In today’s increasingly competitive and rapidly developing business environment, innovation becomes essential for the success of any business and should be an integral part of a business strategy.

This new bulletin issue will assist you in better understanding the vital role that intellectual property has in spurring innovation and providing companies with a range of tools to help drive success.

As an introduction, WIPO highlights the instances where IP has the potential of playing an important role in the process of taking innovative technologies to the marketplace and clarifies the difference between innovations and inventions.

EUIPO provides an article on the value of trade secrets for EU companies, which aims to enhance the understanding of the role and contribution of trade secrets within the IP portfolio of firms at EU level by examining the determinants of protecting innovation through patents and trade secrets.

In addition, the Community Plant Variety Office (CPVO) gives an overview of the relationship between IP, plant variety rights (PVRs) and innovation along with its importance for European SMEs.

Then, EPO focuses on how SMEs from different regions and sectors can better exploit their IP by developing a creative, proactive and value-oriented approach to patents and other IP rights.

Our interview with Sacha Lakic Design provides some guidance on what to do when facing IP issues and how design companies can best manage their Intellectual Property Rights (IPRs).

You will also find in this issue two short articles. The first is part of a new Country Special series, whose first instalment is dedicated to ”IP in Croatia”. The other is focused on the Europe-wide IPforBusiness - IP Training Roadshow for Innovation Support, organised by the European IPR Helpdesk in cooperation with the European Patent Office, consisting of twelve IP training events in twelve different European countries.

As per usual, the Bulletin reports information about past IPR events together with the latest news from our Helpline service.

Finally, we invite you to test your knowledge on patent searching with our usual patent quiz and try to solve our brand new IP and innovation letter soup.

Wishing you an inspiring read!

Your Editorial Team
Role of intellectual property in innovation and new product development

World Intellectual Property Organization (WIPO)

Innovation

In a knowledge-driven, competitive business environment, technological innovation is considered to be the principal determinant of successful firm performance.

This article focuses on the role of Intellectual Property (IP) in innovation in enhancing the competitiveness of enterprises. In doing so, the article highlights instances where IP has the potential to play an important role in the process of taking innovative technologies to the marketplace.

Intellectual Property, Inventions and Innovations

Intellectual Property refers to unique, value-adding creations of the human intellect that result from human ingenuity, creativity and inventiveness embedded in a product or service. An IP right is thus a legal right, which is based on the relevant national law encompassing that particular type of intellectual property right. Such a legal right comes into existence only when the requirements of relevant IP law are met and, if required, granted or registered after following prescribed procedures under that law.

IP rights have made it possible for right holders to harness the commercial value of the output of human inventiveness and creativity. This is usually done through its orderly use, exchange or sharing amongst various types of business partners in a complex network of strategic relationships that generally work harmoniously during the new product development process.

While innovation refers to a process from the conception of an idea to its commercialisation,

in contrast an ‘invention’ may not be directly associated with commercialisation. As such, innovation may be seen as a process of interaction and feedback during the various stages of the new product development process. Invention may be considered as the generation of a new idea or knowledge, which aims to solve a specific technical problem. Since not all inventions are commercialised, it is safe to say that not all inventions are innovations.

Role of IP in Innovation

The effective use of IP tools plays an important role in reducing risk for players involved in the success of innovation in the market; this is due to the fact that there are many players involved in the process. Effective use of IP provides an opportunity to the different players to reap acceptable returns for their participation in the process. Consequently, IP plays an important role in facilitating the process of taking innovative technology to the marketplace.

Perception of Innovative Ideas

Whether an enterprise’s decision to innovate has been influenced by the overall business strategy (e.g. growth through innovation) or a reaction to developments in the market, an enterprise would be well positioned to benefit from innovation if it takes into consideration the full range of IP issues from the initial stage of a new product development process. It is imperative to treat an innovative idea as a secret if an enterprise wishes to appropriate the success of innovation in the market; hence the importance of treating an idea as a trade secret, in particular at the inception stage.

