

Introduction to IP for ICT start-ups

TETRA Webinar #18

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Agenda

- 1 Intellectual Property (IP) in the ICT sector: *The basics*
- 2 IP protection in the framework of ICT/NGI: *Success and Failure Stories*
- 3 To protect or not to protect? *From Counterfeiting to IP Valorisation in the ICT sector*
- 4 Questions & Responses

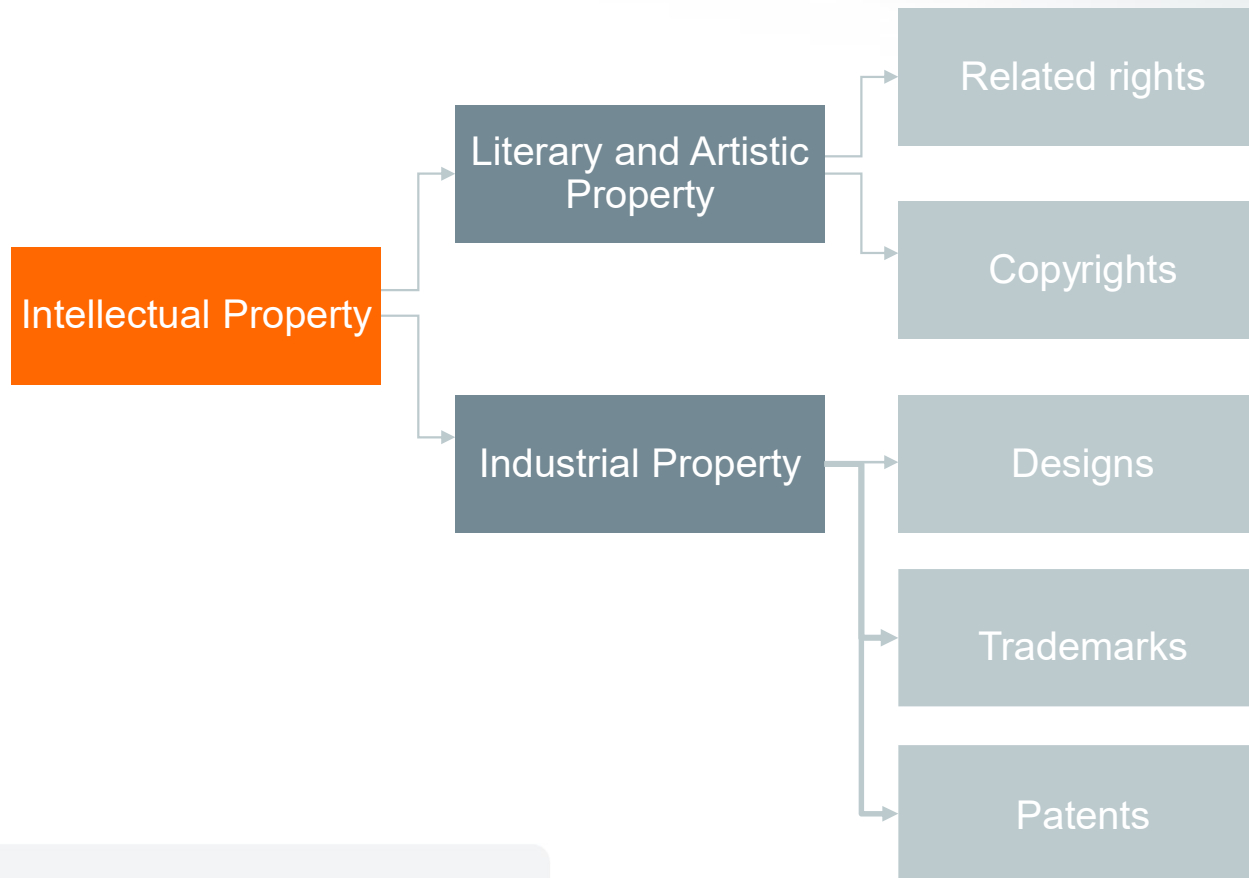
Intellectual Property in the ICT sector

The basics



1. Intellectual Property (IP) in the ICT sector

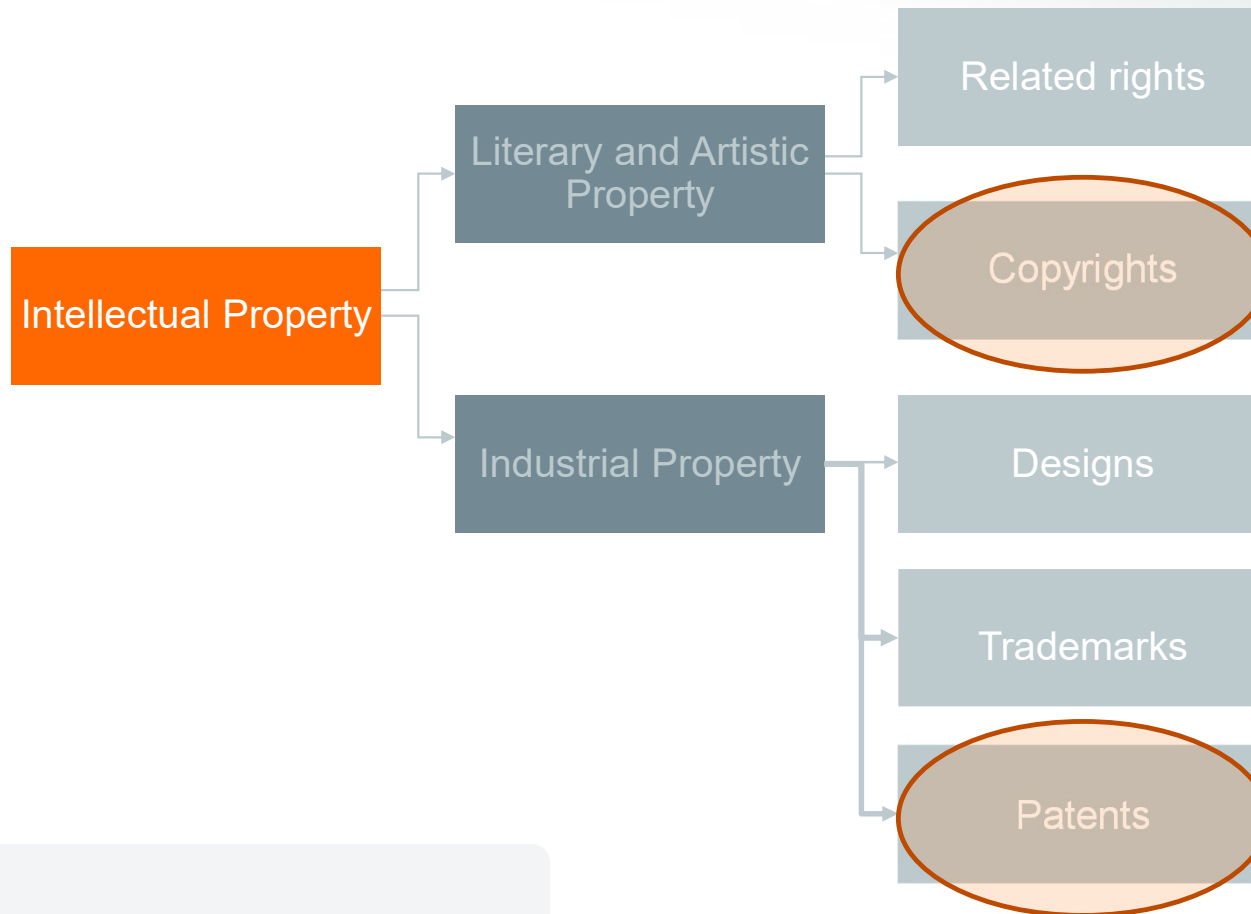
1.1 The basics





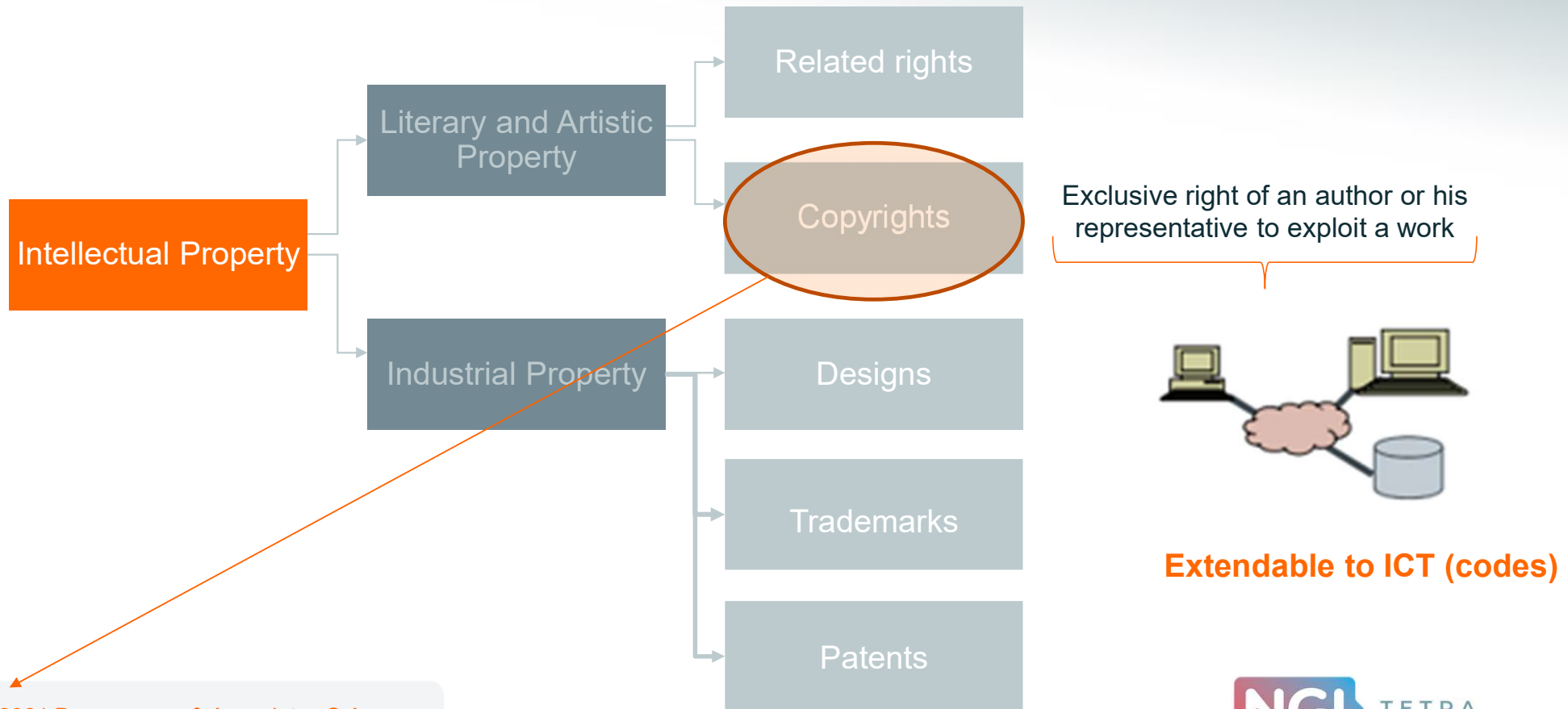
1. Intellectual Property (IP) in the ICT sector

1.1 The basics



1. Intellectual Property (IP) in the ICT sector

1.1 The basics



1. Intellectual Property (IP) in the ICT sector

1.2 Copyrights

Definition and contextual elements for “software” copyrights

- Copyrights do not protect the substance but the form !
 - › Protection of the "source code" + "compiled code"
 - › Protection of the "preparatory design materials" (incl. user manual, flowcharts)

(All protected objects must be an original and unique intellectual creation of its author)

```
Save {
  const bit(4) 9;
  uint(12) serviceID;
  uint(8) groupID;
  uint(lenBits) nbIds;
  for (int i = 0; i < nbIds; i++) {
    uint(idBits) id[i];
  }
}

Restore {
  const bit(4) 10;
  uint(12) serviceID;
  uint(8) groupID;
}

Clean {
  const bit(4) 8;
  uint(12) serviceID;
  uint(8) groupID;
}

constbit(4) 12;
bit(6) msgID;
if (msgID == 2) {
