

Annual Report 2018 | 19



3

Foreword

Catherine Chammartin,
Director General

5

An Overview of the IPI

Envisioned. Created. Protected.
Organigram, the Institute Council
and the Executive Board

12

An Overview of the Year at the IPI

Events in the Year under Review
that Effected Change

18

IP Rights Administration

Trade Marks, Patents,
Designs and Copyright

24

An Interview with...

Alban Fischer, Vice Director General
and Head of the Patent Division

28

Law and Policy

The "Confederation's Attorney's
Office"

32

Using IP Information

Searches, the Fight against Counter-
feiting and Piracy, and Training

36

Annual Financial Statements 2018/2019

Equity Falls despite Operating
Profit

42

Photographs

Aspects of Law and Policy

Published by the Swiss Federal Institute of Intellectual Property of the Swiss
Federal Department of Justice and Police

Project management, concept, editing and translation: Swiss Federal Institute
of Intellectual Property

Editorial collaboration: Jost Dubacher, Journalistenbüro Niedermann, Lucerne

Design and graphic layout: Beat Brönnimann, grafonaut, Wabern

Photo idea and photos: Andreas Greber, Bern

Photographs:

Pages 3, 10, 11: Remo Eisner

Pages 6, 24: Andreas Greber

Pages 12, 13, 14, 15, 16, 17: IPI

Typesetting and proofreading: Typopress Bern AG, Bern

Printing: media f, Fribourg

© Copyright

Swiss Federal Institute of Intellectual Property

Stauffacherstrasse 65/59g, CH-3003 Bern

Tel. +41 (0)31 377 77 77

Fax +41 (0)31 377 77 78

www.ipi.ch

The annual report is published in German, French, Italian and English.
It is available free of charge and can also be downloaded as a PDF from
www.ipi.ch/annualreport.

To make it more easily readable, we have used the male pronoun only.
We thank our readers for their understanding.

Permission to reprint if source is cited. Please send a copy for our files.

October 2019



Catherine Chammartin, Director General

As Director General of the IPI, I am also an ex officio member of the Administrative Council of the European Patent Organisation. This means that I work at their headquarters in Munich on a regular basis. Together with colleagues from 37 countries, I supervise the European Patent Office (EPO), an authority with almost 7,000 employees, which processes well over 200,000 patent applications every year. Around 8,000 of these come from Switzerland. But more on that later.

Once the plenary session has come to the end of its agenda and the official meetings have been concluded, I meet with my colleagues in a smaller group. We share our experiences and discuss the latest happenings at national level.

For example, during the reporting year, Switzerland extended patent protection for medicines for children. With this extension, legislators created an incentive to invest in the development of medicinal products for children.

The informal conversations which run alongside European Patent Organisation meetings also provide an opportunity for in-depth discussions. Something currently on the minds of many of my colleagues is the relationship between their national offices and the European Office. This has been triggered by a trend, which has been evident for years, in favour of the European patent. More and more companies, researchers and inventors are no longer choosing Paris, Helsinki or Bern as the address for their application, but rather Munich.

Opinions on the best course of action to take are very divided. Mariana Karepova, my colleague from Austria, is of the opinion that the appeal of the European patent will continue to grow. She believes that, in the medium and long term, the role of national patent offices will shift more towards providing information and advice and promoting innovation. On the other hand, representa-

tives of the Scandinavian countries foresee that offering applicants an alternative to the European patent will continue to be one of their main tasks in the future.

I am sure you are keen to know what is Switzerland's position on this contentious issue. It is not an easy question to answer as our system has two key unique features.

As regards the obligation to provide information, this task is even stipulated in the Federal Act on the Statute and Tasks of the IPI. Part of our core business involves supporting companies by increasing their awareness of the economic opportunities that the Swiss IP rights system offers. Alban Fischer, Head of the Patent Division, explains on page 24 how he and his team achieve this.

In terms of national patents, Switzerland carved its own special path decades ago. Unlike most other member states of the European Patent Organisation, we do not examine patent applications for novelty or inventive step. As a result, there are questions raised in relation to the validity of Swiss patents – particularly when compared with the fully examined European patent.

The Swiss patent has become “unimportant and unwieldy”, criticises Thomas Hefti, Council of States representative for the canton of Glarus. For this reason, he submitted a motion which included a demand for the full examination of patent applications.

The Federal Council has already responded to the proposal which was submitted in March, and now the ball is in Parliament's court. As you can see, when it comes to the Swiss patenting procedure, just like its European equivalent, one thing is certain – exciting times lie ahead.



Envisioned. Created. Protected.

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

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

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

Research first, then register

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

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

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

Protection grants exclusivity

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

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

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

The IPI as an institution

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

The Swiss Federal Institute of Intellectual Property





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

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

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

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

The federal government's "attorney's office"

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

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

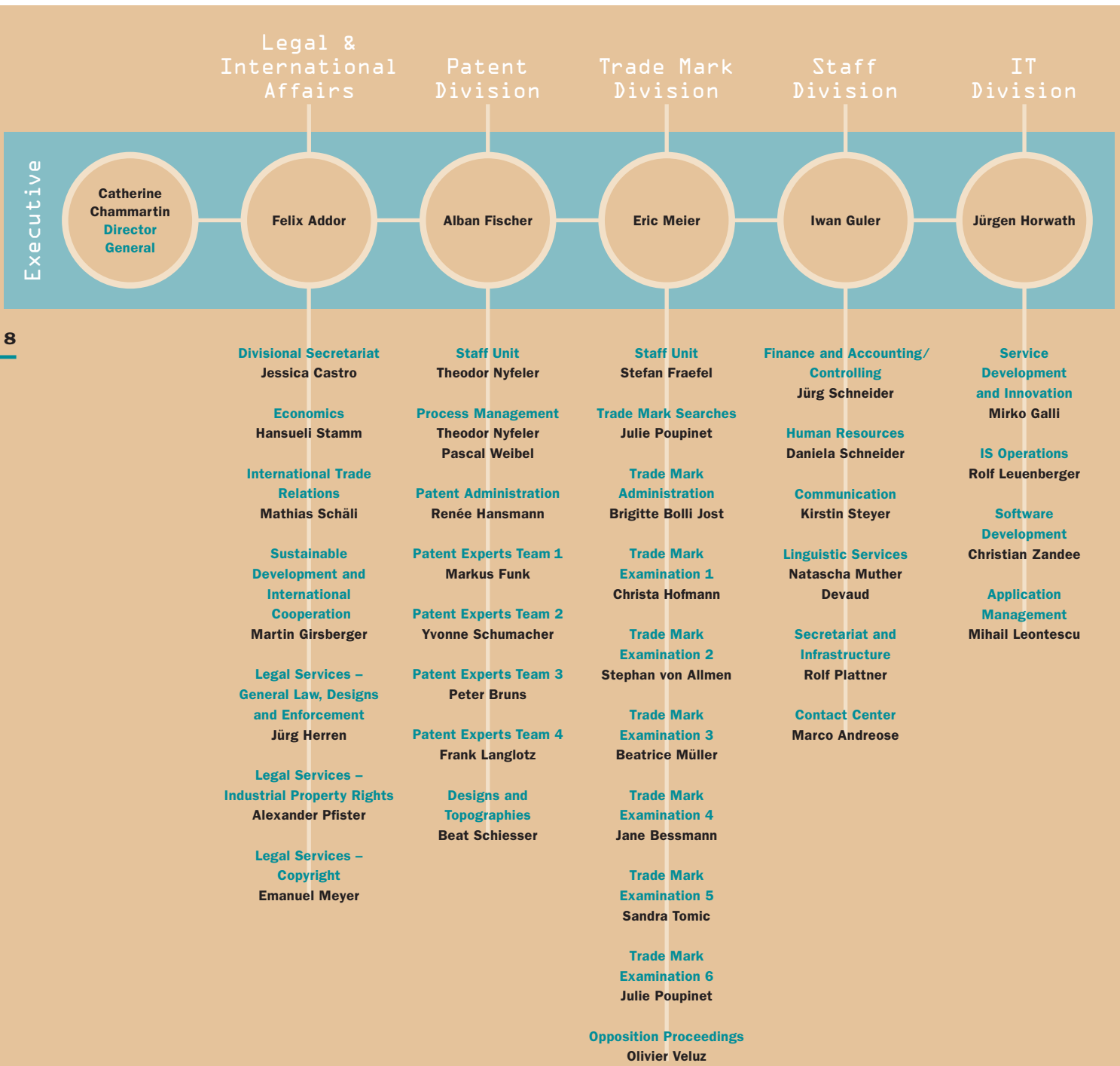
The IPI also provides information to artists, creatives and representatives of the Swiss economy about the IP rights system and the latitude that it offers. For this purpose, the IPI conducts courses and seminars on these topics as well as cooperates with Swiss higher education institutions.

Commercial services

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

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

Organigram







From left to right: Yves Bugmann, Peter Walser, Luc-E. Amgwerd, Evelyn Zwick, Felix Hunziker-Blum (President), Barbara Hübscher Schmuki, Beatrice Renggli (Vice President), Roman Boutellier, Sara Stalder

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

Felix Hunziker-Blum

Dr. iur., Attorney-at-Law, President

Beatrice Renggli

lic. iur., Vice President

Luc-E. Amgwerd

lic. iur., CEO Gjosa SA

Roman Boutellier

Prof. Dr. sc. math., Emeritus Professor of Innovation and Technology Management ETH Zurich

Yves Bugmann

lic. iur.

