

# Clarivate / Licensing Executives Society France 2018 report

Patent Licensing Landscape – 3<sup>rd</sup> Edition

May 2018



For the third year, and in celebration of World IP day, LES France (Licensing Executives Society) and Clarivate Analytics have joined forces to publish a study on patent licensing professionals in France. The study this year has been extended to include members of LES in Benelux countries in order to gain a broader European perspective.

### Summary of main observations

1. There is increased activity in sales and acquisitions of patents. The majority (52%) of organizations surveyed participated in assignments or patent acquisitions during the last two years. This is up from 42% in 2016.
2. Opinions concerning the elements necessary for the development of an effective patent market have shifted somewhat since 2016. Increased patent quality is still most important, but streamlining patent valuation methods has decreased in importance.
3. Despite the continuing slow speed of court decisions in France compared to other European jurisdictions, the level of technical competence of judges remains as the main priority for improvement in the litigation system.
4. Companies surveyed continue the wait and see approach to the implementation of the unitary patent with only 22% of them have a defined strategy (although marginally higher than the 20% in 2016). However, respondents continue to appreciate the potential advantages of the proposed system with unification of court decisions, technical ability of judges and reduced costs being most appealing.
5. The estimated average price for a patent family comprising EP and US members as a minimum across all industries is estimated to be 260 K€ which is remarkably consistent with 2016 when the average value was estimated to be 256 K€. By industry, estimated values range from 66 K€ for industrial equipment to 470 K€ for biotechnologies
6. Average remuneration for licensing professionals in France has risen 2.9% since 2016 from 110.6K€ to 113.8K€
7. China is an important part of patent strategy for nearly three-quarters of respondents surveyed. The key challenges in conducting licensing business in China are identified as language and culture, effectiveness of enforcement and predictability of court decisions.



## INTRODUCTION

The role of licensing and patent trading in innovation strategies continues to grow in importance, but there remains a paucity of empirical data on the subject to give a vision if not exhaustive, at least representative of licensing practices in France and beyond. To address the lack of data, for the third year we have conducted this study among the members of the LES France. This year, we have also extended the study to members of LES in Benelux countries in order to gain a broader European perspective.

This year also, we have continued to separate certain answers according to three professional categories: Corporate (industrial companies), Academic (academic sector and public research organizations) and finally IP Services (Industrial Property Attorney, lawyers and IP services company).

### Identification of respondents

Respondents are evenly split between corporate, IP services and academic sectors with a long experience of licensing. The majority (77%) are from France and the remainder (23%) from Benelux.

Licensing professionals have proven experience, with 81% of corporate respondents and 86% of lawyers offering services related to patent licensing activities having been in the business for 6 years or more. This compares with 71% and 83% respectively in 2016.

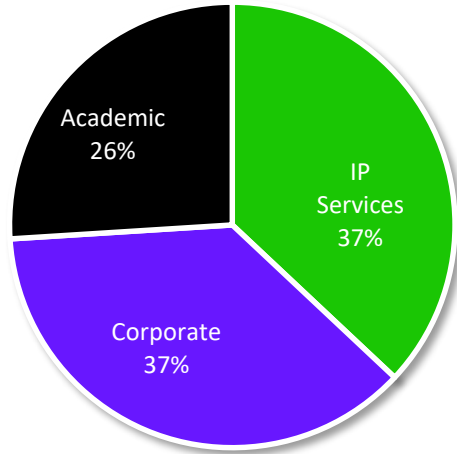
In addition, the vast majority of respondents still feel that their organization understands the strategic importance of patents, with over 81% of respondents strongly agreeing or agreeing with this statement compared to 88% of correspondents in 2016.

**“Patents are strategically important for the business, but not so much for the monetary aspect. Rather the main priorities are:**

- gaining the freedom of development so our R & D teams can work without disruption
- recovery of R & D investment
- acquiring technical skills”

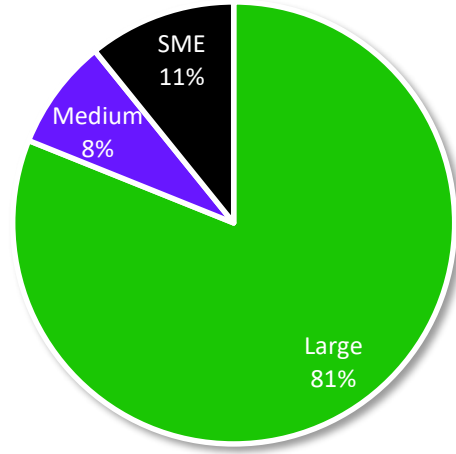
*Bruno Leduc, Director of Licensing, Europe Middle East Africa, Technology & Intellectual Property, IBM France*

