NEWS
WITTEWELLER
PATENTANWÄLTE

WITTEWELLER NEWS II/2025

Client Information and News

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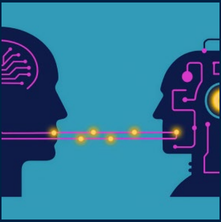

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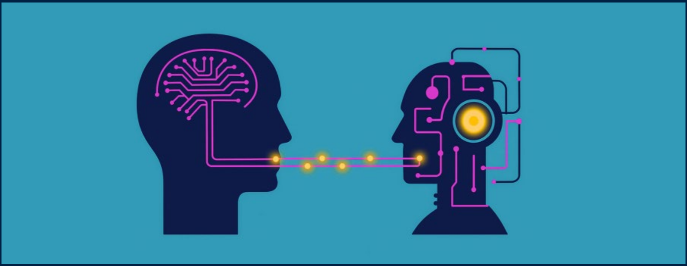

GEMA wins against OpenAI: Copyright violations through AI training

On 11 November 2025, the **Regional Court of Munich I** issued a landmark ruling (Case No. 42 O 14139/24) in the case of **GEMA versus OpenAI**, the company behind ChatGPT.

According to the Munich Regional Court, OpenAI is **violating existing copyright law through the training and use of ChatGPT**. This is the first time a European court decided on the use of protected works by generative AI and has done so in favor of the creatives.

The case originated because ChatGPT provided full or nearly complete song lyrics in response to simple requests, including well-known German songs like "Atemlos" and "Über den Wolken." These lyrics had previously been used to train the AI.

According to the court, this shows that the works were not just used "for learning," but were **actually stored in the system**. The AI retains the texts internally and can reproduce them later. This is only permitted with the consent of the rights holders, which was not present here.

The court also ruled that the **outputs themselves** were **illegal**. When ChatGPT reproduces song lyrics on demand, OpenAI makes these works accessible to the public. The **responsibility** for this lies **clearly with the company**, not the users. OpenAI's argument that the AI generates texts based on probabilities and does not store works in the traditional sense was not convincing to the court. The nearly identical outputs were seen as strong evidence of actual storage.

Thus, GEMA largely prevailed. Only the part of the lawsuit concerning the artists' personality rights was dismissed.

Why is this ruling important?

It sends a clear signal about how copyrighted content should be handled in AI training. Companies wishing to use music, texts, or other protected works for the development of their systems will likely face **significantly stricter requirements** for **licenses and transparency** in the future. If the ruling is upheld by higher courts, it could have far-reaching consequences for the development of generative AI, extending well beyond song lyrics.

This text was created with the help of ChatGPT — of course, without copyright issues.

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UPC: Jurisdiction also for previous patent infringements

On 2 June 2025, the Court of Appeal of the Unified Patent Court (UPC) ruled on the jurisdiction of the court in a patent infringement dispute between ESKO Graphics Imaging GmbH and XSYS Germany GmbH. The case involved European patent EP 3 742 231, which concerns a method for hardening photopolymer printing plates. The case raised the issue of whether the **UPC is also competent to rule on infringements that occurred before the entry into force of** the Agreement on a Unified Patent Court **(UPC Agreement)** on 1 June 2023, as well as for actions during the transitional period of the UPC Agreement.

The **Court of Appeal confirmed that the UPC is competent** to rule on infringements that occurred before the entry into force of the UPC Agreement if these are raised in the legal proceedings after 1 June 2023. This interpretation is based on Article 32(1) of the UPC Agreement, which does not impose a time limit on the UPC jurisdiction. The court emphasized that the UPC jurisdiction aligns with the purpose of the Agreement, which is to create a common court for the contracting states and establish a unified legal framework for European patents.

Another key point of the decision was the **clarification regarding the transitional period.** During this phase, regulated by Article 83 of the UPC Agreement, there is parallel jurisdiction of the UPC and national courts. Patent holders can choose whether to initiate proceedings before the UPC or a national court. However, no partial jurisdiction of the selected court is foreseen. The court clarified that such a choice concerns only the forum and does not impose restrictions on the timing or content of the claim.