In some cases, while patenting-related costs and the complexity of the patenting process (especially relating to ‘prior art’ search and to the drafting of patent claims) may be seen to hamper innovation, particularly in cash ‘strapped’ small and medium-sized enterprises (SMEs) it is equally true that if used strategically, patents can become a reliable source of new, additional or higher revenue for SMEs. The ultimate choice between the use of a trade secret or a patent should be seen as a strategic business decision that should only be taken after careful consideration of the pros and cons of using one of the two. In addition, a part of a new idea may be patented and the rest may still remain as the associated trade secret and know-how, or tacit knowledge owned by individuals that are associated with the patent.

Research and Development (R&D)

Trade secrets continue to be relevant during the entire R&D phase, especially if

1 Hereafter the terms “technological innovation” and “innovation” will be used interchangeably, unless expressed otherwise.

2 IP rights include trade secrets, utility models, patents, trade marks, geographical indications, industrial designs, layout designs of integrated circuits, copyright and related rights, and new varieties of plants.


an enterprise is yet to make a decision to file a patent application\(^5\). One would not want competitors to have access to vital information, which if used by them would result in the loss of competitive advantage.

Patent documents are important sources of information that are often grossly underutilised. Unfortunately, most SMEs do not use patent documents as a source of information.

Most R&D results in both functional and aesthetic improvements. For protecting and leveraging new or original designs, which are solely judged by the eye, one should proceed with the industrial designs registration process.

**IP and the “Valley of Death” of Innovation**

In most cases, innovative technological ideas require further technical development in order to make them successful in the marketplace. SMEs and other small technology-based innovative enterprises may not have the technical resources and facilities to undertake such development, e.g. the development and testing of prototypes. The protection of such ideas by IP rights ensures that these are not “lost” while taking advantage of external technical resources and facilities.

Ownership of IP provides a strong negotiation position in the search for partnership (such as a joint venture, strategic alliance, licensing agreement, merger or acquisition) in the future development of an invention/design and taking it to the market.

In most cases, taking a product to market has proven to be a big challenge to inventors, entrepreneurs, and enterprises, especially SMEs; hence the existence of the concept of the “valley of death” in innovation\(^6\). This is the period where most inventions collapse due to lack of external support.

IP, particularly patents, often plays a crucial role in facilitating access to business angels, providers of early stage capital, including seed capital, venture capitalists, financial institutions, and the like who may provide a “lifeline” for an invention to reach the marketplace. As an example, consider the invention of xerography. In 1937, Chester Carlson invented xerography, which he patented in 1939. It took almost eight years for Carlson to find an investor who was willing to invest in the invention. Finally, the Haloid company (which later became the Xerox Corporation) successfully made the invention commercially available in 1950\(^7\). It would be fair to suggest that the existence of a patent held by Carlson significantly contributed to Haloid Company’s decision to support the invention.

**Marketing of Innovations**

Trade marks and industrial designs play an important role in the marketing process. These enable consumers to distinguish products from a group of similar products and in many cases enable consumers to identify the products or services of a particular company.

Trade marks can be very effective in penetrating new markets. Honda, for example, took advantage of its reputation in motorcycle engineering to penetrate the US car market\(^8\).

It is therefore important to note that strategic use of a combination of IP tools in the innovation process can significantly contribute to facilitating the appropriation of higher profits or maintenance of a premium market position, thus enabling technology-based, innovative SMEs to have a high return on investment.

**Conclusion**

Innovation is not the same as invention. Innovation is a process, which proceeds from the conception of an idea to the launching of a new product or process in the marketplace. Trade secrets, patents, trade marks, industrial designs and copyright may separately or jointly facilitate the acquisition of technology and its commercial use.

Gauging the importance of IP in innovation by merely focusing on patents as the input and/or output of innovation does not do justice to the significant role that can be played by the other tools of IP. A broader approach to the contribution of IP in innovation is therefore needed\(^9\).

