

ANNUAL REPORT 2019

Intellectual
Property
Office



FPS Economy, S.M.E.s, Self-employed and Energy

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Foreword

Like every year, we proudly publish the activity report of the Intellectual Property Office (BE-IPO). This allows us to give the public a general overview of the projects and activities carried out in 2019, illustrated with graphs and statistics.

2019's highlights, as far as production is concerned:

- A 2 % increase in the number of Belgian patent applications in 2019 (1,133) compared to 2018 (1,110);
- The speed with which the Intellectual Property Office delivers Belgian patents. In 2019, 998 patents were granted. 99.9 % of these granted patents were filed between 2016 and 2019. In addition, in January 2020, 1,557 patent applications were still pending, of which 98.9 % (1,539) were filed in 2018 and 2019;
- A 3.2 % increase in the number of European patent applications filed in 2019 by Belgian inventors and companies (2,423) compared to 2018 (2,348);
- The continuous increase in the number of online filings of Belgian patent applications (90 % in 2019 compared to 78 % in 2015);
- The strengthening of the structural partnerships with the regional institutions, responsible for promoting innovation through industrial property, as well as with the European (EPO and EUIPO) and Benelux (BOIP) organisations, responsible for intellectual property;
- The launch of a large-scale information campaign on business secrecy and its strategic importance for the economic development of innovation players.

At normative level, the major developments particularly concern:

- The creation of a one-stop shop where copyright and neighbouring rights for playing music can be managed at the same place;
- The introduction of a new exception of copyright and related rights for early childhood education and care settings;
- The adoption of European Directive 2019/790 on copyright in the digital single market;
- The improvement of patent law and SPCs for a number of technical and operational points, in accordance with the parties involved;
- The ratification of the London Protocol, which simplifies the translation obligations for European patents designating Belgium;
- The introduction of a new exception for the protection afforded by a supplementary protection certificate, the "SPC manufacturing waiver".

As you can see, 2019 was a year in which operational activities have been consolidated, relations with the BE-IPO's stakeholders were deepened and the intellectual property law was further aligned.

Séverine Waterbley

Director-general

Directorate-General for Economic Regulation



1. The Intellectual Property Office at a glance

The Belgian Intellectual Property Office (hereafter BE-IPO) is part of the Federal Public Service Economy, SMEs, Self-employed and Energy (hereafter FPS Economy). More specifically, it is the Intellectual Property Division of the Directorate-General for Economic Regulation.

The BE-IPO mainly carries out the following activities:

- production, finance and information: these activities include the registration and processing of (applications for) titles of industrial property, and the public information, etc.;
- legal and international affairs: these activities particularly include drafting up laws and implementing decrees, as well as representing Belgium at the European and international institutions (the Council of the European Union, the World Intellectual Property Organisation, the European Patent Organisation, the European Union Intellectual Property Office, etc.).

The Intellectual Property Office develops a large part of its activities within the framework of structural partnerships, in particular in the field of informing and raising awareness among companies, university research centres and IT projects. This translates, among others, into the institutional forum bringing together representatives of regional institutions responsible for promoting innovation through industrial property, as well as representatives of the BE-IPO and cooperation agreements with the European Patent Office (EPO), the European Union Intellectual Property Office (EUIPO) and the Benelux Office for Intellectual Property (BOIP). These partnerships offer numerous benefits and enhance the quality of services offered to users of IP systems, as well as synergies based on the exchange of expertise, knowledge and economies of scale.

BE-IPO Organisation chart on 31 December 2019

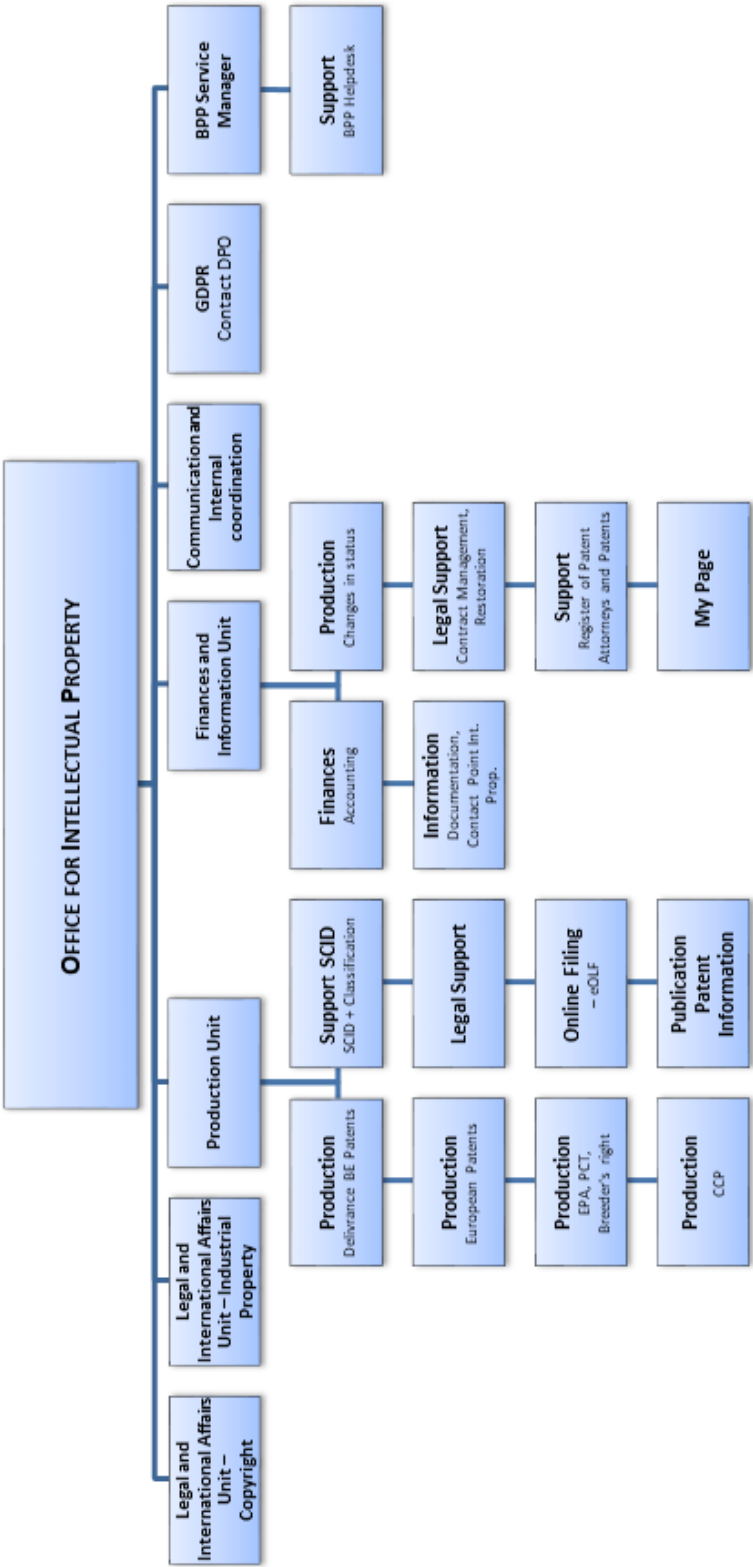


Table 1. Staff figures of the Intellectual Property Office

Situation as of 31.12.2019, in fulltime equivalents.

| Staff members' origin | Number (fte) |
|--|---------------------|
| Legal and international affairs section | 7 |
| Production, Finance and Information sections | 30,7 |
| Management (advisor-general and advisors) | 5 |
| Total | 42,7 |
| Distribution by level | |
| Level A, advisors and attachés | 19,8 |
| Level B, administrative experts | 9,1 |
| Level C, administrative assistants | 7,8 |
| Level D, administrative employees | 6 |
| Total | 42,7 |

Source: FPS Economy.

