

RESEARCH ARTICLE

# Protection of Intellectual Property assets of Germany, the United States and China through Community Trademarks

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## Abstract

Presently, there are three trademark protection systems that coexist on the territory of the European Union: the national, the international and the Community systems. The introduction of the Community system came as a necessity for obtaining protection through a single registration on throughout all the EU member states. This work makes a comparative analysis about the evolution of the applications submitted at OHIM – Office for Harmonization in the Internal Market, by holders from Germany, the United States and China between 1996 and 2012. The study contains determining the variation in total number of the applications submitted by each state, products and services class structure of the requests as well as the place each class occupy in the total registrations. From this research were determined the interests of the countries analysed in the field of trademark protection in Community system on the European Union market.

**Keywords:** *Community trademark, European Union market, Intellectual property, Trademark registration.*

## Introduction

The existence of the brands and commercial signs has roots in the ancient times. The Indian craftsmen were engraving their signatures on their artistic creations to be sent to Iran. For over 2000 years, the Chinese used to sell goods which were marked with their own commercial sign. The importance of the brands grew along with the industrialization, occupying a central place in the modern world of the market economy and international commerce [1].

In the actual economic context, the fight for conquering and keeping new markets takes place in the intellectual property domain. The companies invest considerable amounts of money to create, build, defend and develop the intellectual property actives. An important component of these actives are the commercial signs, as they are, in the same time, durable and passing, strong and delicate, having an existence, sometimes long and stable and, sometimes, with major changes and considerable fluctuations. [2] At present, there are three trademarks protection system coexisting within the European Union:

- The national system, governed by the legislation of each state, member of the European Union.
- The international system, which has, as a legal base the „Madrid Agreement” Concerning the

- International Registration of Marks, dated April 14th, 1891, complemented with the Protocol Relating to the Madrid Agreement, dated June 27th, 1989.
- The European Community Trade Mark system, governed by Regulation no 40/94 of the European Council (EC), dated December 20th, 1993, concerning the community trade mark [3].

The characteristics of the community trade mark are as follows:

- Unitary character-in order to register a community trade mark, a single request shall be submitted and, after the resolution is issued, if favorable, a single title which ensures protection on the entire European Union territory is obtained; this is how the decisions concerning the existence of the trade mark have an unitary character.
- The coexistence with the other two protection systems – the national and international systems; the protection of the community trade mark system is not mandatory and it can exist independent of the national and international trade mark systems; however, there is a correlation between the three systems. This is

where the analysis of the most adequate system for the future development of the mark interferes, the community trade mark system having the advantage of ensuring protection on an extended market and following a single registration procedure.

- Claiming the seniority of a national trade mark, by which the holder of an identical trade mark, nationally or internationally obtained, can appeal to the age of that trade mark.
- The conversion of the community trade mark into a national trade mark - in order to be community registered, the approval of all national patent offices is required; the denial from one of the patent offices is equivalent to the rejection of the request. In this case, the resolution for the holder, in order for him to benefit by the filing date or priority date, is the submission of the request at the patent offices which approved the community mark registration and, so, the conversion of the community trade mark into a national one. The direct advantage is that the filing date will not be lost, as well as the protection for each country but, instead, the surface of the territory where the trade mark is protected is reduced and the prestige of the holder in owing a community trade mark is lost [4] effectively, the system started running from 1996.

The present performs a comparative analysis of the evolution of the requests for marks registrations submitted by holders from Germany, United States of America and China, between

1996-2012, as well as an analysis of the structure of products and services classes of the first 10, regarding the number of registrations, as per Nice classification.

## Methodology

The utilized research method is the analysis of the statistic data available in the OHIM database. The analyzed period is 1996, the first year when the system became operable and 2012, the last year, complete. In order to ensure the data comparison related to complete years, the first months of 2013 are not included [5].