  isPermanent = false;
  isReplace = true;
} else if (msgID == 4) {
  isPermanent = true;
  isReplace = true;
} else if (msgID == 6) {
  isPermanent = false;
  isReplace = false;
} else if (msgID == 7) {
  isPermanent = true;
  isReplace = false;
}
```

1. Intellectual Property (IP) in the ICT sector

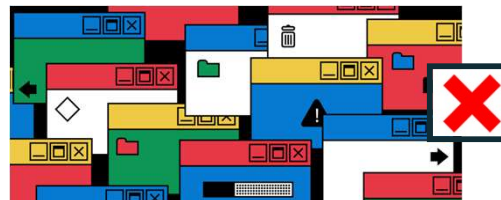
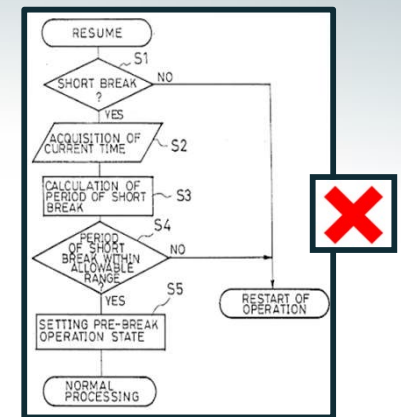
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(All protected objects must be an original and unique intellectual creation of its author)

- ! › NO protection of the algorithm functions
- ! › NO protection of the technical specifications or documentation
- ! › NO protection of the GUI's



1. Intellectual Property (IP) in the ICT sector

1.2 Copyrights

What “software” copyrights entail

- Protection against
 - › reproduction (permanent or temporary).
 - › translating, adapting, rearranging ... the computer program.
 - › Distributing (including rental or copying).
- Duration: 70 years (post-mortem)



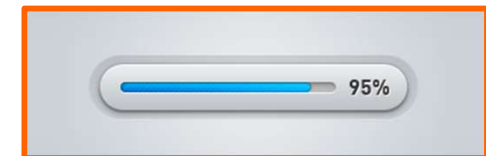
(L 122-6 CIP)



(Art. XI.298. CEL)



(Art. 33 of the law of April 18, 2001)



1. Intellectual Property (IP) in the ICT sector

1.2 Copyrights

Enforcing “software” copyrights

- Only prerequisite: proving the existence of the software copyright by any means
 - › Submitting the code to a dedicated national association (APP in France)
 - › Deed of ownership approved by a notary
 - › Filing to a digital system (“enveloppe Soleau” in France, i-DEPOT tool in Benelux).



