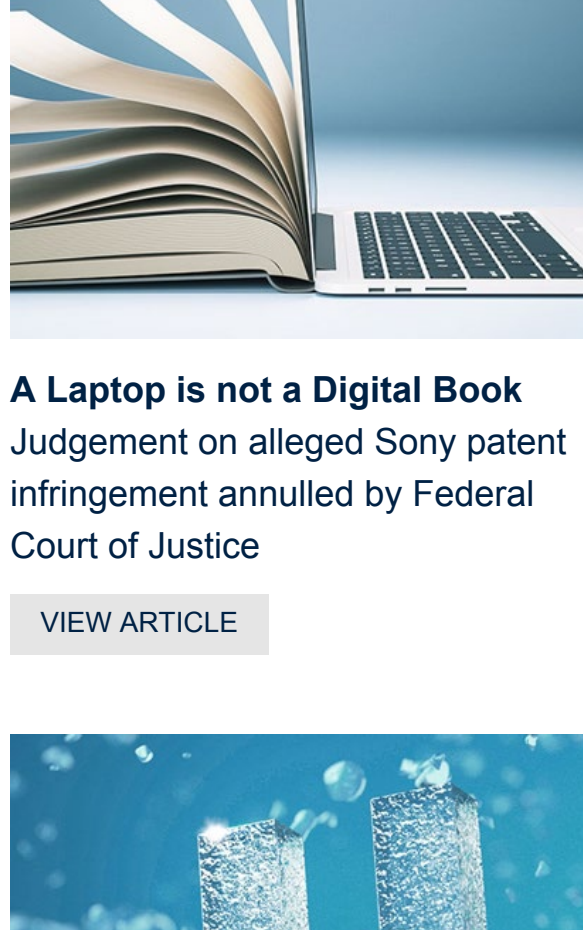




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A Laptop is not a Digital Book – Judgement on alleged Sony patent infringement annulled by Federal Court of Justice

'Is this a book or is it not a book?' The most influential literary critics in Germany, Marcel Reich-Ranicki had frequently asked this question during his roundtable, the Literary Quartet, preferably when he intended to discuss a new work in a devastatingly critical way.

A similar question arose in the patent infringement dispute between our client Sony and Virtual Paper Licensing in Munich. Stephan Keck, partner at WITTEWELLER, has accompanied this case on behalf of the Sony Corporation for over 13 years. Is a laptop a digital book? And what is a digital book at all?

European Patent 1 659 501 B1 relates to a display device with an interface for a charging cable covered by a swivel joint. It is intended for easy handling of digital end devices that can be folded open and shut like a book and display text. Such devices do not require interfaces and cables positioned at the back. According to the patent proprietor, this technology can also be applied to laptops and notebooks. Virtual Paper Licensing sued Sony for infringing the patent with a range of Vaio laptops showing such an interface in the swivel joint.

The patent proprietor, however, disclosed information on the technology in the respective patent application only in connection with a digital book showing that laptops and notebooks would not be suitable for technically unexperienced persons to read books in digital format. During the examination proceedings, the term 'digital book' was exchanged to the more common term 'display device', which was considered in the nullity proceedings by both, the Federal Patent Court and the Federal Court of Justice, to be an inadmissible extension. As a result, the patent proprietor had to reverse this exchanging amendment.

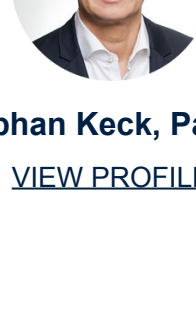
While the Regional Court in Düsseldorf had denied patent infringement in the first instance in the parallel infringement proceedings, the Higher Regional Court in Düsseldorf found, quite surprisingly, that a laptop could indeed be regarded as a digital book.

This decision would have become final, as the appeal was rejected. Although the patent had expired in 2018, and the Vaio laptops under attack had not been on the market for a long time, Sony did not agree to the decision and appealed before the Federal Court of Justice. Finally, and in only one of very few cases, the Federal Court of Justice accepted the appeal and fortunately and reasonably reversed the decision in January 2023.

According to the Federal Court of Justice, a laptop cannot be regarded as a digital book, as it is not sufficient that it can be handled like a book due to its size and weight. Besides, the operating elements of a mobile computer would not enable the use in the same way as a book. In addition to suitable size and low weight, the device would rather require special hardware or software components to serve this purpose. However, such specific hardware or software components were not present in case of the attacked laptops.

