

BUSINESS BRIEF: THE NETHERLANDS

Patents

How do you register or secure patent rights, and is national or international coverage most appropriate?

One can choose to acquire a patent in the Benelux (Belgium, the Netherlands, Luxembourg) via a national patent application or a European patent (EP) application, in which the three Benelux countries will be designated. A Dutch patent application is filed through the Dutch Patent Office. The applicant has to request a search report if one is not available. This report gives parties the opportunity to form an opinion on the validity of the patent. A Dutch patent is granted for 20 years. Once a EP patent has been obtained with a Dutch designation for the same invention, the Dutch patent loses its effect.

An EP is filed at the European Patent Office. The application is examined for novelty and inventiveness. A negative result leads to a refusal, which can be appealed. A granted patent can be opposed by third parties within nine months of the grant. Both parties can appeal against the opposition decision.

A national Dutch or Belgian patent cannot be obtained through an international (Patent Cooperation Treaty) application. The international application needs to enter the European regional phase and proceed to grant.

What are the costs of registering a patent, and what are the costs of defending it?

The costs of filing on the basis of an available earlier filing in English are:

- A direct Dutch or Belgian patent application, claiming priority, including an estimate of the costs for translation and search report, also including grant: €1,500 to €2,500

- A European patent application, either claiming priority or as regional phase for a PCT application, including examination and designation fees for all contracting states, less than 15 claims, less than 35 pages, excluding renewal fees: €3,900 to €5,000.

An EP needs to be validated in the Netherlands and Belgium, including filing a translation. This costs between €600 and €1,100.

The costs of litigating a patent can vary enormously depending its technical field and complexity, and can easily reach €50,000, even in summary proceedings. On appeal, the costs are comparable with those of the first instance. The losing party must reimburse the costs of the winning party.

Is there anything unusual about the patent law that companies should be aware of—what are the most common mistakes businesses make?

It is advantageous to start with a national patent because it will be available 18 months from the earliest priority and provide the possibility to enforce the patent while waiting for the EP.

In the Netherlands, the court in The Hague has exclusive jurisdiction over patent disputes. In Belgium, all courts have jurisdiction.

What are the key threats to patent owners, and what is the best strategy if you suspect someone is infringing your patent?

The key threat to patent owners is a counterclaim for invalidity by the infringer. In the Netherlands, nearly half of all infringement cases end in a (partial) revocation of the patent. Nullity arguments are often based on anticipations that were not found by the examiner. In cases of suspected infringement, we advise engaging a patent agent and a specialised lawyer who will

jointly study the strength of the patent and advise on the best strategy.

Trademarks

How do you register or secure trademark rights, and what protection does it grant?

Trademark law is unified in the Benelux. One acquires a trademark through registration with the Benelux Office for Intellectual Property (BOIP). A trademark in the Benelux can also be owned by means of an international registration or a Community trademark (CTM).

It is advisable to file a Benelux trademark application through a trademark agent. BOIP examines the application on absolute grounds only. It is possible for third parties to oppose the registration on relative grounds. The registration is granted for 10 years and can be renewed every 10 years.

Appeals against decisions of BOIP are brought before the competent court of appeal of either The Hague, Brussels or Luxembourg. Appeals to Brussels are preferable because the Belgian court tends to follow BOIP.

A CTM application can be filed through the BOIP or directly with the Office for Harmonisation in the Internal Market (OHIM).

What are the costs of registering a trademark, and what are the costs of defending it?

If no provisional refusal or other office actions are issued and no oppositions are filed, the cost of a trademark registration is between €660 and €750 for up to three classes.

The cost of defending a trademark in the first instance in summary proceedings is between €9,000 and €20,000, and in a proceeding on the merits between €18,000 and €30,000. Proceedings

“A COMMON MISTAKE IS TO LIMIT ACTIONS TO EVIDENT INFRINGEMENT CASES, WHICH RUNS THE RISK OF DECREASING THE DISTINCTIVE CHARACTER AND VALUE OF A TRADEMARK.”

on appeal cost between €9,000 and €18,000 in summary proceedings, and between €18,000 and €28,000 in appeals on the merits. The losing party must reimburse the costs of the winning party.

What are the key threats to trademark owners (counterfeiting, passing-off, online infringement, etc.), and what is the best strategy for dealing with infringement?

A key threat is infringement by competitors who wish to free-ride on a trademark's reputation, by using a confusingly similar mark, or by counterfeit and grey imports.