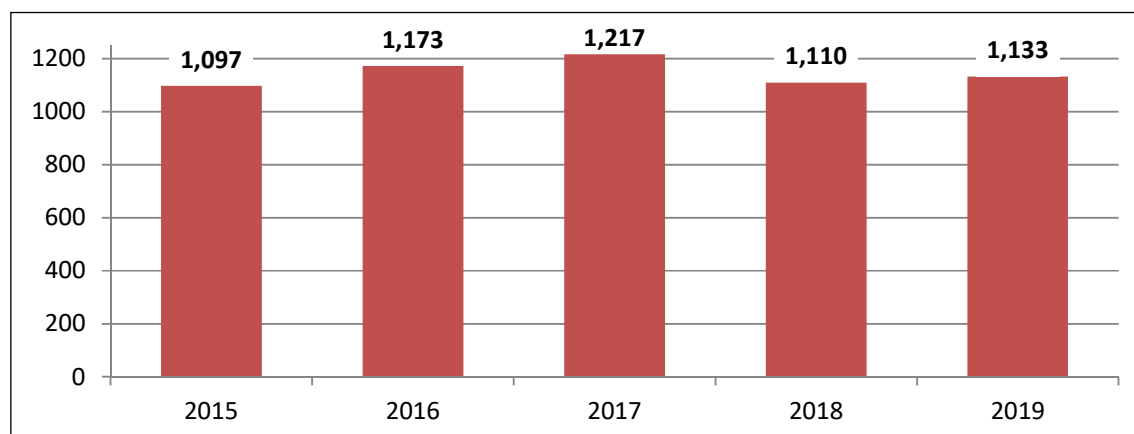


2. 2019's highlights

2.1. Patents and supplementary protection certificates

2.1.1. Belgian patents

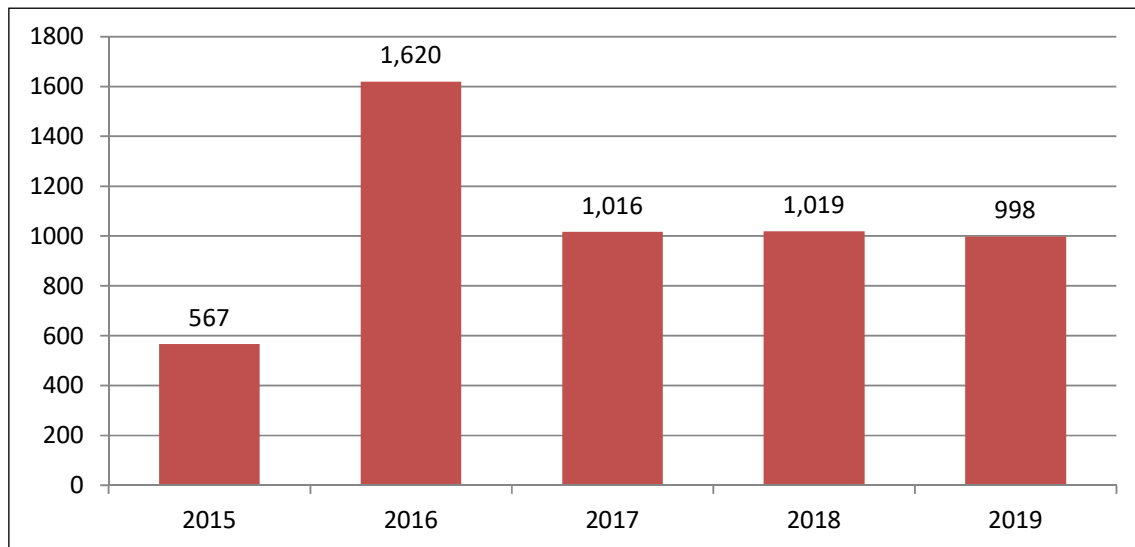
Graph 1. Belgian patent applications



Source: FPS Economy.

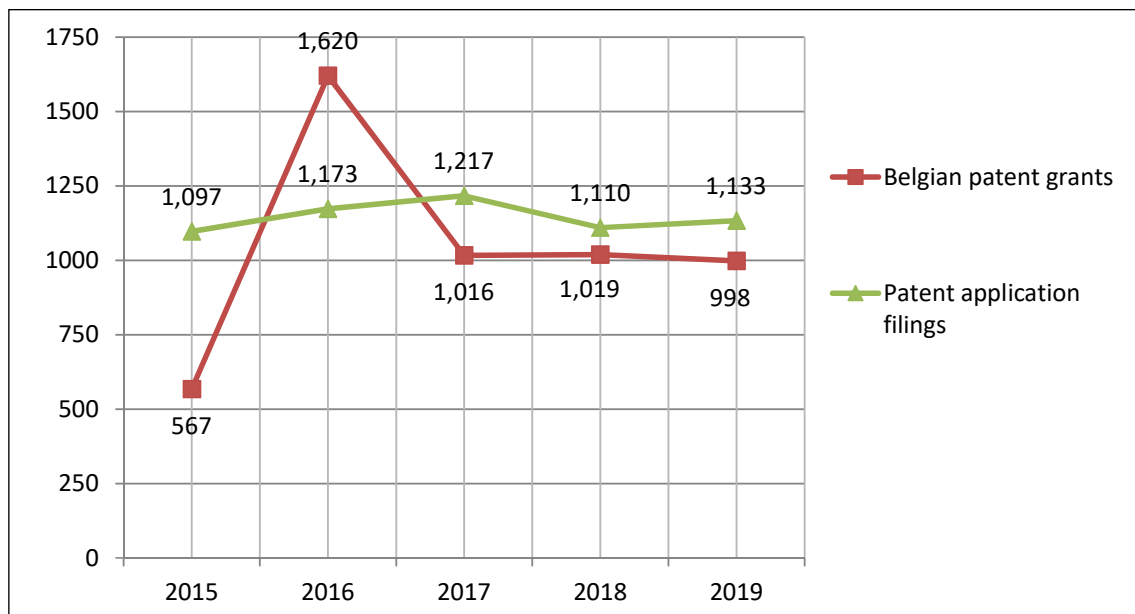
After an increase of 10 % over the period 2015-2017, the number of Belgian patent applications filed in 2018 decreased by 9 % compared to 2017. After this decrease, we see a slight increase of 2 % in 2019. The increase that has been recorded since 2015 is the continuation of a trend that began in 2011 and which only seems to stagnate as from 2018.

Graph 2. Granted Belgian patents



Source: FPS Economy.

Graph 3. Belgian patent grants vs. patent application filings



Source: FPS Economy.

The backlog of patent grants accumulated over the period 2014-2015, when, in addition to the entry into force of a new patent law and the implementation of a new IT system, the Production Section also had to deal with a staff reduction, was cleared as of 2016. The balance achieved in 2018 between the number of Belgian patent applications filed and the number of Belgian patents granted was maintained in 2019.

Table 2. Geographical allocation of Belgian patent applications among the provinces and regions

| | | 2017 | 2018 | 2019 |
|----------|-----------------|------|------|------|
| Flanders | Antwerp | 184 | 161 | 165 |
| | Flemish Brabant | 67 | 53 | 36 |
| | West Flanders | 181 | 136 | 202 |
| | East Flanders | 161 | 150 | 154 |
| | Limburg | 69 | 86 | 86 |
| Brussels | | 105 | 85 | 46 |
| Wallonia | Walloon-Brabant | 80 | 42 | 26 |
| | Hainaut | 28 | 37 | 36 |
| | Liège | 100 | 111 | 100 |
| | Luxemburg | 8 | 5 | 2 |
| | Namur | 17 | 25 | 22 |

Source: EPO Annual Results 2019 Global Release (status: 31.12.2019).

There are large differences between the provinces in terms of the number of applications. Currently, West Flanders is the leader with no less than 202 applications, followed by Antwerp with 165 applications and East Flanders with 154 applications. These three provinces have dominated the patent landscape for several years now, with varying rankings. For the Walloon region and Flemish Brabant, a decline has been recorded since a few years.

Protection of the title of patent attorney

The law of 8 July 2018 containing provisions to protect the title of patent attorney further regulates the profession of patent attorney in Belgium. The existing legislative framework is further completed and contains three key points.

- Firstly, access to the profession will be refined for patent attorneys who are established in other EU Member States and wish to provide services in Belgium.
- Secondly, an Institute for Patent Attorneys will be created, of which all patent attorneys working in Belgium will be members. It will be responsible for the representation of the profession, the enforcement of deontological rules and the organisation of continuous training.
- Thirdly, membership of the Institute will go hand in hand with the protected title of “patent attorney”, professional secrecy, an insurance obligation and a right to speak in patent disputes before the Belgian courts and tribunals.

The entry into force of the law of 8 July 2018 requires further implementing measures. The Office is preparing these measures with a view to a possible entry into force of the law in the course of 2020. The implementing measures include a disciplinary regulation applicable to patent attorneys, further rules regarding membership of the Institute and further rules regarding the compulsory insurance.

Optimisation of the legislation on patents and supplementary protection certificates

The law of 2 May 2019 containing various economic provisions, as well as the Royal Decree of 12 July 2019, have amended several provisions of the regulation on patents and supplementary protection certificates. The amendments are made on the basis of the experience acquired by the

Office on the one hand, following the application of the Code of Economic Law and its implementing decrees, and on the other hand, the consultation of interested parties, taking into account the development of the European patent law.

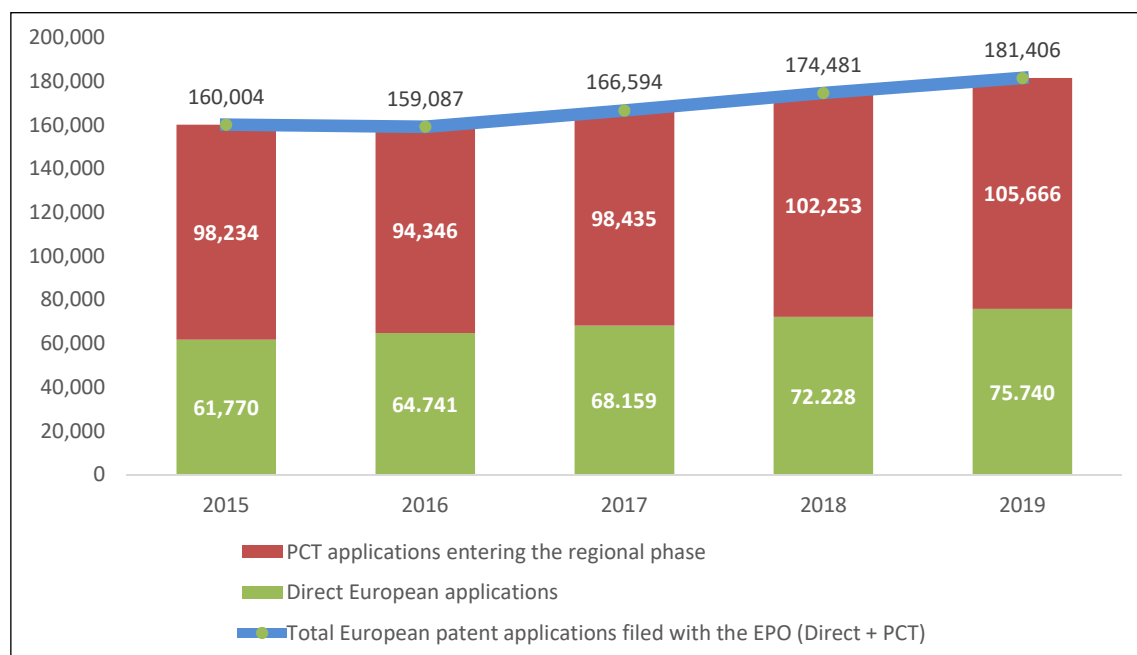
The adaptations include:

- the clarification of the patentability of plants and animals;
- the harmonisation of the procedures for withdrawal, renunciation and revocation;
- the harmonisation of the patent and SPC application forms;
- clarifications with regard to the examination of SPC applications, and
- adaptations with regard to fees.