**Chart 1: What category of organization do you work in?**



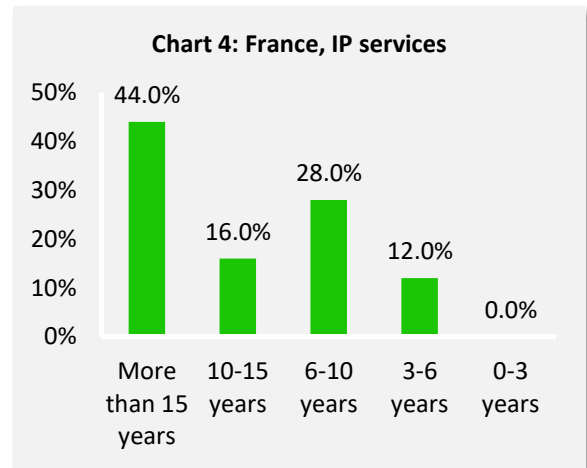
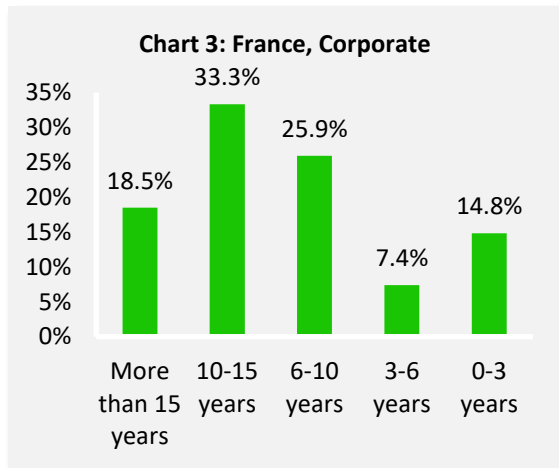
This is for France and Benelux combined. For Benelux, the proportion of respondents working in IP services is 48%, Corporate sector 22% and Academic sector 30%.

**Chart 2: What is the size of the company you work for?**



For France alone, the proportion of respondents working in manufacturing has declined from 50% in 2016 to 41% in 2018. However, of these a growing number work for large corporations (France 78% compared to 73% in 2016)

**How many years have you been involved in patent licensing activities in your organization?**



In order to compare with 2016, France was analyzed separately. For companies, compared to 2016, the length of experience has increased on average from 9.9 years in 2016 to 10.5 years in 2018, a change of 6.1%.

However, for IP services, compared to 2016, the length of experience has decreased on average from 14.3 years in 2016 to 13.6 years in 2018, a change of – 4.9%.

For Benelux, the average length of service for companies is 10.3 years and for IP services slightly longer at 10.5 years.

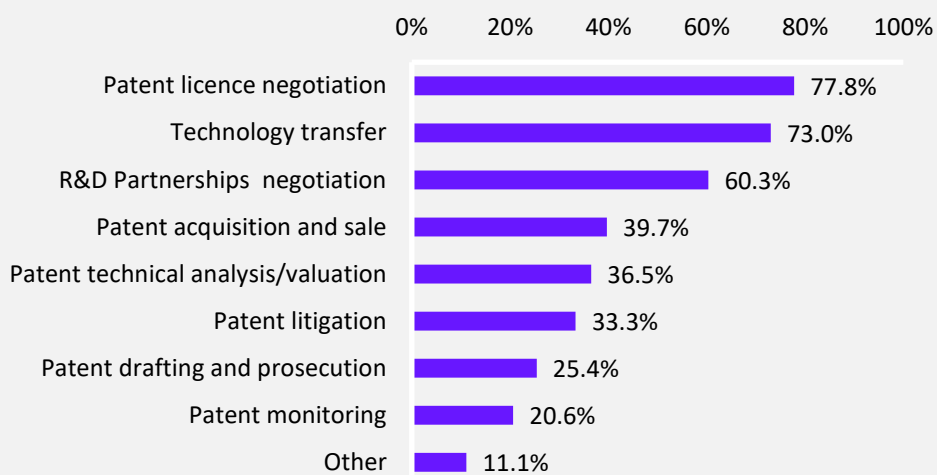
## Activities of licensing professionals cover the full cycle of patent licensing across a diverse set of industries

People working in licensing cover a wide range of responsibilities, ranging from technology transfer, patent analysis and valuation to patent litigation, licensing negotiations and the acquisition and sale of patents.

Across all sectors, the majority of activities involve patent licence negotiation. Respondents within the corporate & academic sectors are 1.5 times more active in technology transfer than IP services employees.

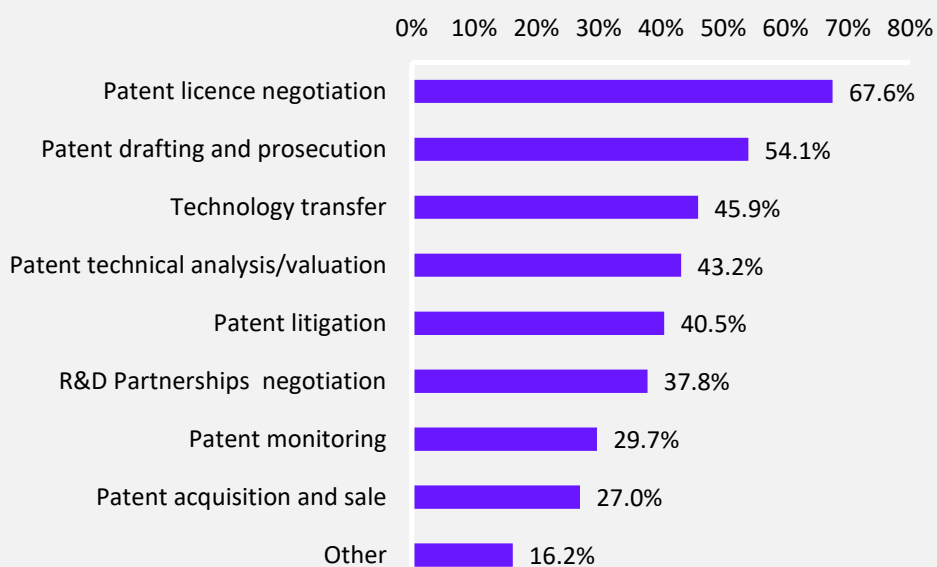
By contrast, as expected, IP services firms are twice as active in drafting and prosecution of patents than corporate & academic licensing professionals since that is their business. Respondents from universities are mainly active in technology transfer (75%), negotiation of R&D partnerships (62.5%) and patent licence negotiation (62.5%) which is surprisingly high. Law firms and lawyers remain very active in litigation as companies focus their activities on licensing and partnership negotiations.