It is advisable to engage a specialised lawyer who can advise on the strength of the mark and the best strategy to pursue. An *ex parte* court order is an important weapon in cases of evident infringement.

What are the most common mistakes trademark owners make?

A common mistake is to limit actions to evident infringement cases, which runs the risk of decreasing the distinctive character and value of the owner's trademark. Trademark owners should not use their marks in a generic way as this will cause their invalidity. Trademark owners should maintain evidence of the use of their mark through the years.

Counterfeiting and online piracy

How big a problem is counterfeiting and/or online piracy in your jurisdiction?

Since the Benelux has a big trading volume, the problem of grey imports and counterfeiting is significant. Online piracy is also a problem in the Benelux.

What industries are particularly at threat?

The music and film industry for online piracy. The clothing, perfume, furniture and electronics industries for counterfeiting.

What are the best strategies for dealing with the problem?

Grey imports and counterfeits of products that bear a European Community production code are easier to establish. A good strategy is to work with the national customs authorities.

General

Are there any legislative changes to the IP regime that would make businesses' life easier?

The recent implementation of the Enforcement Directive in the Benelux makes it easier for IP owners to substantiate their claims and reduce damage to their IP rights. The introduction of

the Community design and trademark have improved the free movement of goods and services in the European Community. We await the introduction of a Community patent.

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Michiel Rijdsdijk is partner at Arnold + Siedsma and has been a specialised IP lawyer for more than 10 years. His practice mainly consists of litigating, including trademark and patent proceedings, both national and international. He also has a great deal of expertise in the field of design and copyright protection.

PROTECTING THE ESSENCE

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The Court of Appeal of The Hague passed final judgment on October 6, 2009 in the patent case between Zilka and Rüegg, more than five years after the appeal proceedings were instituted. The proceedings took so long partly because the Court of Appeal gave the parties the opportunity to present their views on another judgment, passed by the Supreme Court in the case of *Lely v. Delaval*. In that judgment, the Supreme Court presented its views on the interpretation of Article 69 of the European Patent Convention (EPC) and on the manner in which the Protocol on the Interpretation of Article 69 EPC is applied in the Netherlands. It requires the determination of the essence of an invention in order to establish the extent of protection conferred on an invention.

The protocol says that the extent of protection is not defined by the literal meaning of the wording. Nor are the claims a guideline as to what is considered from the description and drawings. The extent is a position between these extremes.

The Supreme Court ruled that the interpretation of Article 69 in relation to the literal wording used in the claims must be based on the idea of the invention underlying the wording of the claims; however, that perspective does not indicate how to find “a position between these extremes”. It also ruled that any lack of clarity in the wording of the claims is to the detriment of the patentee.

Zilka and Rüegg have both developed a product that can be used to deslag heat-exchange devices. Zilka believes that Rüegg’s system includes the essence of its patent and therefore infringes its patent either literally or on the grounds of equivalence. This is therefore also a case of determining the essence of the invention and the extent of the protection.

Zilka argues that the essence of its invention is an explosive-based system for deslagging a heat-exchange device, whereby the explosive device can be moved to any desired position and the explosives can be detonated at any desired moment, since the explosive device is cooled continuously. The parties have a difference of opinion as to how a person skilled in the art will interpret an “explosive device”. Zilka believes that its explosive device should be interpreted so broadly that it also includes Rüegg’s product: a balloon filled with an explosive gas, attached to a hollow lance. Rüegg believes that it means a solid explosive without a lance.

The Court of Appeal studied the wording and drawings of the patent, and concluded that “explosive device” means “explosive” and that the lance is a separate part. The prior art for Zilka’s patent also does not allow Zilka’s interpretation, nor would a person skilled in the art make such an interpretation. So there is no literal infringement.

“ANY LACK OF CLARITY IN THE WORDING OF THE CLAIMS IS TO THE DETRIMENT OF THE PATENTEE”

As for the “position between these extremes”, Zilka argues that, for infringement to occur, all characteristics related to the essence of the invention must be contained in the challenged device, and that infringement may also be deemed to occur if a characteristic is missing that is irrelevant from a technical perspective. Therefore, Zilka believes that the essence of its invention is found in Rüegg’s system.

