

Intellectual Property Teaching Kit

IP Advanced Part I

Patents, utility models and designs

Utility models



IP Advanced Part I Utility models

Part of the IP Teaching Kit

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Introduction

Intellectual property (IP) reaches into everyone's daily lives. A basic awareness and understanding of IP is therefore essential for today's university students, who are the engineers, researchers, lawyers, politicians, and managers of tomorrow.

It is vital that students become acquainted with elementary aspects of IP, so that they can benefit from it fully in whatever career they eventually pursue. Students and universities should be aware too of how they can utilise the incomparable wealth of technical and commercial information to be found in IP documentation, and understand the need for universities to convert their research into IP rights, manage their IP portfolios and engage in technology transfer to industrial partners for value creation and the benefit of society as a whole.

Last but not least, students and universities should be aware of the consequences of failing to protect IP assets correctly, including the risk of reverse engineering, blatant copying and even industrial espionage.

This is where the IP Teaching Kit (IPTK) comes in. Produced by the European Patent Office (EPO) in co-operation with the European Union Intellectual Property Office (EUIPO), the IPTK is a collection of materials – including PowerPoint slides, speaking notes and background information – which can be used to put together lectures and presentations on all kinds of IP, including patents, utility models, trade marks, copyright, designs and trade secrets. The materials can be tailored to the background of the students (science or engineering, business or law), their knowledge of the topic, the time available and their learning objectives.

With the IPTK you have at your disposal an extensive set of freely accessible, professional teaching materials which represents one of the most comprehensive IP teaching resources in the world.

About IP Advanced Part I

IP Advanced Part I is part of the IPTK. It has been designed for teachers of students with little prior knowledge of IP, in order to provide them with advanced teaching material about patents, utility models and designs.

In addition to the main presentations, IP Advanced Part I contains case studies and exercises on patents and designs that demonstrate their use in the real world.

IP Advanced Part I consists of ready-made PowerPoint slides with speaking notes and additional background

information. The speaking notes can be read out as they stand. The background information provides additional details which will help you prepare for the more advanced questions that students might have. It is not intended for this information to be included in the lecture.

For online access to the extensive IPTK collection, plus updates and further learning opportunities, go to www.epo.org/learning-events/materials/kit.html where you will also find a tutorial for teachers and lecturers.

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IP Advanced Part I

Title slide



IP Advanced Part I

Intellectual Property Teaching Kit

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4 Utility models

Utility models

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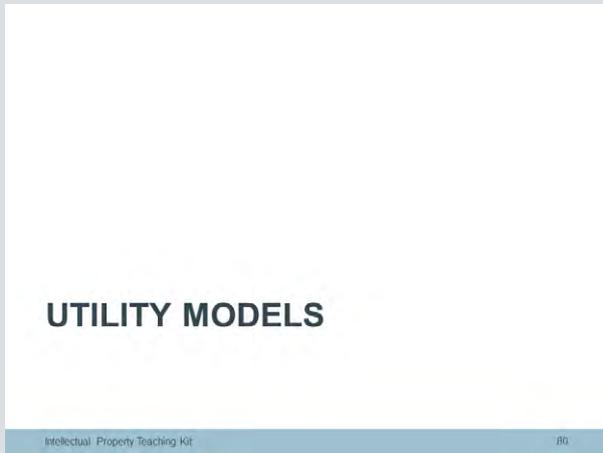
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Utility models

WIPO (the World Intellectual Property Organization) defines the utility model (UM) system as follows:

"Like a patent, a UM confers a set of rights for an invention for a limited period of time, during which UM holders can commercially exploit their inventions on an exclusive basis. The terms and conditions for granting UMs are different from those for "traditional" patents. For example, UMs are issued for a shorter duration (7 to 10 years) and, at most offices, applications are granted without substantive examination. Like patents, the procedures for granting UM rights are governed by the rules and regulations of national intellectual property (IP) offices, and rights are limited to the jurisdiction of the issuing authority."



This presentation is all about utility models.

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Scope of protections of utility models compared with patents

Utility models have many aspects in common with patents. In contrast to other intellectual property rights (such as designs, trade marks, copyright, etc.), utility models and patents may protect the same aspects of a technical invention (e.g. the technical details of a flight simulator comprising a robotic arm). Designs and trade marks can protect other aspects, but not the technical details.

A utility model is an exclusive territorial right which prohibits third parties from

- making
- selling
- marketing
- importing or
- using

the protected subject-matter in the country in which it was registered.

However, while patents offer protection for methods and processes, this is not normally the case for utility models and depends very much on the national utility model law. This is a key aspect when talking about utility models, since there is no one single "European" utility model law, but instead many different national laws. In some countries, such as the UK, it is not possible to file utility models.

Students should be made aware that utility models are unexamined IP rights. That means that they are granted without substantive examination for novelty and inventive step. This is the reason why they can be registered within a matter of a few months of having been filed.

It is important to point out that aspects of utility model law can differ from country to country. This is also true for national patent laws. Strictly speaking, almost every bullet point on this slide should begin with the words 'In the majority of countries', as there are numerous exceptions. For example, French patent law does not stipulate the same examination procedure as German patent law with respect to inventive step. However, rather than detailing the exceptions, we have listed the major differences between utility model law and patent law that exist in most countries.

These aspects will be returned to in the slides that follow.

Utility models are registered intellectual property (IP) rights. Any interested party can consult the register to find the full details of registered utility models.

They are territorial rights that are valid in one country only, namely the country of the issuing authority. For example, a German utility model is only valid in Germany and does not offer protection in France or any other country.

Utility model applications must be filed individually with the individual national offices. There is no equivalent of the PCT or EP/EU route for utility models, although there are possibilities for filing utility model applications based on international or national patent applications, or vice versa

Utility models provide protection for technical inventions, but not normally for processes. Technical processes may be protected by patents. There may be other exceptions. For example, Germany will not register utility models for biotechnology inventions.

Utility models offer protection for a maximum of three to ten years. This limitation, in combination with the quick registration process, makes utility models attractive for inventions with shorter life-cycles.

Utility models do not normally involve a search report (exceptions include Austria, for example). In some countries (e.g. Germany), search reports are available on demand.

Utility models are not examined IP rights with respect to novelty, inventive step and industrial applicability. In other words, they are not examined for these aspects on registration. One exception to this is Brazil (similar examination as for patent applications).

In most countries, the validity of a utility model with respect to novelty and inventive step is only reviewed if it is challenged, i.e. in invalidation or infringement proceedings. Patents are granted following an examination procedure. A published (and granted) patent therefore offers more legal certainty than a registered and published utility model.

The procedural fees for utility models may be lower than those for national patent applications. However, the fact that utility models are available more quickly than patents appears to be more important than potential cost savings.