**Chart 5: Corporate & Academic - What areas are you involved in?**



**“Our institute is not involved in the business of selling patents, but we provide access rights via out licensing, which provides for royalty arrangements to our institution’s patents”**

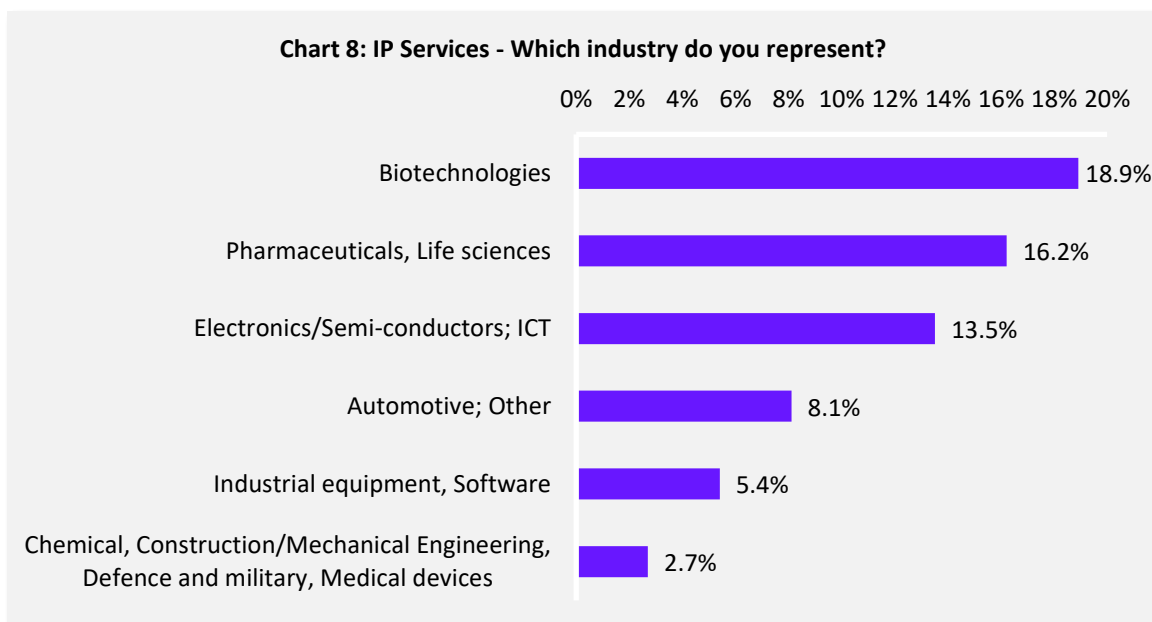
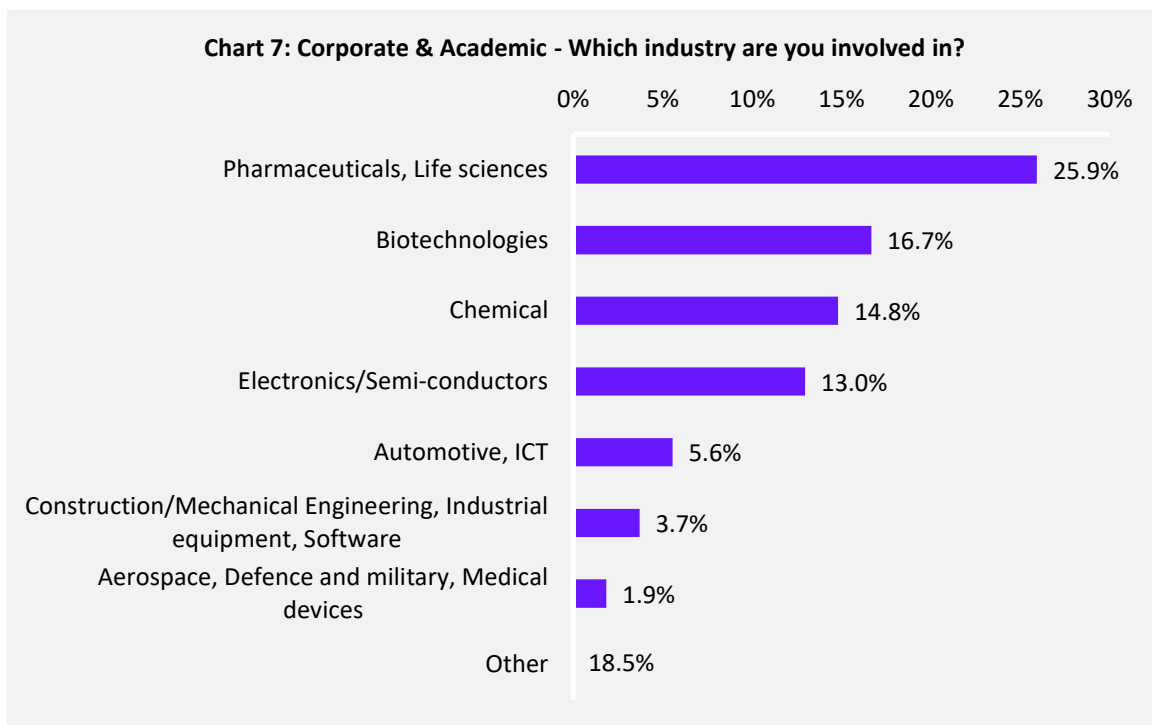
**Chart 6: IP Services - What areas are you involved in?**