The Court of Appeal found that Zilka disregarded many characteristics and eliminated them in its interpretation of the essence of its invention. For instance, Zilka eliminated the cooling envelope in its interpretation, even though it is described in detail in the claims and therefore appears to be essential. Zilka does what Article 69(1) EPC attempts to prohibit, namely removing a limitation from a claim in order to broaden the extent of protection.

There is no infringement on the basis of equivalence either since although the same result is achieved by both systems, the manners in which that is done are essentially different. A person skilled in the art would not regard that difference as equivalent.

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DISTINCTIVE CHARACTER OF 3D TRIANGULAR TRADEMARKS

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On January 5, 2010, 10 years after Mars started an action against the three-dimensional trademark registration of Kraft, the Supreme Court of the Netherlands gave its final judgment. Mars claimed the nullity of the three-dimensional trademark for a triangular box for chocolates and alternatively a non-infringement declaration of that trademark with its product. Kraft's counterclaim was based on trademark infringement by Mars.

The nullity claim was based on Article 3 (1) b of the Trademark Directive No. 89/104, which states that a trademark can be declared void if it lacks distinctive character. The district court rejected both of Mars' claims and ordered it to cease and desist the infringement of Kraft's trademark. Mars appealed against this decision. The court of appeal stated that with respect to the nullity claim, it must be considered whether the sign is able to distinguish the origin of the goods from the goods of other companies. It must be considered too that the perception of three-dimensional marks differs from the perception of word and figurative marks, since the public is not used to identifying the origin of goods from their shape.

Distinctive character is therefore easier to accept when a shape differs significantly from what is standard in the relevant sector. If a trademark has no distinctive character *ab initio*, it can be acquired by integration. It is not necessary that the sign is used on its own—distinctive character can also be accepted when the sign is part of, or used in connection with, a registered trademark. The court of appeal reversed the judgment and nullified the three-dimensional trademark.

Following the decision, Kraft appealed to the Supreme Court. First Advocate General (AG) Verkade assessed Kraft's three complaints and gave his conclusion. The first complaint concerned the opinion of the court of appeal that the trademark has no distinctive character *ab initio*. The court of appeal assessed the packaging in the Benelux of different chocolates, excluding those of chocolate bars. The packages were considered to be very diverse. Since the triangular shape had no other significantly different elements, the court decided that it could not act as a trademark. The consideration of packages in the Benelux and the consideration that they constituted an image of the relevant sector when the trademark was filed were made correctly, according to AG Verkade. He added that even if Kraft was the first to use that triangular shape for a chocolate box, that does not mean it has a distinctive character of its own. This made the decision of the court of appeal correct. The first complaint failed.

The second complaint concerned the consideration that there is no integration in connection with a Kraft chocolate bar on the ground that the three-dimensional triangular box cannot be seen as part of that three-dimensional trademark of a pyramid-shaped piece of chocolate. The AG

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believed that the court of appeal made the right decision, and the second complaint also failed.

In its third complaint, Kraft appealed against the decision that since it was already considered by the court of appeal that both products are not identical, there is no similarity or trademark infringement. The court of appeal considered that the fact that Mars' product is offered laying flat and Kraft's trademark is offered standing up is important for the public's perception. AG Verkade believed that the court of appeal correctly meant to consider that the three-dimensional trademark is void, and Kraft cannot receive protection through the back door based on confusion on the part of the public. The AG believed that Kraft was correct in its statement that product offering is not an element in the assessment of distinctive character. However, the court of appeal considered the likelihood of confusion and therefore this had to be taken into account in that assessment. Therefore, the third complaint failed.

The Supreme Court followed the AG in his rejection of Kraft's complaints and gave no supplemental motivation. This means that the trademark registration will be removed for the Benelux and that the triangular chocolate box is free to be used at last.

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THE UNDISCLOSED DISCLAIMER



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On April 7, 2010, the Dutch Court of The Hague gave a provisional judgment in the patent case between Mundipharma and Sandoz in which it made some interesting considerations about the ‘undisclosed disclaimer’: when a disclaimer must be seen as ‘undisclosed’ and whether there is an undisclosed disclaimer in this instance. The conflict regards a Mundipharma painkiller containing a controlled release formulation, for which it owns the Dutch part of European Patent 0722730 (EP 730). The original application is international patent WO 93/10765 (WO 765). In its counterclaim, Sandoz states that the disclaimer in EP 730 is undisclosed in WO 765 and considers EP 370 invalid.