Regarding a retroactive effect, the Court of Appeal rejected XSYS's argument that the UPC should not have jurisdiction for infringements before the entry into force of the UPC Agreement. The court ruled that the UPC's jurisdiction for such actions does not conflict with the principles of international law or the Vienna Convention on the Law of Treaties (VCLT). The court found that the determination of jurisdiction starting from the filing of the claim, even for previous infringements, does not violate the principle of non-retroactivity of treaties.

Furthermore, the court found that **opting out of the exception rule** according to Article 83(4) of the UPC Agreement **leads to a complete transfer of jurisdiction to the UPC**, **without partial jurisdiction for certain periods**. The court emphasized that this aligns with the goal of the UPC Agreement to avoid a fragmented system and ensure unified jurisdiction.

This decision is part of a series of rulings by the UPC that affirm the court's jurisdiction for prior infringement actions. For example, in an order on 16 January 2025, in the case of Fives vs. REEL, the Court of Appeal ruled that the UPC also has jurisdiction for infringements that occurred before 1 June 2023. This shows that the UPC **remains competent for all acts of infringement** asserted after the entry into force of the UPC

Agreement and that the **jurisdiction of the court is not subject to any time limit**.

Conclusion

The **UPC remains competent** to rule on **infringement claims that occurred before the entry into force of the UPC Agreement**, provided the claim is filed after the Agreement's entry into force. This decision strengthens the central role of the UPC in European patent law and ensures a **unified and consistent procedure for patent disputes in Europe**.

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Cross-border patent enforcement after BSH/Electrolux: Munich Court confirms "long-arm" trend in Onesta IP vs. BMW

The recent decision by the CJEU in **BSH/Electrolux** (C-339/22) opens the way for **significantly broader international jurisdiction of European courts in patent disputes**. It allows companies based in an EU member state to be sued at their home jurisdiction for any IP rights infringement worldwide, even if these are outside of Europe.

We have already reported on the practical implications of the ruling in our **Newsletter I/2025**. Now, one of the first cases in which this new line of case law is being applied in practice was decided – with remarkable consequences for strategic patent enforcement.

In the ongoing case of **Onesta IP/BMW**, a US NPE is suing before the Regional Court of Munich for two US patents and one European patent. The background is that BMW installs certain parts in Germany and exports vehicles to the USA. Onesta argues that this constitutes relevant use of the US patents in Germany. The plaintiff relies directly on the

CJEU's confirmed possibility of deciding over foreign patents within the general jurisdiction of the defendant. For the US patents, the Munich Regional Court is even supposed to apply US law.

The Regional Court of Munich confirms key aspects of the CJEU's ruling: **German courts can rule on infringements of foreign patents,** and the application of foreign law does not hinder their jurisdiction. This case goes beyond BSH/Electrolux as, for the first time, the **focus is exclusively on US patents**, using **export operations as a connecting point.**

The case indicates that plaintiffs, especially NPEs, will seek to establish European courts as a global forum for patent disputes.

At the same time, the case reveals **some limits.** The application of US patent law by German courts presents **practical challenges.** It remains unclear whether German courts and appellate bodies will fully support extraterritorial jurisdiction or if parallel proceedings, especially in the US, will still be necessary. The application of CJEU principles to non-European IP rights might also face political or legal resistance.

New strategic options are opening up for rights holders: US patents can also potentially be enforced before European courts, some of which are patent-friendly. **For European companies**, on the other hand, **the risk of litigation is increasing significantly**, because in the future, patents could be enforced worldwide at their own headquarters. In-house counsel must therefore integrate export processes, supply chains, and international patent strategies even more closely.

Conclusion

This case before the Regional Court of Munich not only confirms the CJEU's ruling but expands its practical reach. For the first time, the **"long-arm" approach is explicitly applied to US patents**, creating potential jurisdiction for German courts in disputes over the infringement of US patents.

