

Seek Project 2010:

# Patent Litigation in Europe

## Motivation

- ▶ Current disputes about reforming the European patent system (introduction of community patent, unified patent), the patent litigation system (“unified patent court”), “European Patent”
- ▶ Missing harmonisation of patent litigation within the EU (“single market”)
- ▶ Fragmentation of national judicial enforcement systems lead to
  - Different outcomes of litigation in Europe
  - Incentives for strategic use and abuse of enforcement systems
  - Double litigation and strategic prolongation of suits
- ▶ No comparative data available to analyse the procedures and efficiency of national patent enforcement systems

## Research Questions

- ▶ Incidence and outcomes of IPR litigation suits in different European legal systems
- ▶ Efficiency of European IPR litigation systems
- ▶ Comparative analysis of the impacts of institutional details of national enforcement systems on the outcomes of IPR cases

## Research Team

- ▶ **Katrin Cremers**, ZEW
- ▶ **Georg Licht**, ZEW
- ▶ **Mark Schankerman**  
London School of Economics
- ▶ **Chrisian Helmers**  
University Carlos III of Madrid
- ▶ **Cedric Schneider**  
Copenhagen Business School
- ▶ **Dietmar Harhoff**,  
LMU Munich, INNO-tec
- ▶ **Georg von Graevenitz**  
LMU Munich, INNO-tec
- ▶ **Nicolas van Zeebroeck**  
Free University of Brussels
- ▶ **Robert Pithkelty**  
St. Peter’s College, University of Oxford
- ▶ **Tony Clayton**  
IPO London

## Data Requirements

- ▶ Coverage of all patent cases filed, settled cases too
  - ▶ Necessary information on
    - Litigants
    - Duration
    - Procedural actions
    - First and higher instances
    - Outcome
    - Costs and potential damages
  - ▶ Comparative information on non-comparable systems in Europe
- .....

## Project Description

### The German System

- ▶ 15 district courts have jurisdiction for patent cases
  - Three of them take more than 80% of the cases: Mannheim, Munich, and Düsseldorf
- ▶ Duality
  - Validity of patents: Jurisdiction at German Patent Court
  - Infringement: Jurisdiction at district courts
- ▶ **Data situation**
  - No data in electronic form available
  - Since May 2010: ZEW collects all procedural information via questionnaire:
    - Mannheim: Collection finished: 1368 filed cases in 2000–2008
    - Munich/Düsseldorf: Collection has started

### The Dutch System

- ▶ Court in The Hague has exclusive jurisdiction on patent disputes
- ▶ Validity and infringement are dealt with by one court
- ▶ **Data situation**
  - Core data of court decisions are available in electronic form
  - High coverage in 2000–2008
  - Settled cases are not observable.
    - The court does **\*NOT\*** issue a decision when parties settle, so these cases will be missing
  - Settlement rate in NL very low: Between 10% and 15%

## Tasks Solved So Far

- ▶ Systematic overview and detailed description of the patent enforcement systems in Germany, France, United Kingdom, the Netherlands, and Belgium as a precondition for:
  - Adjustment of the German questionnaire to the other jurisdictional procedures to ensure comparability
  - Cooperation with lawyers from the University of Mannheim, Düsseldorf, Brussels, and London to take strategic interactions of procedural means into account
- ▶ Supplementary company data which can be combined with the litigation data are made available for all countries involved

### The British System

- ▶ No unified legal system for the UK
- ▶ England and Wales: Patent County Courts (PCC) and the Patent Court (PHC)
- ▶ Nearly all cases are heard by the PHC
- ▶ Validity and infringement are dealt with by one court
- ▶ Appeals are made to the Court of Appeal
- ▶ **Data situation**
  - Lists of cases in electronic form available
  - Detailed data to be collected via questionnaireProblem: Procedural difference among the systems lead to comparability problems

### The French System

- ▶ Tribunaux de Grande Instance (TGIs) have jurisdiction to judge infringement claims and claims to French patent disputes.
- ▶ Until June 2008 there were ten of those TGIs (Marseille, Bordeaux, Strasbourg, Lille, Limoges, Lyon, Nancy, Paris, Rennes, Toulouse).
- ▶ Court in Paris has exclusive jurisdiction on patent disputes (only since 2009)
- ▶ **Data situation**
  - Core data of court decisions are in electronic form available
  - Low coverage in 2000–2008
  - Settled cases are observable
    - The court does **\*ALWAYS\*** issue an indication that parties have settled