1. Intellectual Property (IP) in the ICT sector

1.2 Copyrights

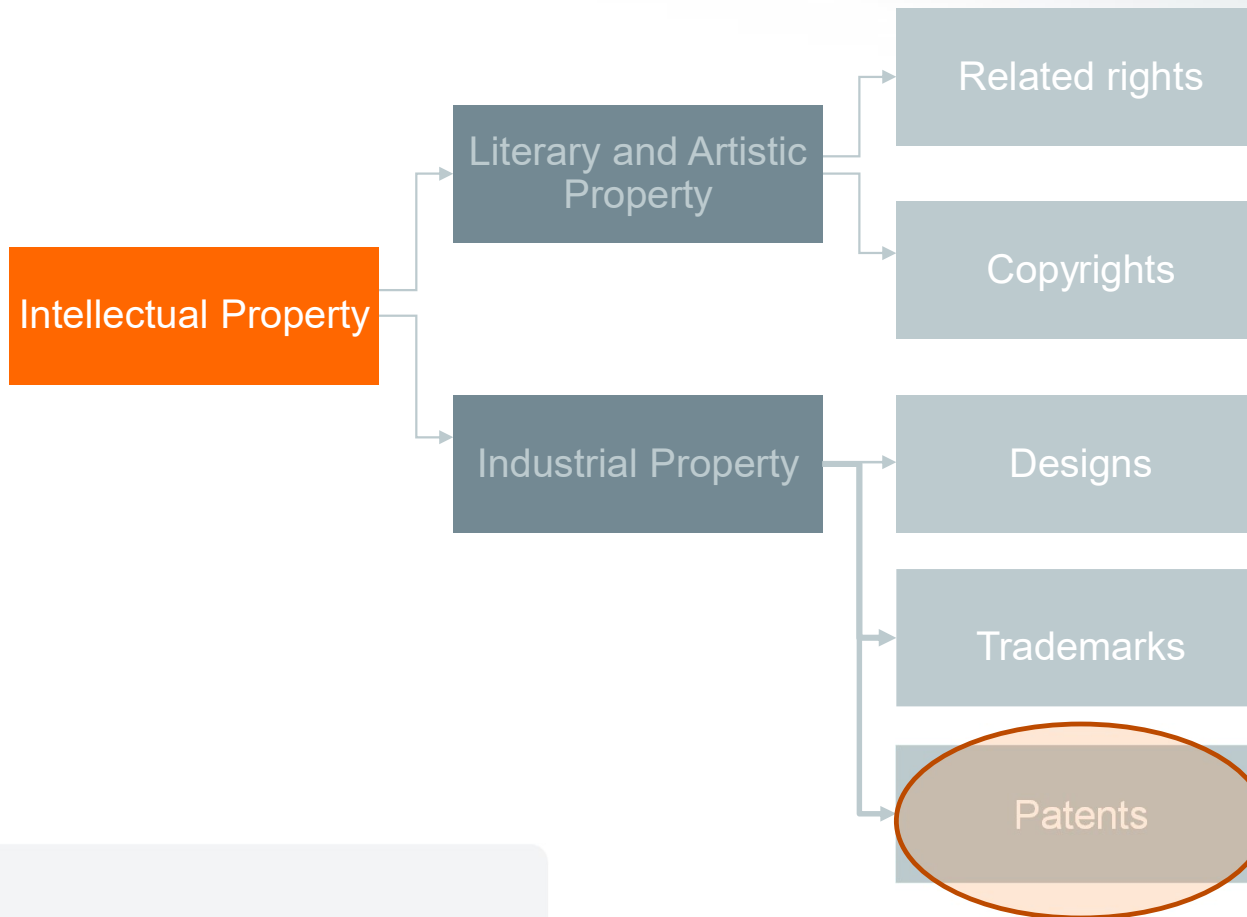
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 - › Deed of ownership approved by a notary
 - › Filing to a digital system (“enveloppe Soleau” in France, i-DEPOT tool in Benelux).
- Infringing any of the aforementioned prerogatives is a counterfeiting act
 ➔ punishable under civil and criminal law
 - › Civil penalties : compensation for damages.
 - › Criminal sanctions: 300 k€ fine, 3 yrs imprisonment (500 k€/5 yrs imprisonment if organized crime).
 - › Publication of the judgment



1. Intellectual Property (IP) in the ICT sector

1.3 Patents



<https://www.epo.org/law-practice/legal-texts/html/guidelines/e/j.htm>

Index for Computer-Implemented Inventions

A computer-implemented invention (CII) is one which involves the use of a computer, computer network or other programmable apparatus, where one or more features are realised wholly or partly by means of a computer program.



Right to prohibit the exploitation of a technical innovation



1. Intellectual Property (IP) in the ICT sector

1.3 Patents

Patentability of ICT inventions (CII's):

“Acquisition of a right to prohibit in exchange for a disclosure of the invention to the public”

- Novelty

Conditions

- Be novel
- Be inventive
- Be technical

Disclosure of the invention in the patent application

VS

State of the art = Everything made public before the filing date

- Inventive step / Non-obviousness

Starting from the closest state of the art, does the invention appear obvious to the person skilled in the art in view of the problem to be solved?

- Technicality for CII's

« ICT invention » : the claimed invention must define “technical” features solving a “technical problem” in a non-obvious manner



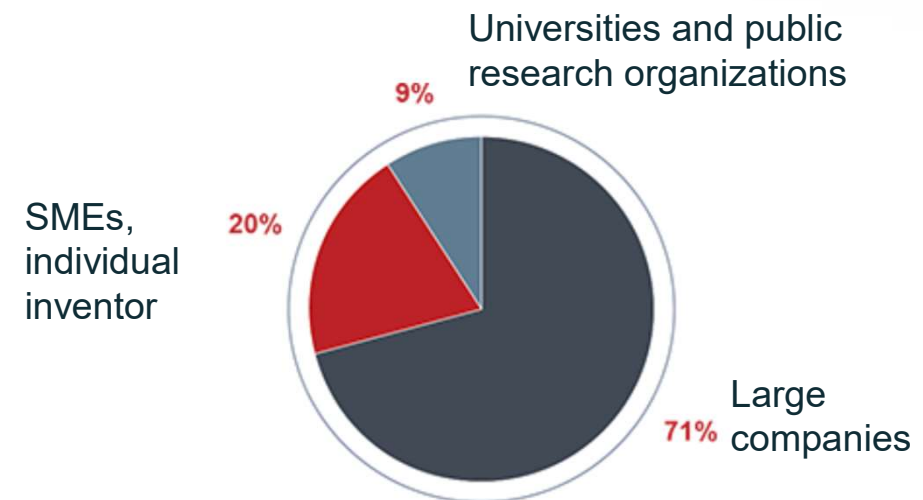
1. Intellectual Property (IP) in the ICT sector

1.3 Patents

Largest technical fields in 2018¹

	Applications ²	Growth
1 Medical technology	13 795	+5.0%
2 Digital communication	11 940	+0.7%
3 Computer technology	11 718	+3.3%
4 Electrical machinery, apparatus, energy	10 722	+4.7%
5 Transport	9 039	+5.9%
6 Measurement	8 744	+9.3%
7 Pharmaceuticals	7 441	+13.9%
8 Biotechnology	6 742	+12.1%
9 Other special machines	6 379	+10.9%
10 Organic fine chemistry	6 233	-3.6%

>> 175 000 European patent applications filed in 2018



>> 1 European application above 5 is filed by a SME

1. Intellectual Property (IP) in the ICT sector

1.4 Summary

ICT inventions: comparison between copyright and patent

- Software copyright

- Proof of ownership/originality difficult abroad
- Scope of protection limited to the software embodiment
- Very low cost
- Very long term (70 years after the author's death)
- Effective mostly against slavish copying/imitation

- Patent

- Proof of ownership/novelty is simple
- Scope of protection may be very broad (not limited to a single embodiment)
- Fairly high cost
- Duration limited to 20 years from filing
- Effective against any act of manufacturing, offering, commercializing, using, importing or exporting the corresponding product or process.