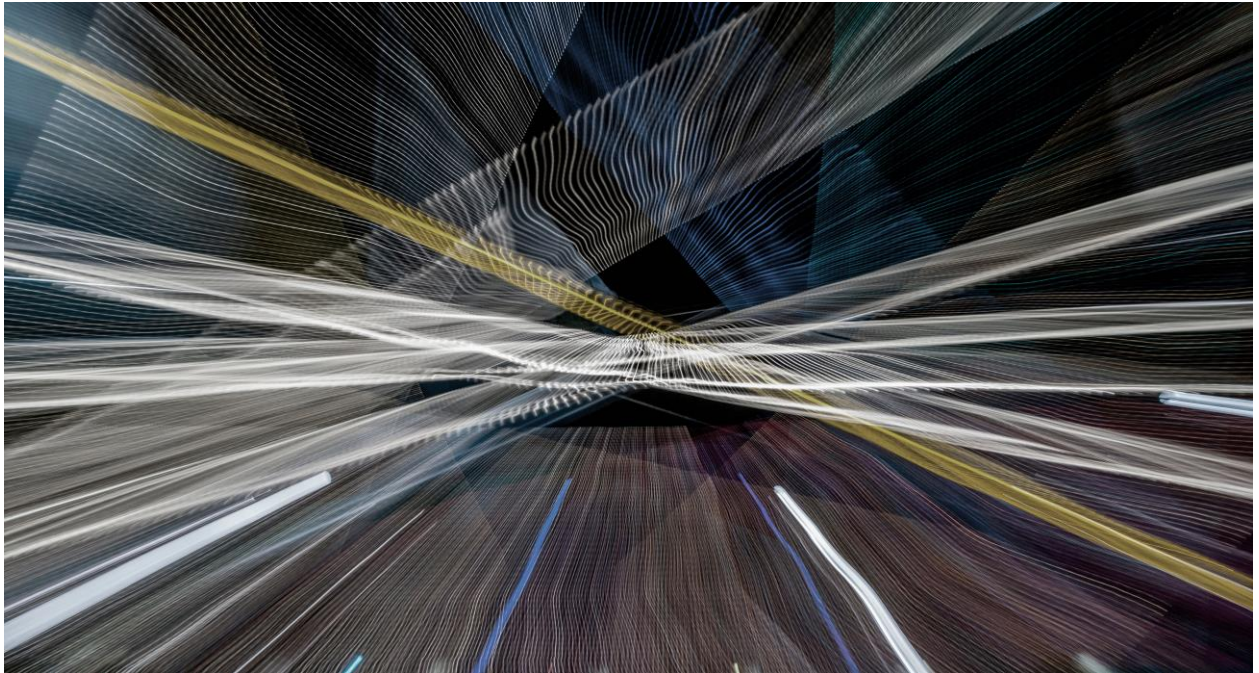


**“Our main activity is patent litigation which we use to help the client throughout the pre-litigation phase to obtain a license”**

The majority of respondents in corporate and academic sectors come from the pharmaceuticals & life sciences (14 companies) and biotechnology (9 companies) industries.

This balance is also reflected amongst the industries that law firms represent although biotechnology is most strongly represented with 7 companies compared to 6 companies from the pharmaceuticals & life sciences sectors.

