



The Global Patent Landscape

23rd Annual Advanced Patent Law Institute

The University of Texas School of Law, Austin, TX

November 2, 2018

Technical Minds. Legal Muscle.

The Times They are a Changin'

The Old World

- Slow-moving innovation
- Focus your IP strategy at home
- Pick your market and let the legal strategy follow

In a Global Economy:

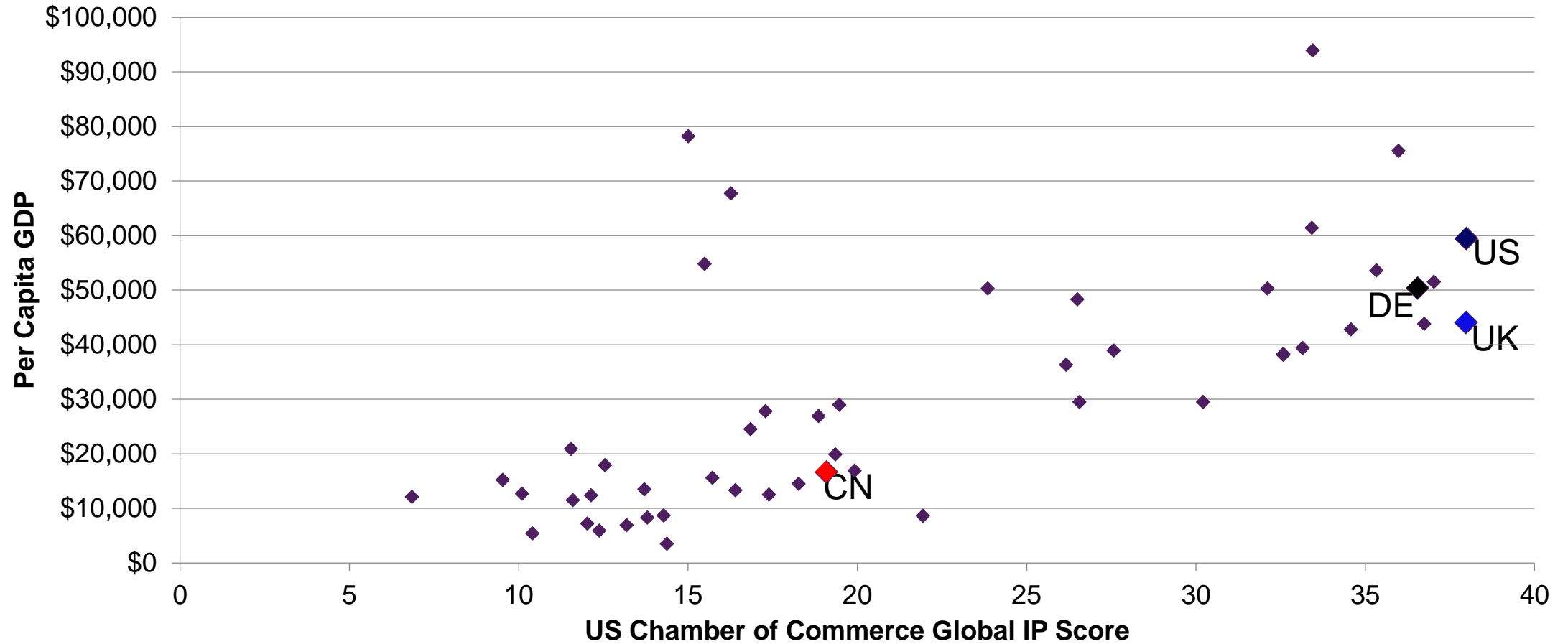
- Protect products and services globally
- Choose where to enforce, but must coordinate efforts worldwide
- Increased pressure to maximize ROI on IP expenditure