IP protection in the framework of ICT/NGI

Success and Failure Stories

2. IP protection in the framework of ICT/NGI

Success and Failure Stories

Approach : examples of startups which meet the following criteria

- Directly involved in the field of ICT
- Having (had) an IP portfolio that played a major role in their success or in their failure
- Ex post analysis using reliable and verified sources



2. IP protection in the framework of ICT/NGI

Success and Failure Stories

Approach : examples of startups which meet the following criteria

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2. IP protection in the framework of ICT/NGI

2.1 Webdyn: “integrated ICT solutions for the Internet of Things”

The company **WEBDYN**

- French SME based in Paris since 1997
- Turnover: EUR 4 million
- Staff: 30 people
- 1 Export office in India
- Core business: hardware + software components for complex networks, especially in the solar energy area, and implement the Internet of Things (IoT) to manage their smart energy systems.

The technology

- IP gateways (used to connect wide area networks to local area networks)
- End points such as ICT concentrators (used to collect local sensor-generated data from local area networks)
- Complete ICT systems for data collection (aggregate the data and send them through wide area communication networks), management and control.

The portfolio

- One patent family (EP1523832)

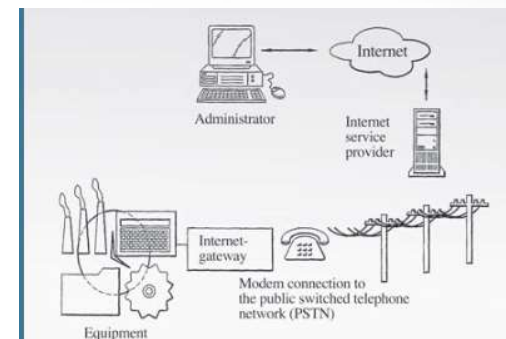
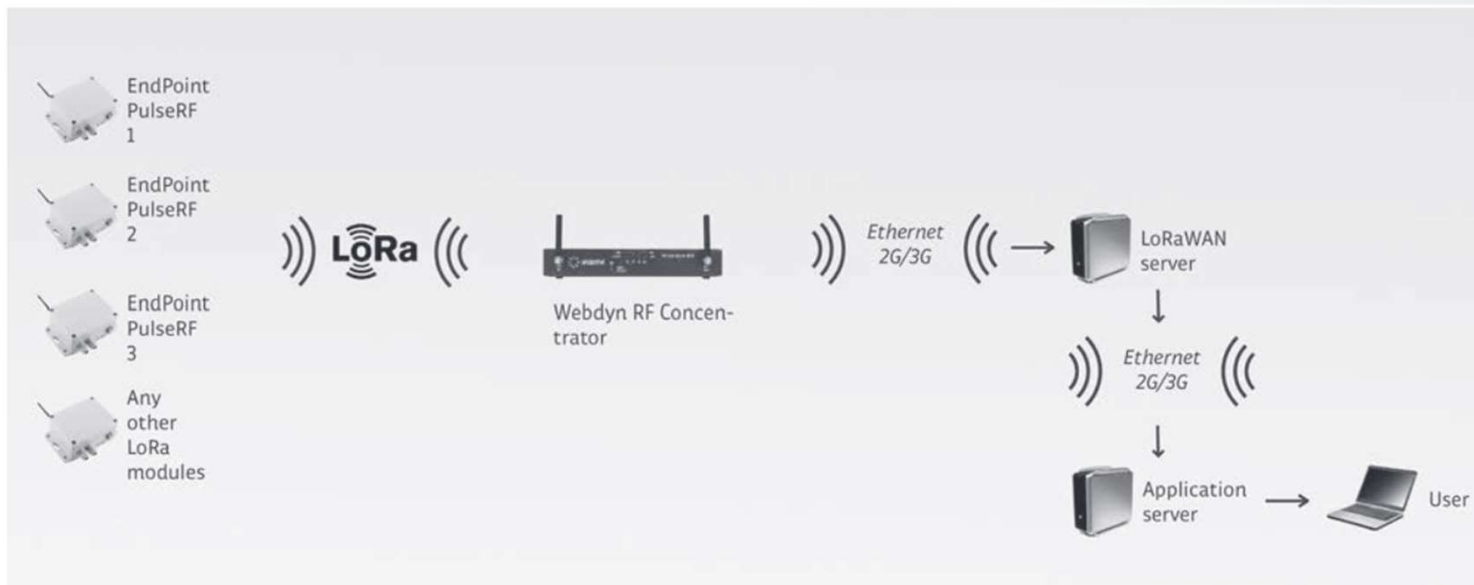


Fig. 4

The patented invention (EP1523832) relates to a method for connecting an electronic system to a communications network through an access provider, such as the internet, and a device, a gateway, for carrying out the method. Gateways act as a communication link to the data generated in electronic equipment and one (or more) computer platform that operates the data received from equipment. With such architecture it is possible to manage remote, electronic equipment using standard IT tools (TCP/IP tools).

2. IP protection in the framework of ICT/NGI

2.1 Webdyn: “integrated ICT solutions for the Internet of Things”

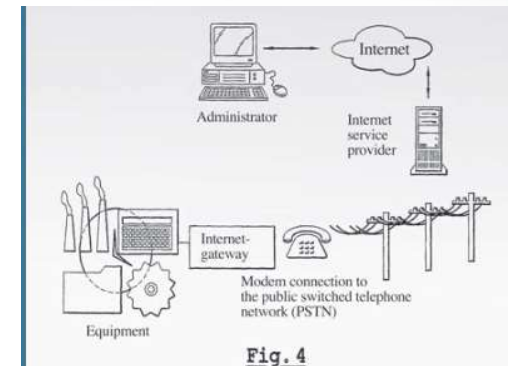


“WebdynRF LoRaWAN is a platform dedicated to wireless networks using the LoRa radio technology. It is designed to link counters, sensors and a data server via the LoRaWAN network.”

Source: <https://www.epo.org/learning/materials/sme/sme-case-studies.html>

The portfolio

- One patent family (EP1523832)



The patented invention (EP1523832) relates to a method for connecting an electronic system to a communications network through an access provider, such as the internet, and a device, a gateway, for carrying out the method. Gateways act as a communication link to the data generated in electronic equipment and one (or more) computer platform that operates the data received from equipment. With such architecture it is possible to manage remote, electronic equipment using standard IT tools (TCP/IP tools).

2. IP protection in the framework of ICT/NGI

2.1 Webdyn: “integrated ICT solutions for the Internet of Things”

The strategy

- Webdyn created a leadership position thanks to a single European patent that was obtained via the international (PCT) route prior to the market boom.
- Patent EP1523832 broadly protects a method allowing an administrator to inspect the client’s systems remotely and to provide whatever intervention is required.
- EP1523832 provided an exclusion right and helped securing Freedom To Operate (FTO)
- Webdyn used the patent to negotiate a licensing agreement with a competitor before grant.
- Broad range of products: WebdynSunPM, WebdynTI, WebdynSun, Modbus, WebdynPulse, WebdynBridge gateways, WebdynEasy W M-Bus 868MHz sensor, radio concentrators, etc.

2. IP protection in the framework of ICT/NGI

2.1 Webdyn: “integrated ICT solutions for the Internet of Things”

Take-away conclusions

- Early patent application is a clear key to growth for ICT companies, especially when involving hardware.
- A strong patent application is a powerful tool for negotiating cross-licensing and/or securing FTO
- As long as a filed patent is not granted, its business value remains significant as providing potential infringers with a signal that they might be liable for damages, seizure and injunction once the patent is granted.

