

## **Conference report on the Young INGRES Roadshow event YI @ Pestalozzi**

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The first roadshow event for Young INGRES was hosted by Pestalozzi Attorneys at Law in Zurich on October 30<sup>th</sup>, 2025. Young INGRES is a subgroup founded by Dr. SANDRA MARMY-BRÄNDLI (Schiffbau Rechtsanwältin), Dr. ANGELIKA MURER (Homburger AG), Dr. LORENA PITICCO (Isler & Pedrazzini AG), Dr. JANINE DAUM (Novartis), and Dr. TIMMY PIELMEIER (MLL Legal AG). The event focused on the intersection of intellectual property (IP) and competition law. Five experts from Pestalozzi Attorneys at Law shared valuable insights into current developments and practical issues within these fields. As a special guest, JOHN ISAAC, CEO of Artisans de Genève SA, captivated the audience with the inspiring story of his unique business and real-world legal challenges it faces. Following the presentations, participants enjoyed an exquisite barbecue with a stunning lake view from the beautiful Pestalozzi Office.

### **Welcome speech**

In their opening remarks, the Young INGRES team warmly welcomed the guests and introduced the vision behind the Young INGRES Roadshow. They explained that the initiative is conceived as a series of events held across Switzerland with the goal of bringing together young IP lawyers, industry professionals, and enthusiasts. Through these gatherings, Young INGRES aims to encourage the exchange of insights, experiences, and ideas within the field of IP law and to strengthen the network of emerging professionals in this dynamic area.

### **Introduction to competition law**

The first presentation was delivered by FABIAN MARTENS, Partner at Pestalozzi Attorneys at Law, who provided an insightful overview of the key principles of antitrust law. Swiss and European antitrust rules comprise three pillars: (1) restrictions on anticompetitive agreements, (2) prohibitions on the abuse of dominance and relative market power, and (3) merger control over concentrations.

As MARTENS explained, antitrust law ensures that companies remain exposed to competitive pressures, fostering efficiency and innovation in the market. The significance of antitrust law is particularly pronounced, as violations can result in severe financial consequences. However, MARTENS noted that there is only

limited case law on the intersection of IP and antitrust law in Switzerland. Consequently, practitioners and scholars often look to European Union case law for guidance in navigating this complex area. A point frequently overlooked, MARTENS observed, is that the transfer of substantial IP rights can, under certain circumstances, constitute a merger within the meaning of antitrust law. The relationship between IP and antitrust law is traditionally described as a challenging one, given their seemingly conflicting objectives: IP law grants exclusivity to incentivize innovation, whereas antitrust law seeks to maintain open and fair markets.

MARTENS further highlighted that in practice, Article 3 paragraph 2 of the Swiss Cartel Act (CartA), which excludes the application of antitrust law to effects resulting from IP law, applies only rarely. Some commentators even consider this provision superfluous, given its limited practical relevance. He then outlined the two main types of agreements that fall under the scope of antitrust law: (1) Horizontal agreements, i.e., agreements between competitors, that involve price-fixing, territorial or customer allocation, and output restrictions such as boycotts and licensing limitations. They also include “pay-for-delay” arrangements, under which one company agrees to postpone its market entry in exchange for payment. (2) Vertical agreements, such as those between manufacturers and distributors, which can also raise competition concerns under certain conditions.

Finally, MARTENS addressed the abuse of a dominant position, the second pillar of antitrust law. A company holding a dominant market position is prohibited from abusing that position. Importantly, MARTENS emphasized that owning a patent does not automatically confer a monopoly, and each case must be assessed on its specific market circumstances.

### **Pharma, patent and competition law**

Next, LARA DORIGO, Partner at Pestalozzi Attorneys at Law, offered an in-depth exploration of practical challenges arising at the intersection of pharma, patents, and competition law. She began by outlining that patents can become relevant under competition law primarily in three contexts: collusive behaviour, abuse of market power, and concentrations of undertakings that may distort competition.

DORIGO noted that between 40% and 90% of patents today are not actively exploited. While maintaining defensive patents can be legitimate, since companies often cannot foresee the future development of technology, overly extensive defensive patenting strategies can hinder innovation and restrict

market entry. Companies, she emphasized, have a responsibility to innovate rather than merely protect market positions through such mechanisms.

She then described several patenting strategies that are frequently discussed in the context of competition law. *Smoke screen patenting* involves filing a large number of patents to conceal the most relevant features of an invention, while *patent clustering* refers to filing multiple, overlapping patents to prevent competitors from “designing around” an existing technology. *Blocking patents* are filed intentionally to obstruct competitors, without any genuine intention of using them. *Pay-for-delay arrangements, which have occurred in the pharmaceutical sector, entail compensating a competitor to delay its market entry.*

DORIGO also discussed the Swiss Competition Commission’s (COMCO) 2022 investigation into Novartis concerning alleged patent-blocking practices. The inquiry examined whether Novartis had engaged in anti-competitive behaviour by purchasing a patent portfolio from Genentech, subsequently initiating patent infringement lawsuits against other pharmaceutical companies, and requesting them to obtain licenses for the portfolio. In its 2025 decision, COMCO determined that Novartis acquired the portfolio to protect its own freedom to operate, and concluded that the licensing requests did not amount to anti-competitive conduct, even though they were pursued through infringement proceedings.