Scope of protection of utility models compared with patents

Utility models

- Registered territorial IP right
- Available in limited number of countries
- No central filing in Europe
- Protection for up to 10 years
- Search report in some countries only
- Registered and published after a few months
- Generally no substantive examination (novelty, inventiveness, industrial applicability)
- Reviewed only in invalidation or infringement proceedings

Patents

- Registered territorial IP right
- Available in most countries
- Central filing possible (e.g. EPO for Europe)
- Protection for up to 20 years
- Search reports standard
- Application published after 18 months
- Substantive examination (novelty, inventive step, industrial applicability)
- Grant or refusal after substantive examination procedure

This slide compares some key aspects of utility models with those of patent applications and granted patents.

Both patents and utility models are registered territorial rights offering protection for technical inventions. In contrast to patents, however, utility models are only available in certain countries. Also, utility models must be filed individually in each country, whereas patent applications may be filed centrally with the EPO or WIPO. Utility models offer protection for up to 10 years, while patents offer protection for 20 years

Utility models are normally registered without a search report on the prior art, whereas such reports are standard for patent applications. Generally speaking, utility models are registered and published within a few months, while patent applications are normally published

after 18 months. The publication of the patent application is a procedural step which takes place before the application is examined.

The result of the patent examination procedure is either the grant of a patent or the refusal of the application.

In general, utility models are registered without a substantive examination as to novelty, inventive step and industrial applicability. The novelty, inventive step and industrial applicability of utility models is only reviewed in revocation or infringement proceedings.

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Example of a utility model (I)

This example of a German utility model can be found in the register of the German Patent and Trademark Office (DPMA) at

<http://register.dpma.de/DPMAregister/pat/register?AKZ=2020120065513&CURSOR=49>

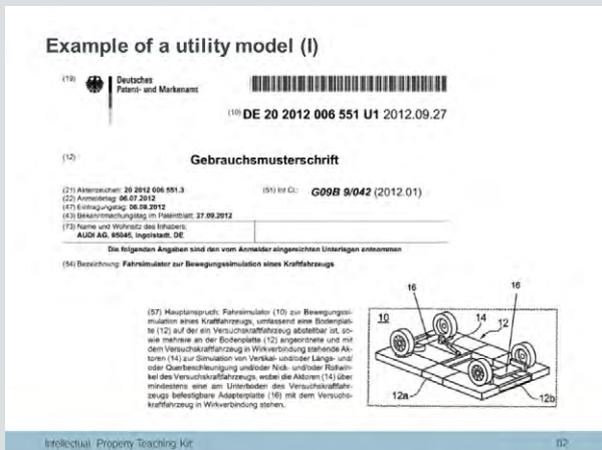
At first glance, it is not easy to distinguish it from a national patent application. It is the letter 'U' that indicates that this document is a registered utility model.

All utility models comprise the following components:

- an abstract
- a description
- claims
- (normally) figures.

The utility model in our example protects a driving simulator that allows a normal car to be used to simulate driving. The simulator comprises a base plate and several actuators for moving the base plate. The wheels shown in the figure belong to a normal car. All other components of this car are not shown. The idea is to connect the base plate to the car via adapters. By using different adapters for different cars, the same base plate and actuators can be used for simulating the driving of a range of different cars.

Since this utility model is only a few pages long, it could be that it is intended to protect one aspect of a more complex invention for which a patent application might have been filed.



This slide shows an example of a German utility model, or "Gebrauchsmuster".

It looks very similar to a German patent application.

It can be identified as a utility model because the publication number at (10) contains the letter "U".

Unlike patent applications, the publication date of the utility model – in this case 27 September 2012 – is very close to the application date, 6 July 2012. This is due to the fact that utility models are registered if the formal requirements are fulfilled. No search report or subsequent examination phase is required.

Utility model applications comprise an abstract, a description, claims and, normally, one or more figures.

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Example of a utility model (II)

According to the German Ordinance Implementing the Utility Model Act (Utility Model Ordinance) at www.dpma.de the description must:

- specify the technical field to which the invention relates
- indicate the prior art known to the applicant which may be considered for the understanding of the invention
- disclose the technical problem underlying the invention
- indicate the invention for which protection is sought in the claims
- indicate the way in which the invention is capable of exploitation in industry
- state any advantageous effects of the invention with reference to the prior art indicated in the application
- describe in detail at least one way of carrying out the invention claimed, using, where appropriate, examples and the drawings.

The claims define the matter for which protection is sought in terms of the technical features of the invention.

The extent of the protection conferred is determined by the terms of the claims.

The essential features of the invention must be indicated in the first claim (principal claim).

Drawings may be added. For the representation of the invention, perspective views and exploded views may be used in addition to views and sectional views.

Further requirements for the example of German utility models can be found in the Utility Model Ordinance at www.dpma.de

Example of a utility model (II)

Beschreibung

[0001] Die Erfindung betrifft einen Fahr Simulator zur Bewegungssimulation eines Kraftfahrzeugs gemäß dem Anspruch 1.

[0002] Fahr Simulatoren zur Bewegungssimulation eines Kraftfahrzeugs sind in verschiedenen Ausführungsformen bekannt. Lediglich bekanntheit wird auf WO 2005/015552 A1 verwiesen.

[0003] Insbesondere stellen Fahr Simulatoren eine kostenintensive und gefahrlose Möglichkeit dar, neue Systeme in einer virtuellen Umgebung mit realen Fahrern zu erproben. Dies gilt insbesondere für Fahrerassistenzsysteme. Dazu ist allerdings eine realistische Nachbildung von Vertikal- und/oder Längs- und/oder Querbewegungen notwendig.

[0004] Zur realistischen Simulation von Vertikal- und/oder Längs- und/oder Querbewegungen ist es bekannt, das Verschaltrahlfähigkeit mit hydraulischen Aktoren zu versuchen, die anstelle der Federeinheiten in das Verschaltrahlfahrzeug integriert werden. Die hierzu nötigen Hydraulikaggregate werden entweder extern verbaut oder anstelle des Motors und Getriebes verbaut.

Schutzansprüche

1. Fahr Simulator (10) zur Bewegungssimulation eines Kraftfahrzeugs, umfassend einen Bodenteil (12) auf dem Verschaltrahlfahrzeug, wobei die Bodenplatte (12) an der Bodenplatte (12) angeordnet ist, wobei mehrere an der Bodenplatte (12) angeordnete Aktoren (14) zur Simulation von Vertikal- und/oder Längs- und/oder Querbewegungen, und/oder Roll- und/oder Rollwinkel des Verschaltrahlfahrzeugs, wobei die Aktoren (14) über mindestens eine mit dem Verschaltrahlfahrzeug verbundene Adapterplatte (16) mit dem Verschaltrahlfahrzeug in Verbindung stehen.

2. Fahr Simulator (10) nach Anspruch 1, dadurch gekennzeichnet, dass mehrere Adapterplatten (16) vorgesehen sind, wobei die Adapterplatten (16) jeweils fahrzeugseitlich auf ein Verschaltrahlfahrzeug eingelenkt sind und über eine jeweilige Adapterplatte (16) vorgesehene Befestigungselemente mit einseitigen Verschaltrahlfahrzeug befestigten Befestigungspunkte (18a) verbunden sind.