2.1.2. European patents and international patent applications (PCT)

European patents

Graph 4. Total number of European patent applications filed with the EPO

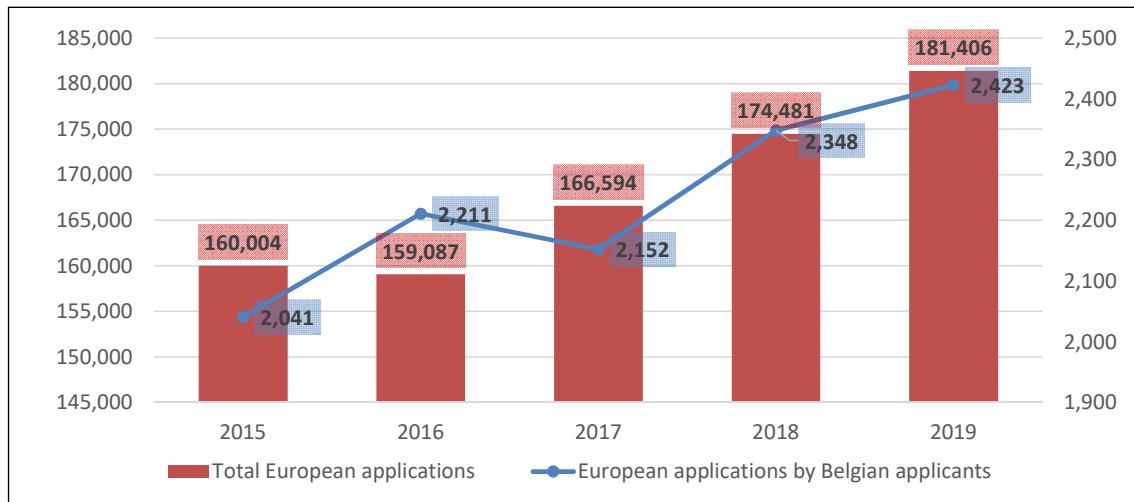


Sources: EPO Annual Results 2019 Global Release (status: 27.01.2020) / EPO Patent Index 2019 (release: 10.03.2020).

These data on European patent applications include all direct European and international patent applications (PCT) that entered the European phase during the reference period.

The European Patent Office (EPO) notes that the demand for patent protection has continued to increase since 2016: in 2019, the European Patent Office received a total of 181.406 European patent applications, an increase of 4 % compared to 2018. This broke the record for the fourth year in a row. Both the number of direct European patent applications and the number of applications for international protection (PCT) continue to increase.

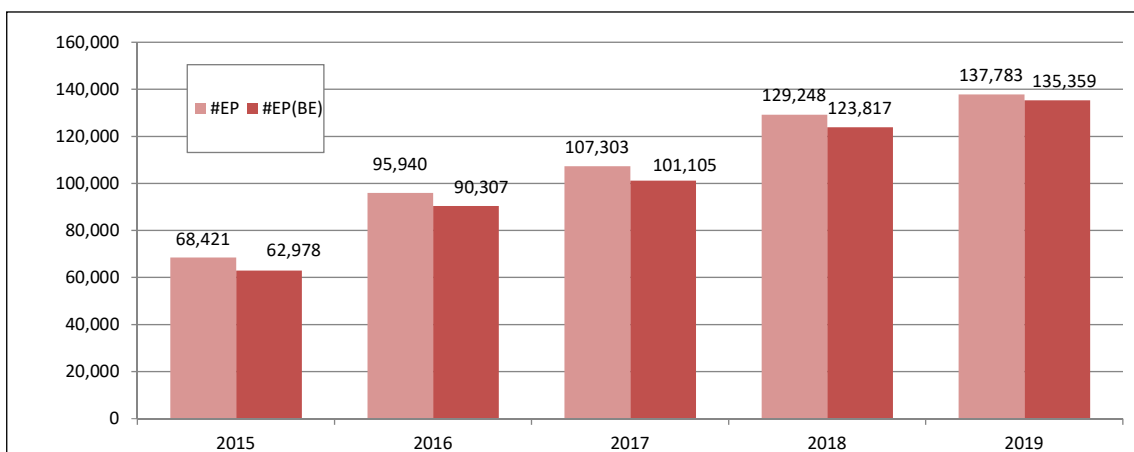
Graph 5. European patent applications designating Belgium filed with the EPO
Direct + PCT, patent applications by Belgian applicants vs. total applications filed.



Source: EPO Patent Index 2019 (release: 10.03.2020).

The number of patent applications from Belgian companies, universities and research institutes filed with the European Patent Office (EPO) reached a new record in 2019 with 2,423 applications, an increase of 3.2 %. After a decrease in 2017, the number of applications has continued to increase visibly for two years in a row. The [EPO Patent Index 2019](#) shows that the increase in the number of patent applications in Belgium is significantly above the average growth of 0.9 % in the 28 EU Member States.

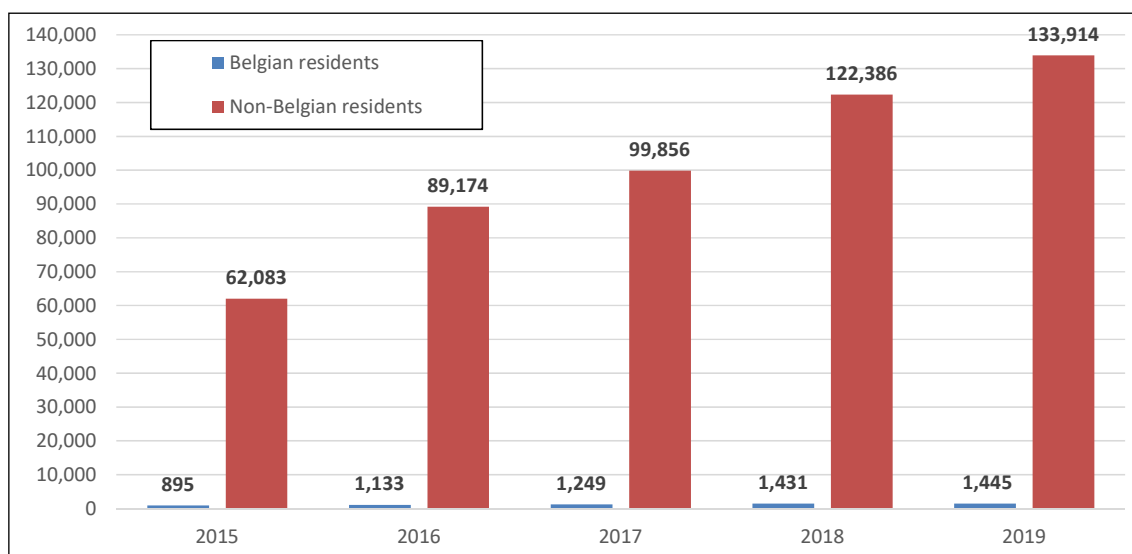
Graph 6. Granted European patents (EP) and granted European patents designating Belgium



Source: Benelux Patent Platform, FPS Economy (status: 31.12.2019).

Belgium was designated in more than 98 % of the European patents (#EP) granted in 2019. The trend that was observed in previous years continues.

Graph 7. Residence of applicants of European Patents (BE and non-BE)



Source: FPS Economy.

Both in 2018 and last year, 98 % of the patent holders of the European granted patents designating Belgium (#EP BE) were located abroad. The upward trend of previous years continued in 2019.

Approving the London Protocol

On 1 September 2019, Belgium acceded to the Agreement on the application of Article 65 of the Convention on the Grant of European Patents (also referred to as the “London Protocol”). The Chamber of Representatives gave its assent by means of the law of 23 March 2019. With its accession, Belgium constitutes the 22nd State that is a member of the European Patent Organisation to join this Protocol.

The London Protocol aims to reduce the costs related to the translation of European patents when their holders wish to validate them in one of the States that are members of the European Patent Organisation. The States becoming parties to the Protocol undertake, under certain conditions, not to request a translation to validate European patents on their territories.

Belgium had already brought its legislation in line with the provisions of the London Protocol since 1 January 2017. For the validation of European patents granted or continued in modified or limited form as from that date, it is no longer required to submit a translation into a national language of Belgium. Therefore, the accession to the Protocol does not change the validation requirements of European patents in Belgium.

