The 2016 Global Patent & IP Trends Indicator

An in-depth look at the foreign filing strategies of U.S. and European patent owners
The Global Patent & IP Trends Indicator is an annual report issued by RWS inovia, the global leader in foreign patent filing, IP translations and search services. Now in its seventh year, the Indicator is a go-to resource for identifying the trends having the greatest impact on the foreign filing strategies of patentees around the world.

The survey was conducted by RWS inovia in May 2016 and includes responses from over 100 companies and universities in the United States and Europe. The IP Indicator has become a benchmark report in the patent industry, providing insight and guidance for those looking to file internationally. This report summarizes the results and trends identified in those that participated.

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Introduction

Respondents represent a diverse range of industries and sizes from small businesses filing a single patent family to multinational corporations filing more than 1,000 patents in 2015. All respondents share one common thread and are involved in the strategy and planning of patent filing activities at their respective organizations. Job functions range from Head of Global Patent Operations to General Counsel to CEO.

Respondent overview

<table>
<thead>
<tr>
<th>Industry</th>
<th>U.S. respondents</th>
<th>European respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemicals / Materials</td>
<td>6.5%</td>
<td>10.3%</td>
</tr>
<tr>
<td>Electrical / Electronics</td>
<td>10.3%</td>
<td>8.4%</td>
</tr>
<tr>
<td>IT / Software / Media</td>
<td>8.4%</td>
<td>16.8%</td>
</tr>
<tr>
<td>Mechanical / Engineering</td>
<td>16.8%</td>
<td>14.0%</td>
</tr>
<tr>
<td>Pharmaceuticals / Biotech</td>
<td>14.0%</td>
<td>15.9%</td>
</tr>
<tr>
<td>University / Association / Non-profit</td>
<td>28.0%</td>
<td>28.0%</td>
</tr>
</tbody>
</table>

* Other includes Manufacturing, Telecommunications, Teaching/Research, Consulting, Pest Control, Mining

The respondents represent the following industries:

**The respondents represent a wide range of company sizes:**

- 37.4% 1-100
- 19.6% 101-1,000
- 32.7% 1,001-10,000
- 10.3% More than 10,000

The number of in-house patent attorneys or agents at each respondent’s organization is as follows:

- 37.4% 0
- 48.6% 1-4
- 6.5% 5-9
- 5.6% 10-24
- 1.9% More than 25
2015 year in review
The priorities of patent applicants in the U.S. differed slightly from Europe in 2015.

**United States** / In the U.S., fallout from the *Alice Corp v. CLS Bank* ruling was noted as a dominating issue. Two years ago, the U.S. Supreme Court ruled on the patent eligibility of software related inventions, declaring abstract ideas ineligible for patent prosecution. Applicants noted this issue as still affecting their ongoing business strategies.

Others indicated the rising cost to obtain patent protection while working with fixed IP budgets. For the second year in a row, patent reform was an area of concern. The switch from first-to-invent to first-to-file was a challenge still being felt by applicants in the United States.

**Europe** / In Europe, applicants cited the unitary patent as the main topic concerning patent professionals. The agreement was established in 2012 as a way to guarantee patent protection in 26 countries throughout Europe. The effect and success of the UP has yet to be seen as the act is still being ratified by EU member states.
2015 year in review

Patent filing activity

79% of respondents said they filed as many patent applications as they expected in 2015 (up from 76% in 2014). 8.3% filed more than expected, while 12% filed less than expected.

Did you file as many patent applications as expected in 2015?

More 8.3%  
Less 12.5%  
As expected 79.2%
Foreign filing & global outlook
Foreign filing & global outlook

The patent portfolios of respondents span a broad range of sizes, with 34% filing 3 or fewer patent families in 2015 (up slightly from 31% last year), 48% filing 4-49 and 16% filing 50 or more (down drastically from 33% in 2013). This is a continuous trend from last year, as people are filing fewer patent families compared to three years ago.

Approximately how many patent families did you file in 2015?

<table>
<thead>
<tr>
<th>Number of Patent Families</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>10.4%</td>
</tr>
<tr>
<td>1-3</td>
<td>24.0%</td>
</tr>
<tr>
<td>4-19</td>
<td>36.5%</td>
</tr>
<tr>
<td>20-49</td>
<td>12.5%</td>
</tr>
<tr>
<td>50-99</td>
<td>6.3%</td>
</tr>
<tr>
<td>100+</td>
<td>10.4%</td>
</tr>
</tbody>
</table>

In terms of international filing activity, 34% of respondents filed more than half their patent applications overseas in 2015. This is down over the past two years, as 49% filed more than half their applications abroad in 2014 and 52% in 2013.