Barbara Hübscher Schmuki

lic. rer. pol.

Sara Stalder

Swiss Consumer Protection Foundation Manager

Peter Walser

Dr. sc. nat. ETH, Patent Attorney

Evelyn Zwick

Dipl. Phys. ETH, Patent Attorney

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



From left to right: Jürgen Horwath, Iwan Guler, Eric Meier, Catherine Chammartin (Director General), Felix Addor, Alban Fischer

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

Catherine Chammartin

Director General

Felix Addor

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

Alban Fischer

Vice Director General and Head of the Patent Division

Iwan Guler

Vice Director General and Head of the Staff Division

Jürgen Horwath

Vice Director General and Head of the IT Division

Eric Meier

Vice Director General and Head of the Trade Mark Division

July

1 July 2018

The founding of the sic! foundation for intellectual property, information and competition law

The journal for intellectual property, information and competition law sic! has been published since 1997 and is indispensable to the professional community. It is financed by the IPI and the Swiss International Association for the Protection of Intellectual Property (AIPPI Switzerland), as well as 14 other professional organisations. An independent editorial board is responsible for the content of the sic! journal. On 1 July 2018, the IPI and AIPPI Switzerland established a foundation of the same name for intellectual property, information and competition law. It is headquartered in Bern. The purpose of the foundation is to share information and foster discussion about Swiss intellectual property law, information law and competition law, as well as related legal fields including regional and international legal developments relevant to Switzerland. This is primarily achieved through the publication of the sic! journal. In addition, the sic! foundation is authorised to introduce measures or participate in measures taken by third parties, if they serve the objective of the foundation.



20 July 2018

Switzerland once again innovation world champion

The Global Innovation Index is published annually by Cornell University, INSEAD and the World Intellectual Property Organization. It compares the innovation performance of 126 countries. Once again, Switzerland performed extremely well in 2018, topping the global and European rankings and defending its leading position for the eighth time running. Switzerland was also ranked the worldwide leader in expenditure for research and development and in the quality of local universities. In second and third positions were the Netherlands and Sweden. For the first time, China broke into the top 20, while the USA slipped from fourth to sixth in the rankings. Switzerland ranked first in regard to the patent and IP-based assessment criteria. This was of particular significance, given that effective management of one's own IP is key when commercialising new products. Whoever anchors intellectual property management in their company's strategy protects their creations from counterfeiters and establishes an economic advantage. In Switzerland, individuals and companies can register inventions, trade marks and designs with the IPI.

September

21 September 2018

Keeping up to date with the new "Patents and Designs" newsletter



In its new newsletter, the IPI reports several times a year on the latest news and shares valuable information from the fields of patents and designs. One topic of focus is the gradual introduction of the electronic IP rights administration system (ESV). With this system, the IPI is modernising its internal processes, which will offer new possibilities to users of the Swiss IP rights system in the future.

October

22 October 2018

Change in practice – from the “infringement test” to “Medeva”

In response to the Federal Supreme Court decision BGE 4A_576/2017 of 11 June 2018, the IPI retroactively changed its practice for granting supplementary protection certificates (SPCs) from the same date. It is no longer essential that the product to be protected falls within the scope of protection of the basic patent (as in BGE 124 III 375 “Fosinopril”), but rather that the product is detailed in the patent claims in a form which can be recognised by a person skilled in the art. This new practice is based on the more recent practice of the European Court of Justice (ECJ). The ECJ takes into account whether the product in the SPC application is stipulated in the claims of the basic patent (“Medeva”, C-322/10) or whether the patent claims implicitly yet necessarily and specifically relate to the active ingredient or active ingredient combination (“Eli Lilly”, C-493/12). With “Tenefovir”, the Federal Supreme Court departed from the old “Fosinopril” practice (BGE 124 III 375), which examined whether the product fell under the scope of protection of the basic patent (known as the infringement test). Since 2014, the IPI has been working with the patent attorney associations (VESPA, VSP and VIPS), AIPPI Switzerland, the industry associations concerned (Interpharma, scienceindustries, vips and Intergenerika) and an external expert, on adapting its practice on the basis of recent European case law. The old practice was retained up until the procedure, which resulted in the Federal Supreme Court’s “Tenofovir” decision, had been concluded.

November

8 November 2018

Two new IPI executive board members

The Institute Council of the IPI appointed Jürgen Horwath and Iwan Guler as new members of the Executive Board in the year under report. Iwan Guler’s appointment as Head of the Staff Division came into effect in April 2019. He succeeded Ueli Buri, who had been appointed as the new Data Protection Commissioner of the Canton of Bern. Jürgen Horwath became an executive board member on 1 January 2019. With his appointment, the IPI’s senior management was reinforced with new competencies from the digital world.



Jürgen Horwath (born 1973) graduated with a Master’s in Telematics from the Graz University of Technology and worked internationally for technology companies before joining the IPI at the beginning of 2012. At the IPI, he had been in charge of the renewal of the electronic IPI rights system – a major project to modernise the IPI – which was successfully concluded in 2017.



Iwan Guler (born 1983) has a degree in Finance & Banking. Before joining the IPI, he was in a business management role at the SRG SSR.

15 November 2018

15 years of ip-search

The IPI has been providing patent and trade mark searches for more than thirty years. But in November 2003, following a steady growth in demand for professionally prepared bases for decisions on trade marks and patents, the IPI decided to give its services its own name and platform in the form of “ip-search”. Since then, ip-search has stood not only for premium quality patent and trade mark searches, but also for certainty, discretion and reliability. Since ip-search began, its initial patent search team of 35 experts has grown to include more than 50 specialists with industry experience from all technical fields. Today, decision makers from across the world rely on the services of the IPI and our experts have carried out around 10,000 patent searches to date.

December

21 November 2018

Bio Innovation Day in Geneva – the IPI awards prizes for inventions



At the Campus Biotech in Geneva, researchers and start-ups presented a total of 36 innovations to potential investors, industry representatives and technology transfer experts. The IPI sponsored a Bio-Innovation Prize for two projects. A patent expert from the IPI was a member of the jury, which also awarded an Incubator Prize. In his presentation, he took the opportunity to shed light on the importance of patents for start-ups. It is not only important to manage your portfolio, he said, but also to keep an eye on your competitors' patents. An Assisted Patent Search can also be of help during the inventing phase. This involves the inventor taking a close look at their new ideas and examining whether they can be patented.

22 November 2018

The IPI once again a main partner of the Swiss Innovation Forum

On 22 November 2018, the Swiss Innovation Forum (SIF) took place in Basel. The IPI was a main partner and the motto of the event was "Surprise – the key to innovation and growth". In a breakout session, the IPI and Innosuisse showcased how a Swiss SME continues to drive cutting-edge innovation. VAT AG, an SME from the tranquil town of Haag, St. Gallen, manufactures highly specialised valves for the production of televisions, smartphones and electric cars. High-value patents play a crucial role in their innovation strategy. Michael Zickar, Head of Core Technology at VAT, explained during a one-hour session how SMEs can sustain top-level innovation management throughout the years. With the help of innovation expert Daniel Huber, visitors also learned how they can remain creative and where they can obtain support.

13 December 2018

Successful interregional cooperation in the field of patents and health



Switzerland presented two proposals concerning the field of patents and health, together with Argentina, Brazil, Chile and Canada, to the WIPO Standing Committee on the Law of Patents (SCP) in the year under report. Both proposals were incorporated into the Committee's work program on 6 December 2018. This signified a breakthrough in international cooperation between countries with often opposing views on the topic of patents and health. It represented an encouraging step for Switzerland and the supporting countries. The SCP is responsible for normative work in the field of international patent law and the complex relationship between patents and health is regularly discussed by the Committee.

January

1 January 2019

Changes to patent law

A partial revision to the Patents Act and its implementing provisions came into force, together with an ordinary revision of the Therapeutic Products Act, on 1 January 2019. This had been decided by the Federal Council at its meeting on 21 September 2018. The partial revision introduced the following improvements for medical personnel, pharmaceutical manufacturers and consumers. Firstly, restrictions to free choice of medical treatment were removed, which was the result of a change in case law by the European Patent Office's Enlarged Board of Appeal. In addition, the prescription of medicines by medical personnel in individual cases and the individual preparation of medicines in pharmacies were excluded from the effect of a patent. Secondly, the revised Patents Act encourages the development of safe medicinal products for paediatric use. To counter the lack of medicines specifically for children, it now provides for a six-month extension to protection for pharmaceutical manufacturers as compensation for carrying out paediatric studies for medicinal products. This extended patent protection can be obtained via either a paediatric extension to a supplementary protection certificate or via the new paediatric protection certificate.

February

3–5 February 2019

Technical cooperation planned with Iran



Since 2016, the IPI has been exploring the possibility of a technical cooperation project with Iran in the field of intellectual property. To this end, several meetings took place in the year under report, as well as a mission by IPI representatives to Teheran. In response to a request by Iran, two seminars were offered on the topic of commercialising intellectual property in February and April 2019. At the same time, an external expert and an expert from the IPI paid a visit to Iran to discuss plans, which was organised in close collaboration with the Swiss Embassy in Teheran. The aim of the visit was to meet with the most relevant authorities and interested groups from the field of IP and to assess what is needed for the planned cooperation. The next step is to prepare a project proposal with a description of the activities planned with Iran.