➔ *Patent protection is not a “necessary and sufficient” condition to success, but its use is most certainly!*



2. IP protection in the framework of ICT/NGI

2.2 AltoBridge: “GSM (2G) and 3G wireless broadband solutions to unconnected communities”

The company

ALTOBRIDGE



- SME founded in Ireland in 2002
- (Had) turnover of EUR 13.2 million in 2011
- Staff: 130 people over IE, MY, US and CN
- Core business: world's first commercial on-board GSM service for aircrafts, for deep-sea vessels and first-time mobile connectivity to remote communities in South East Asia, Oceania and Africa.

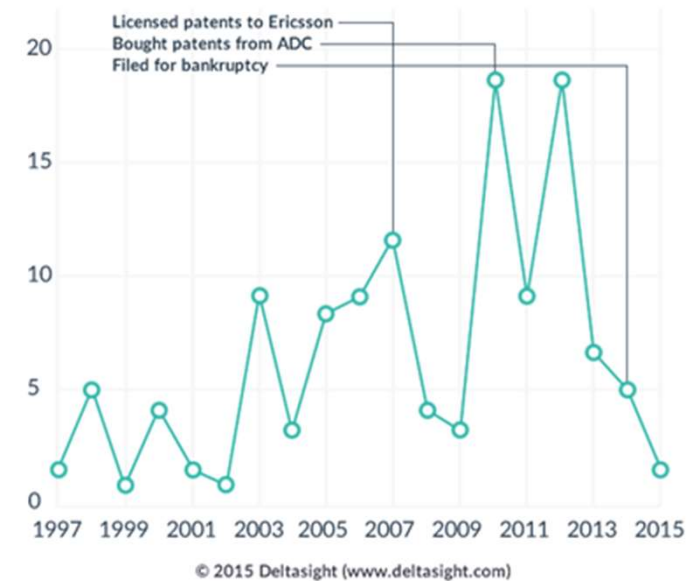
The technology

- All-in-one wireless (mobile) systems including transmitters, receivers, servers and general 2G/3G wireless broadband solutions
- Low transmission bandwidth (4 kbps per call)
- Low power consumption (2 x 10W RF output power, enabling solar-power-only sites)

The portfolio

- > 120 published patent families

ACTIVITY OVER TIME BY NUMBER OF PUBLICATIONS





2. IP protection in the framework of ICT/NGI

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- **Bankruptcy in June 2014, sold for EUR 4 million to iDirect (ST Engineering)**

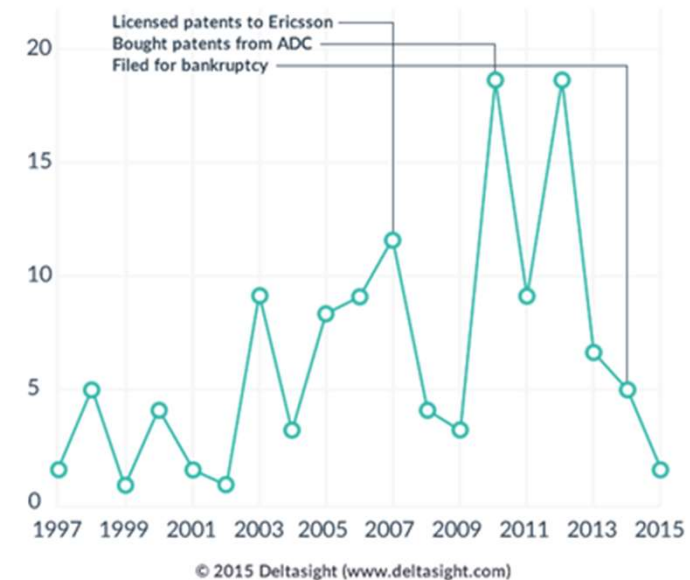
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2. IP protection in the framework of ICT/NGI

2.2 AltoBridge: “GSM (2G) and 3G wireless broadband solutions to unconnected communities”

Success was expected thanks to ...

- Early patent applications, significant R&D investments, impressive geographical coverage, number of citations and awards from 2010 and on.
- A strong patent portfolio with license/selling agreements (Ericsson, ADC)

... but not provided because of:

- Competition - having struck deals with several national communications providers, AltoBridge’s competitors priced them out of the market (2011).
- Lack of action - being faced with competitors, AltoBridge failed to leverage (file infringement lawsuits) or monetize its patent portfolio at the right time.

➔ iDirect eventually acquired AltoBridge for 4 M€ in 2014 whereas IPEG estimated the IP assets to be more than several times this value in 2011.

TOP CITING COMPANIES WITH NUMBER OF ALTOBRIDGE FAMILIES CITED

	ADC Telecommunications	Families cited	● ● ● ● ● ● ● ●
	Motorola	Families cited	● ● ● ● ● ● ○ ○
	Siemens	Families cited	● ● ● ● ● ● ○ ○
	Ericsson	Families cited	● ● ● ● ● ○ ○ ○
	Huawei	Families cited	● ● ● ● ○ ○ ○ ○
	Lemko Corp	Families cited	● ● ● ● ○ ○ ○ ○
	Qualcomm	Families cited	● ● ● ● ○ ○ ○ ○
	Samsung	Families cited	● ● ● ● ○ ○ ○ ○
	Cisco	Families cited	● ● ● ○ ○ ○ ○ ○
	Intel	Families cited	● ● ● ○ ○ ○ ○ ○
	ZTE Corp	Families cited	● ● ● ○ ○ ○ ○ ○

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Source: Intellectual Property Expert Group

2. IP protection in the framework of ICT/NGI

2.2 AltoBridge: “GSM (2G) and 3G wireless broadband solutions to unconnected communities”

Take-away conclusions

- Maintaining IP rights alive becomes expensive in the long-term: a well-defined strategy is essential
- Valuing and monetising one’s patent portfolio is of uttermost importance when facing financial/market challenges
- Patents are not mere (intelligible) assets but rights to prohibit manufacturing, supplying, offering, using, importing and/or exporting on the territories of interest.

➔ *Patent protection’s main interest is to slow down competitors and stop infringers, and not only to contribute to the company’s monetary value.*

2. IP protection in the framework of ICT/NGI

2.3 Life360: Family Locator GPS Tracker for Safety

The company

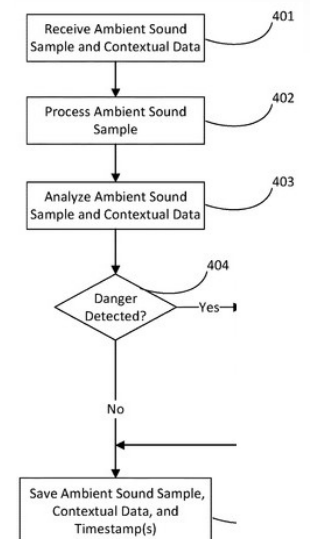
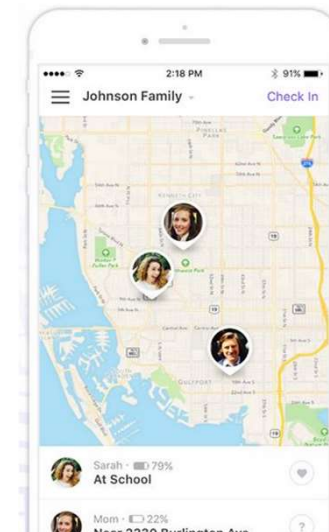
- Start-up founded in San Francisco in 2008
- Revenues of USD 59 millions in 2019
- Staff: 220 people in SF
- Core business: family social networking application (Android, iOS, Windows) for a location-based service designed primarily to enable friends and family members to share their location with each other.