The Global Patent Landscape

	Population	GDP	Perception of Patent Value
	326M	\$20T	
	508M	\$19T	
	1.4B	\$12T	

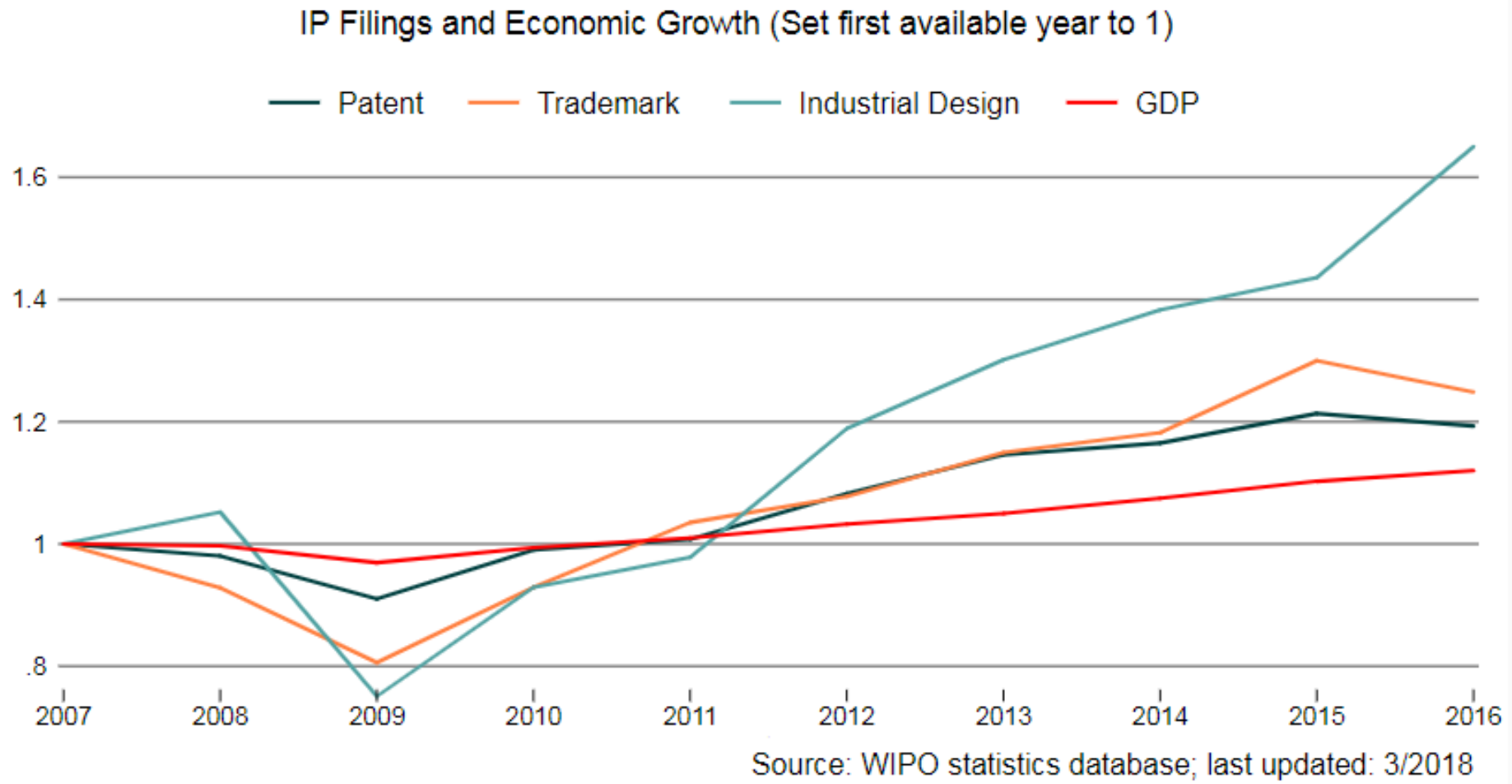
Per Capita GDP vs. Global IP Score



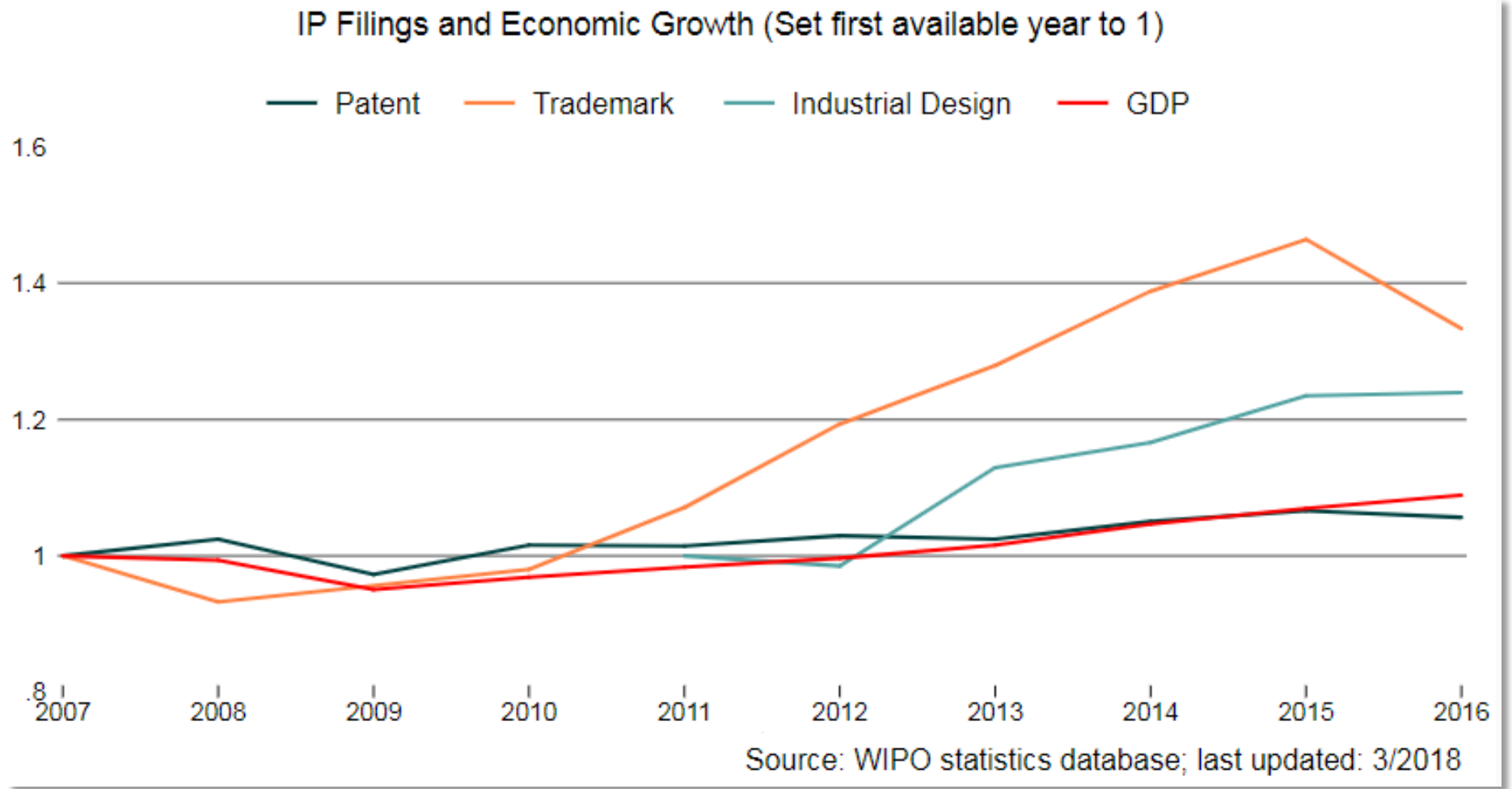
Key IP Strength Metrics

	US	UK	Germany	China
US COC International IP Index Overall Rank, 2018	1	2	5	25
US COC Patent Rank, 2018	12	10	3	20
TaylorWessing Overall, 2016 (2008)	Tier 4 (Tier 1)	Tier 1 (Tier 1)	Tier 1 (Tier 1)	Tier 4 (Tier 5)
TaylorWessing Patent, 2016 (2008)	Tier 2 (Tier 1)	Tier 1 (Tier 1)	Tier 1 (Tier 1)	Tier 4 (Tier 5)

