In the legal sense, design is understood to be the exterior form of a product or parts of it. This includes two-dimensional designs such as fabric patterns and bottle labels, but also shapes such as watches, lamps and chairs. A design is characterised by the arrangement of lines, contours, colours and surfaces, or by the material used.