3. Fahr Simulator (10) nach einem der Ansprüche 1 oder 2, dadurch gekennzeichnet, dass der Bodenteil (12) modular, mittels mehrerer aufeinander abgestimmter und über die Bodenplatte (12) hinaus verbaubare Zeichnungen (12a, 12b) in ihrer Länge und/oder Breite veränderbar ist.

Anhängende Zeichnungen

Fig. 1

Fig. 2

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All applications must contain a request for the grant of a utility model, a description of the invention, one or more claims, any drawings referred to in the description or claims, and an abstract.

The purpose of the abstract is to give brief technical information about the disclosure as contained in the description, claims and drawings.

The claims in our example relate to a simulator device.

It is not possible to get utility model protection for the process of simulation in Germany, although it could be the subject of a German patent application.

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Different names for utility models and patents

This slide shows the different names for utility models around the world. It is important to be aware of these differences in order to avoid confusion and misunderstanding.

The terms or expressions for utility models are shown in blue, while the equivalents for European patents are shown in dark grey.

In the USA regular patents are called "utility patents" and should not be confused with utility model protection (see also www.uspto.gov/patents/process/index.jsp).

The Chinese expressions ("invention patent" and "utility model patent") are less confusing.

For more information about the situation in Australia, go to www.ipaustralia.gov.au/patents/types-patents/innovation-patent

Different names for utility models and patents

- Austria and Germany
 - Gebrauchsmuster
- Australia
 - innovation patent
- China
 - invention patent (~ regular patent)
 - utility model patent
- Indonesia
 - simple patent
- Ireland
 - short-term patent
- Japan
 - utility model
- USA
 - utility patent (~ regular patent)
 - no utility models available
- Malaysia
 - utility innovation

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This slide shows the different names for utility models around the world. In Australia they are referred to as innovation patents, while in China they are utility model patents. In Indonesia, they are known as simple patents.

Ireland has short-term patents, which have a lot in common with utility models in other states.

The United States Patent and Trademark Office differentiates between design patents, plant patents and utility patents. It does not offer utility model protection. The term "utility patent" is used for a regular patent application.

In Australia, innovation patents last for eight years. They are designed to protect inventions that do not meet the inventive threshold required for standard patents. They are a relatively quick and inexpensive way to obtain protection for new devices, substances, methods or processes.

In the People's Republic of China, utility models are known as "utility model patents" and patents as "invention patents".

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European countries in which utility model protection is available

Utility models (or short-term patents) are only available in half of the 38 member states of the European Patent Organisation (see www.epo.org/about-us/organisation/member-states.html).

Ireland and Slovenia have short-term patents rather than utility models. The Netherlands used to offer utility models (or short-term patents) prior to the amendment of the Netherlands Patent Act in 2008.

According to the Slovenian Intellectual Property Office, the short-term patents available in Slovenia basically correspond to utility models like those available, for example, in Germany (see www.uil-sipo.si/sipo/activities/patents/frequently-asked-questions/).

Worldwide, the availability of utility models is difficult to assess because of the differences in laws and names. WIPO, for example, only publishes figures relating to its own member states (see www.wipo.int/sme/en/ip_business/utility_models/where.htm).

According to a study conducted in 2004 by a Japanese researcher, about 130 countries have introduced the utility model system to supplement national patent law (see IIP bulletin 2004, 39).

European countries in which utility model protection is available

- Albania
- Austria
- Bulgaria
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece



- Hungary
- Ireland
- Italy
- Poland
- Portugal
- Slovakia
- Slovenia
- Spain
- Turkey

This slide shows the European countries in which utility model protection is available.

In contrast to patents, utility models – known as short-term patents in Ireland and Slovenia – are only available in half of the 38 member states of the European Patent Organisation (EPO).

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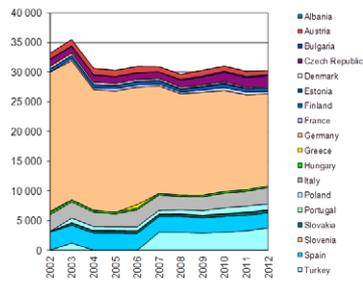
Utility model applications filed in Europe (2002-2012)

The filing figures for utility model applications in Europe are fairly stable. More than 50% of applications are filed in Germany, a country that has a long tradition of utility models. As we will see later, only 10% of all filings worldwide occur in Europe.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Albania	-	-	-	-	-	-	-	1	1	-	-
Austria	983	1 050	1 067	989	1 019	871	861	926	882	812	711
Bulgaria	127	127	96	88	96	-	143	178	178	224	210
Czech Republic	1 121	1 117	1 213	1 185	1 082	1 125	1 183	1 382	1 608	1 646	1 863
Denmark	404	357	339	306	335	305	241	207	235	190	187
Estonia	72	67	85	87	75	124	140	132	166	88	74
Finland	512	496	496	439	520	506	422	475	557	481	474
France	-	369	303	390	381	330	288	413	484	506	428
Germany	23 428	23 408	20 286	20 418	19 766	18 083	17 067	17 306	17 005	16 024	15 497
Greece	204	68	38	-	581	31	33	29	30	-	17
Hungary	351	316	296	268	285	251	224	254	275	270	261
Italy	2 807	2 727	2 411	2 148	2 857	2 559	2 200	2 307	2 462	2 470	2 758
Poland	-	759	680	644	678	649	719	780	945	1 003	997
Portugal	80	73	74	82	101	86	109	127	127	126	90
Slovakia	-	338	348	377	343	321	326	331	387	426	392
Slovenia	-	25	15	25	18	-	20	15	12	-	-
Spain	3 103	3 000	2 904	2 855	2 824	2 666	2 682	2 560	2 640	2 598	2 539
Turkey	-	1 212	-	-	-	3 011	2 992	2 882	3 033	3 280	3 788

These and many other statistics are available from the WIPO website at www.wipo.int/ipstats/en/
As you can see, the database does not have a full set of data for each country/year.

Utility model applications filed in Europe (2002-2012)



The filing statistics for the ten years from 2002 to 2012 show that utility models are used extensively in Germany, Turkey, Spain, Italy and the Czech Republic.

The total number of filings has remained relatively stable. As we will see later, more than 80% of the total number of applications worldwide are filed in the People's Republic of China.

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Scope of protection and exclusions (I)

Like patents, utility models offer protection for technical inventions. The exclusions from protection in utility model laws are very similar to those of the corresponding national patent laws.

Individual aspects of utility model law may vary from country to country, since there is no single, harmonised European utility model law. That means that when filing the same application in several countries, applicants need to be aware of each national law in order to avoid their application being rejected.