11 February 2019

Innosuisse and the IPI – a partnership for Swiss innovation

SMEs and start-ups should be provided with the best conditions to make their innovations economically viable. This was the incentive behind a collaboration between the IPI and Innosuisse, the Swiss Innovation Agency. The Assisted Patent Search is at the heart of the collaboration. Recipients of Innosuisse funding can take advantage of a free, one-off patent search. This offers

inventors the opportunity to take a close look at their ideas, find out if it is new and consider how they may want to proceed, for example by meeting investors or filing a patent.

13 February 2019

Barbara Hübscher Schmuki elected to the IPI's Institute Council

At its meeting on 13 February 2019, the Federal Council elected Barbara Hübscher Schmuki as General Secretary of the Swiss Federal Department of Justice and Police (FDJP), with effect from 1 March 2019. She was also elected to the Institute Council of the IPI. In the role of General Secretary of the FDJP and member of the Institute Council, she succeeded Matthias Ramsauer, who transferred to the position of General Secretary of the Federal Department of the Environment, Transport, Energy and Communications (DETEC) as of 1 January 2019.

14 February 2019

More than half a million trade marks in Switzerland

In 2018, almost 17,000 trade marks were applied for at the IPI. As a result, there were more than 500,000 trade marks in force for the first time in Switzerland. The exact number of trade mark applications was 16,880, which represented a slight decrease of 0.5% in comparison to 2017. Following a review of the relevant applications by examiners at the IPI, a total of 14,314 trade marks were registered in the IP rights database, Swissreg, in 2018. This figure also includes applications from earlier time periods that were later entered in the register. 97% of applications are received by the IPI electronically via eTrade-mark.

An Overview of the Year at the IPI

March

12 March 2019

Counterfeit goods – watch out when bargain hunting!

Online shopping is very popular among Swiss consumers. However, not everything delivered to Switzerland is necessarily legal. The number of counterfeit goods ordered online and delivered by post or courier is rising. The 2018 Customs Statistics from the Federal Customs Administration (FCA) indicated an increase in consignments seized from both tourist and commercial traffic in the previous year. This is why it is important that consumers are aware of the risk of buying counterfeit products when shopping online. For this reason, the IPI is involved in the fight against counterfeiting and piracy, both domestically and within international organisations.

21/22 March 2019

Initial help for start-ups – IPI workshop at the START Summit

Technologies and entrepreneurship were the focus of the START Summit in St. Gallen on 21 and 22 March 2019. At a summit workshop, two IPI experts showed start-ups how they can protect their digital innovations. They explained step-by-step the rules for protecting copyright, trade marks and patents to the around 30 workshop participants. Because whether a company or a start-up, knowing what your possibilities are puts you at an advantage. The presentation in St. Gallen was part of the IPI's commitment to the START Summit.

25 March 2019

Spring meeting with the associations

On 25 March 2019, the annual spring meeting with intellectual property associations took place at the IPI. A total of 17 representatives from the AIPPI, AROPI, Economiesuisse, INGRES, LES-CH, LIPAV, VESPA, VIPS and VSP had the opportunity to present their concerns and discuss topical issues with the executive board. The informal lunch which followed the meeting offered an opportunity for more in-depth discussion of certain topics. The spring meeting is a valuable addition to the bilateral exchange with the associations and a firm fixture in the IPI's annual programme.

27 March 2019

Visit to the Regiosuisse Annual Conference 'Public Promotion of Innovation in Switzerland'

At the annual conference 'Public Promotion of Innovation in Switzerland' held by Regiosuisse on 27 March 2019, a delegation represented the IPI as a partner and service provider for the public intermediaries in innovation promotion. New contacts were made and existing relations were strengthened with representatives from Innosuisse, the SECO, officials from the cantonal funding authorities, as well as members of interested associations. The IPI has been maintaining its network of contacts for years and periodically adds to this network.

April

10 April 2019

The IPI at the Exhibition of Inventions in Geneva

Year after year, the International Exhibition of Inventions brings together more than 700 exhibitors from 40 countries, with companies, inventors, organisations, as well as private and state institutes exhibiting their inventions. The IPI was in attendance once again in 2019 with its own stand.



17 April 2019

Lower fees for Swiss patents

From 1 July 2019, new annual fees came into effect for Swiss patents and supplementary protection certificates (SPCs). The Federal Council had approved the revision of the IPI's Fee Ordinance on 17 April 2019. A Swiss patent is now less expensive over its entire maximum lifespan. The annual fees continue to increase in line with the term of the patent – but initially in smaller increments and in larger increments towards the end of the term. This means that patent owners now save 1,440 Swiss francs over the entire maximum lifespan of a patent. Supplementary protection certificates (SPCs) are added onto the term of patents; their annual fees therefore follow the progression of the annual patent fees and as such are higher than they were previously. For a patent with an SPC, however, the fees over its entire lifespan now amount to 210 Swiss francs less than previously.

May

18 April 2019

Intellectual property in numbers

Which sector registers the most designs in Switzerland? How many patents are in force? On the IPI's new statistics page, visitors can find fascinating figures on IP rights in Switzerland. The figures are illustrated with graphics, while a slideshow continually runs information on the individual IP rights.

www.ige.ch/statistics

30 April 2019

The measures introduced to combat 'Swissness' misuse yield results

Successful measures abroad and fewer offences in Switzerland – the IPI reported a positive result for the year 2018. In 2018, the IPI did not have to initiate any criminal proceedings; the companies subjected to their 78 interventions cooperated with the authorities. The most success was in the fight against wrongful use of the "Switzerland" brand in India where 'Swissness' misuse is anchored in national law. This is also the case in China. The Chinese Trademark Office consistently rejects applications which contain wrongful use of the Swiss cross or the word "Swiss" as part of the trade mark. As a result of this change in Chinese trade mark registration practice, the IPI only had to intervene in 34 cases in China in 2018 (69 in the previous year). In China, the legal framework also allows for the confiscation and destruction of products which are wrongfully advertised as being "Swiss Made". The bilateral dialogue with China, which culminates each year with a meeting in Beijing or Shanghai, is evidently bearing fruit.

8 May 2019

To Ticino for the innovation protection event

"How can I protect my innovation?" This question was the focus of a public event on 8 May 2019 at the Tecnopolo Ticino in Manno. SMEs, start-ups and representatives from higher education institutes participated in the event organised by AGIRE (The Innovation Agency of Southern Switzerland) and the IPI. IPI experts provided attendees with information on the various options for protecting IP and also presented the services offered by the IPI. In the future, the IPI will offer assisted patent searches at the AGIRE location in Manno.

22 May 2019

Geographical indications – Swiss producers should benefit from a simple international protection system

Bündnerfleisch, *Formaggio d'alpe ticinese* or the designation "Swiss" for watches – geographical indications offer an important competitive edge in the global market. This is why it should in future be possible for Swiss producers to obtain protection for such indications in all member states of the Geneva Act of the Lisbon Agreement via a simple, cost-effective application procedure. The Federal Council therefore opened the consultation procedure on Switzerland's accession to the Geneva Act on 22 May 2019, which was concluded on 20 September 2019.

23 May 2019

Speed dating for SMEs – tips for protecting innovation



On 23 May 2019, companies from all over Switzerland gathered at the SEF.Wachstum (meaning 'growth') event. The IPI was present as a partner of the event. During the 'SpeedDating4Growth' part of the programme, experts from the IPI answered questions about protecting innovation. SEF.Wachstum is an event organised by SEF4KMU. SEF4KMU, an initiative of the Swiss Economic Forum (SEF) and supported by reputable partners, including the IPI, is aimed at Swiss SMEs and start-ups looking to grow their businesses.

Trade Marks, Patents, Designs and Copyright

At the source of many achievements is an idea. Innovative performance and creative activities have transformed Switzerland – a land lacking in natural resources – into an economic and cultural success. It is therefore in everyone's interests to properly protect the intellectual property of authors, inventors and companies. Two of the IPI's core tasks are the administration of the various IP rights and the supervision of the collective rights management organisations.

18

Trade Marks

The substantive and formal examination of new trade mark applications is part of the IPI's core business. In the year under report, IPI experts examined over 17,000 words, combinations of letters, combinations of words, graphic images, three-dimensional forms, slogans, sequences of sounds, as well as combinations of these elements. In addition to these new applications, there were approximately 16,000 trade marks already registered abroad, whose protection was then extended to Switzerland.

Around 41% of national applications qualified for an 'early trade mark examination' during the year under report. When applicants choose this procedure, they have to compare online the goods and services for which their trade mark is to be protected with the terms specified by the IPI. If there are no apparent problems with an application, it is entered in the trade mark register within a maximum of six working days.

Where an application for registration had to be examined in more depth, the processing period lasted four to five months in the

year under report, somewhat longer than the long-term average. This is a consequence of the significant rise in applications in 2017/2018. The Trade Mark Division has since introduced measures which will considerably reduce processing times over the long term.

Patents

"Innovation is getting cheaper – lower fees for Swiss patents." What sounds like a headline in a tabloid newspaper is actually the title of an IPI media release from 17 April 2019. On this day, the Federal Council approved the amended IPI Fee Ordinance. To keep a patent in force, fees are payable from the fourth year after filing until the patent expires after its 20th year. The amount of the fee increases with every year. With this staggered increase, the Fee Ordinance traces the economic cycle of the exploitation of the patent.