The technology

- GPS-based location technology with a messaging platform.
- Combination of Wi-Fi signals, cell tower signals and geofences for avoiding GPS battery consumption.
- Use of contextual data (e.g. recorded sounds, local crime rate data, speed, ...) to manage the battery levels and outlying actions.

The portfolio

- > 10 granted US/EP patent families



2. IP protection in the framework of ICT/NGI

2.3 Life360: Family Locator GPS Tracker for Safety

The story

- Early May 2014: \$50 million raised by Life360 + strategic partnership obtained with ADT Security Systems
- May 13, 2014: Life360 receives a letter by Advanced Ground Information Systems Inc. (AGIS) informing them of the alleged infringement of its US Patents and inviting them to discuss a patent licensing arrangement.

- May 14, 2014: response from Life360 →

Dear Piece of ~~Shit~~,

We are currently in the process of retaining counsel and investigating this matter. As a result, we will not be able to meet your Friday deadline. After reviewing this matter with our counsel, we will provide a prompt response.

I will pray tonight that karma is real, and that you are its worthy recipient,

Chris

May 16, 2014: lawsuit filed by AGIS against Life360 base on US 7,764,954, 8,126,441, 7,672,681, 7,031,728

→ Life360 refuses to settle and demands a jury trial to settle the claim.

- March 13, 2015: “victory” of Life360 by receiving a favorable verdict by a jury which found no infringement of any of the patents (“victory” -> ife360’s legal fees reached \$1 million, AGIS’ legal fees totaling \$684,190)

Source: The Patent Scam (2017 Documentary)

2. IP protection in the framework of ICT/NGI

2.3 Life360: Family Locator GPS Tracker for Safety

Take-away conclusions

- Patent protection through grant does not imply freedom to operate!
- Always ask for legal counsel when receiving letters from competitors
- Avoid entering the US market without an IP portfolio (high risk of patent trolling)
- Although patents-in-suit may eventually be ruled as invalid for patentability or definiteness reasons, infringement lawsuits are usually long, costly and unpredictable.

2. IP protection in the framework of ICT/NGI

2.4 Seaters: Redistribution software for online tickets to an event



The company

- Belgian start-up founded in 2013
- Yearly earnings above EUR 2 millions since 2015
- Staff: 10 people and offices in New-York, Brussels, Paris & London
- Core business: fill unsold seats at large-scale events, in particular
 - ➔ Sell the 5-40% of seats on average left vacant at any event
 - ➔ 20% of the fees go to Seaters for any seats sold

The technology

- Online platform allowing users to apply/queue online for seats that become available later at a given event.
- Data collection method (telephone number, address, etc.) from members registered with a sponsor of said event, said data being associated with an interest level to attend the event by registration on a WishList.
- Interface for accessing the collected data at any time from a by the user and the sponsor.

The portfolio

- A single patent family (BE+US)





2. IP protection in the framework of ICT/NGI

2.4 Seaters: Redistribution software for online tickets to an event

The patent application

R1. A **method** comprising:

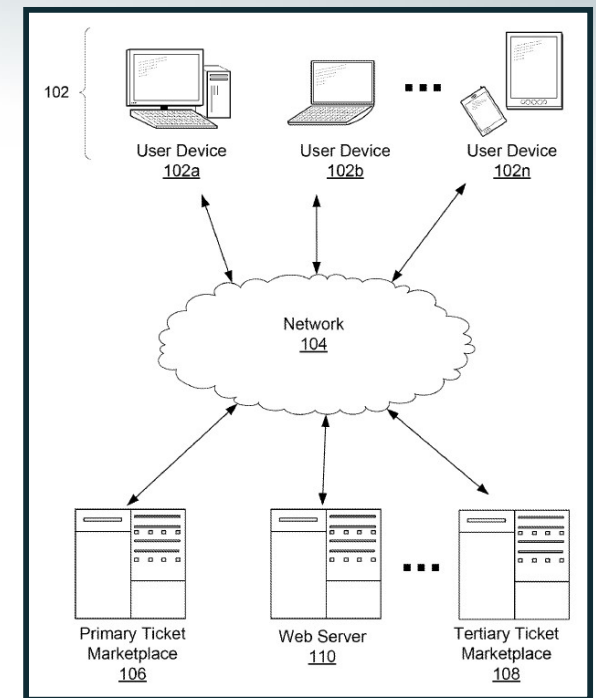
- determining, from a **rights database** that a first right is allocated to a first party;
- receiving a request by a server from a client device** controlled by a second party;
- calculating, by the server, a probability** that the request will be satisfied;
- providing, to the client device, an indicator of the calculated probability; and
- recording the request in a database.**

(12) INTERNATIONAL APPLICATION PUBLISHED UNDER THE PATENT COOPERATION TREATY (PCT)	
(19) World Intellectual Property Organization International Bureau	
(43) International Publication Date 25 June 2015 (25.06.2015)	(10) International Publication Number WO 2015/092552 A2
WIPO PCT	
(51) International Patent Classification: Not classified	DO, DZ, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, GT, HN, HR, HU, ID, IL, IN, IR, IS, JP, KE, KG, KN, KP, KR, KZ, LA, LC, LK, LR, LS, LU, LY, MA, MD, ME, MG, MK, MN, MW, MX, MY, MZ, NA, NG, NI, NO, NZ, OM, PA, PE, PG, PH, PL, PT, QA, RO, RS, RU, RW, SA, SC, SD, SE, SG, SK, SL, SM, ST, SV, SY, TH, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, ZA, ZM, ZW.
(21) International Application Number: PCT/IB2014/003210	(84) Designated States (unless otherwise indicated, for every kind of regional protection available): ARIPO (BW, GH, GM, KE, LR, LS, MW, MZ, NA, RW, SD, SL, ST, SZ, TZ, UG, ZM, ZW), Eurasian (AM, AZ, BY, KG, KZ, RU, TJ, TM), European (AL, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LT, LU, LV, MC, MK, MT, NL, NO, PL, PT, RO, RS, SE, SI, SK, SM, TR), OAPI (BF, BJ, CF, CG, CI, CM, GA, GN, GQ, GW, KM, ML, MR, NE, SN, TD, TG).
(22) International Filing Date: 19 December 2014 (19.12.2014)	Published: without international search report and to be republished upon receipt of that report (Rule 48.2(g))
(25) Filing Language: English	
(26) Publication Language: English	
(30) Priority Data: 61/919,544 20 December 2013 (20.12.2013) US	
(71) Applicant: SMARTSEATS IP BVBA [BE/BE]; Oudburg 64/201, B-9000 Gent (BE).	
(72) Inventor: GOSUIN, Jean-Sébastien; Walckierslaan 54, B-1160 Ouderderm (BE).	
(81) Designated States (unless otherwise indicated, for every kind of national protection available): AE, AG, AL, AM, AO, AT, AU, AZ, BA, BB, BG, BH, BN, BR, BW, BY, BZ, CA, CH, CL, CN, CO, CR, CU, CZ, DE, DK, DM,	

R18. A **system** comprising:

- a **computer processor for network communication**;
- one or more memory elements;
- a computer-accessible memory