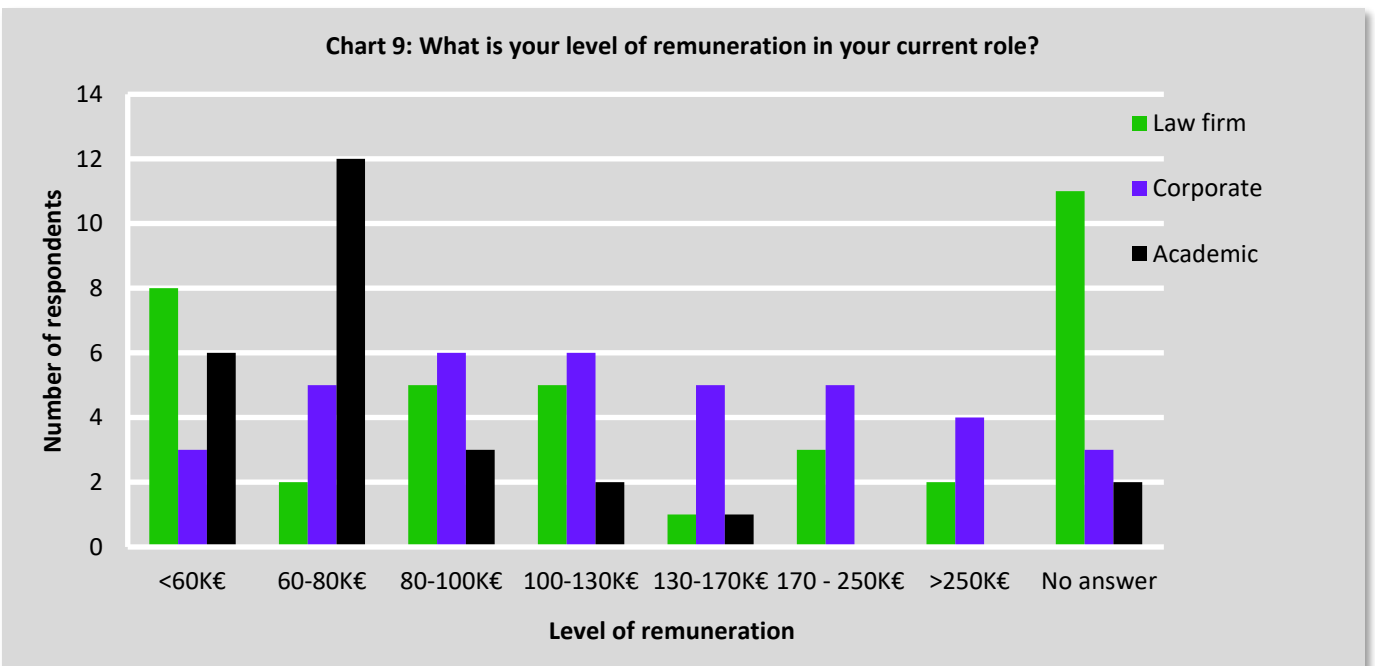




### An above-average remuneration of licencing executives with large disparities between respondents

For France & Benelux combined, the average salary for licencing professionals compares very favourably to executive pay generally with the majority of respondents (46 out of 84) falling in the 60-130K € range and an overall average salary of 111.1K€. However, this is unevenly spread across the three sectors. In the academic sector, with the majority of respondents (69%) falling in the range <60 – 80K€, the overall average salary is 77.1 K€; for law firms, that figure is 46% higher at 112.5 K€, and for corporates higher still at 134.1 K€.

When the regions are split out, the overall trends are similar with average level of remuneration across all sectors in France being 113.8 K€, and for Benelux an average of 99.7 K€. This correlates with the higher level of experience of respondents from France compared to the Benelux countries, particularly at law firms where the average remuneration for French licencing professionals is 125.5 K€ compared to just 77.1 K€ for Benelux (although 1 respondent with 15 or more years experience gave their salary as <60 K€).

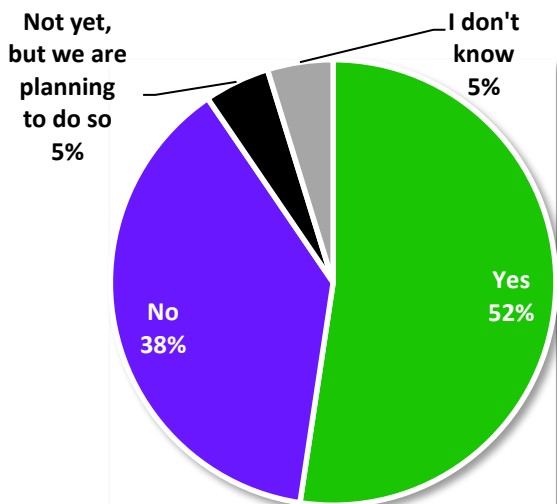


## LICENSING AND MANAGEMENT OF IP

### Transactions of sale and acquisition occur mainly between companies

81% of respondents believe that their organization supports the licensing out or the sale of patents in order to generate new revenues. This is a significantly higher figure compared to the 66% of respondents of that view in 2016. Yet this number is not reflected in the proportion of respondents who have actually sold patents in the past two years, although at 52%, this again is significantly higher than the 40% of 2016. It seems there is a continued reluctance to invest in the resources and skills necessary to generate revenue from the unused portions of an organization’s patent portfolio.

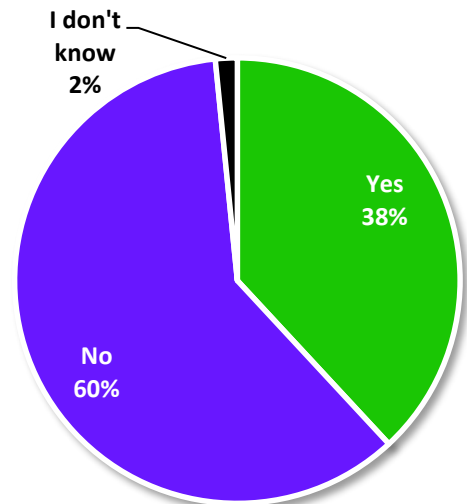
**Chart 10: Has your organization sold patents in the last two years?**



Hardly any of these sales involve the transfer of patents to Non Practicing Entities (NPEs) with only 6.1% of respondents actively engaging this market for revenue.

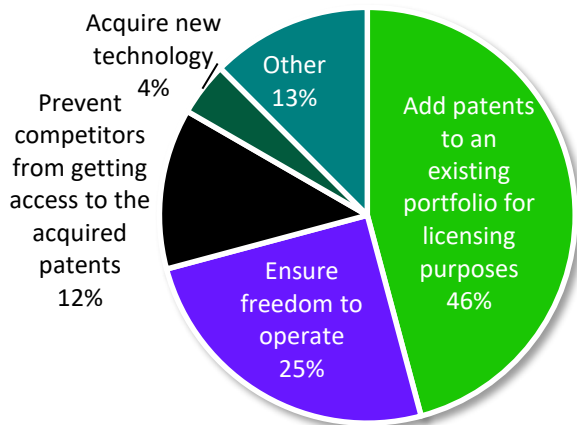
The reasons for patent acquisitions remain the same as in 2016, the main ones being to bolster an existing portfolio with a view to a licensing program and to ensure freedom of operation.