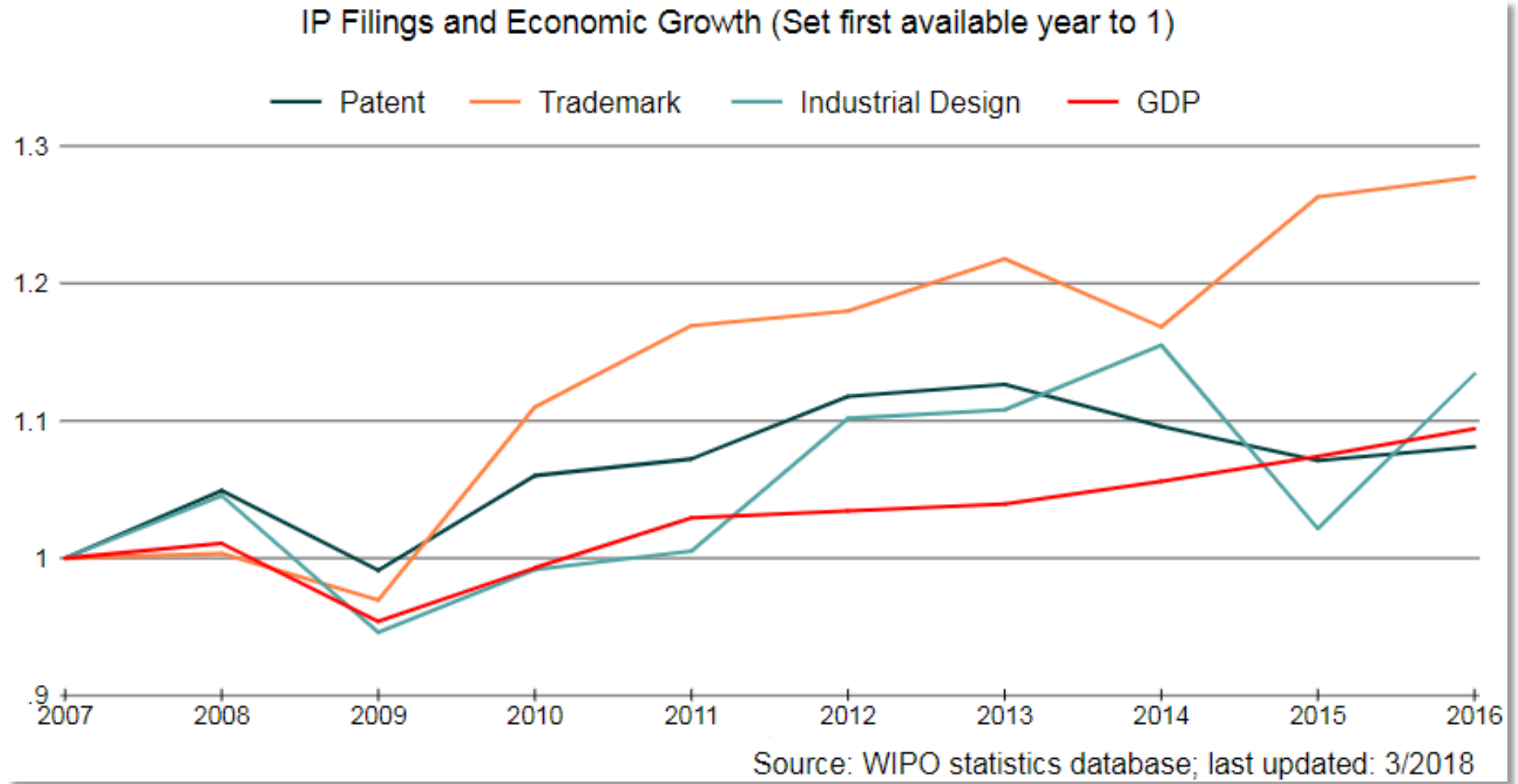
Filing Statistics: United States



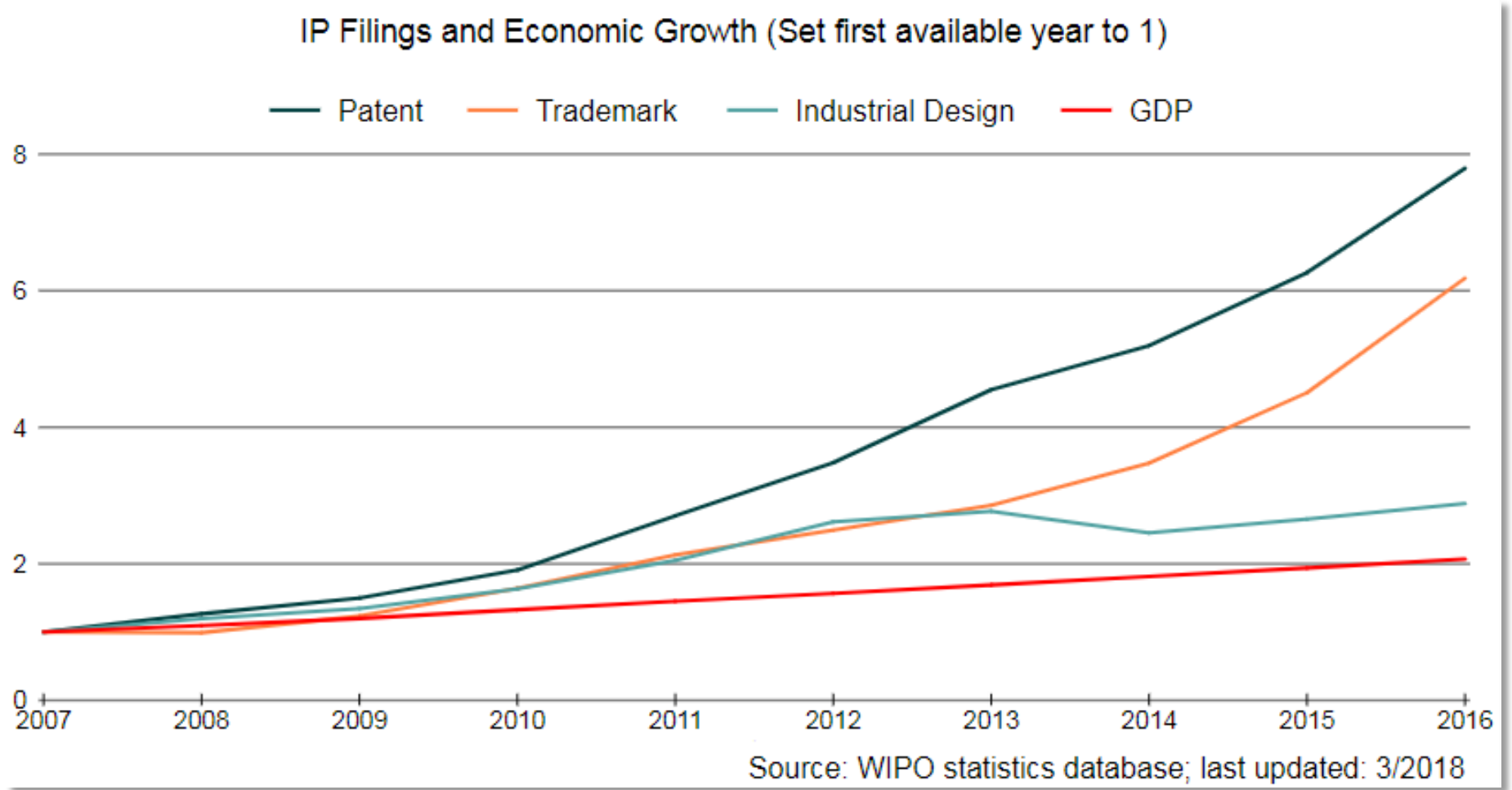
Filing Statistics: United Kingdom



Filing Statistics: Germany



Filing Statistics: China



Patent Value: The Popular Perception

The Big Read **Intellectual property**

FINANCIAL TIMES

Big Tech vs Big Pharma: the battle over US patent protection

Critics fear Silicon Valley lobbying has weakened the defence of int
sapped innovation

Rana Foroohar in New York OCTOBER 16, 2017

Blockchain

FINANCIAL TIMES

China leads blockchain patent applications

Rush to protect technological ideas leads to patent applications trebling in 2017

The Switch

The Washington Post

The Supreme Court's big ruling on 'patent trolls' will rock businesses everywhere

By Brian Fung
May 23, 2017

OPINION | COMMENTARY

WSJ | OPINION

Let's Throw a Patent-Burning Party

When a drug goes generic, it's as if society has paid off a mortgage.

By Peter Kolchinsky
Sept. 30, 2018 1:41 p.m. ET

Patent Office Leadership Perspective

- **Andrei Iancu, Director, USPTO**