Scope of protection and exclusions (I)

- Utility models offer protection for technical inventions, including:
 - apparatus and devices
 - chemical substances
 - medicinal products

- The following do not qualify for utility model protection:
 - discoveries, scientific theories, mathematical methods
 - blueprints, patterns, teaching methods, rules for playing games, accounting systems, programs for computers
 - process inventions (e.g. manufacturing and working processes)
 - biotechnological inventions
 - animal and plant varieties

In most countries, utility models offer protection for technical inventions, including apparatus and devices, chemical substances and medicinal products.

Utility model protection is not available, however, for discoveries, scientific theories, mathematical methods, blueprints, patterns, teaching methods and rules for playing games, accounting systems and programs for computers, process inventions, for example manufacturing and working processes, biotechnological inventions or animal and plant varieties.

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Scope of protection and exclusions (II)

One example of the differences in national utility model laws can be found in Austria, where 'program logic on which programs for data processing systems are based' is regarded as an invention under the Utility Model Law and can thus be protected, whereas 'computer programs as such' are excluded from protection (see www.patentamt.at/Media/PA144.pdf).

As we have already seen, processes normally cannot be protected by utility models. Australia provides an exception to this rule.

In Australia, innovation patents last for eight years. They are designed to protect inventions that do not meet the inventive threshold required for standard patents. It is a relatively quick and inexpensive way to obtain protection for new devices, substances, methods or processes.

To read more about Australian IP law, go to www.ipaustralia.gov.au/patents/types-patents/innovation-patent

Scope of protection and exclusions (II)

- Utility models cannot be granted for inventions the publication or exploitation of which would be contrary to public policy or morality.
- Differences in national utility model laws, e.g.
 - In Austria, program logic on which programs for data processing systems are based is regarded as an invention under the Utility Model Law, whereas computer programs as such are excluded from protection.
 - Some countries (e.g. Australia) allow methods or processes

Utility models cannot be granted for inventions the publication or exploitation of which would be contrary to public policy or morality.

The following example shows not only that differences in utility model laws exist between different countries, but also that different interpretations can exist within one utility model law.

For example, under Austrian Utility Model Law, program logic on which programs for data processing systems are based is regarded as an invention, whereas computer programs as such are excluded from protection.

In most countries utility models cannot protect technical processes. Australia is one exception to this.

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How to get utility model protection

With patent applications we have seen that the applicant has several options for filing a single application, including the World Intellectual Property Organization (WIPO) and the European Patent Office (EPO), which may then result in a plurality of national patents.

Utility models have to be filed separately in each country. Some countries also allow a utility model application based on an international patent application.

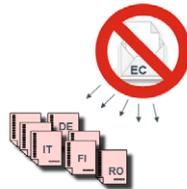
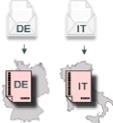
Applicants may file further applications within 12 months of the first filing.

The Paris Convention provides for the right of priority in the case of patents (and utility models, where they exist), marks and industrial designs. This right means that, on the basis of a regular first application filed in one of the contracting states, the applicant may, within a certain period of time (12 months for patents and utility models; 6 months for industrial designs and marks), apply for protection in any of the other contracting states. These later applications will then be regarded as if they had been filed on the same day as the first application. One of the great practical advantages of this provision is that, when applicants desire protection in several countries, they are not required to file all their applications at the same time, but instead have 12 months (in the case of utility models) at their disposal to decide in which countries they wish to seek protection and to organise the filing procedure (see also www.wipo.int/treaties/en/ip/paris/summary_paris.html).

In 1995 a proposal for a European Parliament and Council Directive relating to the legal arrangements for the protection of inventions by utility models was made (see also http://ec.europa.eu/internal_market/indprop/docs/model/util_en.pdf). The Commission decided to withdraw this proposal in 2005, due to objections from several member states. The Commission considered that it was unlikely to advance further in the legislative process.

How to get utility model protection

- Via the national route
- Separate procedures for each state
 - procedures differ according to national law
 - up to 12 months from filing nationally to file in other contracting states of the Paris Convention
- Central filing not possible either in Europe or at international level
- Community utility model proposed in 1995 and finally withdrawn in 2005



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Applicants wishing to file an application for a utility model in several countries, whether in Europe or elsewhere, have to file individual applications for each country concerned.

They can file further applications within 12 months of the first filing.

Patents, trade marks and designs can be filed centrally, but this option does not exist for utility models.

In 1995 a proposal was submitted for a European Parliament and Council Directive relating to the legal arrangements for the protection of inventions by utility models. However, the Commission decided to withdraw this proposal in 2005, on the grounds that it was unlikely to advance further in the legislative process.

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Important requirements for utility model applications

In Europe, the requirements of national utility model laws are often similar to those for patents under the European Patent Convention (EPC).

The Austrian Utility Model Law, for example, states that "On request, utility models shall be granted for inventions in all fields of technology, provided they are new, based on an inventive step and susceptible of industrial application."

Austrian law also states the following:

"The utility model shall entitle the utility model owner to exclude others from industrially producing the subject matter of the invention, putting it on the market, offering it for sale or using it or importing or possessing it for the said purposes. In case of a process it shall be effective to the products directly obtained by such process."

"The utility model protection shall begin on the day of the official publication of the utility model and end no later than ten years following the end of the month in which the utility model application was filed."

"However, no examination for novelty, inventive step, industrial application as well as whether the applicant is entitled to utility model protection shall be made during the application proceeding."

The differentiation between substantive requirements and further requirements is based on European patent law. If all requirements of the patent law are fulfilled, then a patent may be granted for a technical invention.

Novelty, inventive step and industrial applicability are often mentioned as substantive requirements of patentability. However, there are further requirements that an application has to comply with before a patent can be granted. These include sufficiency of disclosure and clarity. The examination as to whether all these requirements are met can be a lengthy procedure.

In the case of utility model applications, the requirements are generally not examined, so the procedure up to registration of a utility model normally takes just a few months.

It is important for students to understand this major difference. Patents are examined registered IP rights and utility models are generally unexamined registered IP rights.

Important requirements for utility model applications

- Substantive requirements
 - Novelty
 - Inventiveness
 - Industrial applicability
- Further requirements
 - Sufficiency of disclosure
 - Claims must be clear and concise
 - Amendments of application only within limitations
- The substantive requirements are normally not examined when the utility model is registered and published.



In Europe, the requirements of national utility model laws are often similar to those for patents under the European Patent Convention (EPC).

However, novelty, inventive step and industrial applicability are not normally examined when a utility model application is registered and published.

This means that an application can be directed at an invention that is neither novel nor inventive and still be granted a utility model that becomes effective on the day of its official publication.

As a result, the validity of a utility model in terms of novelty, inventive step and industrial applicability is not known on the date of its registration and publication.

The further requirements listed on the slide are usually examined during the registration procedure. These requirements include the fact that the specification must disclose the utility model in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

The claim or claims must be clear and concise and be supported by the description, and they must exactly define the matter for which protection is sought. Amendments to a utility model application that would extend beyond the scope of the application as originally filed are not allowed.