**Disclaimer:** This is a short version of the article “Role of Intellectual Property in Innovation and New Product Development” by Christopher M. Kalanje, SMEs Division WIPO. The original version can be found on WIPO’s website, [here](http://www.wipo.int/sme).

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5 See the example of an Australian cameraman, Jim Frazier, who signed a confidentiality agreement with Panavision, regarded as the best lens manufacturer in the world, before he showed them his invention, available at [http://www.wipo.int/ipadvantage/en/details.jsp?id=2546](http://www.wipo.int/ipadvantage/en/details.jsp?id=2546).

6 The “valley of death” normally starts from the period an invention has been made to the launching of a new product or process.

7 For more information visit [http://inventors.about.com/library/inventors/blxerox.htm](http://inventors.about.com/library/inventors/blxerox.htm).

8 Mendonça S. et al., Trade marks as an Indicator of Innovation and Industrial Change, pg. 7.

9 More examples on the role of IP, not only in innovation but also in business in general and in particular by SMEs, can be found under case studies at [http://www.wipo.int/sme](http://www.wipo.int/sme).
Trade secrets are one of the most valuable assets of any business

European Union Intellectual Property Office (EUIPO)

In a study released in July 2017 the EUIPO, through the European Observatory on Infringements of Intellectual Property Rights, is seeking to enhance its understanding of the role and contribution of trade secrets within the IP portfolio of firms at the European Union level by examining the determinants of protecting innovation through the use of patents and trade secrets by European Union firms.

The report “Protecting Innovation through Trade Secrets and Patents: Determinants for European Union Firms”, using data from the Community Innovation Survey for 24 Member States covering almost 200,000 firms operating across manufacturing and service industries in Europe, examines the economic importance of trade secrets and their relationship with patents.

The study found that trade secrets are increasingly preferred by businesses over patents in Europe and, whilst they have complementary protection roles, trade secrets and patents are not substitutes for each other.

It also found that the use of trade secrets is higher than the use of patents for most types of companies (although it is particularly prevalent among SMEs) in most economic sectors and in all Member States.

Both trade secrets and patents are likely to be used in companies with internal R&D, with high innovation expenditure or when the innovation is new to the market. Trade secrets are preferred in innovation new only to the firm. Patents are more likely to be used (alone or in combination with trade secrets) when the innovative product is a physical good rather than a service.

Trade secrets (often without patents) are more likely to be used for process innovation and for innovations in services. Furthermore, they are likely to be used for maintaining or increasing the competitiveness of innovations introduced by companies involved in open innovation practices such as research cooperation, especially with distant (non-European) partners.

Market novelty and innovation in tangible goods are associated with a preference for patents while process and service innovations are more often protected through secrecy. However, in general, the study finds that there is complementarity between the use of trade secrets and patents - many companies use both methods to protect their innovations.

Table 1: Summary comparison between patents and trade secrets

<table>
<thead>
<tr>
<th></th>
<th>Patent</th>
<th>Trade Secret</th>
</tr>
</thead>
<tbody>
<tr>
<td>Codified knowledge disclosure</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Tacit knowledge disclosure</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Reverse engineering allowed</td>
<td>Usually no</td>
<td>Yes</td>
</tr>
<tr>
<td>Subject matter</td>
<td>Statutory</td>
<td>Broader</td>
</tr>
<tr>
<td>Timing</td>
<td>After invention</td>
<td>Any</td>
</tr>
<tr>
<td>Process vs product</td>
<td>Mainly products</td>
<td>Both</td>
</tr>
<tr>
<td>Length of protection</td>
<td>20 years (if not challenged)</td>
<td>Unlimited (potentially)</td>
</tr>
<tr>
<td>Cost</td>
<td>High cost to obtain</td>
<td>High ongoing cost to maintain secrecy</td>
</tr>
<tr>
<td>European harmonisation</td>
<td>Yes</td>
<td>After directive transposition</td>
</tr>
<tr>
<td>Non-disclosure clauses in contracts</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Internal controls required to establish the right</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Exclusive use right</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Table 2: Trade secret and patent use by innovating firms by type of innovation, 2010-2012