- “Today, our patent system is at a crossroads. For more than just a few years, our system has been pushed and pulled, poked and prodded. The cumulative result is a system in which the patent grant is less reliable today than it should be.” – April 11, 2018 at U.S. Chamber of Commerce Patent Policy Conference
- “With the newly updated trial practice guide, the new standard operating procedures, the claim construction standard newly aligned with federal courts, and a robust new amendment process, it is indeed a new day at the PTAB.” – October 25, 2018, at the AIPLA Annual Meeting.



Enforcement and Invalidity Proceeding Comparisons

General Information

	United States	United Kingdom	Germany	China
Are the issues of infringement and invalidity decided simultaneously?	Yes or No	Yes	No, separately	No, separately
In which courts or government bodies can patents be enforced?	Federal district courts	Patents Court of the High Court of Justice, IP Enterprise Court (smaller, less complex), or Patent Office (in certain circumstances).	Regional courts – vast majority brought in Düsseldorf, Mannheim, Munich and Hamburg	3 IP courts in Beijing, Shanghai, and Guangzhou for cases in those regions; 15 IP tribunals for cases in other regions
Who decides infringement?	Judge or Jury	Judge	Judge	Panel of 3 judges
Specialized infringement judges?	No	Yes	Somewhat	Somewhat
Who decides invalidity?	Judge(s) or Jury	Judge	Judge	Panel of 3 examiners
Are judges presiding over invalidity specialized?	No	Yes	Yes	Yes
How Long?	Generally 2 to 2.5 years, but some courts have accelerated dockets	Most cases: 1 year Complex: 1.5-2 years Streamlined: 6 months	Infringement: 8-15 months Invalidity: 2 years	Infringement: 6-18 months Invalidity: 6 months

Substantive Law

	United States	United Kingdom	Germany	China
What level of proof is required for establishing infringement?	Preponderance of the evidence	Balance of probabilities	The court must be convinced	Balance of probabilities
What level of proof is required for establishing invalidity?	Clear and convincing evidence in federal court. Preponderance of the evidence in post-grant proceedings.	Balance of probabilities	The court must be convinced	Strong and unambiguous evidence
Is it possible to amend patent claims during enforcement proceedings?	No. However, claims can be amended at the patent office during post-grant proceedings.	Yes. Claims can be amended at the discretion of the court.	No. However, claims can be amended during opposition or nullity proceedings.	No. However, claims claim amendments are permitted during invalidation proceedings.