### **Selected EU cases: Servier “pay-for-delay” and Teva Copaxone**

JOËLLE MARCIANO, Associate at Pestalozzi Attorneys at Law presented selected cases on the intersection between pharma, IP and competition law. MARCIANO focused on two significant EU cases, highlighting how competition authorities address potentially anti-competitive practices linked to the use of patent rights, and how these principles may also be relevant under Swiss competition law. One example was the Servier Case, often referred to as the *Servier Saga*, a landmark series of proceedings that began in 2008 and remains partially unresolved to this day. The case centres on the “pay-for-delay” strategy. Servier, a French pharmaceutical company, developed a drug for the treatment of heart disease. The validity of its patent was challenged by several generic manufacturers, prompting Servier to conclude settlement agreements with each of them.

These settlements became the subject of an EU investigation into whether Servier had engaged in anti-competitive conduct by delaying market entry of generics. The European Commission found that these agreements infringed EU

competition law because they induced generics to stay out of the market in exchange for value transfers. This assessment was largely upheld by the EU courts. MARCIANO emphasised that settlement agreements are not unlawful *per se*. However, where such agreements replace competition on the merits by inducing generics to stay out of the market, competition law prohibits this conduct, even if the agreements appear unobjectionable under IP law.

MARCIANO then turned to the Copaxone case, concerning a drug developed by Teva, which was the company's blockbuster product until the patent expired in 2015. Following the patent's expiration, numerous competitors entered the market. According to the European Commission, Teva implemented a two-track strategy to respond to this new competition.

The first track involved the creation of a network of divisional patents surrounding Copaxone. Teva strategically used and, in certain instances, withdrew such patents before any decision on its validity could be reached. This practice contributed to sustained legal uncertainty and delayed generic entry.

The second track consisted of communications by Teva to insurers, authorities, and healthcare professionals, suggesting that its product was safer than competing generics – conduct that the European Commission characterized as a disparagement campaign. The Commission concluded that Teva had held a dominant market position and had abused that dominance through both the misuse of divisional patents and the disparagement of competitors.

The Copaxone decision is considered significant: it was the first decision addressing the misuse of divisional patents and one of the few EU decisions to sanction disparagement under competition law. MARCIANO underlined that these cases demonstrate how IP rights do not create a “safe harbour” from competition law. IP rights, when exercised in ways that distort competition, may attract scrutiny and sanctions under EU, and by extension, Swiss, competition law.

### **Swiss watches and the exhaustion doctrine**

The final presentation was jointly delivered by MICHÈLE BURNIER, Partner at Pestalozzi Attorneys at Law, and JOHN ISAAC, Founder and CEO of Artisans de Genève SA, who together explored the exhaustion doctrine and its implications at the intersection of IP and unfair competition law. JOHN ISAAC began by sharing the story behind Artisans de Genève, a company born from his lifelong fascination with craftsmanship and personalisation. Inspired by his grandfather's tailoring business, ISAAC moved to Switzerland, where he learned the art of watch

restoration under a Geneva watchmaker. What began with hand-painting of an old watch for a friend soon evolved into a thriving enterprise dedicated to personalising branded watches for private clients.

Concerned by Aristans de Genève's activities, Rolex initiated proceedings against the company. Together BURNIER and ISAAC used this case to illustrate how the exhaustion doctrine functions in practice. In its 2023 decision, the Swiss Federal Supreme Court held that when a product has been lawfully placed on the market, the trademark owner's rights are exhausted, meaning that the product's purchaser may modify or use it freely, provided this is done for private use and not for commercial resale. The Court thus concluded that Artisans de Genève's activities did not infringe Rolex's trademark rights or violate competition law, since the customized watches were modified on behalf of existing owners and were not sold as new products.

BURNIER explained, however, that the Federal Supreme Court considered that even if the customisation itself was lawful, advertising or presenting the modified watches must not infringe unfair competition principles. However, the Federal Supreme Court did not examine claims under unfair competition law and instructed the lower instance court to further examine these points (BGer 4A\_171/2023, E. 7).

BURNIER emphasized the delicate balance between creativity and brand integrity. The exhaustion doctrine protects the freedom to personalize lawfully acquired goods, but that freedom comes with a responsibility in how such services are presented and marketed. The presentation offered a compelling real-world example of how legal principles governing IP and competition law intersect with creativity, craftsmanship, and entrepreneurial vision and was an inspiring conclusion to the Young INGRES roadshow event.

## **Discussion**

The series of presentations concluded with a discussion moderated by DR. SANDRA MARMY-BRÄNDLI. DR. LORENA PITTICO added that there are few provisions in the PatG and EPC concerning divisional applications. Divisional applications can be filed as long as the parent application is still pending. Additionally, certain countries, such as Switzerland, prohibit double patenting. In the fields of mechanics and physics, at least, divisional applications are usually filed in cases of lack of unity, i.e., when a parent application claims "several inventions" that

must be divided. DR. JANINE DAUM noted that, in their Teva Copaxone decision, the EU Commission put significant emphasis on Teva's internal documents. The decision found that strategic staggered divisional filings and withdrawals had artificially extended legal uncertainty. This was deemed a misuse of the patent system, as there was no legitimate purpose.