The utilized statistic indicator is the dynamic coefficient with a fluctuant basis, which represents the proportion between the records of the current year and the ones related to the year previous to the one for which the calculation is made. This indicator points out the quantity modifications which took place, from one year to another, concerning the activity of mark registrations at OHIM, for each country. The dynamic coefficient with a fluctuant basis -  $R_{y/y_{i-1}}^y = y_i/y_{i-1}$

## Result and Discussion

The table below reveals the number of requests related to the protection of the community trademarks submitted to OHIM, for each analyzed country, as well as the dynamic coefficient with a fluctuant basis for each year and country.

**Table 1: CTMs Received by Year: Germany, United States, China**

Year	Germany	$R_{y/y_{i-1}}^y = y_i/y_{i-1} * 100$ (%)	United States	$R_{y/y_{i-1}}^y = y_i/y_{i-1} * 100$ (%)	China	$R_{y/y_{i-1}}^y = y_i/y_{i-1} * 100$ (%)
1996	7704	-	13237	-	58	-
1997	3922	50.9	7283	55.02	39	67.24
1998	4832	123.2	8065	110.73	28	71.79
1999	6945	143.72	10569	131.04	52	185.71
2000	9816	141.33	14695	139.03	32	61.53
2001	8285	84.40	11302	76.91	68	212.5
2002	7326	88.42	9915	87.72	99	145.58
2003	9811	133.92	11544	116.42	123	124.24
2004	9844	100.33	10462	90.62	163	132.52
2005	11023	111.97	11437	109.31	330	202.45
2006	13596	123.34	12840	112.26	509	154.24
2007	15547	114.34	14020	109.19	761	149.5
2008	15531	99.89	12887	91.91	837	109.98
2009	16260	104.69	11342	88.01	923	110.27
2010	18405	113.19	12852	113.31	1333	144.42
2011	19971	108.5	13936	108.43	1753	131.5
2012	20088	100.58	14097	101.15	1949	111.18
Total	198906		200483		9057	

Source: Author`s adaptation considering the OHIM statistic data

Germany is the EU member state with the highest number of registrations between 1996-2012 and, totally, it is situated on the second position, after the United States of America. The registrations related to the first year is 7704 and the number decreased, in the next year, to 50.9%. The explanation for the decrease is that the companies wanting to benefit of this new unitary protection had been expecting the new system; in 1997 the number of the interested got to half.

Consequently to a continuously increasing trend, followed by 2 years of a slight decrease, 2001-2002, the first year level is exceeded in 2000. 2003-2012 tagged by an increasing dynamic, except for 2008 when a decrease of 0.11% is observed.

The United States of America occupy the first place, considering the number of community trade mark requests which demonstrates the importance of intellectual property actives protection and a developed culture in this domain. The decreasing direction between the first two years, 1996-1997, is also recorded, but as an absolute value, the USA shows almost double than Germany in the first three years of system operation. The increasing trend can be observed if we consider 1998-2012, a period tagged by 10 years of increase and 5 years of decrease of the registrations number; this fluctuation has been calculated using the dynamic coefficient with fluctuant basis. The most significant decreases can be observed in 2001, 23.09% and 2002, 12.28%.

As far as the registration requests number is concerned, China, a country where the intellectual property culture is still developing and where many products pertaining to known brands are being manufactured due to low cost of the manpower, is far under the other two countries. As an absolute value, the total of the registrations obtained by China represents 4.55% from the ones obtained by Germany and 4.51% from the ones obtained by USA. If we consider the fluctuation, the first two years are tagged by a significant decrease of the registrations. If we consider the fluctuation of the first two years, a considerable decrease of the requests number can be observed. Between 2000 and 2013 an increasing trend of the registrations is maintained, with considerable increasing rates, reaching even 102.45%; however, as an absolute value, this is far under the other countries, parts of the present analysis.

There are a few resemblances within the evolution of the three countries:

- 1997 is tagged by the most significant decrease;
- the increasing trend of the requests number from one year to another;
- 2001, 2002, 2008 are tagged, for both Germany and USA, by a decrease of the requests number.
- 2006 is the first year when Germany beats the USA - situation maintained between 2006 and 2012.