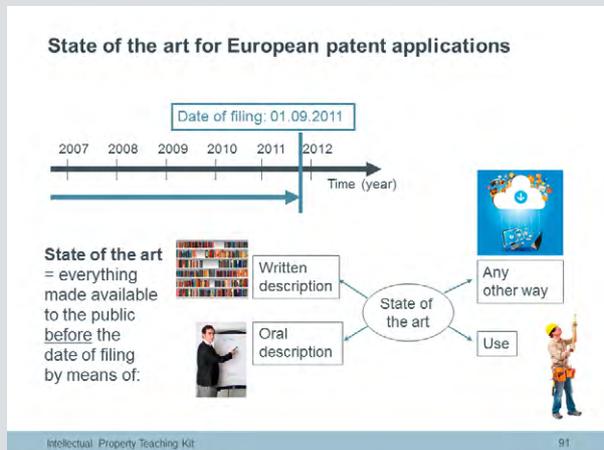
Slide 91

State of the art for European patent applications

This slide reminds students how the state of the art is defined for patent applications. The following slide, covering the definitions used for utility models, allows a direct comparison to be made.

The state of the art (or prior art) is defined as being everything made available to the public by means of written or oral description, by use, or in any other way, before the date of filing.

Students might like to consider what the consequences might be if 'prior art' were to be defined differently in different countries.



This slide explains what is meant by the state of the art for European patent applications.

The state of the art is defined as being everything made available to the public anywhere by means of written or oral description, by use, or in any other way, before the date of filing.

Most countries offering utility model protection apply this definition in order to determine whether an invention is new.

Slide 92

State of the art for utility models

There are differences in the definition of the state of the art for utility models from country to country. These exceptions open up new possibilities for applicants wishing to register utility models.

If they want to file an application in several countries, applicants need to be aware of the national variations.

This slide explains the exceptions in Austria and Germany (see also www.dpma.de/english/utility_models/utility_model_protection/index.html).

In Germany, the following is not considered to belong to the state of the art for utility models:

- prior use outside Germany
- public oral disclosure
- applicant's own use or publication in the previous six months.

At this point, you might like to ask students to come up with possible scenarios in which the absolute novelty criterion for patents would lead to a different state of the art than the less strict relative criterion of novelty for utility models. An example is shown on the next slide.

State of the art for utility models

- Examples: Austria and Germany
 - The state of the art comprises all technical products or processes published before the date of filing.
 - This includes the applicant's own scientific publications or any presentation of a new product at a fair.
 - Six-month grace period.
- Exception: Germany
 - The state of the art does not comprise
 - prior use outside Germany
 - publicly announced oral descriptions.



Utility model law in European countries is not harmonised with respect to the definition of prior art.

In Germany and Austria, for example, the state of the art comprises all technical products or processes published before the date of filing of the utility model application. This includes the applicant's own scientific publications or

presentations of a new product at a fair. If you apply for utility model registration within six months from the publication of your invention, utility model protection is still available. This is called the novelty grace period.

In Germany, the state of the art does not include prior use outside Germany or public oral disclosure.

Slide 93

State of the art for utility models: what happens in practice

The example shown on this slide is intended to illustrate the problems that may be caused by exceptions or other provisions in national utility model laws.

The state of the art in Spain is deemed to comprise anything that, prior to the date of filing the application, has been disclosed in Spain, by written or oral description, by use, or in any other way.

It also comprises the contents of Spanish patent applications and utility model applications, European patent applications designating Spain in respect of which the designation fee for Spain has been paid in due time, and international (PCT) patent and utility model applications designating Spain for which the 'national phase' in Spain has been properly entered into.

The Bulgarian manufacturer of the hammock might be of the opinion that prior use in his country is sufficient to prevent others from filing a utility model application in another country. However, only a written publication available in Spain would really allow him to invalidate a Spanish national utility model. Prior use in Bulgaria would not be sufficient.

State of the art for utility models: what happens in practice

"Relative" novelty requirement



This is a special hammock used in a hotel resort in Bulgaria. The hammock has not been described in public in print in any country other than Bulgaria itself.



A utility model could therefore be obtained for the same hammock in Spain.

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There are differences in the way the state of the art is defined in different countries.

This slide shows a fictitious example of a hammock which is produced and used in Bulgaria.

Unless the Bulgarian manufacturer described the hammock in a printed document in Spain, Spanish tourists, for example, could apply for and still get utility model protection for it in their home country.

Spanish utility model laws do not regard prior use in Bulgaria – that is, outside Spain – as belonging to the state of the art.

If the Bulgarian manufacturer had published a document about the hammock in Germany, it could be used against a utility model in Germany.

That document could not, however, be used against the utility model in Spain, since only publications in Spain are relevant.

In practice, though, the widespread availability of documents through the internet means that many documents that were previously considered to be "national" have become available worldwide.

Slide 94

Prior art searches

The key message of this slide is that, in contrast to patent applications, the registration and publication of a utility model does not normally involve a search. That means that the public and/or the applicants are not necessarily aware of the prior art that is relevant for a registered utility model, unless they carry out their own search.

As soon as a utility model is challenged, however, a search report is required in order to examine novelty and inventive step.

In Germany, applicants or anybody else may choose to request a search report at any time.

An example relating to the application looked at earlier in the module can be found at: <https://register.dpma.de/DPMAregister/pat/register?AKZ=2020120065513&CURSOR=49>

The Austrian Utility Model Law stipulates the following:

"If there are no objections against the publication and the registration of the utility model, the Patent Office will provide the search report, which will indicate the documents determined by the Patent Office at the time the search report is provided that can be taken into account to assess novelty and inventive step."

It goes on to stipulate that the search report must be based on the claims.

Prior art searches

- Before filing
 - Applicants should be aware of the prior art.
 - Public databases (e.g. Espacenet, DepatisNET) can be used.
- On registration
 - Some patent offices offer searches (AT, DE).
- After registration
 - A search might be necessary as part of nullity proceedings or infringement proceedings.



Before filing a utility model application, applicants should be aware of the relevant prior art. They can find out about this by searching public databases such as Espacenet and DepatisNET.

Prior art searches are not normally offered by national patent offices. Austria is an exception to this, and in Germany, applicants are free to choose whether they want the German Patent and Trademark Office to produce a search report or not. In fact, in Germany, anybody can request a search.

After registration, a search for prior art documents might be necessary as part of revocation proceedings, where another party seeks to invalidate a utility model, or infringement proceedings, where a court examines the validity of a utility model within the context of an alleged infringement.

Slide 95

Inventive step

Potential differences between the notion of inventive step for patents and inventive step (or inventiveness) for utility models add even more complexity.