What percentage of 2015 patent families did you file internationally?

<table>
<thead>
<tr>
<th>Percentage Range</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>18.8%</td>
</tr>
<tr>
<td>1-25%</td>
<td>29.2%</td>
</tr>
<tr>
<td>26-50%</td>
<td>17.7%</td>
</tr>
<tr>
<td>51-75%</td>
<td>8.3%</td>
</tr>
<tr>
<td>+75%</td>
<td>26.0%</td>
</tr>
</tbody>
</table>

62% of respondents filed into 4 or more countries.
Did you file overseas using the PCT and/or the Paris Convention in 2015?

<table>
<thead>
<tr>
<th>Filing Method</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCT</td>
<td>66.7%</td>
</tr>
<tr>
<td>Paris Convention</td>
<td>2.8%</td>
</tr>
<tr>
<td>Both</td>
<td>30.6%</td>
</tr>
</tbody>
</table>

**Filing method** / Consistent with statistics from previous years, almost all (97%) of our respondents used the Patent Cooperation Treaty (PCT) for some or all of their foreign filings in 2015.

While less than 3% of respondents filed only via the Paris Convention, those that went this route didn't have any criticism of the PCT; however, the attributes of the PCT process (delayed country filing decisions, unified preliminary processing) were not advantageous for their long term strategic goals.

Other factors that went into decisions to file via the PCT or Paris Convention?

In deciding whether to file via the PCT or Paris Convention, most users discussed the cost benefit analysis that goes into making the decision: the PCT is more cost effective for large patent families and filing Direct makes more sense if only one country is in consideration. The Paris Convention also allows for faster prosecution and more variation in claim sets among countries.

Many individuals who are looking to defer decisions will go with the PCT, as they have up to 30 (or 31) months to make the decision of where to file. Also, many respondents noted that they file into countries that are not members of the PCT, forcing their hand into going the Paris Convention route.

**Those who were critical of the PCT commented:**

- “Should include all countries”
- “Drawings rejected without pointing out the problem areas”
- “Consistency of the searches between search authorities”
- “Keeping track of the rules/timing across countries can be tedious”
- “Too expensive”
- “Some of the examination results are ridiculous”

**Those who went with the PCT noted familiarity and convenience as major reasons for continuing with this method:**

- “We have more time to choose the countries where we want to nationalize”
- “Our attorney recommended this method”
- “Habit”
- “More efficient”
- “Standard practice”
- “Preserves more options down the line”
Foreign filing & global outlook

Country selections / For some respondents, first time filing jurisdictions included countries based in South America and Asia.

BRIC Countries / We asked respondents how recently they started filing into BRIC countries (Brazil, Russia, India and/or China). The results supported the above statistics, with over 80% of people filing into these destinations for the first time in the last 5 years. Around 3% plan to file here for the first time in 2016 and only 16% do not plan to file here in the near future.

How recently did you start filing into the BRIC countries (Brazil, Russia, India and/or China)?

<table>
<thead>
<tr>
<th></th>
<th>Last year (2015)</th>
<th>Within the last 5 years</th>
<th>Will file in 2016 for the first time</th>
<th>Not filing / No plans to file there</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4.5%</td>
<td>76.1%</td>
<td>3.0%</td>
<td>16.4%</td>
</tr>
</tbody>
</table>

Where and why did you file into new jurisdictions in 2015? Where and why did you stop filing into other regions last year?

Advantageous reasons for adding certain countries to patent portfolios in 2015 included:

- Prospective business opportunities in India
- Manufacturing/counterfeit activity in India
- Relevant market for disease in Indonesia

Of those who stopped filing into certain countries in 2015, reasons included:

- Lack of prosecution in China
- War in Syria
- IP protection in China is shoddy
- No longer do business in India
- Authorities unsupportive of pharmaceutical patenting in Argentina
Targeted global outlook / As in previous years, respondents were asked to rank the importance of certain jurisdictions in their 10-year foreign filing strategies. The United States was included for the first time and unsurprisingly, took the top spot. Largely, feelings have remained unchanged from previous years with Europe, China, Japan and Canada rounding out the top 5 respectively.