Patent protection for classically grown plants and animals

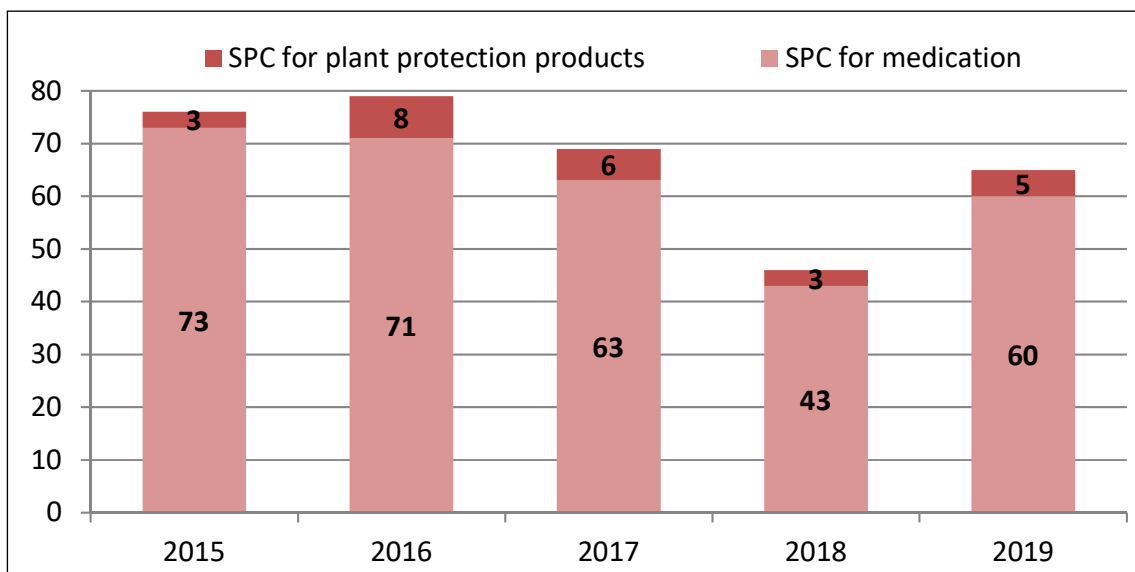
As of 1 July 2017, the Administrative Council of the European Patent Organisation amended Rule 28 of the Implementing Regulations of the European Patent Convention (EPC) in order to clarify that patents shall not be granted in respect of plants or animals exclusively obtained by means of an essentially biological process, but also in respect of plants and animals resulting from such processes. The Administrative Council considered it necessary to align the legal framework of the Organisation with the position of the European Commission, considering that Directive 98/44/EC on the legal protection of biotechnological inventions excluded such plants and animals from patent protection. An earlier decision (in the merged cases “Tomatoes II” and “Broccoli II”) of the Enlarged Board of Appeal of the European Patent Office (EPO) had raised questions about the

scope of the patentability of biotechnological inventions within the European patent system. At that time, this Board ruled that the EPC did not exclude plants and animals obtained by means of essentially biological processes from patent protection.

In December 2018, an EPO Technical Board of Appeal decided that the new Rule 28 of the EPC does not comply with the exclusion of patent protection of essential biological processes for the procurement of plants or animals in Article 53 of the EPC as interpreted by the Enlarged Board of Appeal in the merged cases “Tomatoes II” and “Broccoli II”. Following this decision, the EPO President referred questions on the compatibility of Rule 28 with Article 53 of the EPC to the Enlarged Board of Appeal. Within the framework of this referral, everyone had the opportunity to submit observations to the Enlarged Board of Appeal on legal questions raised. In addition to the European Commission, Belgium, as well as nine other EU Member States and patent offices, submitted an *amicus curiae* letter for this purpose. In this letter, Belgium defends the position that the new Rule 28 does not conflict with Article 53 or other provisions of the EPC and that plants and animals obtained by means of essentially biological processes are therefore excluded from patent protection.

2.1.3. Supplementary protection certificates (SPC)

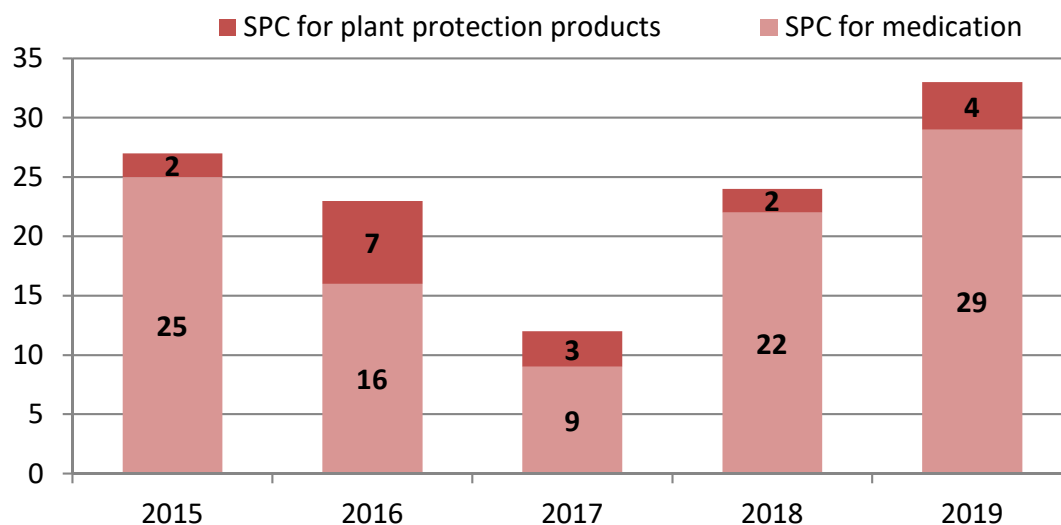
Graph 8. Applications for a Belgian supplementary protection certificate (SPC)



Source: FPS Economy.

After a sharp decrease of more than 40 % in 2018, the number of applications for SPCs for plant protection product recovered in the course of 2019. The number of applications for supplementary protection certificates for medicinal products also increased again. Both figures are still below the results for 2017, but interest in both certificates is on the rise again.

Graph 9. Granted Belgian supplementary protection certificates (SPC)



Source: FPS Economy.

After bottoming out in 2017, the number of SPCs granted has started to recover. In 2019, for the second year in a row, a higher percentage of issued SPCs was recorded, as a result of which the record number of SPC applications in 2015 was even exceeded by 8.9 %.

Table 3. Extension of supplementary protection certificates (SPC) for medicinal products for paediatric use

| Year | Number of applications for supplementary paediatric SPC | Number of grants for a supplementary SPC |
|------|---|--|
| 2015 | 8 | 2 |
| 2016 | 8 | 3 |
| 2017 | 9 | 8 |
| 2018 | 6 | 8 |
| 2019 | 10 | 6 |

Source: FPS Economy.

After a decrease between 2017 and 2018, the number of applications for paediatric SPCs rose sharply in 2019, even above the level of 2017. Compared to 2018, this represents an increase of no less than 40 %.

By contrast, the number of extensions of SPCs for medicinal products for paediatric use decreases by 25 % in 2019 compared to 2017 and 2018.

SPC manufacturing waiver

On 28 May 2018, the European Commission submitted a proposal for a regulation amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products to the Competitiveness Council. With this proposal, the European Commission wants to address the unintended side effects of the current system of supplementary protection certificate (SPC) on the competitiveness of EU-based manufacturers of generics and/or biosimilars (the generic variant of a biological medicine). Following the discussions in 2018, an agreement was reached in the Council of the European Union. On the basis of this text, trilogues were started between the European Parliament, the European Council and the European Commission. Following a number of amendments to the text, Regulation 2019/933 amending Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products was adopted on 20 May 2019.

The regulation provides for an exception, in the form of a manufacturing waiver, to the rights of the holder of an SPC. This is a limited exception, enabling manufacturers of generics and biosimilars to manufacture such medicines (1) for the exclusive purpose of exporting them outside the EU during the SPC term of protection, or (2) for the purpose of having the medicinal product in stock in order to place it on the market within the EU once the protection has expired (stockpiling). In the latter case, the exception shall only apply during the last six months of the period of validity of the SPC. Since the Regulation also provides for an obligation for national intellectual property offices to notify and publish, the BE-IPO took the necessary technical measures to make this possible.