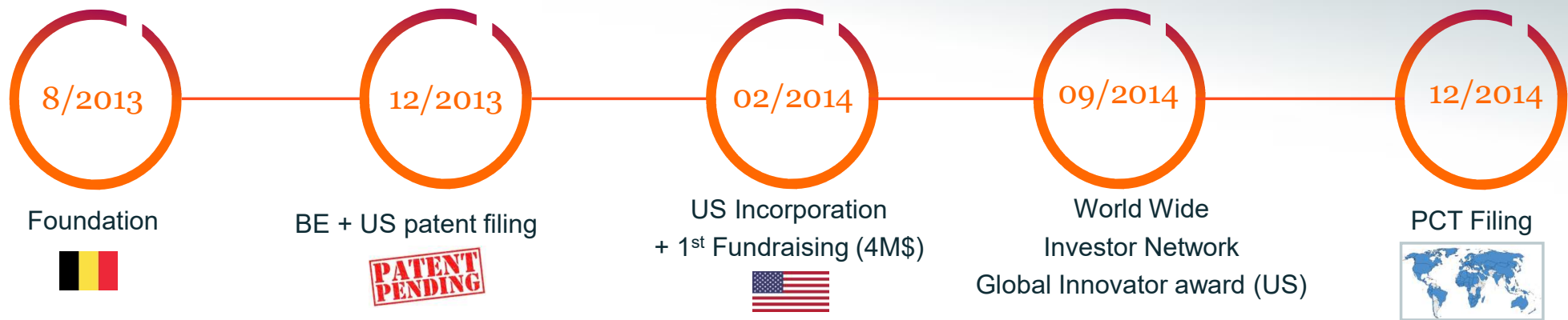
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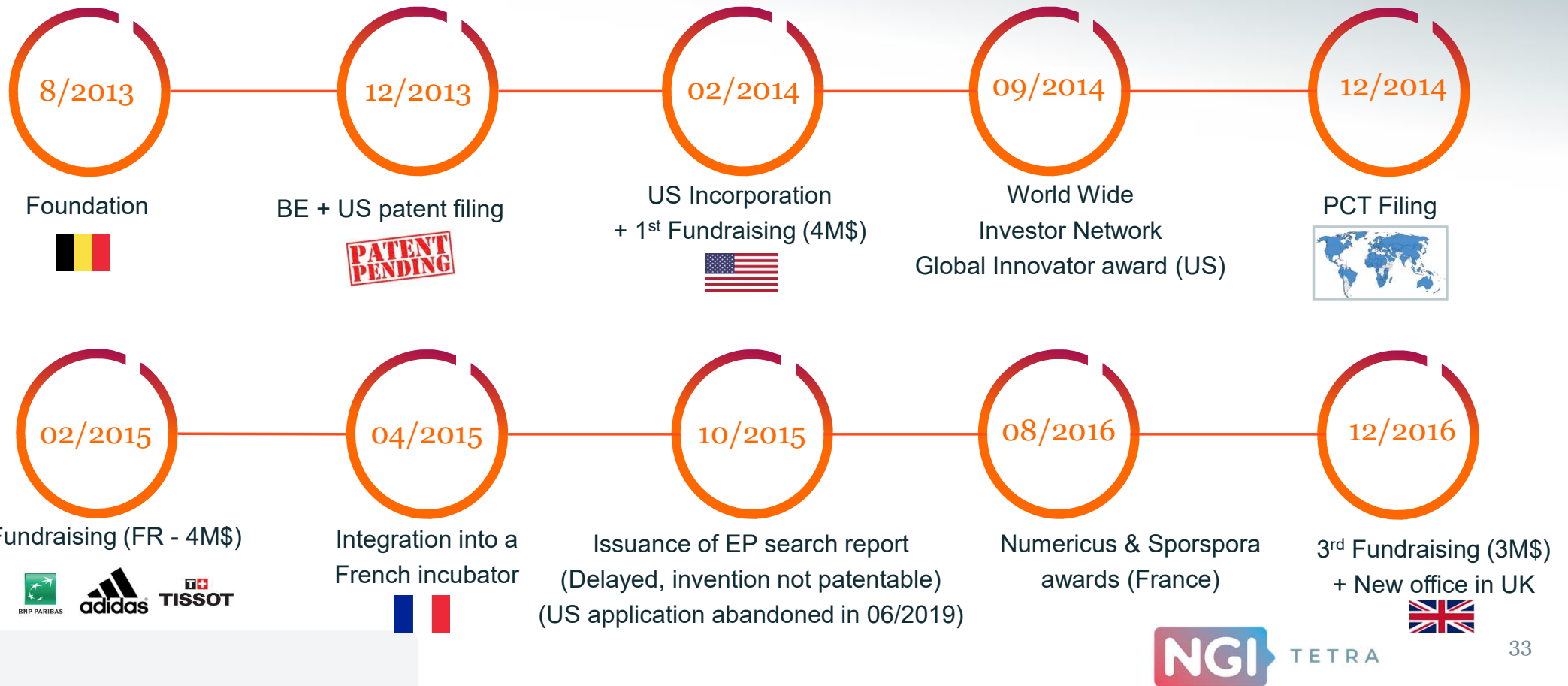
2. IP protection in the framework of ICT/NGI

2.4 Seaters: Redistribution software for online tickets to an event



2. IP protection in the framework of ICT/NGI

2.4 Seaters: Redistribution software for online tickets to an event





2. IP protection in the framework of ICT/NGI

2.4 Seaters: Redistribution software for online tickets to an event



***“An online,
scalable Brand
Relationship
Management
that will
transform your
business in the
digital era.”***



Seaters has been chosen by the **Belgian authorities** to develop QVAX. **QVAX** is the reserve list for scheduled **COVID-19 vaccines** that could not be administered at the vaccination centers.

The system maximizes use and avoids **waste of valuable vaccines** (increased efficiency), allowing society to reach the target vaccination coverage more quickly, resulting in herd immunity.

QVAX is the government's official reserve list and follows the distribution priorities of the vaccination strategy, ensuring that reserved vaccines reach the right people.

www.QVAX.org

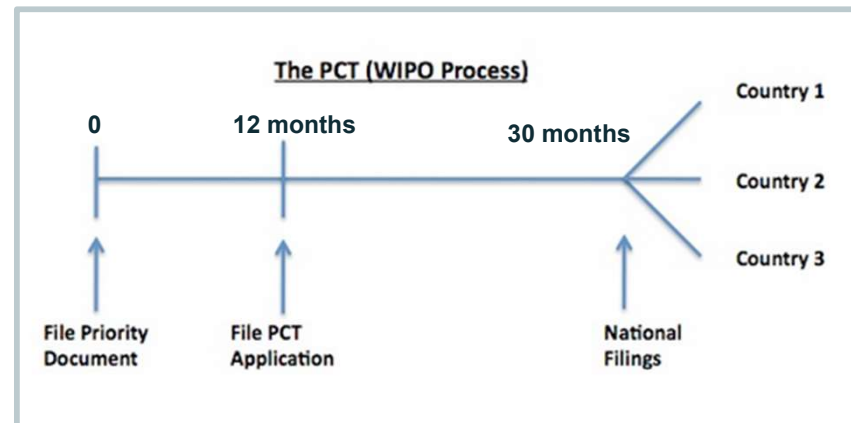


2. IP protection in the framework of ICT/NGI

2.4 Seaters: Redistribution software for online tickets to an event

Take-away conclusions

- Necessity of the first filing to establish a date (preserve the novelty), obtain funding and gain credibility.
 - PCT filing within 12 months of the first filing allows postponing costs and getting more time to gain value.
 - Even if not granted, a well-exploited patent application attracts investors (especially for ICT methods).
- ➔ *Adapting the IP strategy to the marketing strategy is crucial for successful international development.*



To protect or not to protect?

