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## EU Patent Package. The University perspective

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Dr. Nicole Anthéunis October 17th 2014

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## The University perspective

- What are the key issues of concern for European universities with regards to the Unitary Patent and the Unified Patent Court starting from their present existing Patent landscape?
- What is their position with respect to the introduction of EU Package.
- Shall it reshape the University patent portfolio, facilitate patent protection at the University, improve patent enforcement?
- What is the likelihood to adopt the new system?

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## Average Patent portfolio for a european university. Priority filings

- A European university registered an average of 10-12 priority applications per year (Source: ASTP survey 2011 - 329 universities from 5 countries UK, ES, IT, IE, DK)

Year	Average number of priority patent applications
2005	6.4
2006	8.7
2007	10.7
2008	10.0
2009	10.5
2010	9.3
2011	11.8

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## Average Patent portfolio for a European University active patents

- The average patent portfolio held by a European university is increasing. (Source: ASTP survey 2011 -329 universities from 5 countries UK, ES, IT, IE, DK)
- An average of 82 active patents per university is reported end 2011 (i.e. active patents granted + active patent applications)

Year	Average patent portfolio
2005	27.8
2006	40.9
2007	52.6
2008	67.0
2009	69.8
2010	72.0
2011	81.9

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## Average active patent portfolio by country.

(Source: ASTP survey 2011 –non-zero values)  
active patents= active patents granted + active patent applications

Country	2008	2009	2010	2011
Denmark	8.9	12	11.6	14.9
Italy	45.3	51	56.9	57.1
Spain	75	84.3	88	88
UK	158.8	144	160	170.3
Ireland	64	51.4		

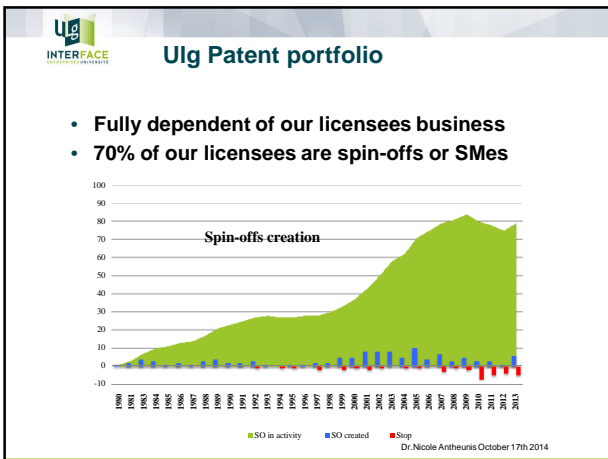
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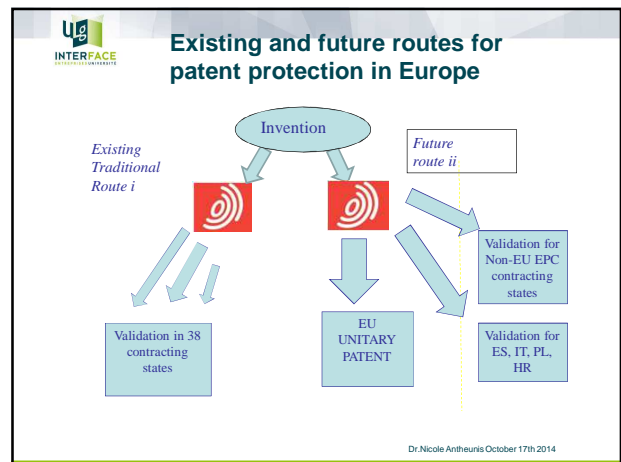
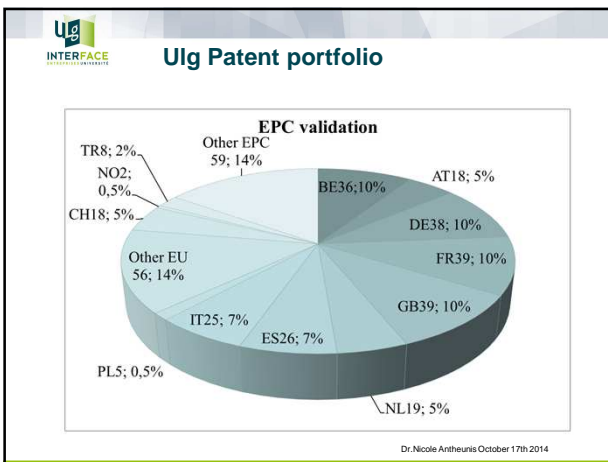
## Ulg patent portfolio (granted patents)

- Average of 51 patents granted/year.
- Total 540 patents granted in 2013 wherein 350 are still active in 2013.