The main issue in the long-time dispute was finally rejected and responded by the Federal Court of Justice. By the way, Marcel Reich-Ranicki's rhetorical question was also mostly responded by himself in a negative way: *'No, that's not a book, it is nothing more than printed paper.'* This criticism frequently challenged disputes as well. It is not known, however, which instances this issue passed. Bearing this in mind, it can be clearly stated: *'No, a laptop is not a digital book, it is nothing more than a portable computer.'*

Should you be forced to dispute with competitors about patent law issues, or if you want to protect your ideas, especially in the field of information technology and communication technology as well as computer-implemented inventions and software, our partner Stephan Keck will be happy to assist you.



Stephan Keck, Partner

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Constitutional complaints against EPO decisions failed – EPO fulfills requirements of effective legal protection

The German Federal Constitutional Court dismissed several constitutional complaints which challenged decisions of the EPO's Technical Boards of Appeal and the Enlarged Board of Appeal. The respective decision was published on 12 January 2023.

The complainants are companies from Germany, from other EU member states, and from third countries. They essentially alleged a violation of the right to fair trial, the right to one's lawful judge and the right to be heard, as stated in the German constitution. More precisely, the complaints referred to general and obvious deficiencies of the legal protection system and, consequently, respective decisions within the European Patent Organization.

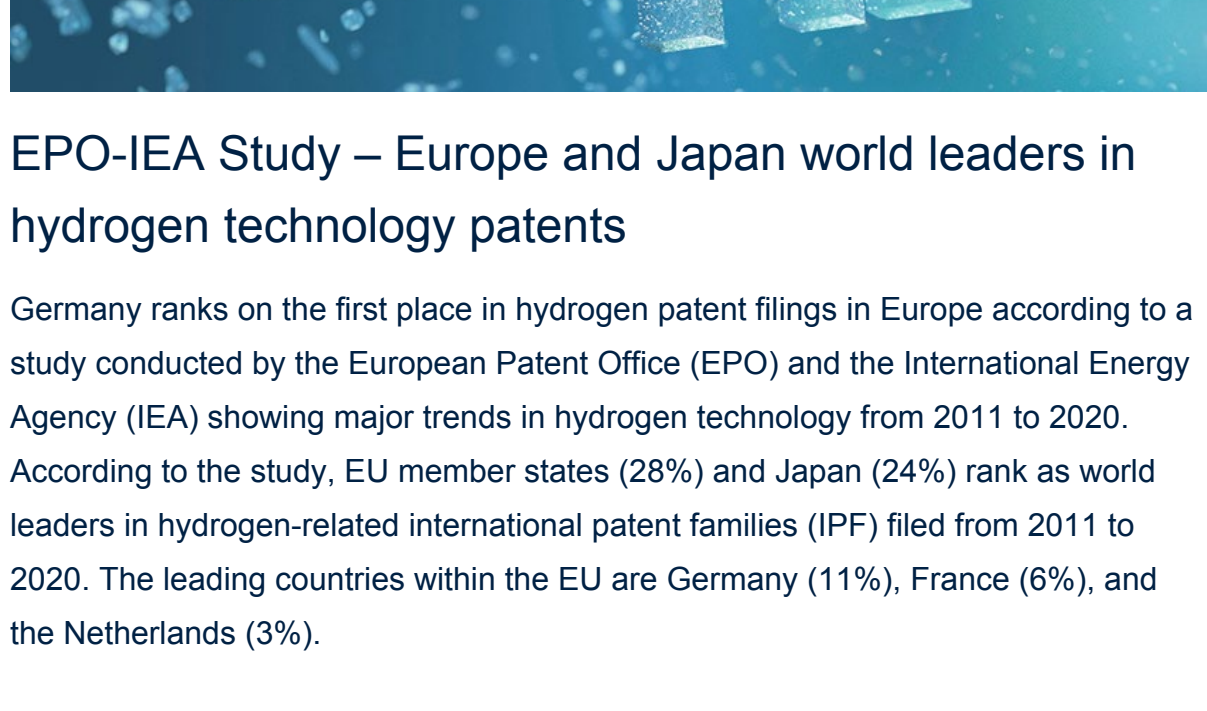
The Federal Constitutional Court disagreed. Complainants domiciled in third countries are not entitled to invoke the fundamental rights laid down in the German constitution. Additionally, the right to one's lawful judge and the right to be heard can only be violated by decisions of German judges. As the Federal Constitutional Court does not review the EPO's decisions, an acceptable complaint is not provided according to the Federal Constitutional Court. The complainants finally failed to substantiate their assertion that after the structural reform of 2016 the EPO's Boards of Appeal is structured in a way that fails to provide the minimum standard of effective legal protection. The Federal Constitutional Court could not see such a failure either.