A light blue line drawing of three business professionals in a meeting. A man in a suit is seated on the left, gesturing with his hand. A man in a shirt and tie stands in the center, looking towards the seated man. A woman in a blazer is seated on the right, looking towards the standing man. The background is white, and the bottom of the slide features a large orange-to-red gradient bar.



3. To protect or not to protect?

3.1 Frequent arguments against filing for IP protection for ICT inventions

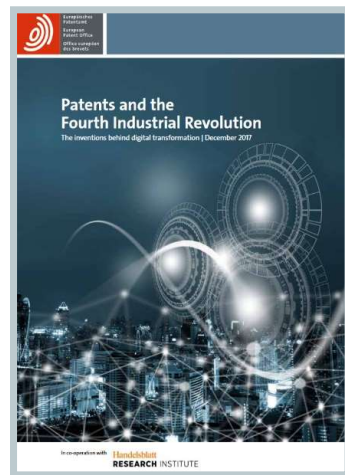
Argument 1: “ICT inventions cannot be protected”

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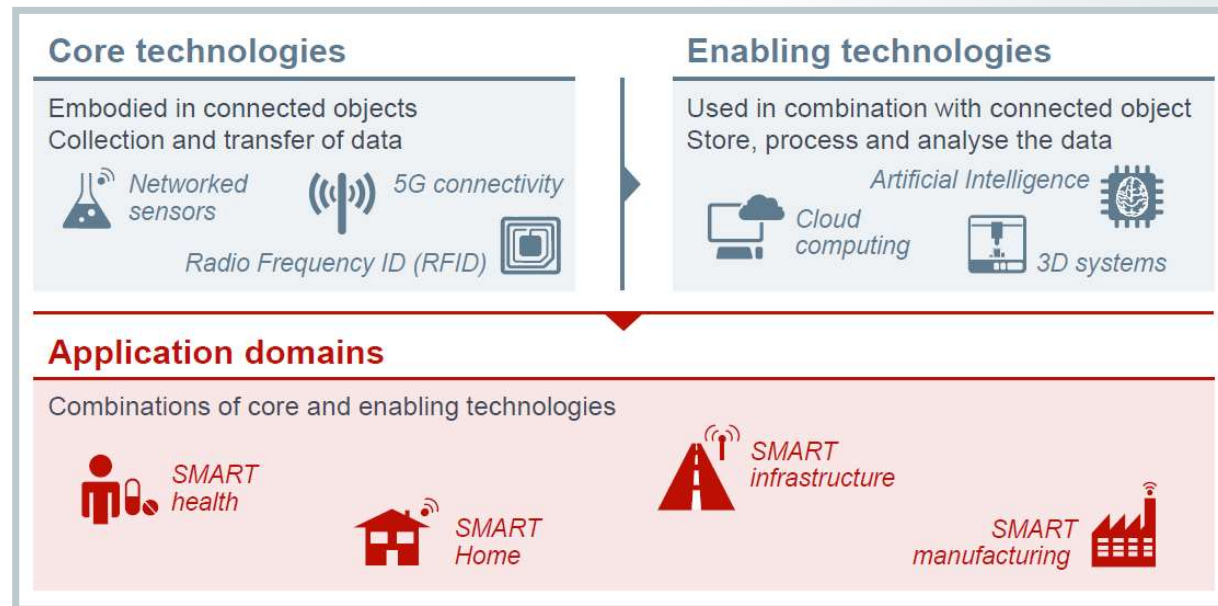
→ Simply not true.



4th Industrial Revolution



- * 3 Core Technologies (hardware, software, connectivity)
- * 7 Enabling Technologies (Analytics, Security, AI, GPS, Power, 3D, UI's)
- * 6 Application domains (Home, Personal, Enterprise, Manufacturing, Infrastructure, ehicles)





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Argument 2: “patent proceedings are too long” (3 – 5 yrs before grant on average)

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Argument 2: “patent proceedings are too long” (3 – 5 yrs before grant on average)

This is generally an advantage within the ICT sector

- ➔ Applicants are given more time to **adapt the scope** of the patent to the product that will be really developed and marketed.
- ➔ The writing process allows inventors to take a **larger perspective** on the technology, to consider new embodiments, and approach new clients.
- ➔ The published specification & claims provide a **smoke screen** for competitors.



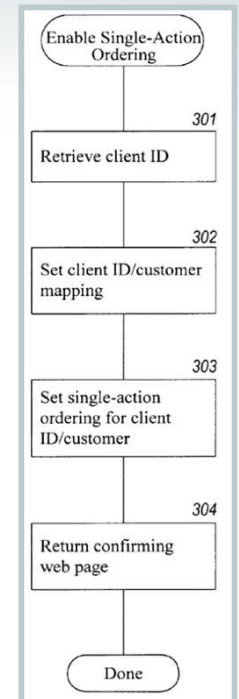
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 Europäisches Patentamt European Patent Office Office européen des brevets		
(19)	(11) EP 1 134 680 A1	
(12) EUROPEAN PATENT APPLICATION		
(43) Date of publication: 19.09.2001 Bulletin 2001/38		(51) Int Cl.: G06F 17/60, G06F 3/033
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(22) Date of filing: 11.09.1998		
(84) Designated Contracting States: AT BE CH CY DE DK ES FI FR GB GR IE IT LI LU MC NL PT SE Designated Extension States: AL LT LV MK RO SI		(72) Inventors: • Hartman, Peri Seattle, Washington 98109 (US) • Kaphan, Shel Seattle, Washington 98115 (US) • Bezos, Jeffrey P. Seattle, Washington 98101 (US) • Spiegel, Joel Woodinville, Washington 98072 (US)
(30) Priority: 12.09.1997 US 928951 23.03.1998 US 46503		(74) Representative: Grünecker, Kinkeldey, Stockmair & Schwanhäusser Anwaltssozietät Maximilianstrasse 58 80538 München (DE)
(71) Applicant: Amazon.Com, Inc. Seattle, WA 98101 (US)		
(54) Method and system for placing a purchase order via a communications network		



**\$ 2.4 Billion
(per year)**



R1. A method for ordering an item using a client system, the method comprising:

- receiving from a server system a client identifier of the client system;
- persistently storing the client identifier at the client system;
- displaying information identifying the item and displaying an indication of a single action that is to be performed to order the identified item; and
- in response to the indicated single action being performed, sending to a server system a request to order the identified item and automatically sending the client identifier whereby a user does not input identification information when ordering the item.



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Argument 3: “it is too expensive”

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Argument 3: “it is too expensive”

Yes, but it is a virtuous circle with favorable results

- → **Financial funding** is increasingly available at the European and national levels.
- → **Strategic choices** and valuation allow keeping the costs under control.
- → IP helps raising funds and attracting external finance (venture capital firms and future licensees).

3. To protect or not to protect?

3.2 Summary

A patent provides:



A **weapon** against infringers

- Deters competitors & offers a competitive advantage
- Enables long-term control of the innovation (even if not exploited immediately)



A monetizable **asset** for the applicant

- Adds direct value to your company
- Provides a source of revenues (licenses)



A **marketing advantage**

- Reassure investors (due diligence & fundraising)
- Makes the technology more credible

3. To protect or not to protect?

3.2 Summary

What IP strategy ?

When? Where? How? - *There is no golden rule* -

The best IP strategy depends on numerous criteria:

- ➔ Your **technology**
- ➔ Your **business plan** and your **budget**
- ➔ Your **competitors**
- ➔ Your future **geographical coverage**

Adapt your IP strategy depending on the **goal** that you are pursuing!



Essential asset for **longevity**



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Questions & Responses

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