

YOUR TEAM FOR SWISS LAW





Creating and Holding IP in Switzerland



October 3, 2014

Hotel Palace, Lucerne

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● VISCHER at a glance

- independent commercial law firm
- offices in Zürich and Basel
- approximately 90 attorneys, notaries und tax experts
- strong roots in growth industries (life sciences, energy, IT, new media)

Service groups

Corporate M&A | Corporate Finance | Corporate and Commercial | Banking and Finance | Life Sciences, Pharma, Biotech, Health | Aviation | Employment Law | Real Estate | Restructuring and Insolvency | Public Sector and Regulatory | Antitrust and Competition | Energy | Litigation, Arbitration | White Collar Crime | Intellectual Property and Technology Transfer | Media, Entertainment, Information and Communication Technology | Tax | Pension Funds | Private Clients | Civil Law Notaries

● Innovation Hub Switzerland

Switzerland is used by many (multinational) companies as a platform for exploiting IP rights on an international level:

- reliable and effective legal system
- traditionally strong protection of IP rights
- well-functioning environment for technology transfers
- access to scientific experts and advanced technology
- privileged tax opportunities

● Innovation Management in the Company

- Systematically **seize ideas** and develop them into commercially exploitable products or services
- Develop **internal guidelines** to raise employee awareness of the economic importance of innovation
- Develop **IP strategy** for the commercialization of innovations (what, how and where to protect)
- **Bundle and secure** IP rights subsisting in the innovations (including in contracts with employees and directors and with external service providers)

● Innovation Management in Business

- Negotiate and structure complex **technology transactions** to reflect the needs of the individual project and the specific interests of the parties
- Clearly distinguish between **pre-existing** and **newly created**, project-specific IP rights
- Provide for detailed rules on **ownership, commercialization** and **enforcement** of IP rights

● IP Strategies

- **Keep** ideas, processes, know-how and inventions **secret**
- File a **patent** application for novel, non-obvious technical inventions
- Register **trademarks** as a source-identifier for the products and services
- Register new and unique **designs** of products
- Rely on **copyright** protection for writings and software
- Manage, defend and **enforce** your IP rights

● Patent Protection for Technical Inventions

- What is protected?
 - Technical inventions which are novel, non-obvious and can be applied commercially
- What is **not** protected?
 - Ideas, concepts, discoveries, scientific theories and mathematical methods, forms, plant varieties, animal breeds and other primarily biological procedures for breeding plants or animals (but biotechnical inventions are patentable), and computer programs (but computer-implemented inventions are patentable)
- The protection begins once the patent is registered and last for **20 years**
- **Disclosure** of the invention with precise and accurate description is required

● Copyright Protection for Writings and Software

- What is protected?
 - Works of literature and art, including scientific writings and software (object code and source code, including the development documentation), which are an original (i.e. statistically unique) expression of an individual
- What is **not** protected?
 - Ideas, concepts, procedures, instructions for humans, and the functionality of software (but the concrete implementation/expression of an idea or functionality of software is protected)
- The protection begins once a protectable work is created and lasts for the **life of the author plus 70 years (plus 50 years** in the case of software)
- Registration of copyrights is neither necessary nor possible in Switzerland!
- Attaching a copyright notice ("copyright" or ©) is recommended, but not necessary



Further Instruments to Protect Innovations

- Protect words or logos used to identify the source of products and services as **trademarks**
- Register new and unique **designs** of products
- **Keep** know-how, processes, ideas, documents, etc. **secret**
- Disclose know-how, processes, ideas, documents, etc. only to parties bound by confidentiality obligations; use **non-disclosure agreements** to protect “confidential information”

● Management, Enforcement and Defense of IP

- Regularly conduct market surveys and **monitor** possibly adverse patent or trademark applications
- Proof: **Keep records** of contracts, relevant communications and documents; document the research and development process (well-documented copyrights are key for copyright enforcement!)
- Jurisdiction:
 - **Patent infringements and validity:** Federal Patent Court has exclusive first-instance jurisdiction
 - **Other IP-related disputes;** a single instance in each Canton has first-instance jurisdiction
 - Second (final) instance: Federal Supreme Court

● Transfer of IP Rights

- IP rights are transferable = commercial assets
- The transfer of patents, designs and trademarks must be **in writing**
- No registration required for the **validity** of the transfer of patents, designs and trademarks
- Registration required **to give full effect** to the transfer of patents, designs, and trademarks **in relation to third parties**
- No written form required (but recommended) for the transfer of copyrights
- Registration of the transfer of copyrights is not possible

● IP Income Taxation in Switzerland

- Mixed Company: available in all Cantons
 - ETR: approx. 10%
 - Potentially Holding Company
 - ETR: 7.8%
- Current tax models
 - Patent Box (Canton of Nidwalden only)
 - ETR: 8.8%

ETR= Effective Tax Rate

● Taxation of IP Income in Switzerland – Current Developments

Corporate tax reform III:

expected to enter into force not before 2017

(with 2 years transitional period)

- Mixed Company and Holding Company status will be abolished
- Patent Box will be available in all Cantons

ETR: approx. 10%

Note: Patent Box available for income from registered patents or from exclusive licenses (for a certain region) only

● Withholding Tax on IP Income

- Outbound royalties: no withholding tax on royalty payments from Swiss sources
- Inbound royalties: full or partial relief of withholding tax on royalty payments from foreign sources to Switzerland according to large network of double taxation treaties

Examples: US: 0%
 Germany: 0%
 Russia 0%

● Your Speakers



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Thank you!

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