2.1.4. Plant breeders' right

Table 4. Applications for a Belgian plant breeders' right and granted certificates

| Year | Applications for a plant breeders' right | Granted plant breeders' rights |
|------|--|--------------------------------|
| 2014 | 3 | 3 |
| 2015 | 1 | 0 |
| 2016 | 4 | 1 |
| 2017 | 3 | 1 |
| 2018 | 2 | 0 |
| 2019 | 2 | 4 |

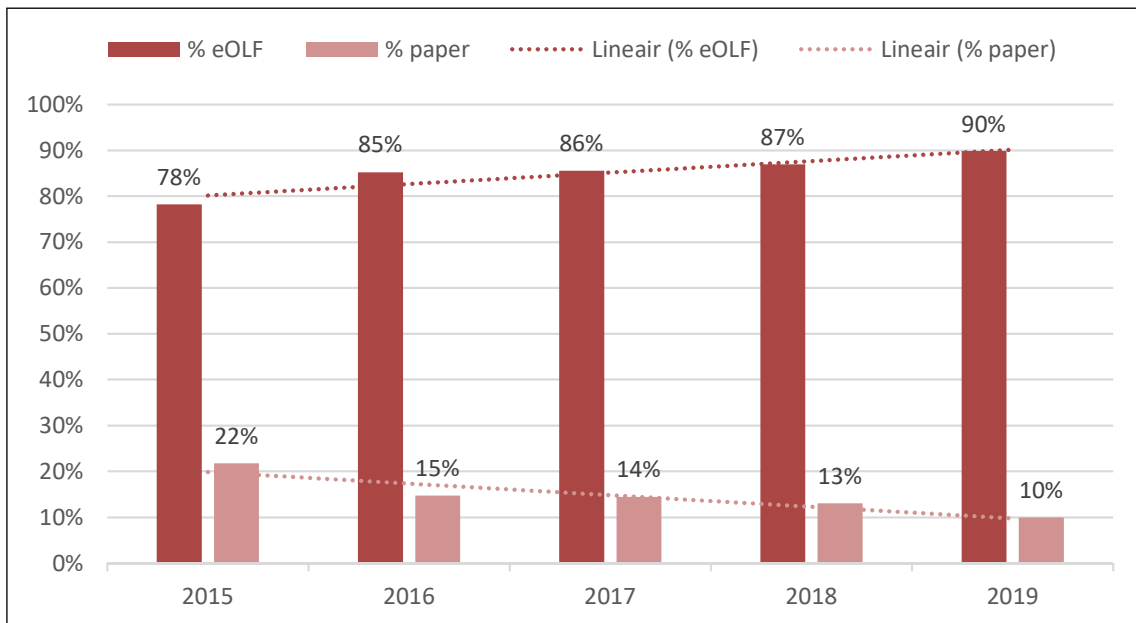
Source: FPS Economy.

Applications for a Belgian plant breeders' right are submitted to scientific tests which may take one or several years, depending on the plant variety. Consequently, the average number of applications for a plant breeders' right within a certain period is not always in accordance with the average number of granted plant breeders' rights within that same period.

2.1.5. Electronic online filing (eOLF)

The use of eOLF in 2019

Graph 10. Electronic filing (eOLF) vs. paper filings of Belgian patents



Source: FPS Economy.

In 2019, 90 % of patent applications were filed electronically (online). Since 2015, this percentage has steadily increased, while the number of paper filings continues to decrease in the same proportion.

2.1.6. Registration section's activities

Restoration requests

In case of non-compliance with some of the applicable time limits regarding proceedings acts before the Office, the patent holder can obtain the restoration of his or her rights through a restoration procedure. The following tables illustrate the statistics relating to the decisions taken for restorations between 1 January 2015 and 31 December 2019.

Table 5. Application for restoration after the expiration of the time limit

| | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
|-----------------------------|-----------|------------|-----------|------------|-----------|------------|-----------|------------|-----------|------------|
| | Number | In % | Number | In % | Number | In % | Number | In % | Number | In % |
| Annual fees | 27 | 66 | 41 | 82 | 12 | 55 | 20 | 95 | 20 | 95 |
| European patents validation | 10 | 24 | 7 | 14 | 8 | 36 | 0 | 0 | 0 | 0 |
| Priorities | 4 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 5 |
| Other | 0 | 0 | 2 | 4 | 2 | 9 | 1 | 5 | 0 | 0 |
| Total | 41 | 100 | 50 | 100 | 22 | 100 | 21 | 100 | 21 | 100 |

Source: FPS Economy.

Table 6. Decisions following an application for restoration

| | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
|----------------------|--------|------|--------|------|--------|------|--------|------|--------|------|
| | Number | In % | Number | In % | Number | In % | Number | In % | Number | In % |
| Restoration | 13 | 77 | 45 | 85 | 33 | 89 | 22 | 62 | 7 | 78 |
| Rejection | 4 | 23 | 8 | 15 | 4 | 11 | 13 | 38 | 2 | 22 |
| Definitive decisions | 17 | 100 | 53 | 100 | 37 | 100 | 35 | 100 | 9 | 100 |

Source: FPS Economy.

Regarding the result of the requests, the figures show that:

- the delay indecisions, which was largely due to the fact that the BPP platform went online in 2014, was completely eliminated in 2018. This also explains the large number of decisions taken that same year. In 2019, nine final decisions were taken. On 31 December 2019, twelve are still pending. This last figure can be explained by the fact that no fewer than nine additional applications were submitted after mid-November;
- a large number of requests received a positive result, but 2018 is an exception to this trend. This can be explained by the fact that a large number of filings with an intention to reject, remained pending over the past two years, and were definitively confirmed in 2018.

Applications for listing in the patent register

Table 7 lists the number of applications for registration by category. The three most common types of applications concern changes of ownership, address and representation. Please note that the same application for change can contain dozens of patents. In addition, the same application may contain, for example, both a change of address and a change of representative. Therefore, the total number of patents involved does not necessarily correspond to the total number of applications.

Table 7. Patent Registry registration requests

| | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
|-----------------|--------------|------------|--------------|------------|--------------|------------|--------------|------------|--------------|------------|
| | Number | In % | Number | In % | Number | In % | Number | In % | Number | In % |
| Owner change | 1,400 | 68 | 874 | 67 | 1,007 | 62 | 1,001 | 55 | 1,197 | 54 |
| Address change | 315 | 21 | 286 | 22 | 378 | 23 | 483 | 27 | 542 | 25 |
| Attorney change | 119 | 8 | 110 | 8 | 259 | 16 | 350 | 19 | 433 | 20 |
| Licence | 23 | 2 | 27 | 2 | 23 | 1.5 | 19 | 1 | 16 | 0.6 |
| Conversion | 11 | 1 | 16 | 1 | 11 | 0.7 | 5 | 0.3 | 12 | 0.4 |
| Total | 1,472 | 100 | 1,313 | 100 | 1,630 | 100 | 1,812 | 100 | 2,200 | 100 |

Source: FPS Economy.

Registration to be accredited as a patent attorney

A commission for the accreditation of patent attorneys has been set up with a view to organising an annual examination on patent law. Passing this examination is an indispensable condition for the approval of representatives and therefore their entry in the register of accredited representatives. With regards to citizens of the member states of the European Economic Area, the Committee for the accreditation of patent attorneys may require them to take an aptitude test, if the training they have received covers substantially different subjects from those covered by the diploma required in Belgium.

The table below shows, by year of organisation of the examination and the aptitude test, the number of people who passed.

Table 8. Results of the Patent Attorney Examination

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|----------------------------|------|------|------|------|------|
| Succeeded attorneys | 6 | 6 | 3 | 8 | 13 |

Source: FPS Economy.

On 31 December 2019, 155 patent attorneys were registered in the Belgian register of accredited patent attorneys.

2.1.7. Finances of the Intellectual Property Office

Patents – Supplementary protection certificates (SPC)

The following tables show the receipts collected by the BE-IPO during the budgetary years 2015 to 2019.

Table 9. Annual fees receipts (Belgian patents, European patents, SPC)

In euro.

| Annual receipts | 2015 | 2016 | 2017 | 2018 | 2019 |
|------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Annual fees BE | 603,965.00 | 614,830.00 | 680,585.00 | 706,945.00 | 771,510.00 |
| Annual fees EP | 8,933,547.50 | 9,434,982.50 | 9,928,737.50 | 9,911,247.50 | 10,516,010.00 |
| Contribution EPO | 8,607,977.00 | 9,112,647.50 | 9,584,937.50 | 9,557,897.50 | 10,138,240.00 |
| Total fees | 18,145,489.50 | 19,162,460.00 | 20,194,260.00 | 20,176,090.00 | 21,425,760.00 |

Source: FPS Economy.

Compared to 2018, the total number of annual fees paid (for the Belgian patents and the European patents validated in Belgium) increased by 6.19 % in 2019. Since 2015, this represents an increase of 18.07 %.

Processing fees receipts (Belgian patents)

We notice that unlike previous years, processing fees receipts increased slightly between 2018 and 2019. As a reminder, some processing costs were cancelled on 1 January 2016 (more specifically, the fee received for the registration of a “request for change” was cancelled, as well as the priority fee required when filing the patent application). This may partly explain the decline in turnover since 2015.

Table 10. Processing fees receipts, Belgian patents

In euro.

| Processing fees receipts | 2015 | 2016 | 2017 | 2018 | 2019 |
|----------------------------------|----------------|----------------|----------------|----------------|----------------|
| Application fees | 84,425 | 77,975 | 71,075 | 66,350 | 70,425 |
| Priority fees | 4,360 | 974 | 412 | 1,050 | 650 |
| Search fees | 335,088 | 333,378 | 304,800 | 323,700 | 306,594 |
| Special fees (regularisation +) | 27,348 | 7,386 | 4,296 | 4,972 | 3,326 |
| Total proceeding fees | 451,229 | 419,713 | 380,583 | 396,074 | 380,995 |

Source: FPS Economy.

PCT fees receipts (international patent applications)

As the BE-IPO ceased to act as a receiving Office for PCT applications as of 1 April 2018, these receipts have disappeared since then.

Table 11. Total receipts BE-IPO

In euro.

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|-----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Total receipts | 18,811,010.50 | 19,769,873.00 | 20,728,857.00 | 20,581,988.00 | 21,806,755.00 |

Source: FPS Economy.

Since 2019, we again see an increase in turnover, as a result of a significant increase in the number of BE and EP annual fees paid. The upward trend of recent years has only been temporarily interrupted by a decrease in receipts in 2018, because the BE-IPO, as of 1 April 2018, no longer acts as a receiving Office for PCT and European patent applications.