**Chart 11: Has your organization bought patents in the last two years?**

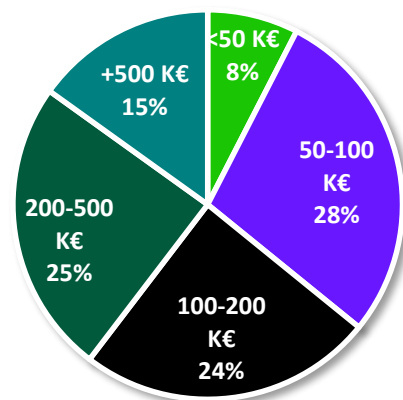




**Chart 12: If yes, what was the main reason for these acquisitions?**



**Chart 13: What do you think is the average price of a patent family (EP + US members as a minimum) in your industry?**

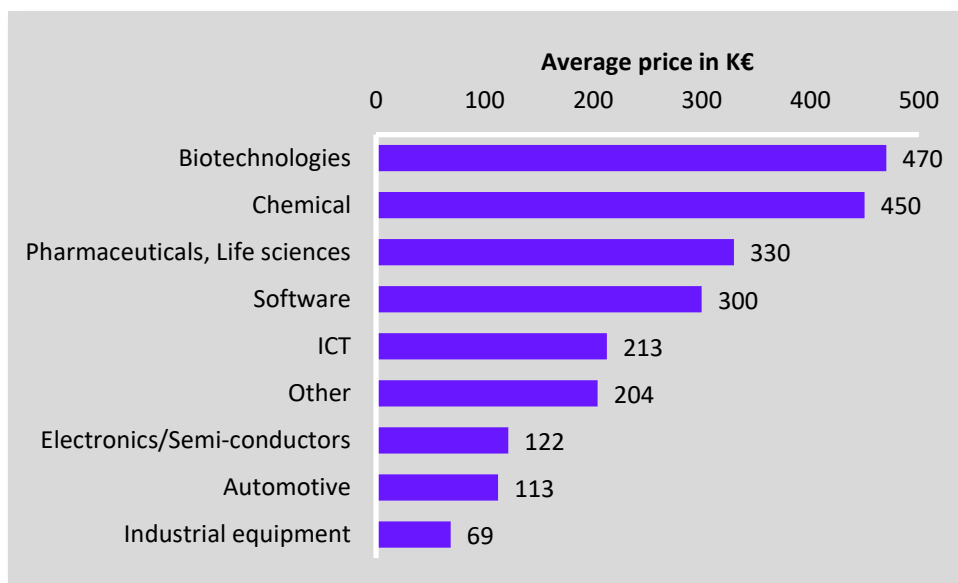


The estimated average price for a patent family comprising EP and US members as a minimum across all industries is estimated to be 260 K€ which is remarkably consistent with 2016 when the average value was estimated to be 256 K€. By industry, estimated values range from 69 K€ for industrial equipment to 470 K€ for biotechnologies.

*“The strategy is to be able to intervene in all areas including sale & purchase, and licensing in & out of patents, implementation of a pol PI (contractual part), counterfeiting support and so on. We often participate in the audit phases - solicited by clients or colleagues and working in pairs Lawyer/Patent attorney to cover all aspects”*

**Camille Pecnard, Marketing, Communication and Business Development Manager, LAVOIX**

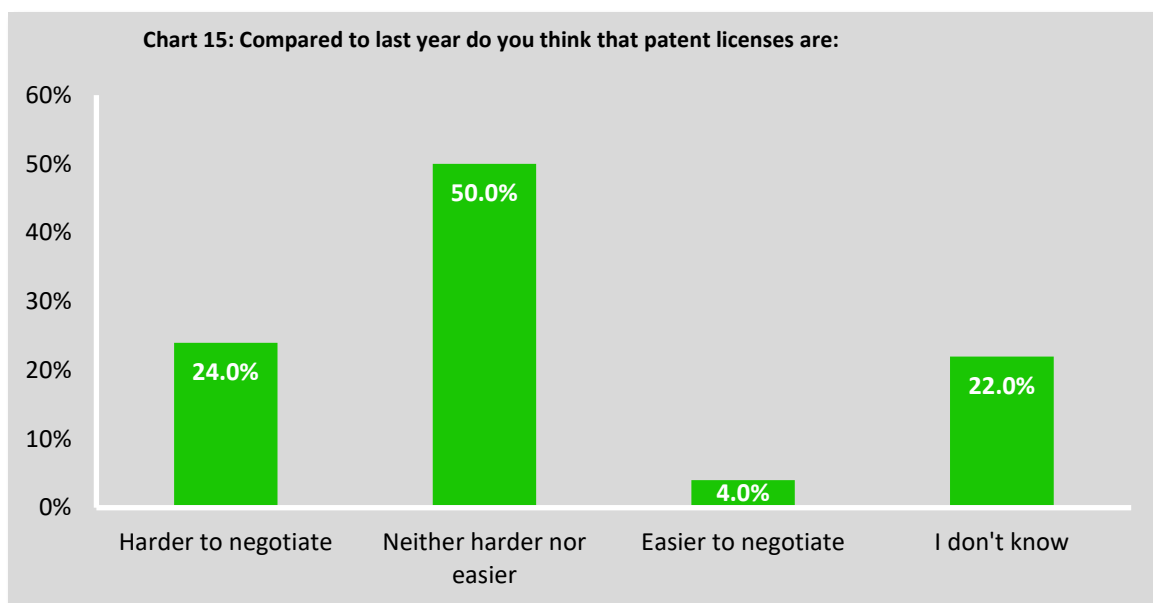
**Chart 14: Average price per patent family by industry (industries with 2 or more respondents only included in chart)**



**The licensing market is stable, but there are some key difficulties**

With 50% of respondents of the opinion that licenses are neither harder nor easier to obtain than last year, the licensing market appears stable. However, there remain the same difficulties in establishing a licensing program as in 2016, namely the identification of licensees, the determination of the amount of license fees and the construction of an evidence file. It is surprising that identification of licensees remains the main difficulty, although this may refer to the difficulty of finding an appropriate partner with the need for the technology at that precise moment when the technology is offered for licence.