The first years following the filing is when the owner lays the foundation for the commercial exploitation of their IP right. They

invest in a product, whose chances of success are still uncertain. There are therefore no high fees to pay in this phase. Later, however, when the revenues from exclusively exploiting the invention are finally flowing, higher fees are hardly of any consequence. Keeping the patent in force after the 18th or 19th year after filing proves that the owner is benefiting from protecting their patent.

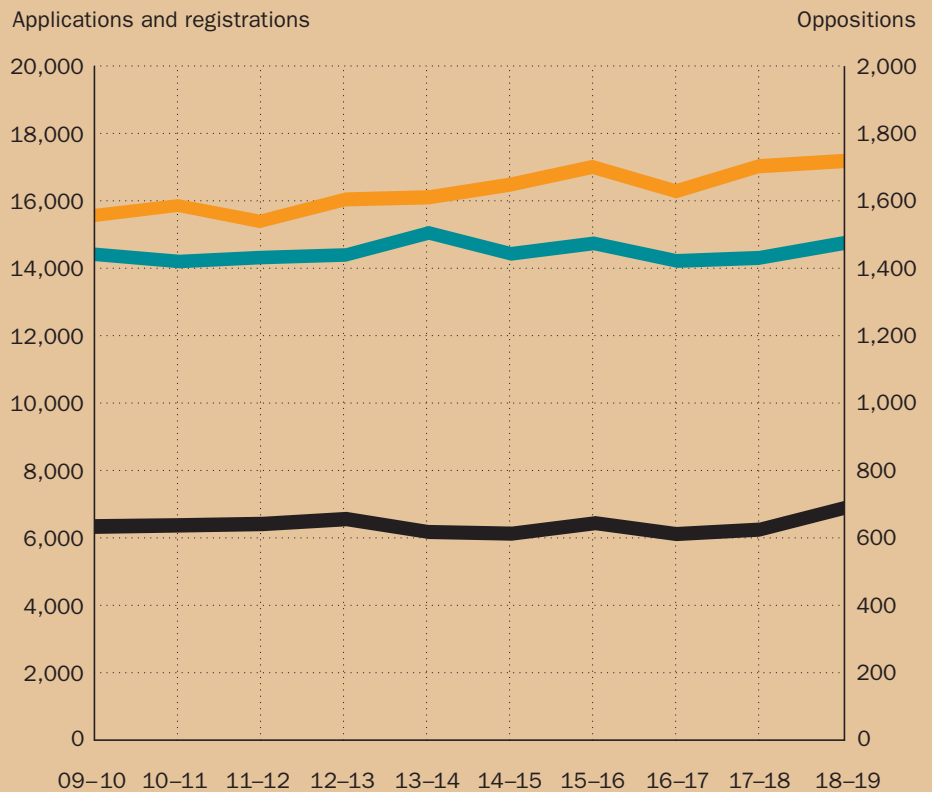
It now costs 7,060 Swiss francs to keep a patent in force until the 20th year after filing, meaning that patent owners save 1,440 Swiss francs over the entire maximum lifespan of a patent. The Federal Council also consolidated this progressive element in the Fee Ordinance. While patent renewals have become less expensive by up to 160 Swiss francs between the 4th and 18th year, the costs for keeping a patent in force for the 20th year have increased from 900 to 960 Swiss francs. This change came into effect on 1 July 2019.

During the year under report, 7,127 annual fees were paid in Switzerland to keep national patents in force and 121,697 annual fees to keep European patents in force. Patent renewals are the IPI's most important source of income. They are also used to cover the costs of sovereign and non-profit services as defined in the Statute and Tasks of the IPI. For the coming year, the IPI is expecting a reduced income of around 6.5 million Swiss francs, which will lead to a temporary reduction of its equity base.

There has been little change in the number of applications in the year under report. In this year, the IPI examined 2,048 new patents. Within the scope of its statutory mandate, it also provided information services to the Swiss business community by carrying out 774 assisted patent searches. This corresponds to an increase of 12% compared to the previous financial year.

Trade Mark Trends

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



- National applications
- National registrations
- Oppositions filed

Trade Marks

	2018/19	2017/18	% change from previous year	2016/17	2015/16	2014/15
National						
Trade mark applications	17,231	17,109	0.7	16,229	16,995	16,202
– expedited service	1,461	1,114	31.1	992	931	968
– e-filings	16,663	16,554	0.7	15,663	16,447	15,440
Registrations	14,763	14,238	3.7	14,172	14,683	14,351
Pending applications	9,106 ¹	8,307	9.6	7,129	6,705	5,913
Renewals	10,914	11,519	-5.3	10,847	10,443	11,263
Oppositions						
New cases	684	616	11.0	605	645	602
Closed cases	664	606	9.6	661	620	632
Pending cases	757 ¹	705	7.4	695	751	721
International						
International registrations designating Switzerland	16,840 ²	15,631	7.7	15,342	13,191	13,794
Renewals	13,652 ²	13,863	-1.5	13,821	12,597	12,974

20

Patents

National patent applications and patents

Patent applications submitted	1,658	1,591	4.2	1,795	1,819	2,016
– Swiss origin	1,285	1,305	-1.5	1,464	1,440	1,482
– foreign origin	373	287	30.0	331	379	534
Patents granted	615	718	-14.3	646	639	748
Processed patent applications	2,048	2,238	-8.5	2,200	2,002	2,323
Pending patent applications	5,969 ³	6,271	-4.8	6,820	7,110	7,180
Patents in force	7,127 ³	7,304	-2.4	7,371	7,368	7,540

European patent applications and patents

Submitted to the Institute and forwarded to the EPO	30	39	-23.1	36	46	83
European patents granted designating Switzerland and Liechtenstein ⁴	136,472	107,728	26.7	96,065	76,878	58,226
European patents paid designating Switzerland and Liechtenstein	121,695 ³	111,172	9.5	106,007	100,617	97,804

International patent applications (PCT)

Applications submitted to the Institute and forwarded to WIPO	59	93	-36.6	128	195	186
--	----	----	-------	-----	-----	-----

Designs

Number of filings	671	780	-14.0	866	842	833
– number of objects	2,687	2,888	-7.0	2,752	2,635	3,162
Number of second term renewals	408	556	-26.6	514	516	551
Number of third term renewals	333	374	-11.0	418	360	402
Number of fourth term renewals	218	169	29.0	114	88	117
Number of fifth term renewals	84	86	-2.3	81	89	81
Annulments	822	839	-2.0	835	856	798
Designs in force	9,500 ⁵	9,649	-1.5	9,723	9,689	9,686

Changes in the methodology of data collection possible.

¹ Figures as of 05.07.2019 ² Sources: EPA, WIPO; figures as of 05.08.2019

³ Figures as of 04.07.2019 ⁴ Sources: EPA, WIPO ⁵ Figures as of 11.07.2019

Design

The year under review was characterised by a marked decline in the number of new designs registered in Switzerland. The reasons for this are not yet clear. An online survey conducted by the IPI points to a need for action in the enforcement of design rights and in information/training. Initial measures in the field of information/training have already been initiated in close cooperation with the communication division.

Like patents and trade marks, design rights can also be registered internationally. The legal framework that underpins this is the Hague Agreement Concerning the International Registration of Industrial Designs. The Agreement was ratified by additional countries in the reporting period. No direct impact on the number of new registrations from Switzerland has been identified so far.

Bilateral cooperation with the European Union Intellectual Property Office (EUIPO) is currently limited to the annual liaison meeting of national IP offices. This is because the number of countries participating in the design-related project CP10 – Criteria for assessing disclosure of designs on the internet – has been heavily restricted by the EUIPO.

On the other hand, a milestone was reached in cooperation with the World Intellectual Property Organization (WIPO) as Swiss design data was entered in the Global Design Database. Meanwhile, the 12th edition of the Locarno Classification came into force on 1 January 2019. So far, this international classification has been handled without any problems.

The IPI is involved in technical cooperation with developing countries within the scope of SECO projects. During the year under review, a member of the design team visited Indonesia and Ghana where he successfully ran training courses for the responsible authorities on the ground.

Monitoring Office for Technological Measures

The Monitoring Office for Technological Measures (OTM) is the federal government's specialist authority for determining the effects of technological measures that protect works and other protected subject matter. These refer, in particular, to copy barriers and access controls for copyright-protected content, such as pieces of music or films.

The OTM takes action if it finds or receives evidence that a technological measure impairs the authorised use of copyright-protected content. It can carry out investigations based on its own observations or it can become actively involved as a result of reports by third parties. In the reporting year, the OTM did not receive any reports from third parties.

This year, the OTM continued its examination into the portability of online content and geoblocking. Subscribers of online content, e.g. film streaming services, can often only use their subscription in Switzerland. Due to geoblocking measures, they have limited or no access to these services when abroad. The OTM investigated whether geoblocking measures go too far and prevent permitted uses of the content. For this investigation, the OTM is in contact with various consumer protection organisations, online content services, rights owners and collective rights management organisations.