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EPO-IEA Study – Europe and Japan world leaders in hydrogen technology patents

Germany ranks on the first place in hydrogen patent filings in Europe according to a study conducted by the European Patent Office (EPO) and the International Energy Agency (IEA) showing major trends in hydrogen technology from 2011 to 2020. According to the study, EU member states (28%) and Japan (24%) rank as world leaders in hydrogen-related international patent families (IPF) filed from 2011 to 2020. The leading countries within the EU are Germany (11%), France (6%), and the Netherlands (3%).

In the major regions, only the US has shown a decline in hydrogen-related patent application filings within the past decade (-20%). Relatively few patent activities in the field of hydrogen technologies have been shown in South Korea and China, however, the number is growing steadily.

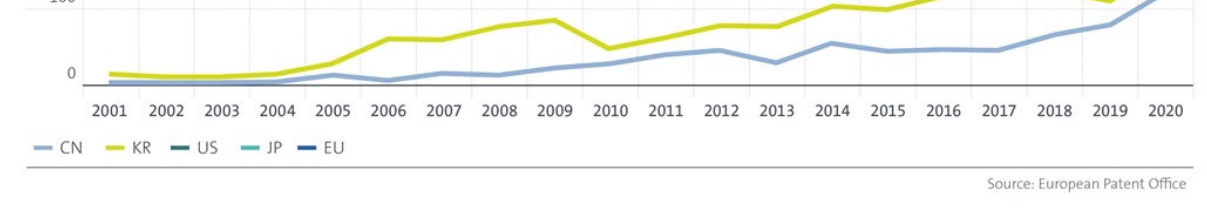
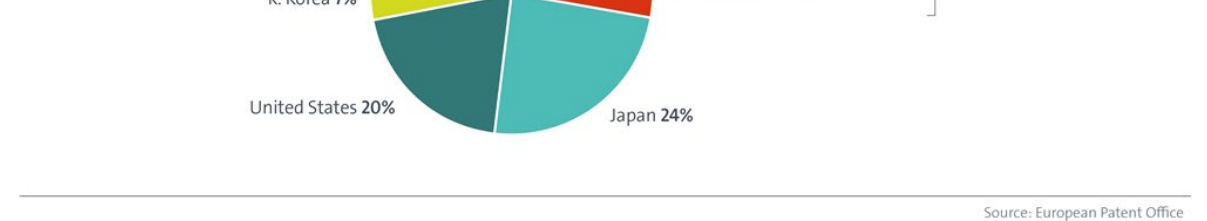


Figure 23
Patenting trends by main world regions (international patent families, 2001-2020)

Source: EPA/IEA



Leading countries for hydrogen patents, 2011-2020

Source: EPA/IEA

Hydrogen production technologies accounted for the largest number of hydrogen patents from 2011 to 2020. The study shows that across all areas of the hydrogen value chain, low emission innovations generated more than twice the number of international patent filings than already established technologies. While hydrogen production is currently almost entirely based on fossils, patenting data show an enormous shift towards alternative and low-emission methods, for instance, electrolysis. About 80% of all hydrogen production related patent filings are to be seen as a clear consequence of climate protection concerns in 2020. The growth can be mainly attributed to a sharp increase of innovation in the field of electrolysis.

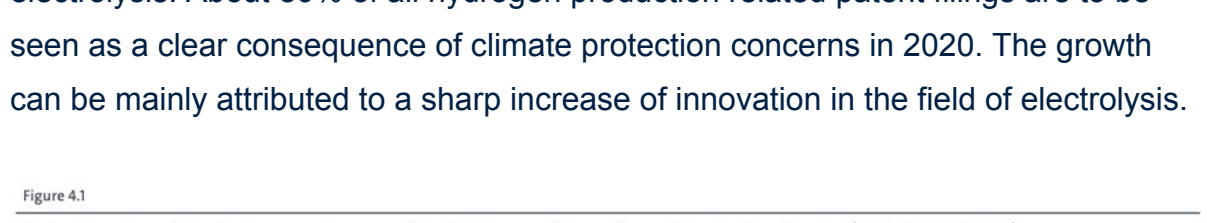


Figure 41
Patenting trends in hydrogen storage, distribution and transformation technologies (IPFs, 2001-2020)

Source: EPA/IEA

The shift to alternative methods clearly shows a boom in the field of electrolysis. Additionally, Europe is expected to act as top location for investment in new electrolysis manufacturing capacities.

The automotive sector continues to retain its leading position among hydrogen end-use applications due to innovations in the field of fuel-cell drive. A significant increase in patent production was also shown in the field of hydrogen utilization in iron and steel applications since 2017, after a decline from 2014 on.