**Table 2: The first 10 classes related to the total requests number for each analyzed country.**

No.	Total Nr.class	Application by class Total	Germany	Application by class Germany	United States	Application by class United States	China	Application by class China
1	9	318185	9	61043	9	66079	9	2851
2	35	253160	42	53106	42	36707	25	1343
3	42	221160	35	48509	35	29241	11	1248
4	41	175150	41	33027	16	27857	7	1149
5	16	165975	16	30423	41	26111	35	1008
6	25	147463	38	23515	25	21702	12	1000
7	05	112107	25	22089	5	20237	18	877
8	38	108188	7	21368	3	15658	20	656
9	03	98293	5	20845	10	14818	42	615
10	36	87071	11	18676	28	13620	6	606

Source: Author's adaptation considering the OHIM statistic data

The table shows the first 10 classes, the total registrations number for each country, as well as the number of registration per each class.

Germany has 8 classes, in relation to the first 10, with some positioning differentiation, as follows:

class 35 occupies the 3rd position unto the 2nd position, considering the total, class 42 occupies the 3rd position unto the 2nd one, considering the total, class 39 occupies the 6th position unto the 8th, per total. Relating the registrations structure, as the total of the classes of services

and products, to the one related to Germany, we can observe considerable correspondences, if we refer to the classes positioning as registrations number; this situation is possible due to the share of this country in the total of the registrations, among others. Classes 7 and 11 are part of the Top 10, as far as Germany is concerned, but not part of the total.

The USA has 8 classes on the first 10 positions, related to the total number of registrations. The first 7 classes are the same as the ones in the total, with slight positioning differences, as registrations number. Classes 10 and 28 are the ones present in Top 10 differently from the total. By contrast with the other analyzed countries, China has only 4 classes in Top 10, classes also present in the total. Consequently, there are 6 classes containing a number of registrations which positions them in the first 10. These classes are 11, 7, 12, 18, 20, 6.

A resemblance can be observed between classes 11 and 7, which are missing from Top 10 per total, but they are present for Germany and China.

### **The First 10 Products Classes as per the Nice Classification related to the Total Number of Requests [6]**

- 9- Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus.
- 35- Advertising; business management; business administration; office functions.
- 42- Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.
- 41-Education; providing of training;

entertainment; sporting and cultural activities.

- 16- Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks.
- 25- Clothing, footwear, headgear.
- 05-Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides
- 38- Telecommunications.
- 03-Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
- 36- Insurance; financial affairs; monetary affairs; real estate affairs.

### **Product classes in Top 10 number of requests in Germany that are not in Top 10 per total**

- 7- Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs; automatic vending machines.
- 11- Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

### **Product classes in Top 10 number of requests in USA that are not in Top 10 per total**

- 10- Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
- 28- Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

## Product Classes in Top 10 Number of Requests in China that are not in Top 10 Per Total

- 11- Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
- 7- Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs; automatic vending machines.
- 12- Vehicles; apparatus for locomotion by land, air or water.
- 18- Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas and parasols; walking sticks; whips, harness and saddlery.
- 20- Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
- 6- Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

## Conclusions

The protection territory for an intellectual property active has a major importance in

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exploitation and creating additional values. By its governing principles, the protection community trademarks system has created the basis of the unique European market development as, far as the intellectual property is concerned. Now, the companies can build the marketing strategy not only at a national or international level, but, also, at a community level. Applying this trade mark development policy, protecting it on the European Union territory, as well as on the territory of future member states after their adherence, an opportunity for the commerce, which is no longer limited by the protection systems differences or lack of protection in a certain state, has arisen. Analyzing the statistic data within OHIM trademarks database, an increasing interest for community trademarks can be observed. The trend is maintained for countries having a total high share, such as Germany and the USA, as well as for China which, although numerical is far from the first two, as increasing rate, it goes beyond them. Analyzing the classes structure of the trade marks, it can be observed the products and services for which protection is more often requested. There is a natural resemblance between the first classes per total as registration numbers and the first classes for Germany and USA; these are the states having the highest share in the total. The structural analysis of the community trademarks reveals relevant data regarding the economic interests on the European market. Using the community protection system and following an unitary procedure, a protection on the territory of 27 states can be obtained and the possibility for this territory to be extended in case of new members.

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