Supervision of the Collective Rights Management Organisations

For individual composers, singers, authors and filmmakers, direct management of copyright often requires a disproportionate amount of effort. This is why the law provides for the establishment of collective rights management organisations (CMOs). There are currently five CMOs in Switzerland representing over 76,000 creative artists. They authorise the use of works upon payment of a fee, collect remuneration where the law permits the direct use of works for remuneration, and distribute the royalties to the beneficiaries.

IP Rights Administration

The IPI supervises the Swiss CMOs together with the Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights (FACO). To this end, the IPI engages in regular dialogue with the CMOs.

In 2016, the IPI changed its practice concerning costs incurred by appeals against CMOs. The costs for handling an appeal are now passed on to the CMO, even if the investigation reveals that no infringement nor improper conduct took place on the part of

the CMO. The Federal Administrative Court confirmed the legality of this practice concerning costs with its judgment of 10 October 2018.

22 Overview of the Swiss Collective Rights Management Organisations

Collecting Society	SUISA	SUISSIMAGE	PROLITTERIS	SSA	SWISSPERFORM
Year founded	1923	1981	1974	1986	1993
Repertoire	Non-theatrical musical works	Audiovisual works	Literary and dramatic works, as well as visual works of art	Spoken, dramatico-musical, choreographic and audiovisual works	Related rights
Members	Composers, writers and music publishers	Script writers, directors, producers and other rights holders of the film branch	Writers, journalists, visual artists, photographers, graphic artists, book, newspaper and periodical publishers as well as art publishers	Dramatists, composers, script writers and directors	Practising artists, producers of sound carriers and audiovisual carriers as well as broadcasting companies
No. of members including principals	38,573	3,756	12,687	3,186	16,573
Gross revenue from the management of rights in Switzerland and abroad in millions of CHF					
2017	152.2	65.7	34.6	22.9	60.5
2018	152.6	59.6	36.4	23.3	58.5



"Patent information is worth a lot of money"

The Patent Division of the IPI examines patent applications and maintains the national patent register. It also has a legal mandate to provide information on intellectual property rights systems and the state of the art. Alban Fischer, Head of the Patent Division, discusses how he carries out this task and describes the services his 75-strong department of staff provides for Switzerland as a location for innovation.



Alban Fischer, Vice Director General and Head of the Patent Division

How well do the Swiss understand patenting, Mr Fischer?

In sectors such as the pharmaceutical industry, but also increasingly in the higher education innovation and start-up scene, the protection of intellectual property is dealt with very professionally.

The key word is professional – what about those who don't deal with intellectual property (IP) on a daily basis?

I think it's clear to most people that effective IP rights systems are highly important for an innovative, export-oriented economy. Yet, the legal, scientific and, above all, economic aspects of the IP rights system have to be explained and justified time and time again. This is why we do a lot of educational work – with our assisted patent searches for the general public, with our publications, with our courses, and by being present at events.

Essentially, a patent is a deal between the state and an inventor – legal protection in exchange for publication.

Why is disclosure so important?

The patent system works like a set of scales; on the one side, you have the inventor's interest in protecting their IP; on the other, you have society's demand for a state of the art that is as transparent as possible.

What's the reason for this demand?

Patent information is a prerequisite for all systematic research and development work as it prevents resources being poured into inventing the same product or process multiple times.

The IPI has a Contact Centre for specific questions, which can be reached at 031 377 77 77. Who can use this service?

Anyone who is innovative or creative. Our experts will answer any questions concerning patents, trade marks, designs and copyright.

How often do people ask if unknowingly using others' intellectual property is a punishable offence?

I don't know off the top of my head how often, but it happens.

And what's the answer to that question?

Ignorance is no defence. With regard to IP-related matters, penalties are never imposed ex officio. Infringement of third-party intellectual property rights can only be prosecuted upon request. The rights owner must therefore first become aware of the infringement and then initiate proceedings against it.

The IPI employs more than 50 patent experts in the fields of physics and electronics, chemistry, engineering, and life sciences. What services do they provide for interested members of the public?

Firstly, they are responsible for examining patent applications. Secondly, they are able to extract data from a practically arbitrary number of patent specifications and present it in a format suitable for customers. Two concepts play a central role here – freedom to operate (FTO) and verifying novelty. By carrying out a novelty search, an inventor can avoid investing in an invention that has already been made somewhere else in the world. By having a freedom to operate search carried out, he or she can make sure that they're not infringing the rights of third parties.

The IPI also supports companies in strategic questions. What can it offer a manager?

The magic word is metadata. Patent information is much more than the disclosure of an invention or an innovative process. It also contains information on the owner of the patent, its origin, the inventor and the technical field of the invention. By not only looking at a single patent specification, but also, for example, the patent portfolio of a company or an entire country, we can obtain much more information.

For example?

An experienced patent searcher can find out the other areas in which the owner of a patent is conducting research. Or, they can search for details of the partnerships that the owner has entered into. And because patents are only valid in certain countries and regions, it is usually fairly obvious which markets the patent owner is operating in. Moreover, they can gain general information on partners and competitors. We're talking about classic business intelligence here.

How up-to-date is the information you provide?

Given that we also have access to published filing details, our information is very up-to-date. At the moment, for example, we are seeing that the new 5G wireless network has triggered a huge increase in research activity. Our engineering experts have noted that the number of patents relating to the Internet of Things and autonomous mobility are soaring here in Europe, but also in Asia and the USA.

Some patent attorneys and information brokers offer patent searches, too. How does the IPI set itself apart from them?

Private providers work with the same basic information as the IPI does. On the often cross-border market for commercial searches, we are ordinary competitors operating under the brand name ip-search.

However, unlike private providers, the IPI collects 50 million Swiss francs in annual fees each year...

In terms of how fee revenue is used, legislators have made a clear distinction between our commercial services and our information mandate. Our commercial services must be cost covering, meaning that no cross-subsidisation is allowed (which, by the way, makes us one of the most expensive providers on the market). Income from fees is reserved solely for sovereign activities for Switzerland as a location for innovation. We use this money to provide free information and to share our IP know-how with authorities, higher education institutions and other non-profit organisations.

What does this mean in concrete terms?

Our collaboration with the National Centre of Competence in Research (NCCR) Chemical Biology's research project is a good example of the support we offer. The NCCR runs boot camps where young researchers participate in two full-day intensive courses to find out if their research results are suitable for commercialisation. One of our life sciences experts attends each

An Interview with...

boot camp and is on hand to analyse which aspects of a technical work are really novel. Or, they can show how to translate a scientific discovery into a patent specification.

The Assisted Patent Search is a service aimed directly at inventors. What's it about?

We launched the Assisted Patent Search 14 years ago because we saw that there were no commercial services providing basic information. Here at the IPI, any inventor, researcher, start-up or SME representative can ask questions about the patent system and comb through the relevant patent literature with one of our experts.

26

How many assisted searches did the IPI carry out during the reporting year?

A good 750.

Who are typical clients?

Many work at the interface between higher education and entrepreneurship in what is known as the 'innovation ecosystem', which brings us back to the NCCR Chemical Biology research project. At one of their boot camps, ETH engineer Daniel Steitz from Aargau gained initial insight into the quality of his patent portfolio. He later founded a start-up and spent a day at the IPI in Bern doing an assisted search.

What was he interested in?

He and his team work in the area of metalorganic frameworks (MOF), a new class of materials which experts say has huge potential. With the patent landscape analysis search, my colleague Christian Moser showed Mr Steitz who his potential competitors are.

Novomof (the name of his company) was one of the finalists for the prestigious 2017 Swiss Technology Award (STA).

Does that ring a bell?

Yes, it does. I'm a member of the jury for the STA. However, I'm sure that Novomof would have made it to the final without my vote. In my opinion, the fact that my colleagues and I have been involved with a high-tech start-up in various stages of its development shows that our fee-funded services are well known and valued within the innovation ecosystem. However, we are less visible to SMEs.

Why do you think that is?

Many SMEs are highly innovative but they don't have a systematic and documented IP strategy. Also, their day-to-day opera-

tions are very much focused on the upstream and downstream companies in the value-added chain. Getting a birds-eye view of the state of the art therefore often gets neglected, not least because of its dynamic character.

Is it not enough for an SME to ask the IPI or a patent attorney for advice if they have a specific IP-related problem?

To give an example, someone who only deals with the subject of IP rights when they first receive a warning letter from a competitor has generally already invested quite a lot. And they have potentially lost all of this money.

What would you advise in such a situation?

You can never rule out a mutually agreeable solution in the form of a licence agreement with the owner of the patent in question. However, a licence comes with a price tag. This is why, as a rule, the earlier in the innovation process the legal aspects of IP protection are considered, the cheaper it will work out in the end. Patent information is worth a lot of money. That message needs to be heard more clearly.

What are your plans with regard to this?

Organisations such as the innovation agency Innosuisse, regional and cantonal economic development agencies, trade associations, organisers of enterprise awards and also associations of inventors, work with innovative SMEs on a daily basis. Our aim therefore is to strengthen our collaboration with these intermediaries.