1. United States
2. Europe
3. China
4. Japan
5. Canada
6. India
7. Australia
8. South Korea
9. Brazil
10. Russia
11. Singapore
12. South Africa
Foreign filing & global outlook

The International Search Report (ISR) is a fundamental part of the PCT procedure. Once a PCT application is filed, an International Search Authority (ISA) performs a search of the prior art, and provides the results to the applicant in the form of an ISR. The applicant can use the ISR to gain an insight into what prior art they might encounter during examination after national stage entry.

We asked respondents which offices they use as an International Search Authority and found that 64% have used the United States Patent and Trademark Office, 56% have used the European Patent Office (down from 73% last year), 31% have used the Korean IP Office (same percentage as last year) and 8% have used the Australian Patent Office.

Have you used any of the following offices as a search authority?

<table>
<thead>
<tr>
<th>Office</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Patent Office</td>
<td>8.1%</td>
</tr>
<tr>
<td>Brazilian National Institute of Industrial Property</td>
<td>2.7%</td>
</tr>
<tr>
<td>European Patent Office</td>
<td>56.8%</td>
</tr>
<tr>
<td>Japanese Patent Office</td>
<td>6.8%</td>
</tr>
<tr>
<td>Korean IP Office</td>
<td>31.1%</td>
</tr>
<tr>
<td>Russian Patent Office</td>
<td>5.4%</td>
</tr>
<tr>
<td>United States Patent and Trademark Office</td>
<td>64.9%</td>
</tr>
<tr>
<td>N/A - not filing internationally</td>
<td>8.1%</td>
</tr>
<tr>
<td>Other</td>
<td>13.5%</td>
</tr>
</tbody>
</table>

For those that chose “other”, offices included the Nordic Patent Institute and Finnish Patent Office.

The three major ISA players are Korea, EPO & USPTO. Feelings are mixed for each:

KIPO / Mostly positive
This sentiment is consistent year after year and was overwhelmingly cited as the best search authority.

- “KR faster”
- “KIPO has been the best”
- “Korean Patent Office does a thorough job at a good price”
- “EPO and USPTO the best in terms of quality but also the most costly. KIPO cost is excellent (but has increased lately) and their quality has gone from good to better but still not top notch like EPO and USPTO”
- “KIPO is the best”
- “Korea good speed, but not so good quality”

EPO / USPTO - Mixed feelings
Europe cited as slow at times but high in quality and the USPTO consistently described as mediocre.

- “Up and down with all of them. EPO a bit better than USPTO in quality”
- “Europe is fast”
- “EPO issues very good search reports in a short time”
- “Good results from Korean and European authorities compared to U.S. benchmark”
- “Originally selected Korea based on cost and perceived quality. Discontinued Korea in 2015. Now use USPTO”
- “KIPO is usually chosen for speed and lower cost. EPO is slower, of high quality, but most expensive. USPTO is OK”
IP budgets & workflow changes
IP budgets & workflow changes

For the past three years, 31% of respondents were working on a reduced IP budget, compared to nearly two-thirds of respondents five years ago. 40% of respondents were not affected by these cuts and in 18% of cases, the budget actually increased in 2015.

The majority of respondents did not allow granted patents to lapse last year (over 60%) compared to previous years. 26% let their patents lapse, with the rest of respondents unsure.

Was your IP budget cut in 2015?

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, for the first time in recent years</td>
<td>12.1%</td>
</tr>
<tr>
<td>Yes, in addition to previous cuts in recent years</td>
<td>19.3%</td>
</tr>
<tr>
<td>No, but it had been cut previously in recent years</td>
<td>19.3%</td>
</tr>
<tr>
<td>No, and it has not been cut previously in recent years</td>
<td>21.7%</td>
</tr>
<tr>
<td>No, it actually went up in 2015</td>
<td>18.1%</td>
</tr>
<tr>
<td>Other</td>
<td>9.7%</td>
</tr>
</tbody>
</table>

For those respondents who did have their budget cut in 2015, 19% saw it cut by more than 30%. The majority of respondents with reduced budgets saw it cut by between 5-15% (50%).

By what percentage was your IP budget cut in 2015?