Other challenges exist in specific industries. For example, in the the ICT sector, the explosion of so-called essential patent declarations has resulted in ever increasing numbers of cross-licensing negotiations. There is a need for more transparency of patent holders on the essentiality of patents. According to Christian Loyau, “licenses become more difficult to negotiate because the negotiations are no longer patent-based but on a portfolio level. For a potential licensee, there is no indication that the technologies of the entire portfolio are needed. The licensee faces the difficult task of establishing the detail of the entire portfolio which can comprise several hundred patents”.



**Chart 16: When your organization intends to create a licensing-out program, what are the main challenges faced in order of importance?**

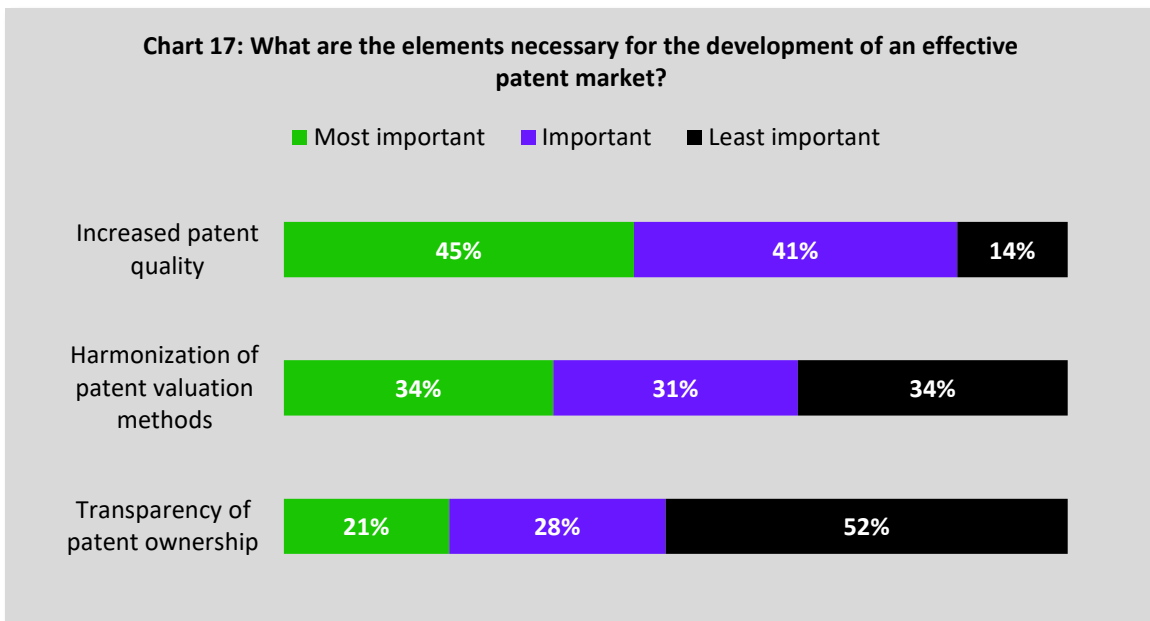
	Ranking
Identify potential licensees	1
Determine the licence price	2
Build a patent evidence of use file	3
Identify the patent to licence within your portfolio	4

“Difficulties could especially arrive when the parties are unbalanced such as a large multinational company vs a SME (start-up) who does not have the resource to analyze patent portfolios and establish the essentiality of patents in the proposed portfolio when such SME is invited for taking a license on”

**Christian Loyau, Legal and Governance Affairs Director, ETSI**

Opinions concerning the elements necessary for the development of an effective patent market have shifted somewhat since 2016. Increased patent quality is still a major factor, but the importance of streamlining patent valuation methods has declined with only 34% of respondents considering this to be the most important factor compared to 46% in 2016.

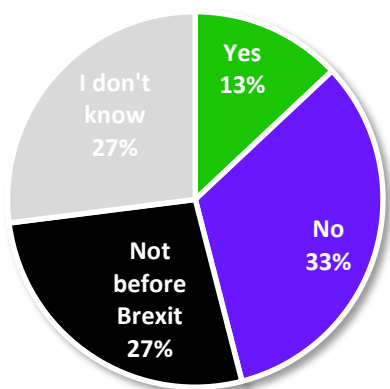
The change in importance of transparency of patent ownership is more nuanced. Although more respondents in 2018 (21%) consider this to be the most important factor compared to just 15% in 2016, more respondents (52%) consider this to be least important than in 2016 (40%). This factor may be technology specific as in the reference above to the importance of transparency of essentiality of patents in the ICT sector.