The "Confederation's Attorney's Office"

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

28

'Stay down' only

14 December 2018 was a special date in the history of the IPI. The National Council unanimously approved the Federal Council dispatch on the revision of the Copyright Act with only two minor amendments. The matter was then discussed by the Council of States in the spring session. The lower chamber proposed some modifications concerning public libraries' obligation to pay remuneration and related rights for publishers. However, it mostly followed the first chamber. In doing so, both chambers of Parliament supported the compromises drafted by the copyright working group (AGUR12), presided over by the IPI. The aim of the new copyright law is not only to utilise the opportunities of digitalisation, but also to provide an instrument for combating piracy. One of the cornerstones of the AGUR12 proposal was particularly undisputed – namely the 'stay down' rule. In contrast to the new EU copyright reform passed in April 2019, the current draft bill does not impose a general obligation on platform operators to prevent copyright infringement. It simply seeks to ensure that infringing content which has been the subject of a notification is not re-uploaded. This would prevent Switzerland from being a home to pirated content. The AGUR12 compromise is also more practice-oriented than the EU when it comes to the subject of data mining. The goal is to make it generally possible to link data free

of charge in Switzerland. The EU, on the other hand, is introducing restrictions on data mining. The only exceptions are for research organisations and cultural heritage institutions.

Dispute over the patentability of plants

Investments in research and development should also be cost-effective in the development of seeds, which is why patents for genetically modified plants exist in most countries – including Switzerland. Not so clearly defined is the question of whether this also applies to plants which are obtained by essentially biological processes. This has been the subject of an on-going dispute between the seed industry and patent critical non-governmental organisations (NGOs) at the European Patent Office (EPO). In a spectacular decision in 2015, the Enlarged Board of Appeal of the EPO sided with the industry and approved patents for new plants produced by essentially biological means. The defeated NGOs subsequently intensified their campaign politically, which led the Administrative Council of the European Patent Organisation to change the legal bases in 2017. The effects of the more restrictive practice were felt by the Basel-based agro-technology company Syngenta. It lodged an appeal against a negative examination decision by the EPO and won its case on 5 December 2018. The Technical Board of Appeal ruled that the modified pro-

visions breach the European Patent Convention, which caused a certain amount of confusion amongst industry experts. Like other member states of the European Patent Organisation, Switzerland is also affected as plant patents granted in Europe are also valid in Switzerland. What happens next remains to be seen. Discussions are in full swing at political level and the Enlarged Board of Appeal is yet to comment on the legal issue.

Change in practice for supplementary protection certificates

In mid-2018, the IPI changed its granting practice for supplementary protection certificates (SPCs) for medicinal and plant protection products. This was due to a judgment by the Federal Supreme Court, which ruled that patent protection may only be extended if the patent claims at least implicitly (but recognisably) relate to the product authorised by Swissmedic. This essentially concerns whether the product for which a SPC is required is covered by the specific subject of protection or if it falls under the broader scope of protection of the patent. This stricter practice, introduced by the court in Lausanne, is based on the recent decisions of the European Court of Justice (ECJ). For some time now, the ECJ has taken into account whether the product in an SPC application is stipulated in the claims of the basic patent or whether the patent claims implicitly yet necessarily and specifically refer to its active ingredient.

Right to continued use of the Swiss coat of arms

The 'Swissness' legislation, which entered into force at the beginning of 2017, also prohibits the use of the Swiss coat of arms for commercial purposes. However, for years, some companies and organisations have invested in a market presence in which the Swiss coat of arms plays a key role, and without which would lose its appeal. This is why the new Coat of Arms Protection Act contains an exception, which allowed affected institutions to apply up until the end of December 2018 for the right to continue using the Swiss coat of arms in their logos. By the deadline, nine applications had been submitted; six were approved and one has not yet been evaluated. Traditional Swiss companies and organisations such as Victorinox, the Swiss Alpine Club (SAC) and the Touring Club Switzerland (TCS) are permitted to continue to use the shield with the Swiss cross in their logos.

Multilateral activities

In May of the year under report, the Federal Council opened the consultation procedure on Switzerland's accession to the Geneva Act of the Lisbon Agreement. The member states of the World Intellectual Property Organization (WIPO) had already agreed on

an international system for the protection and registration of designations of origin in 1958. However, only a small number of states participated and Switzerland never acceded to the treaty as its content did not adequately address the country's needs. In order to make the international IP rights system more attractive, the Lisbon Agreement was supplemented four years ago by the Geneva Act. The act broadens the scope of designations which can be protected to include all geographical indications and provides for a higher level of protection, thus providing Swiss producers of regional products with the possibility of protecting their specialities with well-known labels such as the protected designation of origin AOP (*appellation d'origine protégée*) and the protected geographical indication IGP (*indication géographique protégée*). Accession to the Geneva Act would mean that, for example, *Bündnerfleisch*, *Formaggio d'alpe ticinese* or "Swiss made" watches could benefit in the future from a higher level of protection in all member states. Switzerland's accession to the Lisbon System would require a certain number of amendments to the Trade Mark Protection Act. The consultation procedure ended on 20 September 2019.

Bilateral activities

Free trade agreements break down trade barriers such as customs duties or non-tariff barriers. Given that Switzerland has a high proportion of trade mark and patent-protected exports, it is nearly always of central importance that intellectual property is protected in the partner country. This was the motivation behind the free trade agreement with Indonesia, signed by the former Minister for Economic Affairs Johann Schneider Ammann on 16 December 2018. The case of Indonesia was tricky, however, in that patent protection in this country depends on the local added value. Companies which import their ready-to-use goods into this country of 250 million inhabitants may be obliged to grant a compulsory licence to local manufacturers. To eliminate this legal uncertainty, IPI experts negotiated an annexed declaration to the trade agreement with their Indonesian partners. This rules out any unjustified granting of compulsory licences and improves the legal situation for Swiss companies that export their innovative products to Indonesia.

At the end of March, Parliament approved an agreement between Switzerland and Georgia concerning the mutual recognition and protection of geographical indications and indications of source. The Caucasus republic is the tenth country to have concluded an international treaty of this kind with Switzerland. The agreement lists protected designations to ensure that geographical indications of Swiss specialities, the designation "Switzerland", the

Swiss cross and the names of the Swiss cantons will also be protected in Georgia in the future. The treaty provides for a very high level of protection, making it an international model.

International cooperation

Switzerland and Iran have had close relations for several years. Switzerland has represented the interests of the USA in Tehran for almost 40 years. In 2016, both countries drew up a roadmap which includes collaboration on IP matters. This is also set out in the trade agreement between the two countries, which entered into force in 2017. In April 2019, the IPI paid a visit to Iran and evaluated the local training and consultation needs. International cooperation in the field of intellectual property is part of the IPI's legal mandate. In the case of Iran, all activities are financed by the IPI. There are other projects which are financed by third parties, however. In particular, the IPI has a framework agreement with the State Secretariat for Economic Affairs (SECO) of over ten million Swiss francs for international development collaboration in the field of intellectual property. This money is currently being used to launch IP-related projects in five countries – South Africa, Albania, Peru, Colombia and Myanmar. The country formerly known as Burma is on the list of 'Least Developed Countries (LDC)' and only has rudimentary structures for IP protection. Experts from the IPI will not only be dealing with the authorities in the Southeast Asian country, but will also be in direct contact with local companies. The aim is to increase awareness of the economic potential of a well-developed IP rights system.



Searches, the Fight against Counterfeiting and Piracy, and Training

As the federal government's centre of competence for patents, trade marks, designs and copyright, the IPI also has the task of raising public awareness, as well as providing training and information services. These services include commercial patent and trade mark searches for the national and international business community.

Searches

The IPI carries out searches on the patentability of new ideas, on technological trends and on rights owned by third parties. These commercial services are marketed under the label 'ip-search'. In the reporting year, the order volume for these searches was approximately 5.2 million Swiss francs, which is roughly equivalent to last year's figure. What is particularly interesting, however, are the shifts that occurred within this portfolio.

In comparison to the previous reporting year, the demand for freedom to operate (FTO) searches for patents rose. These searches provide insights into the extent to which a product or process could infringe third-party IP rights. "The increase of no less than 10% does not come as a surprise to us as it reflects the increasing internationalisation of value chains," explains Theodor Nyfeler, Head of Patent and Technology Searches at the IPI. It is also important to know that patent law operates strictly according to the principle of territoriality. This is why it is necessary to ensure freedom to operate for every single economic step.

If a company develops something in Switzerland, manufactures it in China and sells it in the USA, patent conflicts could arise in all three locations. However, companies who have experience with IP also file their patents in countries where they are barely active in order to deter third parties. IP rights are therefore also being used as a scare tactic. "Our FTO customers are well aware of the risks involved when it comes to third-party IP rights and they want to minimise them," explains Nyfeler.

The aim of every FTO search is to record, as comprehensively as possible, all IP rights which may cause problems. This sounds easy but it is a challenge that should not be underestimated, as there are currently tens of millions of IP rights in force around the world. This includes millions upon millions of drawings, lists, depictions, descriptions and legally relevant patent claims.

To cope with the ever-growing volume of data, the IPI introduced new software during the last reporting year. Since September 2018, IPI patent experts are also working with what is known as a semantic search. It is based on artificial intelligence (AI) and considers not only terms, but also their contextual significance. The self-learning search algorithm knows, for example, that 'to screw' and 'to glue' have a somewhat similar meaning. More-

over, it recognises that, in both cases, the terms refer to an act of ‘connecting’.

Its ability to group multiple terms under one collective term is already proving valuable for FTO searches. It can therefore be used to identify IP rights that claim a very wide scope of protection and which could overlap with the subject of the search.