The question of inventive step is, however, not immediately relevant for utility models since utility models are not normally examined for inventive step at the time of registration and publication. The inventive step may be examined, however, if a utility model is the subject of:

- revocation proceedings (when another party seeks to invalidate a utility model)
- infringement proceedings (when a court examines the validity of a utility model within the context of an alleged infringement).

Different practices with respect to inventive step can potentially lead to different outcomes in different national litigation proceedings.

Here are some examples of differences between patent law and utility model law.

Ireland

In Ireland, the specification of a short-term patent (utility model) application may not include more than five claims. The requirements of novelty and industrial applicability apply, but instead of non-obviousness, it is sufficient for the invention to be "not clearly lacking an inventive step". Neither a search report nor evidence of novelty in the form of a foreign patent specification is required in order for registration of a short-term patent.

Australia

In Australia, innovation patents last for eight years. They are designed to protect inventions that do not meet the inventive threshold required for standard patents. It is a relatively quick and inexpensive way to obtain protection for a new device, substance, method or process (see also: www.ipaustralia.gov.au/get-the-right-ip/patents/types-of-patents/innovation-patent/).

In some countries, the differences between the inventive step requirements for patents and utility models have been discussed by the most important courts in the country, e.g. in the *Demonstrationsschrank* ("demonstration cupboard") decision of the Federal Supreme Court (File No. X ZB 27/05) of 20 June 2006 in Germany, which brought the requirements for inventive step for patents and utility models more closely into line in that country.

Inventive step

- Inventive step (or inventiveness) is not defined in the same way in every country
- There is often a lower threshold of required inventiveness for utility models than for patents
 - not clearly lacking an inventive step (Ireland)
 - lower inventive threshold than for standard patents (Australia)
- In some countries, the difference between the inventive step requirements for patents and utility models has been the subject of judicial decisions at the highest level



In some countries, including Ireland and Australia, for example, there is a difference between the requirements for inventive step for utility models and those for patents.

Some sources highlight the difference by referring to "inventive step" for patent applications and "inventiveness" or "innovative step" for utility models, although the two expressions can often be used interchangeably.

The potential difference for the inventive step requirement is, however, only one argument in favour of utility models.

Applicants may want to seek protection of the same invention by both a patent – for up to 20 years – and a utility model, for fast availability of initial protection.

The conditions governing the coexistence of patents and utility models for the same invention depends on national law.

Slide 96

Developing an IP strategy

This slide looks at the various strategic possibilities that utility models offer to applicants.

Depending on the national law concerned, applications can be filed at various stages. Applicants can choose to register a utility model as strategic IP tool, together with applications for patents and other IP rights.

In some countries it is possible to file a national utility model from a pending European patent application. In Germany and Austria, for example, applicants who become aware of a potential infringement may, subject to obtaining a translation of the patent application into German, obtain a utility model in a matter of weeks based on a pending European patent application.

The German Utility Model Law provides for a split-off utility model from an existing patent application (see also the German Patent and Trademark Office's brochure on utility models, www.dpma.de/english/utility_models).

Before the expiry of 10 years from the filing date, a utility model may be split off from a patent application for the same invention. The utility model application must be filed (together with the splitting-off declaration) within two months after the conclusion of the examination of the patent application (see also www.dpma.de/english/service/glossary/s_z/index.html).

In China, utility models cannot be converted into invention patents. However, dual filing of applications for invention patents and utility models is possible in order to obtain early protection. Upon notification of the grant of the patent, the utility model must be abandoned (see www.epo.org/searching/asian/china/faq.html#faq-493).

In China, only one patent can be granted for the same invention. However, where the same applicant applies for a utility model patent and an invention patent for the same invention on the same day, if the utility model patent acquired earlier has not yet been terminated and the applicant waives his rights, the invention patent will be granted (see Patent Law of the People's Republic of China, Article 9 and http://english.sipo.gov.cn/laws/lawsregulations/201101/t20110119_566244.html).

Developing an IP strategy

Applications for utility models can be filed:

- On the same day as a patent application
- After a patent application has been filed
- As a split-off utility model of
 - a national
 - European or
 - international patent application or granted patent
- Before the final refusal of a patent application
- Without a corresponding patent application
- In addition to an application for another IP right (design, trade mark)

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Depending on the national law concerned, applications for utility models can be filed at various stages.

A utility model based on a patent application may be filed on the same day, or later.

In some countries it is possible to split off a national utility model from a pending European patent application, or to convert the utility model application into a patent application.

Applicants can also choose to file an application for a utility model without a patent application for the same or a similar invention.

Together with other IP rights such as designs and trade marks, this gives applicants and inventors a wide range of strategic flexibility.

Slide 97

Comparison of costs – patent and utility model applications

The lower costs for utility models are often mentioned as an advantage for small and medium-sized enterprises. However, when analysed over a period of several years, the total costs might not be substantially different from those for national patents and patent applications.

In this slide, it has been assumed that:

- the attorney fees are similar for both types of applications
- a patent is granted after around 4-5 years
- the time axis is not linear

The fee structure for the two procedures differs in that:

- for patents/patent applications the applicant/proprietor pays annual renewal fees
- for utility models the applicant/proprietor pays fees for several years in advance.

The main advantage of utility models is their early registration (three months after filing) compared with several years for patents.

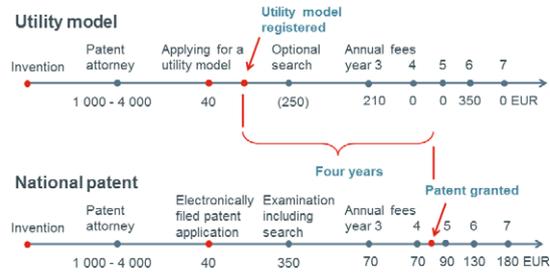
Reminder: Utility models are registered, but unexamined. Their validity with respect to novelty and inventive step is therefore unknown.

From a cost perspective, the differences between utility models and patents appear to be less relevant.

A major difference lies in the frequency and number of payments. Once a patent has been granted, renewal fees have to be paid annually. With utility models, the applicant has to pay in advance to cover several years.

As the total costs might not be all that different after several years, it is the strategic value for the inventor that is more relevant. Granted patents are based on a thorough examination process, while utility models offer fast, but unexamined protection.

Comparison of fees - patent and utility model applications



This slide compares fees for a utility model application with those for a realistic example of a national patent application.

The total fees might not be all that different when we look at a period of several years. It is the strategic value for the inventor that is more relevant.

Slide 98

Utility models: for and against

The strategic potential of utility models is unique within the category of registered IP rights.

On the one hand a utility model offers protection for technical inventions, like a patent. On the other hand it is an unexamined registered IP right, like registered trade marks and designs.

You could ask your students to discuss the advantages of these two aspects.

Patents offer protection for technical inventions but the search and examination phases preceding the grant of a patent or the refusal of an application may last several years. For some inventions this time period might be too long, and that's where utility models might be particularly useful. An inventor can file a patent application and in parallel get protection for his invention after a few months via a registered utility model (where available).