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Christian Gembruch, Partner
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Office Updates

WIPO: Ethiopia joins the Paris Convention

Ethiopia joined the Paris Convention for the Protection of Industrial Property (Paris Convention) on 15 August 2025. This **membership enables the protection of Ethiopian trademarks, patents and designs in all Paris Convention member states without** the need for **separate registrations** in each country.

At the same time, foreign IP holders can extend their protection to Ethiopia. Another **benefit** for Ethiopian applicants is the **priority right,** which allows them to claim the same filing date in Ethiopia as in any other Paris Convention country for patents and utility models within 12 months and for trademarks and industrial designs within six months of a first application abroad. This step strengthens the international recognition and competitiveness of Ethiopian companies and fosters the global exchange of innovation and intellectual property.

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EUIPO: Over 5 Million Trademark and Design Applications since 1994

The European Union Intellectual Property Office (EUIPO) announced a new milestone: Since its establishment in 1994, **over 5 million trademark and design applications** have been filed with the office.

This increase underscores the **growing importance of trademarks and designs as intangible assets**. The European system provides for obtaining protection in all 27 EU member states with just one application.

At the same time, the EUIPO is modernizing its processes: Digital solutions and the future use of artificial intelligence are expected to ensure even more efficient processing.

Studies conducted by the EUIPO and the European Patent Office (EPO) show that **companies with registered IP rights achieve higher revenues** per employee and also **pay higher wages**. The economic effects are especially noticeable for small and medium-sized enterprises.

The current record highlights not only the growing demand for IP rights but also their relevance for competitiveness in Europe.

If you have questions about trademark and design applications or want to evaluate the potential for expanding IP rights in your company, please feel free to contact us.

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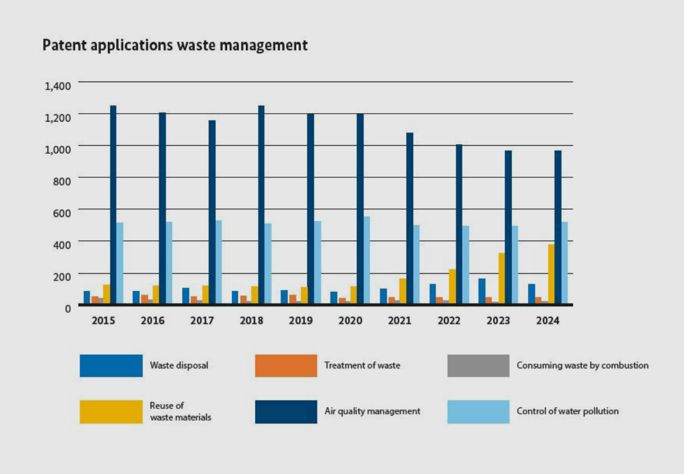
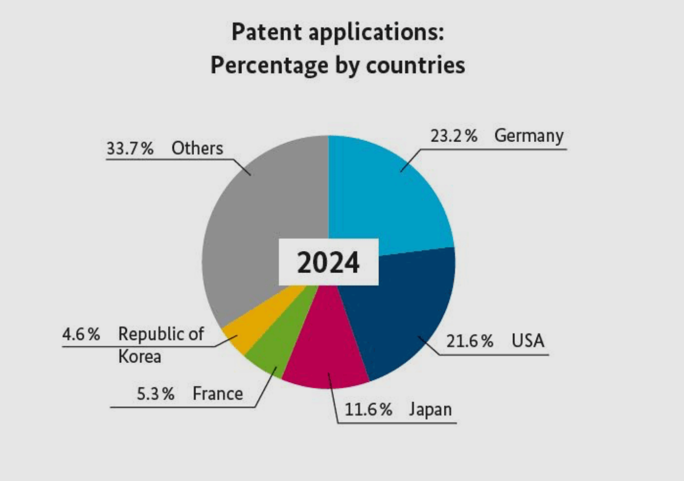
GPTO: Patent Applications for Recycling of Materials from Waste Triple in Ten Years