Once the search field of an FTO search has been defined, potential areas of conflict are then examined in detail. This is when it can become apparent that there are patents which could hinder the customer’s plans. It may be possible, under certain circumstances, to get around the protected claims by doing more research and development work, or by bringing a nullity action against the patent in legal proceedings. If this is not possible, the search then shifts from a technical and legal level to a business one.

“The customer can try to reach a mutually agreeable solution with the owner of the patent in question – for example, in the form of a licensing agreement,” says Theodor Nyfeler. If financial or strategic considerations are not in favour of this action, psychological factors then come into play. The customer needs to assess the patent owner’s willingness to defend their right.

If necessary, the IPI experts will consult alternative sources – legal databases provide information on the litigiousness of the potential counterparties, while news agencies such as Reuters and Bloomberg give details on business activities and financial resources.

All of this information combines to form a well-rounded image of the patent landscape. Essentially, FTO searches show the customer how the patent situation could influence their investment decisions. Relevant IP facts can be used to support strategic analyses and discussions within a company.

As these kind of considerations increasingly take place under time pressure, ip-search can also prepare searches within a few working days when requested. “Our core customers greatly appreciate this service,” Theodor Nyfeler confirms.

The Fight against Counterfeiting and Piracy

The non-profit association STOP PIRACY is dedicated to fighting counterfeiting and piracy and plays a key role in the cooperation between the authorities and trade and industry.

The association promoted awareness of counterfeiting and piracy at the ‘Cité des Métiers’ careers fair from 20 to 25 November 2018 in Geneva’s Palexpo exhibition centre. This event is aimed at young people who have not yet entered the world of work, which makes them a particularly appealing target audience for such awareness-raising campaigns. The centre of attraction of the STOP PIRACY contribution was a 3D animation that projected a fictional purchase proposal onto the hologram of a sneaker. This was a good starting point for questions and explanations on the topic of counterfeiting, perception and reality. Consumers are often not sufficiently aware of the backdrop to counterfeiting and piracy and therefore have to be actively informed about its shady side. This is why STOP PIRACY constantly appeals to consumers’ individual responsibility when purchasing goods – whether specifically when on holiday or generally on the internet, where the problem is increasingly becoming more prominent.

The special exhibition *Beguiling Appearance – Murky Shadows?* at the Swiss Customs Museum in Cantine di Gandria, which was conceptualised by STOP PIRACY and the Federal Customs Administration, has evolved into a major attraction. The exhibition recorded over 7,000 visitors from all over Switzerland in its third season, and due to its immense popularity, has since been extended until October 2020.

STOP PIRACY has also been present at the FAKE. The Whole Truth exhibition in Stapferhaus in Lenzburg since 28 October 2018. The exhibition, which runs until 24 November 2019, sheds light on the topic “FAKE” from all angles, including counterfeiting. The Federal Customs Administration has provided exhibits for the exhibition and STOP PIRACY has contributed to its content.

Training

Organising events on various IP rights is part of the IPI's legal mandate to provide information. Almost 150 people attended the formal training courses held in the year under review. In addition, speakers from the IPI gave more than 120 talks at various institutions in Switzerland and abroad.

The IPI also offers specialist support within the framework of the start-up training run by Innosuisse. In training modules two to four, under the auspices of Venturelab and Startup Campus, IP trainers introduced prospective entrepreneurs to the basics of industrial property protection.

International development cooperation is also an integral part of the IPI's mandate and training is always delivered by IP trainers from the IPI. In Ghana, this involved providing general training on IP to members of parliament. Meanwhile, in Iran, the focus was on students, who were introduced to the issue of IP and technology transfer. Finally, in Costa Rica, training was aimed at SMEs and start-ups. Workshops with company representatives always last between one and three days.

The series of lectures entitled "ip@6" is aimed at interested members of the public. Four times a year, external IP experts come to the IPI to address specific questions from the world of intellectual property. The event held on 15 November 2018 provided a glimpse into a future that in many places is already reality. Peter Picht, Professor of commercial and business law at the University of Zurich, gave a talk on the intellectual property aspects of artificial intelligence (AI). This is a controversial topic as products that are developed using AI systems cannot be directly attributed to a creator, inventor or author. Can AI productions still be protected? And if so, who owns the property rights? Questions like these are set to be hotly debated at the IPI, in courts and in legal faculties in the years to come.



Equity Falls despite Operating Profit

In the 2018/19 financial year, the IPI recorded an operating profit of CHF 7.1 million with a net revenue of CHF 62.9 million. The negative effects from revaluing pension obligations and pension fund assets amounted to CHF 9.1 million. Equity decreased from CHF 64.6 million to CHF 62.6 million.

36

The IPI's income from fees of CHF 55.8 million in the year under report remained at exactly the same level recorded in the previous financial year. This represented the IPI's largest revenue item accounting for 88.3% of total revenue, followed by revenue from services at 9.3%. At CHF 5.9 million, the latter showed a slight decrease of CHF 0.2 million compared to the previous year.

Income from annual patent fees, on the other hand, increased by CHF 1.8 million in the year under report. In recent years, the number of European patents designating Switzerland, which are granted by the European Patent Office (EPO), have risen by a double-digit percentage rate. This is partially to do with the EPO reducing their number of pending cases, but has also been affected by an upsurge in the number of European patent applications being filed; they are increasing on average by approximately 5% every year. The increase in fees revenue for both of these items amounted to CHF 2 million in comparison to the previous year. Annual fees for national patents, however, recorded a decrease of CHF 0.2 million, as did the fees for national design rights.

Revenue from trade mark fees showed a decrease of CHF 1.6 million in the year under report. This can mostly be attributed to how the accrual account for filing fees was handled. In the 2017/18 financial year, these accrued fees were linearly reversed due to a hypothetical average of the length of the trade mark procedure and recorded in the statement of financial performance. During the financial year under review, however, it was discovered that the estimation of the average length of this procedure had been too optimistic. As a result, the 2017/18 financial year included fees for trade mark procedures that were first concluded in the 2018/19 financial year, and which could no longer be recorded in the statement of financial performance in the year under report. Additionally, renewal fees were CHF 0.5 million down on the previous year's figures, while the remaining fees showed an increase of CHF 0.5 million.

Operating expenses including third-party expenses totalling CHF 55.7 million were CHF 0.2 million above the previous year's figure. The IPI's personnel expenses increased by CHF 0.6 million in comparison to the previous year – a planned increase due to the fact that the IPI is working on the goal of reducing the currently high processing time limits. Overall, the IPI posted an operating profit of CHF 7.1 million in its twenty-third year of business.

The revaluation of long-term pension obligations and pension fund assets under IAS 19 led to actuarial losses totalling CHF 9.1 million. These losses are a result of a decline in the long-term yield expectations on the financial markets, which led to a reduction of the technical interest rate from 0.95% to 0.45%.

With actuarial losses, this results in negative comprehensive income of CHF 2 million, which decreases the equity to CHF 62.6 million for the 2018/19 financial year. This is therefore within the upper half of the range determined by the Institute Council.

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

To download the comprehensive annual financial statements in accordance with IFRS, please refer to our website at www.ipi.ch (under About us > Annual reports and financial statements).

Statement of Financial Position

(in thousands of CHF)	2018/2019	2017/2018
	30.06.2019	30.06.2018
Cash and cash equivalents	125,385	119,567
Receivables from services	664	653
Contract assets	199	304
Other receivables	969	782
Accrued income and prepaid expenses	1,882	1,542
Current assets	129,099	122,847
Tangible assets	21,269	21,417
Intangible assets	1,893	2,243
Fixed assets	23,162	23,660
Total assets	152,261	146,507
Trade accounts payable	1,648	1,191
Contract liabilities	9,100	7,007
Customer prepayments (current accounts)	6,196	6,822
Financial liabilities to third parties	32	10
Other liabilities	11,698	9,825
Accrued expenses and deferred income	2,984	3,520
Current provisions	2,328	2,128
Current liabilities	33,986	30,502
Provisions for pension fund liabilities	52,084	47,877
Other provisions	3,607	3,496
Non-current liabilities	55,691	51,373
Profit (+) / loss (-)	7,094	7,731
Retained earnings	83,207	75,482
Accumulated actuarial losses	-27,717	-18,581
Equity	62,584	64,632
Total liabilities	152,261	146,507

Statement of Profit and Loss / Comprehensive Income

(in thousands of CHF)	2018/2019	2017/2018
	01.07.2018 to 30.06.2019	01.07.2017 to 30.06.2018
Profit and Loss Statement		
Fees*	55,792	55,760
Services	5,866	6,112
Miscellaneous revenues	1,499	1,562
Gross revenue	63,157	63,434
Other revenue decreases**	-292	-193
Net revenue	62,865	63,241
Third-party fees	-955	-1,024
Third-party services	-1,297	-1,440
Other third-party expenses	-594	-640
Third-party expenses	-2,846	-3,104
Personnel expenses	-43,535	-42,962
IT expenses	-1,897	-2,152
Other operating expenses	-4,661	-4,573
Depreciation, amortisation and impairment loss	-2,006	-1,729
Federal Patent Court	-726	-966
Operating expenses	-52,824	-52,383
Operating profit	7,194	7,754
Financial income	5	55
Financial expenses	-106	-79
Financial result	-100	-24
Profit (+) / loss (-)	7,094	7,731
Statement of Comprehensive Income		
Other comprehensive income***		
Actuarial gains	-9,136	7,684
Other comprehensive income	-9,136	7,684
Comprehensive income	-2,042	15,415

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

** This position includes CHF 20,000 for the 2018/2019 financial year and CHF 9,000 for the 2017/2018 financial year for impairment losses on financial assets and contract receivables.