EP 730 concerns a formulation for a regulated release of oxycodone or an oxycodone salt, which is established by the use of a controlled release matrix. In an opposition against EP 370, the patent was altered but maintained. This decision was appealed by Mundipharma and the opposing party, Sandoz. The decision on appeal was suspended, awaiting the decision on Mundipharma’s auxiliary requests.

Mundipharma put the painkiller on the market under the name OxyContin. Sandoz was granted three permits by the Medicines Evaluation Board to sell a generic formulation for controlled release of oxycodone hydrochloride in dosages of 5, 10 and 20 milligrams. Sandoz used the shortened registration procedure for generic products and pointed to OxyContin as the referential preparation, stating that its formulation is bioequivalent to OxyContin.

Mundipharma analysed the Sandoz products and found out that they contain a matrix with particles of oxycodone hydrochloride, that the *in vitro* release pattern of the Sandoz products matches the release profile in EP 730 and that they have a pH-independent release pattern as meant in EP 730. Mundipharma states that Sandoz has infringed its patent, since the products fall under its scope of protection. In a counterclaim, under the condition that the pending opposition does not revoke the conclusions of EP 730, Sandoz claimed the nullity of EP 730 based on *inter alia* added material regarding an undisclosed disclaimer.

Sandoz stated that the added material is covered by the disclaimer “other than an acrylic resin matrix”, which was not disclaimed in WO 765 and does not meet the requirements for undisclosed disclaimers set out in the decision of the Grand Chamber of Appeal (G1/03). This would be in conflict with the requirements following from G1/03; therefore, conclusion 1 of EP 730 should be invalid.

According to the court, G1/03 only concerns the permissibility of disclaimers that are not disclosed in the original application. ‘Undisclosed disclaimers’ means that only those that are neither positively nor negatively

“THE COURT CONSIDERED WHETHER THE DISCLAIMER CHANGED THE TECHNICAL TEACHING OF THE PATENT, BUT FOUND THAT IT DID NOT. IT CONSIDERED THAT THE DISCLAIMER HAD A SOLELY LEGAL IMPLICATION”

disclosed in the original application. In this case, the court considered that the disclaimer contained material that was not literally found in WO 765, but deductible from it by the average skilled person. Therefore, the court considered that the disclaimer was not ‘undisclosed’ as meant in G1/03.

Sandoz also states that the disclaimer has a technical meaning. The court therefore considered whether the disclaimer changed the technical teaching of the patent, but found that it did not. It considered that the disclaimer had a solely legal implication. It prevents double patenting in relation to WO 765, which had already led to EP 643 from which EP 730 is a divisional. The disclaimer covers a limited group of substances for a controlled release matrix, so it only alters the scope of protection of the patent, but not its technical teaching.

Sandoz’s other nullity claims—scope for further development, lack of inventive step and novelty—were also denied by the court. The court considered conclusion 1 of EP 370 to be valid and therefore that the 10 and 20 mg formulations of Sandoz infringed the patent. The 5 mg dosage did not infringe the patent since it is out of the range mentioned in conclusion 1 of EP 370. The court also suspended the decision in the principal action until a decision is made in the pending opposition and awarded Mundipharma a provisional injunction.

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UNTIL DEATH US DO PART: STOPPING COPYRIGHT TRANSFER



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The Dutch copyright act is heading for a major change if the Dutch government's recent proposal for copyright contract law gains public support. The government proposes making it impossible for the natural creator of a work in the Netherlands to transfer its copyright.

What is going on? With the growing possibilities for exploiting a work (e.g. through the Internet), the position of natural authors in negotiations has weakened against whoever administers their work. Therefore, the Dutch government wants to create a stronger position for natural creators. To strengthen their position, the proposal prevents a natural author transferring his work. This is significantly different to the current situation, which allows the author to transfer all or part of his copyright or give it in licence to another. According to the proposal, a natural author can only give all or part of his copyright in licence. It is only after the death of an author that copyright can be transferred.

The Dutch government's proposal takes a monistic view of copyright. Formerly, the Netherlands adhered to a dualistic system; the rules had property law consequences and obligation law consequences. The proposal to prevent the transfer of copyright away from a living author effectively scraps the property law implications of copyright. The proposed copyright contract law gives the author more influence over the exploitation of their work by introducing a termination clause at the end of every five-year period and the mandatory right to a fair remuneration for the author. This means that if a work is not well exploited, the author can terminate the contract and search for another licensee or change the content of the contract. If a work is not being exploited or when certain provisions are evidently disproportionate, the proposal foresees a mandatory right to nullify or alter the agreement. Currently, a natural author does not have these mandatory rights and if a copyright is transferred, the creator has no more influence on the exploitation of their work except with regard to personality rights.