Plant breeders' right

Table 12 illustrates the receipts from plant breeders' rights for the budgetary years 2015 to 2019. After a decline in receipts from 2015 to 2017, receipts stagnated in 2018, and then decrease significantly again in 2019. This decrease can be attributed to the fact that an increasing number of breeders are opting for a European plant breeders' right rather than for a national certificate, in order to enjoy equal protection throughout the European Union. (More figures on the European plant breeders' right can be found on the website of the Community Plant Variety Office (cpvo.europa.eu)).

Table 12. Receipts from plant breeders' rights

In euro.

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---------------|---------------|---------------|---------------|--------------|
| Annual fees, filing fees, priority fees | 16,225 | 14,410 | 11,495 | 11,954 | 9,914 |
| Search report DHS | 250 | 1,380 | 0 | 0 | 0 |
| Total receipts | 16,475 | 15,790 | 11,495 | 11,954 | 9,914 |

Source: FPS Economy.

MyPage

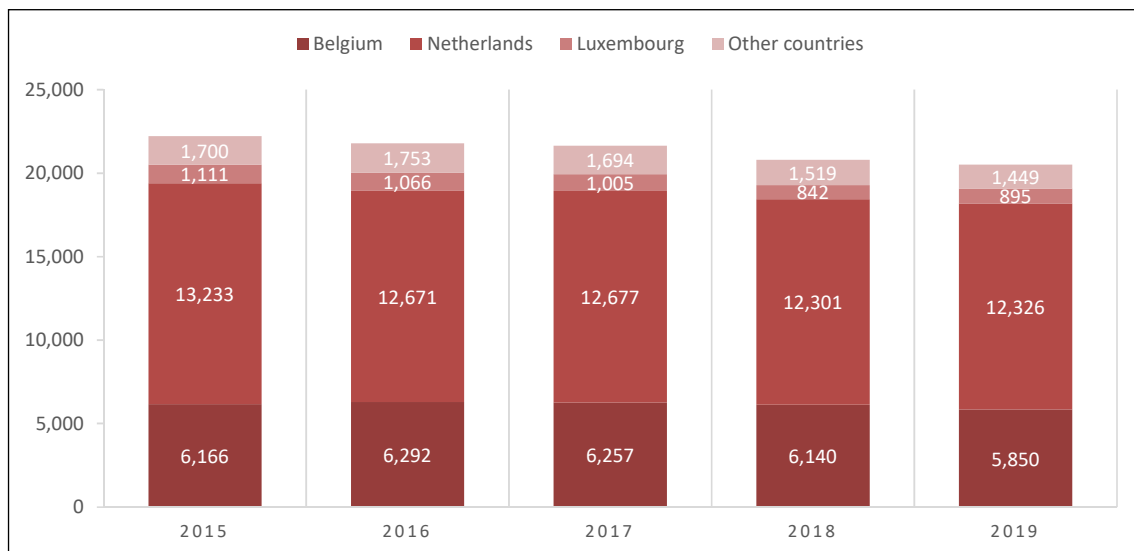
MyPage is a secured consultation platform accessible to customers of the Intellectual Property Office (BE-IPO). The platform allows individual payments for procedural and/or annual fees, and/or bulk payment orders, as well as the consultation of patents and related correspondence (portfolio function). In 2019, 77 accesses were granted by the BE-IPO.

The MyPage payment module is currently only available to patent attorneys and payment agencies that have a current account with the BE-IPO, but in the course of 2020, the portfolio will also be made accessible to external users.

2.2. Trademarks and designs

2.2.1. Origin of the Benelux-trademark applications

Graph 11. Origin of the Benelux-trademark applications

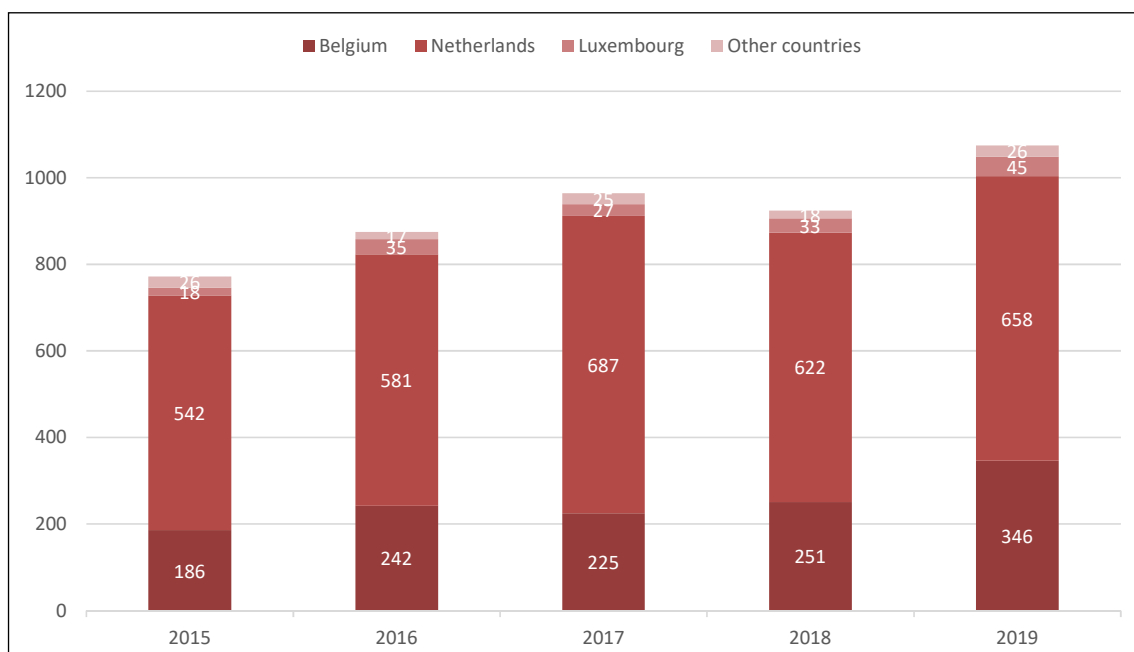


Source: Benelux Office for Intellectual Property (BOIP).

Trademarks and designs applications for Belgium, the Netherlands and Luxembourg are handled collectively by the Benelux Office for Intellectual Property (BOIP) in The Hague. Figures show that the number of trademark applications from Belgium has been falling slightly and steadily since 2016. In 2019, this figure fell by 4.72 %.

2.2.2. Origin of the Benelux design's applications

Graph 12. Origin of the Benelux design's applications



Source: Benelux Office for Intellectual Property (BOIP).

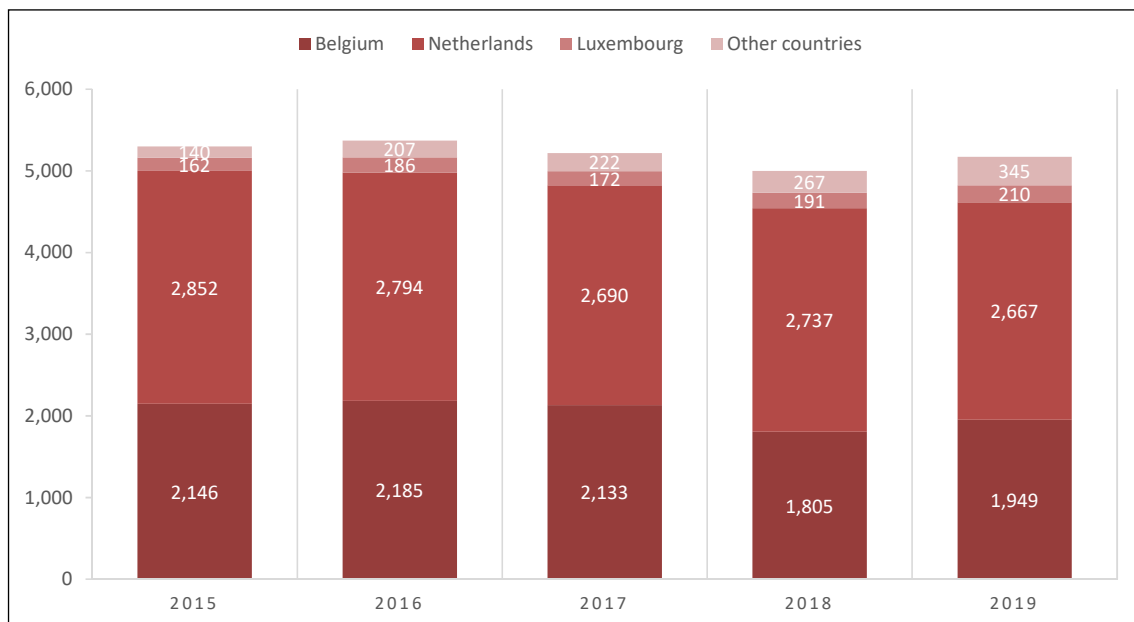
In contrast to trademark applications, the interest of Belgian applicants for Benelux designs has increased. The slight decrease of 7 % in 2017 was followed by a positive trend with an increase of 11.6 % in 2018 and a spectacular 37.8 % in 2019.

Further data on Benelux trademarks and designs can be found in the annual reports of the [Benelux Office for Intellectual Property \(BOIP\)](#) and the [European Union Office for Intellectual Property \(EUIPO\)](#).

2.2.3. Electronic filing per country of application

The Benelux Office for Intellectual Property (BOIP) offers the possibility, via the i-Depot, of generating proof of the creation date for a range of intellectual property rights. You can also find more information about this on the [BOIP website](#).

Graph 13. Electronic filing per country of application



Source: Benelux Office for Intellectual Property (BOIP).

