

## LICENCES IN THE CZECH REPUBLIC – METODOLOGY PART

This publication contains the comprehensive results of an annual statistical survey **Lic 5-01**. The main focus of this survey is to monitor the number of valid licence agreements (purchased and sold) in order to protect industrial property, as well as, the value of licence fees (paid and received) in the Czech Republic in the respective year. Apart from the total number of valid licence agreements, the survey also inquires about newly concluded licence agreements, type of licence agreements (licence for patent, utility model etc.) and country of the contracting party.

The Czech Statistical Office collected data on licence agreements by means of an exhaustive survey VTR 5-01<sup>1</sup> in years 1995-2002. As a result of improved data collection process, the survey was divided into two separate questionnaires in 2003. Licence indicators have therefore been collected annually by means of the aforementioned Lic5-01 since 2003, which is part of a Statistical Survey Program. Reporting units represent all entities that acquired or sold a licence for any form of intellectual property.

A reporting duty for ANNUAL REPORT ON LICENCES IN 2006 was enacted in the CZSO regulation published on 11. October 2005 in the statute book as Act. No 421, which constitutes the Statistical Survey Program.

### DEFINITIONS AND CHARACTERISTICS OF INDICATORS

Licence agreement generally represents one of the options for intellectual rights protection in the commercial context. There are several criteria for distinguishing types of licence agreements. The basic division follows the provision (**active licence**) or acquirement (**passive licence**) of the licence subject.

Depending on the extent of granted rights, we also distinguish between **exclusive licence agreements** (the licensee is a sole owner of rights in the agreed territory and the licensor is not entitled to enter any other licence agreements, which could violate the right of the licensee); and **non-exclusive licence agreements** (the licensor reserves the right to enter a licence agreement with another partner in the given territory). The licence subject will thus be used by other licensees whereby such act prevents each sole licensee from gaining a monopolist advantage, as is the case with the exclusive licence agreement.

In terms of licence subject, we can distinguish **patent licences** (where the subject of the licence is an invention protected by patent, including licence agreements for utility models, industrial designs etc.); **trademark licences** (a provision of right to use a trademark); **know-how licences** (a variety of technical and technological improvements and production processes, which could not qualify as subjects of patent protection); and **combined agreements** (most wide-spread, subject of the licence is a combination of patent rights and production know-how, which actually enable the licensee to use the patent and/or trademark provided by the licensor).

In a **licence agreement**, the licensor thus grants a right to use the subject of licence (a form of intellectual property) to the licensee in the agreed extent and territory, and the licensee is obliged to pay royalties (licence fee) in exchange for this right. Licence agreements assigned to intellectual property rights (patents, utility model, industrial design, topography of semiconductor products, new plant varieties and breeds of animals or trademarks) must be in writing. The licence agreement takes effect upon the registration with the Czech Industrial Property Office (IPO).

**Patent** is a set of exclusive rights granted for an invention, i.e. a product or a process that is new, inventive and useful, or offers a new technical solution to a problem. The applicant must disclose in sufficient detail the functionality of his/her invention. When a patent is granted, the applicant becomes the owner of the patent (patentee). A patent, issued by the IPO or some other national or international patent office, provides protection for the invention to the patentee for up to 20 years (effective from the date of public notice in the IPO bulletin). Like any other form of property, a patent can be bought, sold, licensed or mortgaged.

**Utility model** protects particularly technical solutions, which do not comply with strict requirements for granting patent but its technical level exceeds the scope of a mere professional skill. The patentability requirements are therefore less stringent (quicker and cheaper protection) and the protection term shorter (often 6 to 10 years).

**Industrial design** intends to protect the ornamental or aesthetic aspect of products (not their functionality). The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour. Industrial designs are applied to a wide variety of products of industry (technical and medical instruments, electrical appliances etc.). Formal

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<sup>1</sup> "Annual Questionnaire on Research and Development 2002" (VTR5-01) addresses all legal and natural persons who carry out R&D (or their local units, i.e. work stations devoted to R&D) as their primary or secondary activity. This survey constitutes a basis for research and development indicators in the Czech Republic.

and factual consideration including the requirement of novelty is in competence of the IPO (protection effective from the date of public notice in the IPO bulletin).

**Topography of semiconductor products**, in final or intermediate form, is the design of the layout, i.e. the three-dimensional location of elements and interconnections of an integrated circuit. Whereas the industrial design determines the external appearance of the device, the topography determines the exact location of each element with an electronic function within the integrated circuit. The rights granted by this legal title are similar to other industrial property rights, especially those for patents, trademarks and industrial designs.

**New plant varieties and animal breeds** are protected by a breeding certificate issued by the Ministry of Agriculture, provided they are new, distinct, homogenous (identical in their basic features) and stable (after multiple reproduction). The authorship certificate grants an exclusive right to the owner to use the aforementioned in commerce.

**The trademark** is a distinctive verbal, pictorial, spatial or combined sign, which identifies certain products or services as those produced or provided by a specific person or enterprise. The registration of such signs is in competence of the Czech Patent and Trademark Office (IPO), which examines its compliance with trademark eligibility requirements. The owner of the trademark is entitled to dispose of the trademark and also to provide rights to its temporary utilisation by means of a licence agreement.

### **Basic classification of reporting units that concluded a licence agreement**

The aforementioned survey Lic 5-01 monitors and classifies the concluded licence agreements and the volume of licence fees paid or received depending on the reporting units (licenser or licensee) according to:

- **Industrial classification (ISIC)**, i.e. core economic activity of the entities that entered a licence agreement
- **Size of enterprise** defined with respect to the number of employees: 0, 1-9, 10-49, 50-249, 250-499, more than 500 employees
- **Firm domicile** defined by CZ-NUTS 3 (14 regions in the Czech Republic)
- **Main high-tech and knowledge-intensive groups** defined by ISIC
- **Country of contracting partner**, both, as licenser and licensee