<table>
<thead>
<tr>
<th>Percentage</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 5%</td>
<td>7.7%</td>
</tr>
<tr>
<td>5-15%</td>
<td>50.0%</td>
</tr>
<tr>
<td>16-30%</td>
<td>23.1%</td>
</tr>
<tr>
<td>+ 30%</td>
<td>19.2%</td>
</tr>
</tbody>
</table>
Workflow and cost containment / Respondents that reduced foreign patent filing costs in 2015 saved by filing in fewer countries (36%), bringing steps in-house (19%) and negotiating with their foreign counsel (18%).

Compared to 2015 results, more applicants expect to save on foreign patenting costs by:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bringing steps in-house</td>
<td>19.8%</td>
</tr>
<tr>
<td>Consolidating local counsel</td>
<td>9.2%</td>
</tr>
<tr>
<td>Consolidating foreign counsel</td>
<td>14.5%</td>
</tr>
<tr>
<td>Filing in fewer countries</td>
<td>36.9%</td>
</tr>
<tr>
<td>Negotiating with foreign counsel</td>
<td>18.4%</td>
</tr>
<tr>
<td>Negotiating with U.S. or European counsel</td>
<td>18.4%</td>
</tr>
<tr>
<td>Patent translations</td>
<td>15.8%</td>
</tr>
<tr>
<td>Using non-law firm providers</td>
<td>7.9%</td>
</tr>
<tr>
<td>Not applicable</td>
<td>30.3%</td>
</tr>
<tr>
<td>Other</td>
<td>9.2%</td>
</tr>
</tbody>
</table>
If you reduced foreign patenting costs in 2015 (compared to 2014), from which areas did these savings come?

- Bringing steps in-house: 23.7%
- Consolidating local counsel: 9.2%
- Consolidating foreign counsel: 18.4%
- Filing in fewer countries: 41.0%
- Negotiating with foreign counsel: 17.1%
- Negotiating with U.S. or European counsel: 19.8%
- Patent translations: 11.8%
- Using non-law firm providers: 14.5%
- Not applicable: 26.3%
- Other: 5.3%

The primary reason for bringing steps in-house or outsourcing to a non-law firm provider included cost containment (60%), to take control of the process (18%) and to reduce administrative work (12%).

What steps, if any, did you bring in-house or outsource to a non-law firm provider (i.e., did not use local counsel for) in 2015?

- Annuities: 29.0%
- Drafting specifications: 17.1%
- Filing U.S. or European patent applications: 7.9%
- Foreign patent filing: 17.1%
- Foreign patent prosecution: 6.6%
- Patent translations: 11.8%
- U.S. or European prosecution: 9.2%
- None: 46.1%
- Other: 1.3%
Outlook for 2016
Outlook for 2016

Approximately how many patent families do you expect to file in 2016?

<table>
<thead>
<tr>
<th>Number of Patent Families</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>4.2%</td>
</tr>
<tr>
<td>1-3</td>
<td>19.4%</td>
</tr>
<tr>
<td>4-19</td>
<td>47.2%</td>
</tr>
<tr>
<td>20-49</td>
<td>11.1%</td>
</tr>
<tr>
<td>50-99</td>
<td>4.2%</td>
</tr>
<tr>
<td>100+</td>
<td>13.9%</td>
</tr>
</tbody>
</table>

From these, 26% of respondents plan to file over 75% of these families internationally in 2016 and over 58% plan to file between 25% and 74% of their patents overseas. Only 4% do not plan to seek protection abroad.

Topics cited as key trends for 2016:

- Normalizing IP defense in emerging markets
- How to generate and identify valuable patents and find appropriate business uses for them that generate ROI
- Cost containment on patents
- Consolidating efforts and reducing costs (such as Patent Prosecution Highway)
- The Unitary European Patent
- How to maintain quality at a lower cost
- In U.S., continued resolution of “Alice vs. CLS Bank”
- Search reports consolidating external consulting
- Patent reform in U.S. congress
- Continuing budget issues and cost saving opportunities
- Continued increase in the importance of IP in China
About us

RWS inovia is the world’s leading expert in IP translation, foreign patent filing and search services.

For more than 70 years combined, we have led the industry and helped more than 10,000 clients protect their intellectual property and enforce their IP rights around the world.

• Ensure top quality
• Cut costs and save resources
• Simplify and streamline

Group IP Services

- Patent translations
- PCT national stage entry
- Direct filing
- PatBase - patent database
- Patent searches
- European validation

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