Another alleged positive effect of the proposal results from the five-year termination clause. This provides a stimulus to the licensee to use and exploit the work and therefore to innovate. According to the government, the five-year period strikes a balance between the interests of the author in having control over their work and the interests of the licensee in investing and exploiting the work. Five years is sufficient time for the licensee to successfully exploit a work.

This rule might cause problems in the future, since the time required to successfully exploit a work differs depending on the type of work, and successfully exploiting a work does not necessarily mean that a licensee has already earned back the initial investment in the work. This could also have

“ACCORDING TO THE PROPOSAL, A NATURAL AUTHOR CAN ONLY GIVE ALL OR PART OF HIS COPYRIGHT IN LICENCE. IT IS ONLY AFTER THE DEATH OF AN AUTHOR THAT COPYRIGHT CAN BE TRANSFERRED.”

the consequence that possible buyers do not wish to enter into a licence agreement in case the author terminates the contract on the suspicion that their work is not being exploited at its best, while the reality may be that the licensee needs time and investment to increase the chance of fruitfully exploiting the work. Another downside of the proposal is that the copyright of a natural owner will no longer be regarded as a property right and therefore will not be transferable, whereas that changes as soon as the author dies. This seems inconsistent.

Further, the new copyright contract does not affect works made by 'fictive authors'. These are works made by employees or works disclosed as stemming from an organisation without mentioning a natural author. Those works are therefore regarded as property rights and can be transferred. It raises the question: can an author circumvent the consequences of the proposed law by means of making a work as employee of their own company? How this problem and other problems that result from a new copyright act will be solved is for the courts to decide in the future. For now, this proposal is open for public consultation until the end of August 2010. The public's response might cause the government to rethink its proposal, which could benefit the industry. We will keep a close eye on it.

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THE 'EXCEPTIO PLURIUM LITIS CONSORTIUM'



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When several parties have joined in a case against another and won it, that can create problems for the losing party if it tries to appeal against the judgment on the merits. In the Netherlands, it is important to pay attention to the legal relationship of the parties involved in the proceedings on the merits.

Summoning only one party runs the risk of the counterparty putting forward the '*exceptio plurium litis consortium*'. This defence says that a claim cannot be accepted when the claimant brings the action on its own instead of together with one or more other parties. More importantly in this context, it prohibits claims against a single defendant instead of against several, on the grounds that the legal relationship between the parties is indivisible. If the court accepts this defence, it must declare the case inadmissible.

The Dutch Supreme Court upheld this defence in its decision of July 9, 2010. The case concerned the Dutch company Engineering Design Documentation Services, the US parent company Electronic Data Systems Corp and its subsidiary Electronic Data Systems International (Electronic Data). Engineering Design Documentation Services was established in 1977 and was active under the trade name 'EDS' in delivering information and, more recently, computer services. Electronic Data Systems Corp has been active since 1962 in the US in computer services under the trade name EDS. It established Electronic Data, a Dutch subsidiary, in 1979. In 1988, Electronic Data Systems Corp filed the Benelux trademark EDS, for which Electronic Data received a licence. In 1994, Engineering Design Documentation Services also filed a Benelux trademark EDS, for the same services.

A dispute arose about the trademarks and the trade name EDS. Electronic Data Systems *et al* requested nullification of Engineering Design Documentation Services' EDS trademark. Engineering Design Documentation Services filed a counterclaim seeking nullification of the other EDS trademarks. The court allowed the claims of Electronic Data Systems *et al* and rejected the counterclaims. Engineering Design Documentation Services decided to appeal against the decision but only served its writ to Electronic Data Systems Corp. This meant that the initial decision in favour of Electronic Data became final.

During the appeal, Electronic Data Systems Corp put forward the defence that Engineering Design Documentation Services had no interest in its appeal, as well as the *exceptio plurium litis consortium* defence. These defences were put forward as the question in this case was which party was entitled to carry the trademark and trade name EDS. The relationship between the parties made it legally necessary that the answer to this question was uniform for all parties, all the more since Electronic Data

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Systems Corp is the parent company of Electronic Data and the judgment in favour of Electronic Data was final. This meant that Engineering Design Documentation Services could not continue the proceedings against just one of the Electronic Data Systems parties. The Court of Appeal accepted this defence and found that Engineering Design Documentation Services had no interest in appeal.