<table>
<thead>
<tr>
<th>Type of Innovation declared</th>
<th>Innovating firms reporting</th>
<th>Appropriability mechanism used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process only</td>
<td>24.8 %</td>
<td>TS</td>
</tr>
<tr>
<td>Process and goods but not service</td>
<td>20.9 %</td>
<td>Patent</td>
</tr>
<tr>
<td>Goods only</td>
<td>19.0 %</td>
<td>34.9 %</td>
</tr>
<tr>
<td>Process, service and goods</td>
<td>18.0 %</td>
<td>52.3 %</td>
</tr>
<tr>
<td>Goods and service but not process</td>
<td>7.5 %</td>
<td>41.0 %</td>
</tr>
<tr>
<td>Process and service but not goods</td>
<td>6.3 %</td>
<td>31.7 %</td>
</tr>
<tr>
<td>Service only</td>
<td>3.5 %</td>
<td>27.4 %</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100 %</td>
<td>25.4 %</td>
</tr>
</tbody>
</table>

Table 3: Firms using different appropriate mechanisms for protecting product or process innovations, 2010-2012

<table>
<thead>
<tr>
<th>Lead Time Advantages</th>
<th>Complexity of Goods/Services</th>
<th>Trade Secrets</th>
<th>Trade Marks</th>
<th>Patents</th>
<th>Copyright</th>
<th>Design Registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>61.9 %</td>
<td>61.0 %</td>
<td>52.3 %</td>
<td>41.0 %</td>
<td>31.7 %</td>
<td>27.4 %</td>
<td>25.4 %</td>
</tr>
</tbody>
</table>

Weighted average of 24 EU Member States.
Source: Community Innovation Survey (CIS 2012) CIS core sectors only.

1 The Czech Republic, Denmark, France and Spain did not include the questions about use of trade secrets in their versions of the CIS.

The most frequently used mechanisms are not IP rights. Rather, the top three mechanisms reported in most countries are first-mover advantages, complexity of product and secrecy.

**Figure 1: Trade secret and patent use among innovating SMEs by country, 2010-2012**

Figures 1 and 2 show the mix of uses of trade secrets and patents by SMEs and large firms in each Member State. The graphs serve to compare companies from the 24 Member States in their tendency to use trade secrets over patents. Source Figures 1 and 2: Community Innovation Survey (CIS 2012) weighted totals (unweighted for IE).

Figure 2 shows the same data as Figure 1, but for large companies. The use of protection tools among large firms varies more than among SMEs.

Figure 3 shows the sectorial pattern of use of trade secrets and patents. As in Figures 1 and 2 above, the diagonal is the ‘same-use’ line, the point at which trade secrets and patents would be used equally. All sectors are below this line, indicating the greater frequency of use of trade secrets.

In the case of manufacturing (as well as mining and quarrying and other industries), the more innovative the sector the greater is the use of both patents and trade secrets, maintaining a ratio of approximately 1.5 in favour of trade secrets. In the case of services, the use of patents is quite flat at around 20%; the more innovative the sector the more it uses trade secrets, from a minimum of 30% (land transport) up to nearly 70% (computer programming).

High use of both patent and trade secrets can also be observed in:

- C26, Manufacture of computer, electronic and optical products
- C29, Manufacture of motor vehicles, trailers and semi-trailers
- C21, Manufacture of basic pharmaceutical products and pharmaceutical preparations
- C27, Manufacture of electrical equipment
- C28, Manufacture of machinery and equipment not elsewhere classified
- C20, Manufacture of chemicals and chemical products.