On the contrary, no significant innovations were shown in areas such as long-distance traffic and power generation.

Christian Steil, partner at WITTEWELLER, has filed multiple patent applications for a Japanese client in the field of fuel cell-related block power stations. In this process, hydrogen is extracted from natural gas and is transported and transported to the fuel cell to generate electricity and heat highly efficiently. Unlike in Japan, the use of hydrogen in heating technology is not common in Europe as production costs are very high.

For questions concerning inventions in the field of fuel cells or hydrogen-related technologies, please contact our partner Christian Steil.

Further information

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Christian Steil, Partner

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Office News

UPC Updates

The European Unitary Patent (UP) and the Unified Patent Court (UPC) are ready to enter into force. The UPC will start operating on 1 June 2023. We reported about this topic in our previous newsletters and are providing a brief overview of the current developments in the following.

Update I – Unified Patent Court starts operation on 1 June 2023

Germany's Federal Government ratified the Unified Patent Court (UPCA) on 17 February 2023. This step opens the door for the UPC to finally enter into force.

The agreement enters into force on 1 June 2023. On the same day, the Unified Patent Court (UPC) will start operating and is supposed to decide on disputes with direct effect on all participating member states.

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UPC Update II – UPC Registrar and Deputy Registrar appointed

In January, the UPC appointed Alexander Ramsay from Sweden as Registrar and Axel Jacobi from Germany as Deputy Registrar. Both started work on 19 January 2023.

The Registrar takes over representation of the UPC office. His tasks particularly comprise organizing the court proceedings, keeping the register of cases, keeping the lists of judges and representatives, and publishing the decisions of the court.

The Deputy Registrar is responsible for the organization of sub-registries. The Registrar as well as the Deputy Registrar are appointed for a renewable term of six years.

The office is located at the Court of Appeal in Luxembourg. The Deputy Registrar is located at the Court of First Instance in Paris.

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WIPO

Hague System – Brazil and Mauritius join the Hague System

Brazil will join the Hague System for the International Registration of Industrial Designs (Hague Agreement concerning the international Deposit of Industrial Designs) on 1 August 2023. From this date, Brazil can be designated for international design applications.

Mauritius will also join the Hague System on 6 Mai 2023.

The Hague System provides the benefit of obtaining design protection in many member states within the Hague System by filing a single international application. It is not required to file a national application previously. The Hague System currently comprises more than 70 member states and intergovernmental organizations.

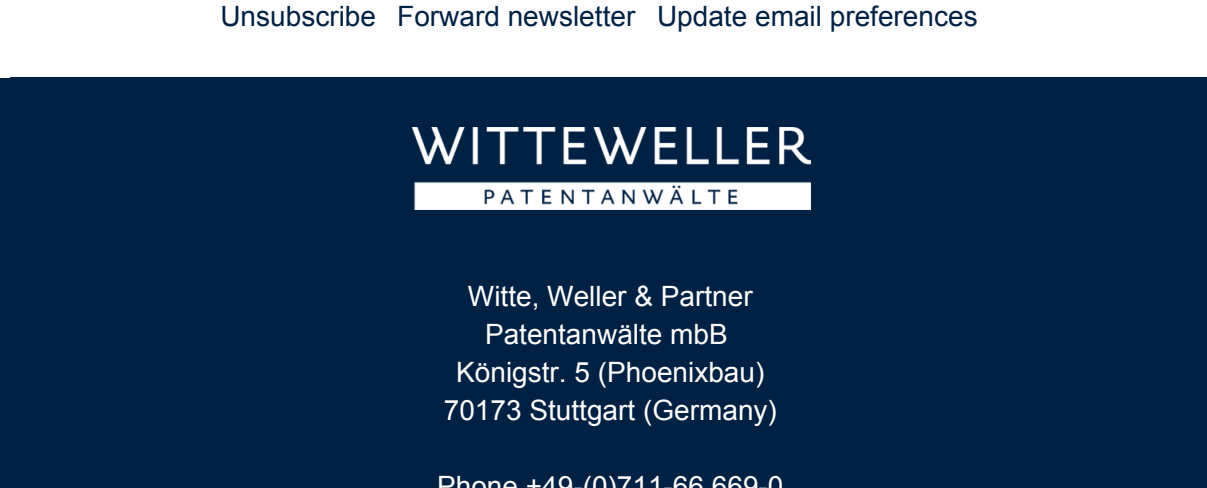
The World Intellectual Property Organization (WIPO) operates as responsible office for the implementation of the Hague System and, therefore, for the application and registration procedure.

Further information

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[WIPO NEWS \(Mauritius\)](#)

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