Evidence

	United States	United Kingdom	Germany	China
What is the format of patent infringement proceedings?	Adversarial	Adversarial	Inquisitorial, emphasis on written pleadings.	Traditionally inquisitorial, but recent trend toward adversarial, emphasis on oral debate.
To what extent are experts used?	Proceedings are heavily expert-driven.	Proceedings are heavily expert-driven.	Can be appointed by court in infringement proceedings.	Can be appointed by court in infringement proceedings.
To what extent is pre-trial disclosure permitted?	Extensive	Limited	Virtually non-existent	Virtually non-existent
Any other mechanisms?	No	Search and seizure orders are sometimes available.	Search and preservation orders are sometimes available.	Using private investigators who pose as buyers.

Preliminary Relief and Final Remedies

	United States	United Kingdom	Germany	China
Are preliminary injunctions available?	Yes, but can be difficult to obtain.	Yes, but rarely granted.	Yes, but rarely granted.	Yes, but rarely granted.
Are permanent injunctions available?	Yes, but can be challenging to obtain.	Yes. Generally granted when infringement found.	Yes. Generally granted when infringement found.	Yes. Generally granted when infringement found
Are monetary remedies available?	Yes. A patentee is entitled to lost profits or a reasonable royalty. Triple damages are available if infringement is willful.	Yes, but monetary remedies are rarely adjudicated and the amount awarded is generally lower than in the U.S.	Yes, but monetary remedies are rarely adjudicated and the amount awarded is generally lower than in the U.S.	Yes, but the amount awarded is generally low, though this may be changing.

Litigation Costs

	United States	United Kingdom	Germany	China
What level of cost should a party expect to incur to take a case through to a first instance decision?	Ranked 26 th in cost effectiveness of enforcement by TaylorWessing. Where the amount at stake is more than \$25 million, can be around \$6 million.	Ranked 7 th in cost effectiveness of enforcement by TaylorWessing. Ranges from \$650,000 to \$2.5 million.	Ranked 1 st in cost effectiveness of enforcement by TaylorWessing. Where the amount at stake is ~\$35 million, can be around \$900,000.	Ranked 25 th in cost effectiveness of enforcement by TaylorWessing. Ranges from \$200,000 to \$775,000
Can costs and attorney fees be recovered by the winning party?	Certain costs may be recoverable. Attorney fees are in “exceptional circumstances,” though getting easier to obtain.	For a case at the High Court, the losing party generally pays between 50% and 70% of the winning party’s costs. For a case at the IPEC, recoverable costs are capped at about \$65,000.	The losing party generally pays the winning party’s costs; however, the amount recoverable is capped based on the value of the underlying claims.	The losing party generally pays the winning party’s litigation costs; however, the amount recoverable depends on the reasonableness of the costs – generally low.



Panelists and Moderator

Panelists



Hon. Paul R. Michel

Chief Judge, Retired

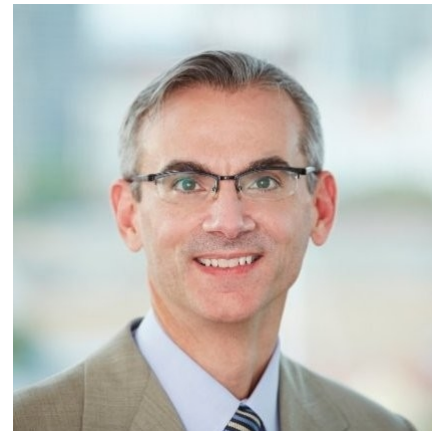
United States Court of
Appeals for the Federal
Circuit



Paul Evans

Chief Operating Officer

Predictive Technology
Group



Damon C. Matteo

CEO

Fulcrum Strategy



Wayne P. Sobon

Vice President,
Intellectual Property

JUUL Labs

Moderator



Robert Greene Sterne

Director

Sterne Kessler

Thank You

The views contained in these slides do not necessarily reflect the views of the session moderator or panelists.