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- ### Ulg patent portfolio
- Fully dependent of our licensees business
  - 55 EPC patents are validated essentially in BE, FR, UK, DE,
  - and according to our licensee market strategy: IT, ES, NL, PL, TR, CH, DK, GR, HU, IE, LU, SE
  - exceptionally: FI, CY, AL, BG, EE, HR, IS, LT, MC, MK, NO, RO, RS, SK (labo Servier)
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- ### Shall the EU package.....
- ...reshape the University patent portfolio?
  - ...facilitate Patent protection at the University?
  - ...Improve Patent enforcement of University patent portfolio?
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- ### ...reshape the University patent portfolio?
- 70% Ulg patent licences are allocated to spin-offs or SMEs and 30% to LEs.
  - Our spin-offs or SMEs are based in Belgium and interested in the EP market first.
- >>>>>> a priori, Ulg is interested in a « European » patent with unitary effect to avoid validation steps and high costs
- >>>>>>Ulg is interested to obtain a wider european patent protection.
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**...reshape the University patent portfolio?**

- Ulg patent portfolio comprises 55 EPC patents with 25 validations in Italy, 26 in Spain, 5 in Poland
- >>>>>unitary patent as defined today is not sufficient
- Ulg patent portfolio comprises 2 patents in Norway, 18 in Zwitserland, 8 in Turkey
- >>>>> EU patent is not sufficient

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**Shall the EU package.....**

- ...reshape the University patent portfolio?
- ...facilitate Patent protection at the University?
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**...facilitate Patent protection at the University?**

- the actual procedure for filing and examining a patent application at the EPO will not change.
- >>>> incentive
- However at the end of the procedure, only 1 month to decide whether to stick with EPC patent or request a unitary patent for EU member states that have ratified the UPC agreement
- >>>>short delay
- But if all requested countries are not in EU or are in EU countries that have not yet ratified...
- >>>>necessity to follow 2 routes >>>>complexity

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**...facilitate Patent protection at the University?**

- **Practically:**
- Validation is still required for HR, ES, IT, PL (EU countries)
- And is still required for CH/Li, NO,TR, ...(non-EU countries)
- For technology and licenses requiring such specific territorial protection, the costs estimation will be an important point.
- IF too high, no incentive to use unitary patent together with EPC patent validation

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**Practical example**

- Specification of 13 pages with 4500words and 3 pages of claims with 500 words
- If one wish to cover FR, DE, UK, ES, IT and TR (the 6 largest economies in Europe):
  - DE, FR, UK do not require translation
  - ....but IT, ES, TR do.
- However because the latter 3 are not participating in the EU package, the EU patent route will still require 3 national validation including translations into national language thereby adding costs (3200 eur)
- Moreover if French is used during prosecution and during the transition period, necessity to translate in English (800 eur)


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**Unitary renewal fee**

**Is a Key issue**


- If unitary fee ~ 2 annuities (DE+FR) >>>ideal
- If unitary fee ~ 3 annuities (UK, DE, FR) >>>> neutral.
- If unitary fee ~ 5 annuities (UK, DE, FR, CY, Lu) 500-700eur >>>>too much;
- >>>>>only if the number of countries to be covered is much higher than the example and includes EU member states that have joined the EU patent package, than the annuity fee will be lower than the ones using the traditional route.

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 **Shall the EU package.....**


- ...reshape the University patent portfolio?
- ...facilitate Patent protection at the University?
- ...improve Patent enforcement of University patent portfolio?

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 **...improve patent enforcement of University patent portfolio?**

- *The UPC system means enforcement of the EU patent in a single Court Action with effect on the whole EU territory*
- >>>>>incentive because it avoids separate national proceedings in the various countries in which the EPC patent has been validated and maintained.
- But Universities generally delegates opportunity to sue for infringement to its licensees.
- >>>>>no change

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 **...improve patent enforcement of University patent portfolio?**


*Risk of central revocation attacks by infringer*

>>>> will stimulate the efforts for strong patents

>>>> will increase the risk of revocation of the whole EPC patent portfolio and related licenses.

- To avoid such a risk, possibility to opt-out of the UPC competence will surely be used in case of weak patent.
- The opt-out fee will be a major factor in this decision. Shall it be an administrative fee or more?

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 **...improve patent enforcement of University patent portfolio?**

*Risk of patent troll attacks like in the US*

>>>>Same consequences as before


*Anxiety concerning judicial composition and experience.*

- Lack of jurisprudences

*Court fee remain an issue.*


Arbitration or mediation may be preferred

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 **Conclusions about EU package from University point of view**

- **Incentives:**
- One enforcement system i.o. a plurality of national litigations . UPC aims to unify European patent litigation .
- Would avoid contradictory decisions
- One unitary patent if all EU and EPC countries are involved.
- Would involve a wider patent protection in Europe
- Would avoid the expensive and complex validation steps.

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 **Conclusions about EU package from University point of view**

- **Disincentives**
- Complexity of the unitary patent system resulting from some non-EU and non EPC countries not involved.
- Costs involved in such complex system
- **Key issue:** costs associated to UE Package will be fundamental for Universities in deciding whether to follow the new route.

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