Graph 13 shows that after a decrease of 15.4 % in the number of electronic applications in 2018 for Belgium, an increase of 8 % is again recorded for 2019.

2.3. Copyright and related rights

Many changes were implemented at national level in the field of copyright in 2019, in particular in the following areas:

2.3.1. Adaptation of legislation on private copying

During 2019, the legislation on private copying underwent profound changes. As a reminder, this legislation allows individual users to make a reproduction of a protected work or performance for private purposes (e.g. copying a purchased CD onto a blank CD or onto one's computer), without

requesting the authorization of the rights holders. As compensation for the damage suffered as a result of the exception, the latter are entitled to remuneration.

The scope of the private copying exception was amended by a law of 2 May 2019, in order to align the terminology of the exception with the terminology used by Directive 2001/29 from which it originated. It no longer refers to reproduction “made within the family circle”, but to reproduction “made by a natural person for private use and for purposes that are neither directly, nor indirectly commercial”. This amendment came into force on 1 June 2019.

A second amendment was made to the private copying regime, this time concerning remuneration. The purpose of this second amendment is to reintroduce publishers into the list of beneficiaries of the remuneration. They had been removed by the Act of 22 December 2016, when the scope of the reprography exception was amended. This reintroduction of publishers took place by an Act of 2 May 2019, which entered into force on 1 September 2019.

2.3.2. Music now taken care of via a single license thanks to Unisono

Until the end of 2019, the organisers of temporary events, the entire sector of hotels, cafés and restaurants, all businesses, hairdressers, beauticians and other service providers, cultural centres, youth centres, cinemas, associations, the public sector and companies, had to obtain permission from composers and music authors to play music, and they also had to pay an equitable remuneration to neighbouring rights holders. In practice, copyright was collected by the collective management society Sabam and equitable remuneration for the use of neighbouring rights of performers and producers was collected jointly by PlayRight and Simim. In concrete terms, this meant that each of the aforementioned music users had to submit two declarations or conclude two contracts and receive and pay two invoices for this purpose. In order to reduce this formality to a single declaration, a single contract and a single invoice, the King intervened. The King thus adopted two Royal Decrees on 17 May 2019. A first Royal Decree amends the Royal Decree on equitable remuneration of 17 December 2017 and a second Royal Decree lays down the terms and conditions of the one-stop shop. Thus, since 1 January 2020, there is in practice a one-stop shop for music under the name Unisono, where copyright and related rights for playing music can be settled at the same place.

2.3.3. Exception to copyright for educational activities in early childhood education and care settings

Educational institutions have long enjoyed the legal possibility of using works and performances for illustrative purposes for teaching. The question has also been raised for years as to whether early childhood care facilities or so-called “crèches” do not provide education for babies and young children and do not fall within the scope of this exception or should not be able to benefit from a specific exception. On 7 September 2016, a bill was introduced in Parliament with a specific exception for early childhood education and care settings. On 7 February 2018, the Parliament’s Committee on the Economy requested the views of the Council for Intellectual Property. After obtaining the opinion of the Council for Intellectual Property, given on 18 April 2018, and after obtaining the opinion of the Council of State, given on 28 February 2019, the recommendations of the Council of State were incorporated into the bill through amendments by several deputies. The bill was adopted on 2 May 2019 and published in the Belgian Official Gazette on 21 May 2019.

2.3.4. Copyright in the Digital Single Market

In 2019, an important and very comprehensive European Directive in the field of copyright was adopted. Specifically, it concerns Directive 2019/790 of 17 April 2019 on copyright in the digital single market. It is a directive that covers a wide range of subjects, which can be subdivided into the following sections:

Four new mandatory exceptions

The first part of the directive provides for four new compulsory exceptions to copyright and neighbouring rights. They are linked to the emergence of digital technologies in the fields of research, innovation, education and the preservation of cultural heritage, and allow new types of uses which were not previously covered by an exception.

In concrete terms, these are:

- two exceptions for text and data mining;
- exceptions for teaching in a cross-border context;
- exceptions for cultural heritage institutions, such as museums, libraries, archives, etc.

Wider access to out-of-commerce contents

A second part provides for measures to guarantee wider access to content. Thus, cultural heritage institutions, such as libraries and archives, can make out-of-commerce works and other protected subject matters available to the public. The rightholders of these works (authors, publishers, musicians, actors, producers, etc.) may decide at any time (via a so-called “opt-out” mechanism) that the institutions concerned do not (no longer) have the right to do so for all their works, certain works or certain uses.

Improvement of the position of rightholders

A third part is devoted to various measures to improve the position of rightholders in the face of increased digital and cross-border uses of content protected by copyright and related rights.

These measures include, among others, the introduction of a new right for publishers of press publications and the introduction of new rules for the sharing of protected content.

Measures to ensure appropriate and equitable remuneration for authors and performers

Finally, the Directive contains measures to ensure that authors and performers (actors, singers, musicians, etc.) receive an appropriate and fair remuneration for the exploitation of their works and performances. In this framework, various measures are taken in relation to copyright contract law, such as a transparency obligation, a success clause and a right of revocation.

The Directive must be transposed by 7 June 2021 at the latest. Work on the transposition of the Directive has already started in 2019, through the consultation of the Council for Intellectual Property, and will continue in 2020.

2.3.5. Updating of the Satellite Broadcasting and Cable Retransmission Directive

On 17 April 2019, (EU) Directive 2019/789 was adopted in the audiovisual sector. This Directive contains provisions on copyright and related rights within the framework of the provision of online services in order to support broadcasting, as well as provisions on the transmission of television and radio programmes. Specifically, it provides for:

- the application of the country-of-origin principle for the exercise of copyright and related rights which are relevant for online services for supporting radio and certain television programmes. Concretely, it is for example provided for that when a news program is proposed for download online, the country of origin principle applies;
- a mandatory collective management system for the right to authorize retransmission via new technical means, such as IPTV retransmission;
- a legal regime for the broadcasting of programmes via the technical process of direct injection.

This directive must be transposed into Belgian law by 7 June 2021 at the latest. Activities to this end have begun via consultation with the Audiovisual Consultation Committee and the Council for Intellectual Property and will continue in 2020.

2.4. New composition of the Council for Intellectual Property

The mission of the Council for Intellectual Property is to provide the Minister in charge of intellectual property with opinions on issues raised by the evolution of intellectual property. The Council consists of two sections, the “Industrial Property” section and the “Copyright and Neighbouring Rights” section, which are responsible respectively for industrial property issues (patents and designs) and copyright and neighbouring rights issues.

The new composition of the Council was laid down by the Minister in a ministerial decree of 18 December 2018, for a period of four years, starting on 1 March 2019.

2.5. Communication and awareness

Within the Intellectual Property Office, the Information Service is responsible for processing applications from companies (mainly SMEs), intellectual property professionals, research centres (universities) and the general public. Then, the BE-IPO also has the task of raising awareness and emphasizing the importance of intellectual property rights. This is done through awareness campaigns, public information and the provision of educational and advertising material, as well as through information sessions via the Contact Point and consultation days.

The BE-IPO is also the national headquarters where patent applications, applications for supplementary protection certificates for medicines and applications for plant protection products and for plant breeders’ rights can be filed.

And *last but not least*, the BE-IPO is responsible for the [eRegister](#), an official register that can be consulted online, in which every Belgian patent is mentioned. Via this platform, any published Belgian patent can be fully consulted, including the description of the invention, as well as its issuance file.

2.5.1. Institutional Forum on Industrial Property

This forum brings together, on a voluntary basis, all the public players who, at the federal and regional levels in Belgium, have the task of informing and raising the awareness of the general public with regard to industrial property. The members of this forum are the BE-IPO, which falls under the federal State, and the institutions that fall under the three Regions, such as VLAIO in the Flemish Region, Innoviris and Hub in the Brussels Region and the Operational Directorate General in charge of the Economy, Employment and Research of the SPW and Sowalfin in Wallonia.

The objectives of this forum are to:

- enable all the institutional players to inform each other about each other's projects and activities which aim to inform and raise public awareness on industrial property. The focus is in particular on projects and activities for the attention of a target audience, such as SMEs, research centres, universities, etc.;
- establish synergies on a voluntary basis between the various institutional players.

In 2019, two activities have thus been set up with the support of the Forum:

- the dissemination and promotion of the "Business Secrets" Campaign launched by the FPS Economy;
- the establishment of a future collaboration between the Regions, the BOIP and the FPS Economy-BE-IPO for the development of IP tools.

2.5.2. Business secrets campaign

In December 2019, the FPS Economy launched a campaign to encourage companies to protect their business secrets. This initiative was carried out in collaboration with the Benelux Office for Intellectual Property and with the support of the Walloon Region, the Flemish Region and the Brussels-Capital Region.

Business secrets are much more common than one might think and they provide a major competitive advantage for companies for which it is imperative to secure them.