Patent applications play a significant role in promoting environmentally friendly technologies. The German Patent and Trade Mark Office (GPTO) has published current statistics on patent applications. Particularly in the field of **recycling waste materials**, there has been a noticeable increase. **379 patent applications** were filed in Germany in 2024 for the recycling of materials from waste, **three times as many as ten years ago.** The number of applications in the area of waste disposal also rose during this period. In contrast, the number of inventions related to air purification has decreased, which, according to the GPTO, reflects the decreasing innovation activity in the field of combustion engines.



Source: GPTO

In international comparison, **German applicants lead** in the area of waste management with **479 applications**, **followed by the United States, Japan, France, and South Korea**. These figures are based on published patent applications with effect for Germany at the GPTO and the European Patent Office (EPO).



Source: GPTO

Together with partners from around the world, the GPTO is working to bring the protection of environmentally and climate-friendly innovations into greater focus. The goal is to promote solutions to combat climate change and support the technology transfer of green technologies.

An important tool in this context is the **platform "WIPO Green,"** initiated by the World Intellectual Property Organization (WIPO). This platform connects inventors of environmentally friendly technologies with businesses and investors. With over 130,000 entries for solutions, needs, and contact points, and about 2,500 active users worldwide, WIPO Green makes a structural contribution to the technology transfer of green innovations.

For companies and innovators, the platform offers a valuable opportunity to make their green technologies accessible to a wide audience and find potential partners and investors.

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News from Abroad

UK: The use grace period for cloned UK trademarks ends on 31 December 2025

Following the United Kingdom's exit from the European Union (Brexit), all existing EU trademarks and international trademarks with EU protection were converted into **"comparable UK trademarks"**, also called "**cloned UK trademarks**." These cloned UK trademarks are **now independent** of the originally registered EU trademarks and are **subject to UK trademark law**.

Until 31 December 2025, the use of a comparable UK trademark in the EU in opposition proceedings, invalidation and cancellation proceedings, can be accepted as proof of use in the United Kingdom. However, **from 1 January 2026**, only **actual use** of the trademark **in the United Kingdom** will be relevant for maintaining the rights to the comparable UK trademark.

What does this deadline mean for trademark holders?

From 1 January 2026, trademark holders in procedures seeking cancellation due to non-use may be forced to provide proof of continuous use in the UK for a period of five years. Previous use of the trademark in the EU will no longer be sufficient to prevent cancellation for non-use in the UK. The same applies to oppositions based on comparable UK trademarks: For trademark applications filed on or after 31 December 2025, **proof of use** will **only be required for the United Kingdom**.

What needs to be done now?

To prevent the loss of rights of cloned UK trademarks after 31 December 2025, owners of cloned UK trademarks should immediately review whether and to what extent their trademarks are used in the UK. If they are not used, it is advisable to use the affected trademarks in the UK **promptly** and in an **economically relevant way**.

We recommend reviewing your UK trademark portfolio, including both cloned UK trademarks and EU trademarks, and their use in the UK. We are happy to provide detailed advice to ensure the protection of UK trademark rights even after the transition period ends.

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Tanzania: New Trademark Registration System since 1 December 2025

Since **1 December 2025**, all **importers of branded goods in Tanzania** must **register** these **goods with the Fair Competition Commission (FCC).** The goal of the initiative is to improve protection against product piracy and facilitate border control more efficiently.

Required Documents

- Information about the applicant (jurisdiction, nationality)
- Manufacturing location of the goods
- Samples or photos of the products
- Information about licensees
- Certified copy of the trademark registration
- Payment receipt

Consequences of non-compliance
Non-registered branded goods may be held at the border, resulting in delays and penalties.

Recommendation
Brands being used in Tanzania but not yet registered should be filed with the FCC as soon as possible.

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