The Dutch company then appealed to the Supreme Court. The Supreme Court stated that although it would have been possible for Engineering Design Documentation Services to have held proceedings on the merits with Electronic Data Systems Corp alone, the fact that did not and that the proceedings on the merits were held between three parties whose legal relationship became indivisible through the initial decision, made an appeal between only Engineering Design Documentation Services and Electronic Data Systems Corp inadmissible. The Supreme Court agreed with the appeal court that because the proceedings on the merits were held between all the parties, and the lower court's decision applied to all of them, the part of the decision dealing with the legal relationship between Electronic Data and Engineering Design Documentation Services had effectively not been appealed, and therefore had become final. This meant that an outcome on appeal in favour of Engineering Design Documentation Services would be incompatible with the final decision between Engineering Design Documentation Services and Electronic Data. Therefore the *exceptio plurium litis consortium* defence was justified.

This decision underlines the importance of an assessment of the legal relationship between parties before starting an appeal procedure. Ideally, this would be assessed when starting a procedure on the merits.

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KNOWLEDGE ECONOMY HERE TO STAY

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Traditionally, the Netherlands has an excellent reputation for its knowledge economy. Research and development form a major part of Dutch economic activity, and many companies, such as pharmaceutical companies, profit from the Netherlands as a knowledge science centre with its favourable innovation climate. The Dutch government thinks that pharma research plays a particularly important role in innovation and therefore in the Dutch economy.

It only became clear what is at stake for this knowledge economy when the US-based pharmaceutical company MSD & Co recently announced it would move its subsidiary Organon to the US. Organon's R&D department is currently based in the Netherlands and employs about 1,100 highly educated and specialised researchers in a specific pharmaceutical field, which would be lost if a transfer is continued.

Since this announcement, the Dutch government is alerted and now plays an important role in its attempt to keep knowledge and skills up and running in the Netherlands.

As part of this attempt, the vice president of the Netherlands contacted the head of the parent company of MSD, Merck & Co. Inc. and discussed long-term solutions. He also contacted other stakeholders, such as the Dutch Society of the Research Oriented Pharmaceutical Industry and the Dutch Chemical Steering Group. A Taskforce Life Sciences Park has been set up to study how best to preserve knowledge and skills. Research has also been done on starting an independent scientific research institute. Clearly the Netherlands is trying to maintain a high-profile Dutch innovation climate.

Several suggestions are made to preserve the Dutch knowledge economy, some of which may deter established companies from staying, and others to move their offices to the Netherlands. These suggestions are regarding how to keep the research knowhow protected by patents, since this knowhow needs to be used as the basis of further research.

The first suggestion is compulsory licensing. Under article 57 of the Dutch Patent Act, the Minister of Economic Affairs can force a company to grant a licence to all its patents on research methods on general interest grounds. Granting a compulsory licence is a major decision that can only be taken under exceptional circumstances. Since its introduction in the Patent Act, not even one compulsory licence has been granted.

The second solution is the patent research exception. Under article 53 (3) of the Dutch Patent Act, it is permitted to do scientific research with and to patented inventions of third parties, such as patents on research methods. It is believed that this exception is even valid for research purposes in a commercial company, though only if the aim is to develop new techniques.

“RESEARCH AND DEVELOPMENT FORM A MAJOR PART OF DUTCH ECONOMIC ACTIVITY, AND MANY COMPANIES, SUCH AS PHARMACEUTICAL COMPANIES, PROFIT FROM THE NETHERLANDS AS A KNOWLEDGE SCIENCE CENTRE WITH ITS FAVOURABLE INNOVATION CLIMATE.”

Both suggested solutions run the risk of turning companies off setting up R&D departments in the Netherlands, which would not be beneficial to the Dutch economy. For that reason, the solution to keeping knowledge and skills in the Netherlands must be to improve the knowledge economy. The alerted government's attempts to keep R&D in the Netherlands therefore might boost the Netherlands' innovative climate, resulting in the development of corporate, legal and financial incentives.

MSD has postponed its announced transfer plans until December 31, 2010. That gives the Dutch government and all other involved parties time to explore the alternatives to keep the R&D knowledge and skills in the Netherlands. We await further developments.

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