Remind the students that the central filing of one application for several countries is not possible.

Utility models: for and against

- + Utility model applications can be filed as a strategic IP right
- + Procedural fees may be lower than for national patent applications
- +/- Utility models are registered, but are normally not examined
- Utility models offer less legal certainty than patents
- Utility model litigation proceedings may be costly

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Utility model applications can be filed when needed at different times in different countries depending on national utility model law and the strategic preferences of the inventor.

Although procedural fees may be lower than for national patent applications, applicants are advised to consult a professional for drafting utility model applications.

The requirements for utility model applications are similar to those of patent applications and the procedure of filing and prosecuting applications requires professional experience.

It is very important to remember that utility models are registered but unexamined IP rights.

Registration takes place within a few months. The inventor may thus have an IP right at hand when going to market with a new product.

The examination for novelty and inventive step is postponed as long as the utility model is not challenged in litigation. This causes more legal uncertainty than with granted patents.

Utility model revocation proceedings may be expensive if the losing party has to bear the costs, including those incurred by the opponent.

Slide 99

Total filing figures for various IP rights 2008-2010

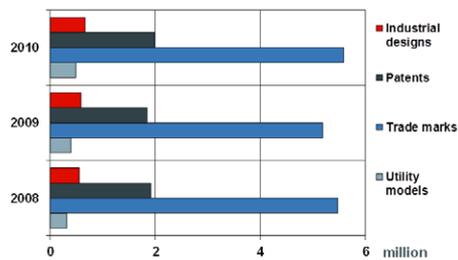
The figures on this slide were obtained from the WIPO IP Facts and Figures 2012 report.

	Utility models	Trade marks	Patents	Industrial designs
2008	313 000	5 473 000	1 915 000	557 000
2009	399 000	5 185 000	1 846 000	587 000
2010	496 000	5 588 000	1 979 000	669 000

They reveal that:

- utility models are used less than the other three registered IP rights
- utility models have the strongest growth (especially in China – see next slides)
- trade marks are by far the most frequently used IP right.

Total filing figures for various IP rights 2008-2010



The filing figures for utility models, patents, trade marks and industrial designs in the period 2008 to 2010 reveal that, although they are used less than the other three IP rights, utility models have recorded the highest growth rate.

These figures were obtained from WIPO's IP Facts and Figures 2012 report.

Slide 100

Relative filings in 2010 by continent

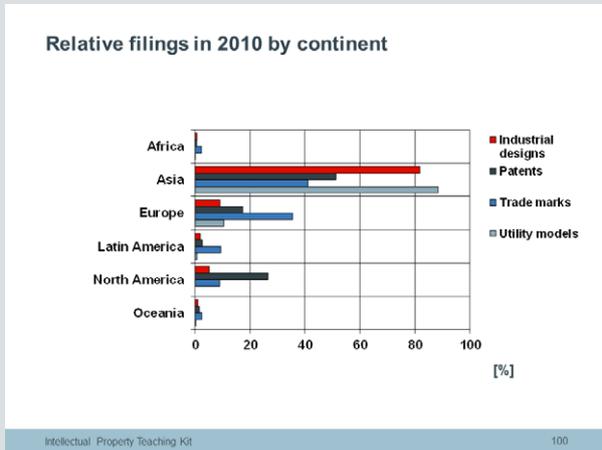
The figures on this slide were published in the WIPO IP Facts and Figure 2012 report.

	Utility models	Trade marks	Patents	Industrial designs
Oceania		2.5	1.6	1.1
North America		9.0	26.6	5.1
Latin America	0.7	9.5	2.6	1.9
Europe	10.5	35.6	17.4	9.1
Asia	88.5	41.1	51.3	81.8
Africa	0.02	2.3	0.6	0.7

Utility models statistically play a role in just two continents: Asia and Europe.

The percentage for Africa is 0.02 %, only just above zero.

Utility models are not known in North America, which is why there is no entry in this column.



The 2010 figures for IP rights filings by continent – also from WIPO's IP Facts and Figures 2012 report – reveal that utility models are primarily used in Asia.

The chart on this slide compares percentages of total filings, not absolute figures. The bars in each colour add up to 100%.

When we look at utility models, indicated by the grey bars, we can see that just over 88% are filed in Asia and around 10% in Europe, leaving less than 1% in the rest of the world.

Utility models are unknown in North America.

Slide 101

Top 10 offices in 2012 for utility model applications

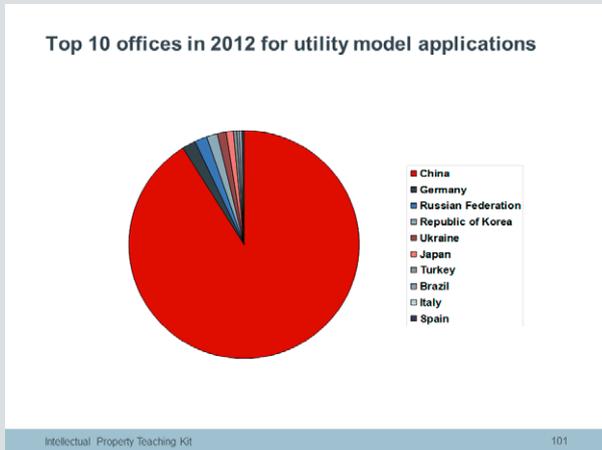
The figures on this slide were sourced from the WIPO Statistics Database in June 2014.

	2012
China	740290
Germany	15497
Russian Federation	14069
Republic of Korea	12424
Ukraine	10217
Japan	8112
Turkey	3788
Brazil	2997
Italy	2758
Spain	2539
Czech Republic	1863

This table shows the top offices with respect to total filing numbers for utility models in 2012.

Interestingly, Brazil is listed as number 8 worldwide, while Latin America as a continent is statistically speaking virtually irrelevant in the worldwide comparison of total utility model filing numbers (see previous slide).

China is top of the list in terms of the total number of filings.



This chart shows that, in 2012, almost 90% of all utility model filings worldwide occurred in the People’s Republic of China, which has seen an enormous increase over recent years.

This information was sourced from the WIPO Statistics Database in June 2014.

Slide 102

30 years of filing history for utility model applications

The figures on this slide were obtained from the WIPO Statistics Database.

Illustrating 30 years of filing history, the graph very clearly shows that the countries with the highest filing numbers are located in Asia and Europe.

At first glance, the presence of continents (Europe) and individual countries (e.g. China and Japan) might give the impression that the graph is comparing apples and oranges. The intention, however, is to show that as far back as 1982, more than 80% of filings were made in Asia (2012: 92%), and 20% in Europe (2012: 6.3%).

A comparison by continent would hide the fact that the majority of utility model applications filed in Asia in the 1980s occurred in Japan, and in 2012 in China.

The changes in Asia are due to a number of reasons.