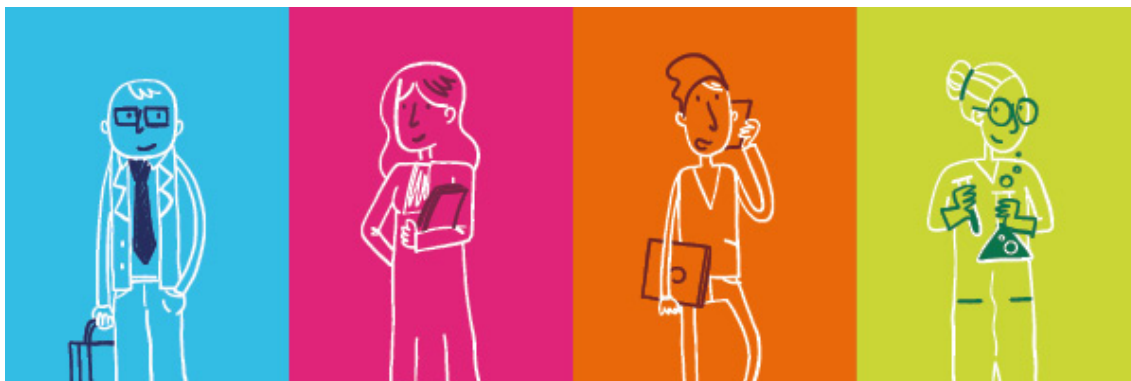
This campaign, spread out in two waves (December 2019 and February 2020), made it possible to highlight several essential measures: making physical and digital backups of important documents, providing confidentiality and non-competition clauses in employment contracts or trade agreements, etc.

All these practical tips have been developed through a video, a communication kit and a specialised [website](#).

The results of this campaign are considered very positive by the FPS Economy, considering the number of people reached via the various channels used.

In particular, Twitter made it possible to reach 839,875 people during the February 2020 wave and 675,558 people during the December 2019 wave and the video via this channel obtained 560,820 views during the February 2020 wave and 399,109 views during the December 2019 wave.

We also notice that Google Ads reached 3,132,377 people.



2.5.3. Requests for “certified copies”

The number of issued certified copies of patent applications and patents is:

- 674 copies in 2015;
- 817 copies in 2016;
- 934 copies in 2017;
- 837 copies in 2018;
- 841 copies in 2019.

The number of delivered certified copies had increased substantially between 2015 and 2017. In 2018, a slight decrease in the number of requests for certified copies is observed. This trend continues in 2019. Generally, there is a correlation between this number and the number of Belgian patent applications filed in the course of the year.

2.5.4. Requests for “EPOQUE searches”

These searches, carried out by the BE-IPO, are purely informal and initiated through a request from clients (mainly patent attorneys). They are carried out via the “EPOQUE Net” system (which gives access to the Epodoc and Clarivate Analytics databases), which is also used by the examiners of the European Patent Office.

Number of searches conducted:

- 336 searches in 2015;
- 255 searches in 2016;
- 281 searches in 2017;
- 190 searches in 2018;
- 220 searches in 2019.

We can see that the number of search requests in 2019 increased slightly compared to 2018 but is still below the level of requests made in 2017 and before. This is mainly due to the extensive possibilities for the “public” to search the patent publication databases themselves (such as Esp@cenet) or because these searches are carried out by other services (PATLIB centres or private companies). Another explanation is the increasing quality of public databases, which are more and more efficient.

At the same time, our researchers note that the fields wherein the searches are requested, are more detailed.

As in previous years, these are the two most important technical areas wherein the searches are requested:

- IPC-classification 'A': human necessities, which include:
 - rural activities (including agriculture, hunting, fishing, ...);
 - foodstuffs; tobacco;
 - personal or domestic articles;
 - health; amusement;
- IPC-classification 'B': various industrial techniques and transportation, such as:
 - separating, mixing;
 - metalworking;
 - printing, books, art;
 - transportation or export;
 - microstructural technology; nanotechnology.

2.5.5. Customer Services

The BE-IPO Contact Point handles all questions addressed to the BE-IPO and provides access to all information relating to intellectual property.

Regarding individual questions that were dealt with during the year, the BE-IPO Contact Point receives first-line support from the Contact Centre of the FPS Economy, and from the two legal services of the BE-IPO.

The following tables (13 and 14) show the figures of the questions handled by the aforementioned services. Both statistics on the number of visitors (received at the contact point) and on the number of questions (by phone and via email) dealt with by the BE-IPO contact point in the various intellectual property areas are displayed.

Table 13. Questions treated on intellectual property

| Visitors | 2015 | 2016 | 2017 | 2018 | 2019 |
|-----------------------|-------------|-------------|-------------|-------------|-------------|
| Patents | 434 | 228 | 183 | 148 | 138 |
| Trademarks and Models | 234 | 58 | 110 | 63 | 49 |
| I-Depot | 71 | 28 | 18 | 13 | 10 |
| Copyright | 8 | 2 | 0 | 3 | 0 |
| Total | 747 | 316 | 311 | 227 | 197 |

Source: FPS Economy.

As in previous years, most of the appointments in 2019 concerned patents. The total number of appointments is decreasing, which can be explained by the fact that the public relies more on available digital resources to search for information. More specifically, appointments on trademarks and designs issues have decreased, which can be explained by the possibility to find information online and to file a protection or i-Depot application on the website of the BOIP.

Table 14. Appointments relating to intellectual property

| Phone calls and emails | 2015 | 2016 | 2017 | 2018 | 2019 |
|-------------------------------|--------------|--------------|--------------|--------------|--------------|
| Patents | 1,771 | 1,509 | 3,366 | 1,946 | 1,510 |
| Trademarks and Models | 1,358 | 1,235 | 1,206 | 816 | 598 |
| I-Depot | 362 | 356 | 268 | 172 | 104 |
| Copyright | 182 | 165 | 1,015 | 534 | 526 |
| Total | 3,673 | 3,265 | 5,855 | 3,468 | 2,738 |

(*) 2015 and 2016: these figures only concern the Contact point.

Source: FPS Economy.

This table shows that most contacts concern patent law, trademarks and models. Compared to previous years, the number of questions relating to patents, trademarks and models and i-Depot continues to decline. Similarly, the number of phone calls and emails concerning copyright remains almost the same as in 2018. A logical explanation for the dramatic decrease in this figure since 2017 can be found in the increased performance of digital tools and, for trademarks and models, on the platform of the BOIP.

On the basis of the data of the three services (BE-IPO Contact Point, legal services of BE-IPO and Contact Centre of the FPS Economy), the total number of (individual) questions on intellectual property in 2019 can be estimated at 2,935 individual questions. In 2018, there were still 3,695 questions.

The number of questions addressed to the FPS Economy is still only half of the total number in 2017. This could, among other things, be explained by the increased quality of the websites and an increased use of digital tools, through which the public can also access the information.

2.5.6. Consultation days

The BE-IPO not only has a Contact Point, but also organizes and/or participates in consultation days across Belgium in the field of intellectual property. These consultation days are mainly focused on SMEs.

Table 15. Number of consultation days at the Intellectual Property Office

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|-----------------------------|-------------|-------------|-------------|-------------|-------------|
| Number of consultation days | 17 | 17 | 16 | 15 | 12 |

Source: FPS Economy.

In 2019, the BE-IPO was able to inform more than 200 SMEs and start-ups by answering their questions during 12 organized consultation days.

The questions dealt with by the BE-IPO during these bilateral meetings concerned only patents and were directly related to the SME project, such as:

- What are the conditions to be met for filing a patent application?
- What are the benefits of filing a patent?
- What is a patent's lifespan?

- What is the cost of a patent application?
- In case of filing a patent, where am I protected and for what?
- How can I check if an invention is already protected by a third party?
- How can I protect an idea or a product against counterfeiting?
- Where to find patent information?
- How to interpret certain patent texts?
- How should I read and interpret a search report?

2.5.7. Events

In 2019, the BE-IPO organized two events:

- a consultation meeting with patent attorneys about the application of Belgian patent law;
- a copyright seminar devoted to the latest developments in Belgian and European copyright law, such as the new regulations concerning the audiovisual sector, equitable remuneration, private copying and reprography.

The BE-IPO also participated in the “Salon Métamorphoses” at the WEX in Marche-en-Famenne, a trade fair focusing on innovative products and materials and aimed at business leaders, R&D engineers, researchers, research centres and the university sector.



3. How to contact us?

Federal Public Service Economy, SMEs, Self-employed and Energy

Intellectual Property Office

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1210 Brussels

Belgium

Tel.: +32 800 120 33 (Contact Center, free of charge from Belgium)

Fax: +32 800 120 57

Email: info.eco@economie.fgov.be

Internet: <https://economie.fgov.be/en/themes/intellectual-property>

List of abbreviations

| | |
|------------------|---|
| BE-IPO | Belgian Intellectual Property Office |
| Benelux | Belgium, the Netherlands and Luxembourg |
| BOIP | Benelux Office for Intellectual Property |
| CEL | Code of Economic Law |
| CPVO | Community Plant Variety Office |
| eOLF | Electronic Online Filling |
| EPA | European patent application |
| EPO | European Patent Office |
| EU | European Union |
| EUIPO | European Union Intellectual Property office |
| FPS | Federal Public Service |
| fte | Full time equivalents |
| M&M | Trademarks and models |
| PATLIB | Patent Library |
| PCT | Patent Cooperation Treaty |
| PlayRight | Association for the Collection, Distribution and Defense of the Rights of Performers |
| Sabam | Belgian Association of Authors, Composers and Publishers |
| Simim | Society of the Belgian Music Industry |
| SPC | Supplementary protection certificate |
| SPW | Public Service of Wallonia |
| Unisono | Collective platform of Sabam, PlayRight and Simim for the registration and payment of licences for music, theatrical works, audiovisual works and so on |
| UPC | Unified Patent Court |
| UPP | Unitary Patent Package |
| WIPO | World Intellectual Property Organisation |



FPS Economy, S.M.E.s, Self-employed and Energy

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