*** Other income consists only of those positions that are not subsequently transferred to the profit and loss sheet, which is why detailed subdivisions have been dispensed with.

Cash Flow Statement

(in thousands of CHF)	2018/2019	2017/2018
	01.07.2018 to 30.06.2019	01.07.2017 to 30.06.2018
Income/(expenditure) from operating activities		
Profit	7,094	7,731
Depreciation of tangible assets	1,507	1,404
Amortisation of intangible assets	385	324
Non-cash income / expenses	137	12
Increase / decrease in non-current provisions for long-service awards	111	283
Increase / decrease in non-current pension fund provisions	-4,929	2,197
Increase / decrease in receivables for services	-42	25
Increase / decrease in contract assets	105	84
Increase / decrease in other receivables	-188	135
Increase / decrease in accrued income and prepaid expenses	-341	125
Increase / decrease in trade accounts payable	457	-635
Increase / decrease in contract liabilities	2,092	340
Increase / decrease in other liabilities	1,873	650
Increase / decrease in accrued expenses and deferred income	-535	504
Increase / decrease in current provisions	200	66
Cash flow from operating activities	7,927	13,246
Investments in tangible assets	-1,472	-858
Divestments in tangible assets	0	0
Investments in intangible assets	-34	-56
Divestments in intangible assets	0	0
Cash flow from investment activities	-1,506	-914
Increase / decrease in financial liabilities to third parties	22	10
Increase / decrease in customer prepayments (current accounts)	-626	1,113
Cash flow from financing activities	-604	1,123
Net increase / decrease in cash and cash equivalents	5,817	13,454
Cash and cash equivalents at start of year	119,567	106,113
Cash and cash equivalents at year end	125,385	119,567

Statement of Changes in Equity

(in thousands of CHF)	Accumulated actuarial gains/losses	Retained earnings	Total Equity
Opening balance on 01.07.2017	-26,265	75,482	49,217
Profit	0	7,731	7,731
Other comprehensive income	7,684	0	7,684
Closing balance on 30.06.2018	-18,581	83,213	64,632
Opening balance on 01.07.2018	-18,581	83,213	64,632
Adjustment resulting from first-time adoption of IFRS 9	0	-6	-6
Opening balance on 01.07.2018 incl. adjustment	-18,581	83,207	64,626
Profit	0	7,094	7,094
Other comprehensive income	-9,136	0	-9,136
Closing balance on 30.06.2019	-27,717	90,301	62,584

Events after balance sheet date

No events have occurred since the reporting period (30 June 2019) that influence the informative value of the financial statements 2018/2019.



Markus Müller (left) is Deputy Head of the Patent Administration department. Brice de Montmollin is a staff member in the Contact Centre. They both work, like all other photo subjects, at the IPI (inside front cover)



Jean-Paul Hargrave is an administrator in the Trade Mark Administration department. When she's not tracking down counterfeit goods, three-year old Alpine Dachsbracke Nala likes to chase foxes (front cover and page 4)



Anatol Heib is a content specialist/storyteller (page 9)



Ekaterina Trufakina is a trade mark examiner (page 23)

The fight against wrongful use of the 'Switzerland' brand

'Swissness' is a national and international bestseller. The indication of Swiss origin instils trust in consumers as it stands for reliability and premium international quality. Many producers benefit from this advantage. However, not all do this lawfully, as the success of the 'Switzerland' brand attracts a high number of free riders. In collaboration with the business community, the IPI combats misuse of indications such as Made in Switzerland, the Swiss cross and the Swiss coat of arms. The common, long-term goal of the business community and the authorities is to ensure that the 'Switzerland' brand enjoys a high level of credibility. Customers and consumers should be able to trust that when it says 'Switzerland' on the outside, 'Switzerland' is on the inside too.

Commitment to the fight against counterfeiting and piracy

Almost everything that has a good name is faked and copied – clothing, watches, software, music, medication and even food products. Counterfeiting and piracy affect all sectors and know no boundaries. Cooperation is required on a national and international level to successfully combat this issue. At domestic level, the IPI is a founding member of STOP PIRACY, the Swiss Anti-Counterfeiting and Piracy Platform. Founded as a public-private partnership in 2005, the STOP PIRACY association is committed to raising public awareness of the risks and issues behind counterfeiting and piracy and promotes cooperation between the business community and the authorities. At international level, the fight against counterfeiting and piracy is mostly focused on empowering the law enforcement bodies. Switzerland therefore actively participates in numerous international organisations concerned with local enforcement of patent, trade mark and copyright law.

Balancing IP and health

A well-developed healthcare system places patients' well-being first. This involves giving them the best possible access to high-quality, safe medicinal products. This is why international bodies are continuously discussing how the availability of diagnostics and medicines could be improved, particularly in developing and emerging countries. The role of patent protection is at the core of the often controversial debate. Switzerland plays an active, and sometimes even a leading role in these discussions, for example in the World Health Organization (WHO) or the World Trade Organization (WTO). One of Switzerland's main tasks is to increase awareness of the function of the patent system in pharmaceutical research. Industrial property rights create an incentive for investing in research and development, clinical tests and marketing approval. They also add to the pipeline of inexpensive generic preparations. The patented active ingredients of today are the generics of tomorrow.

The federal government's "attorney's office"

The IPI is responsible for drafting legislation and advising the Federal Council and other federal authorities on matters concerning intellectual property. This is set out in the Statute and Tasks of the IPI of 1997. What this means is demonstrated by the recently adopted revision of the Copyright Act, which the IPI has had a key role in since 2012. At that time, Federal Councillor Simonetta Sommaruga convened a working group to identify the possibilities for adapting the copyright law to be in line with technological developments. She assigned the chairmanship of the working group to the IPI. After preparing a compromise, which treated the partially conflicting interests of all parties involved in a balanced manner, it was again up to the IPI to conduct the consultation procedure. The example of the copyright revision highlights that there are two sides to the IPI's service mandate – with regard to the economy and society, the IPI is an independent centre of competence; with regard to the federal government, it acts as an attorney's office for intellectual property matters.



Natascha Muther Devaud is Head of Linguistic Services (page 27)



Felix Addor (left) is Deputy Director General, Chief Legal Counsellor of the IPI and Head of the Legal & International Affairs Division. Eiman Maghsoodi is an economist and Jingming Li Salina is a patent expert (page 31)



Madeleine Lüthi is Business Administration Manager (page 35)



Laura Wild works in Training Administration and Web Publishing. Peter Benninger is a trade mark expert (page 44)

IP and innovation

A well-functioning system of intellectual property protection increases the attractiveness of a business location. It supports the innovation cycle and promotes sustainable economic growth. As an export nation and global innovation centre, Switzerland relies on appropriate and enforceable protection of intellectual property. Therefore, in its role as the federal government's centre of competence for all intellectual property matters, the IPI is a pillar of the Swiss business and innovation location. It is committed, at national and international level, to ensuring appropriate, effective and economically viable intellectual property protection. For example, effective protection of the intellectual property of innovative products and services is a prerequisite for expanding free trade. For this reason, the IPI ensures that each free trade agreement contains a substantial chapter on the protection of intellectual property.

International trade relations

The IPI safeguards the interests of the Confederation in IP-related matters. It represents Switzerland in the regional and international IP organisations of which Switzerland is a member, for example, in the World Intellectual Property Organization (WIPO) and in the European Patent Organisation (EPO). In addition, the IPI works closely with IP organisations such as the European Union Intellectual Property Office (EUIPO). Lastly, the IPI's experts participate in organisations and working groups that are not primarily focused on IP, but are affected by it, for example, the World Trade Organization (WTO), the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO) and the forums of the Convention on Biological Diversity (CBD).

International technical development projects

Part of the IPI's statutory mandate is to engage in international cooperation in the field of intellectual property. This is either carried out independently or together with other national and international organisations and the IPI must coordinate with other competent federal agencies. At international level, Switzerland is committed to establishing technical cooperation on IP matters with developing countries. The aim is to introduce reforms within the field of IP to improve the socio-economic situation in the project countries. The cooperation specifically provides support to the competent authorities, for example, in employee training or in drafting local legislation. With these activities, Switzerland also aims to make an IP-related contribution to the implementation of the 2030 Agenda for Sustainable Development.

Bilateral dialogue

The export-oriented Swiss economy relies on positive economic frameworks for trading with third countries. For this reason, Switzerland has concluded bilateral agreements on trade and economic cooperation with numerous partner states. The agreements also include regulations on the protection of intellectual property. They take into account the importance of intellectual property – namely patents, trade marks, geographical indications and designs, as well as know-how in general – in global commerce. Parallel to this and independent of interdisciplinary bilateral agreements, Switzerland maintains close dialogue on all aspects of IP with several countries, including China.







Eidgenössisches Institut für Geistiges Eigentum
Institut Fédéral de la Propriété Intellectuelle
Istituto Federale della Proprietà Intellettuale
Swiss Federal Institute of Intellectual Property

Stauffacherstrasse 65/59 g
CH-3003 Bern
T +41 31 377 77 77
info@ipi.ch | www.ipi.ch