The reinstatement of the patent system in China in 1985 introduced the concept of invention, utility model and design patents. Filing figures for utility model patents (as well as for invention patent applications) have risen steadily since then.

The 1987 amendment of the Patent Law in Japan allowed multiple claims for patent applications and resulted in a significant shift in filings from utility models to patents.

In 1993 Japan amended its Utility Model System and abandoned substantive examination of utility models at the time of registration. Another significant shift of filings from utility models to patents was the result.

In Europe filings fell from around 50 000 in 1982 to fewer than 25 000 in 1990, before rising again above 50 000 in 2012. These developments have not been analysed.

More information can be found on the WIPO website at www.wipo.int/ipstats/en/statistics/models/

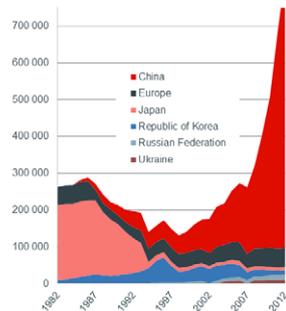
	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
China	-	-	-	5 174	9 673	16 706	22 400	20 727	27 615	33 282
Europe	49 357	50 214	50 689	52 893	51 957	28 272	25 332	26 060	24 716	25 906
Japan	202 702	205 215	202 164	204 803	204 199	201 609	171 656	153 277	138 272	114 674
Republic of Korea	10 669	11 485	14 765	18 548	22 401	24 773	22 677	21 530	22 654	25 895
Russian Federation	-	-	-	-	-	-	-	-	-	-
Ukraine	-	-	-	-	-	-	-	-	-	-

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
China	44 369	47 499	45 511	43 741	49 604	50 129	51 397	57 492	68 815	79 722
Europe	29 303	34 439	35 883	36 224	37 367	38 579	37 427	39 185	39 367	38 276
Japan	94 601	77 101	17 531	14 886	14 082	12 048	10 917	10 283	9 587	8 806
Republic of Korea	28 665	32 205	39 790	59 856	68 822	45 809	28 890	30 650	37 163	40 804
Russian Federation	-	1 193	1 756	2 039	2 379	2 356	2 723	3 444	4 631	6 029
Ukraine	-	-	-	125	126	135	137	204	276	432

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
China	93 139	10 9115	112 825	139 566	161 366	181 324	225 586	310 771	409 836	585 467	740 290
Europe	34 343	43 020	45 725	48 168	50 047	39 225	4 8561	49 429	52 527	52 048	52 392
Japan	8 603	8 169	7 986	11 387	10 965	10 315	9 452	9 507	8 679	7 984	8 112
Republic of Korea	39 193	40 825	37 753	37 175	32 908	21 084	17 405	17 144	13 661	11 854	12 424
Russian Federation	-	7 622	8 948	9 473	9 699	10 075	10 995	11 153	12 262	13 241	14 069
Ukraine	622	839	5 232	7 286	8 171	-	9 600	9 205	10 685	10 431	10 217

30 years of filing history for utility model applications

- Over 827 000 utility model applications worldwide in 2012
- 1985 China
 - reinstatement of patent system introduced invention, utility model and design patents
- 1987 Japan
 - amendment of Patent Law
 - multiple claims allowed
- 1993 Japan
 - new utility model system abandoning examination at registration



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Looking at this graph, we can see that filing figures in Japan and China have changed dramatically over the last 30 years.

30 years ago utility models were mainly filed in Japan and Europe, with, as of 1985, a few thousand in China. By 2012 the situation was very different in Asia, with 740 290 filings in China and 8 112 in Japan, while in Europe the figure – 52 392 – was very similar to what it had been in 1982.

There are a number of reasons for these developments in Asia.

In 1987 the Japanese Patent Law was amended to allow multiple claims for patent applications. This resulted in a significant shift from utility models to patents.

In 1993 Japan amended the Utility Model System and abandoned the examination of utility models at the time of registration. The result was a further significant shift from utility models to patents.

In 1985 the reinstatement of the patent system in China introduced invention, utility model and design patents. Filing numbers for utility models (as well as for patent applications) have increased steadily since then.

Slide 103

Recommendations and further reading

Anyone thinking of drafting and/or filing a utility model application should consult a professional first.

It is only too easy to overlook, say, a technical detail when drafting an application, and it is normally not possible to correct such errors after the application has been filed.

For more information see the following websites:

- World Intellectual Property Organization
(www.wipo.int)
- Country profiles
(www.wipo.int/directory/en/)
- Directory of Intellectual Property Offices
(www.wipo.int/directory/en/urls.jsp)
- The patent offices of the EPO member states
(<http://www.epo.org/about-us/organisation/member-states.html>)
- The websites of other national IP offices

Recommendations and further reading

- Consult a professional before drafting or filing a utility model application.
- For more information:
 - WIPO (www.wipo.int), including country profiles and a directory of intellectual property offices
 - Patent offices of the EPO member states (<http://www.epo.org/about-us/organisation/member-states.html>) 
 - Other national patent offices

Anyone considering filing a utility model application should consult a professional first.

More information can be found on the websites shown here.

Slide 104

Quiz

1. Name three differences between patents and utility models.

Answer:

- Utility models are normally unexamined registered IP rights (exception: Brazil) and patents normally registered examined IP rights (exception: France).
- The duration of protection for patents is 20 years compared with a maximum of 10 years for utility models.
- Patent applications may be filed centrally with WIPO and the EPO.

2. Are utility models available in:

- all European states? (Answer: No)
- all EPO member states? (Answer: No)
- all EU member states? (Answer: No)

3 (a). What is the difference between "relative" and "absolute" novelty?

Answer:

Absolute novelty means that any prior art worldwide is used for the assessment of the validity of the patent or the utility model. Relative novelty means that prior art in the country of application is relevant, but not prior art from other countries.

3(b). Some countries only assess relative novelty when examining the validity of a utility model. What are the consequences of this assessment?

Answer:

A utility model may still be filed in one country for an invention that was already in use in another country before the date of filing of the utility model.

4. Are inventions in published utility models novel and inventive?

Answer:

It depends. The answer to this question is often only investigated during litigation, in other words after the utility model concerned has been published.

5. Is the inventive step/inventiveness criterion always the same for utility models and patents in any one country?

Answer:

It depends on national law and current practice.

6. Can a utility model offer protection for:

- a simulation process? (Answer: Normally not; depends on national law)
- a simulator? (Answer: Yes)

Quiz

1. Name three differences between patents and utility models.
2. Are utility models available in:
 - all European states?
 - all EPO member states?
 - all EU member states?
3. (a) What is the difference between "relative" and "absolute" novelty?
(b) Some countries only assess the relative novelty when examining the validity of a utility model. What are the consequences of this assessment?
4. Are inventions in published utility models novel and inventive?
5. Is the inventive step criterion always the same for utility models and patents in any one country?
6. Can a utility model offer protection for:
 - a simulation process?
 - a simulator?



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