## Patent Litigation

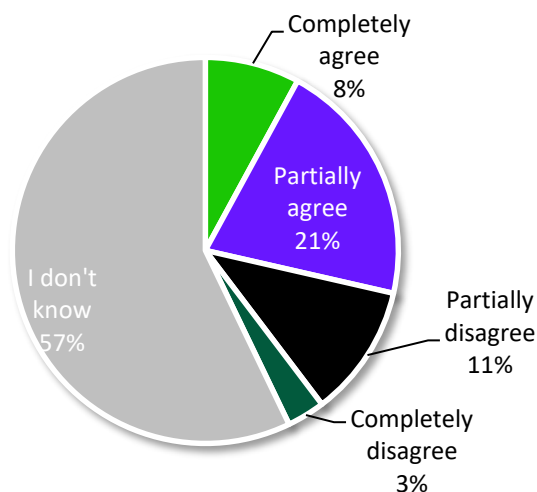
With the recent ratification by the UK of the international agreement to set up a Unified Patent Court (UPC) for Europe, the prospect of the European Unitary Patent has moved one step closer. However, the German constitutional challenge is still unresolved and respondents reflect the continuing uncertainty with only 13% believing the UPC will happen any time soon.

**Chart 18: With the German constitutional challenge to UPC legislation and Brexit in mind, do you believe that the Unitary Patent System will be effective anytime soon?**



As in 2016, the minority of companies have yet established a strategy to deal with the implementation of the UPC. The main advantage of this future system remains the same as in 2016; the application of the judgments of the Unified Patent Court to all member countries of the unitary patent.

**Chart 19: The UPC will contribute to the development of activities of NPEs in Europe in your industry**



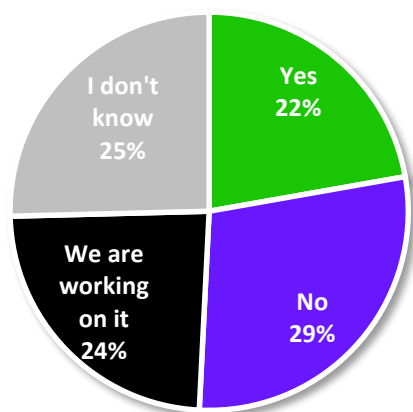
**Chart 20: What aspects of your national litigation system would you like to see prioritized?**

	Ranking
Technical ability of judges	1
Predictability of decisions	2
Speed of court decision	3

"The speed of court decisions in France compared to other EU countries needs to be improved. The duration is close to two years vs less than one year in UK and Germany or Netherlands.

French judges in the special chamber dealing with patents at the TGI of Paris are forced to change positions every 3 years. In the Netherlands, for example, they can develop their abilities by remaining in their IP role."

**Chart 21: Has your organization already agreed on a strategy for the UPC implementation?**



"The UPC will be advantageous because we will be dealing with specialists, judges who are very experienced.

The speed will also be good with a maximum duration of one year for litigation.

The court of appeal will also unite court decisions at European level!"

**Chart 22: What will be the main benefits of UPC for patent owners in order of importance?**

	Ranking
Court decision enforced on all UPC members territory	1
Judges' technical abilities	2
Litigation Cost	3

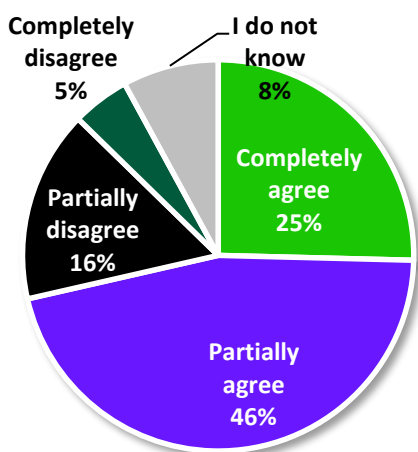
## China

China continues to grow in importance both as a global market and as a source of the majority of the world’s patent information with publication in 2017 of 2.66 million Chinese patent documents. Nearly three-quarters of the survey’s respondents agree that China is now an important part of their organization’s patent strategy.

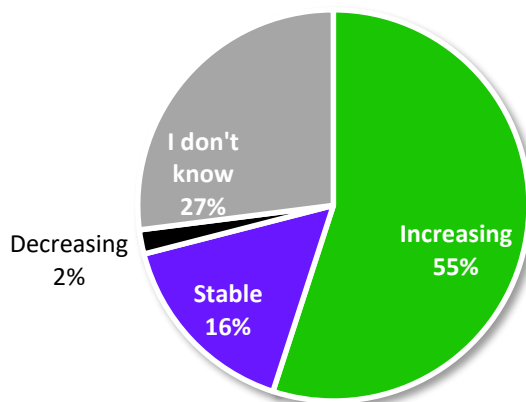
Conducting licensing business there however is not without challenges, the main ones being language and culture followed by effectiveness of enforcement and predictability of court decisions.

Despite the relative youth of the Chinese patent system compared to others globally, there is a recognition that the quality is steadily improving.

**Chart 23: China is an important part of my organization's patent strategy:**



**Chart 24: In your opinion, the quality of Chinese patents is:**



**Chart 25: What are the main challenges of licensing or litigating in China in order of importance?**

	Ranking
Language & culture	1
Effectiveness of enforcement	2
Predictability of court decisions	3
Consistency of court decisions	4
Costs	5

**“China is now fully up to international IP standards. We no longer treat China as a special case, but consider it the same way we consider the US and adapt to competing actors in the same way.**

**There is real will in China to be taken seriously as a respectable IP actor. As an example, the new president of AIPPI is Chinese.”**

**Camille PECNARD, Marketing, Communication and Business Development Manager, LAVOIX**

## Who we are

Clarivate Analytics is the global leader in providing trusted insights and analytics to accelerate the pace of innovation. Building on a heritage going back more than a century and a half, we have built some of the most trusted brands across the innovation lifecycle, including Web of Science, Cortellis, Derwent, CompuMark, MarkMonitor and Techstreet.

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