There are two sectors with a very high use of trade secrets and low use of patents:

- M71, Architectural and engineering activities; technical testing and analysis
- J62, Computer programming, consultancy and related activities.

Core Industry: Manufacturing, mining and quarrying, and other industry (see Table 2). Weighted results from AT, BE, BG, CY, DE, EE, EL, FI, HR, HU, IT, MT, NL, LT, LU, LV, PL, PT, RO, SE, SI and SK. See the complete study for the names of the economic sectors.

Source: Community Innovation Survey (CIS 2012).
The relationship between IP, PVRs and innovation and its importance for European SMEs

Community Plant Variety Office (CPVO)

What is a plant variety right?

Plant variety rights ("PVR"), also called plant breeder’s rights ("PBR"), are a form of intellectual property right granted to the breeder of a new plant variety. The breeder might be a plantsman, a farmer, a company or a scientist. The breeder must be the one who bred the variety, i.e. created a plant variety by means of plant breeding techniques. The plant breeding techniques can range from a basic selection by an amateur grower, through to technically advanced procedures such as genetic engineering. Thus, any person, irrespective of their background, irrespective of the effort expended to create the variety, is a potential breeder.

The subject matter of protection are plant varieties which represent a defined group of plants, selected from within a species, with a common set of characteristics (e.g. plant height, leaf shape, time of flowering etc.) by which a variety can be defined as such. A plant variety is eligible for protection as an intellectual property right if it is new, distinct from any other variety of common knowledge, uniform and stable, and has a suitable denomination. Within the European Union, a PVR regional system with unitary effect in the territory of the member states (the Community plant variety right or “CPVR” system), is managed by the Community Plant Variety Office (the “CPVO”). The CPVO is a decentralised Agency of the European Union based in France and fostering innovation in plant varieties by processing applications for CPVRs at affordable costs. This system coexists with the national PVR systems of the EU member states and is based on the legal principles of the International Union for the Protection of New Varieties, known as “UPOV”, to which the European Union is a party. UPOV was established in 1961 by the International Convention for the Protection of New Varieties of Plants (the “UPOV Convention”). The most recent version of the UPOV Convention in force is the 1991 Act. The duration of protection of an EU PVR is 25 years or, in the case of varieties of potatoes, vine and tree species, 30 years following the year of grant. The longest period of protection is designed to ensure an adequate incentive for the long-term investment that is necessary in plant breeding.

The granting of a PVR is based on the technical examination of the variety that shows compliance with the requirements for protection, i.e. that the variety is distinct, uniform and stable (“DUS” in short), which is based mainly on growing tests carried out by the designated competent authorities. The outcome of the technical examination of varieties is compiled in an official description document, in which the relevant characteristics observed during the testing are listed with the corresponding notes. Once the technical examination has been conducted, the decision on whether to grant an IP right is taken by the granting authority, such as the CPVO at European Union level.

Once granted, PVRs entitle the holder to prevent anyone from unauthorised production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, exporting, importing or stocking for any of the purposes mentioned. However, breeders are allowed to use protected varieties for further breeding and the resulting plant variety can be commercialised without any obligation towards the PVR holder; this is called the breeder’s exemption. This feature has always been relied upon by breeders for further improvement on each other’s plant varieties and to foster innovation in plant breeding. Further compulsory exceptions that do not require the breeder’s authorisation include reproducing material for experimental purposes and for private and non-commercial purposes.

Benefits of Plant Variety protection

An effective PVR system is a key enabler for investment in breeding and in the development of new varieties of plants for the benefit of society. Plant breeding is a knowledge-based activity that requires intensive investment in terms of both time, financial and human resources. It may take 15 years or more to create a new variety with improved characteristics followed by an additional number of years for it to be introduced into the market and grown by farmers. It is thus key to encouraging creativity and investment through an effective PVR system, which provides breeders with a legal and administrative framework to control the reproduction of protected varieties and thereby allow recovery of their investment.

In this context plant breeding is important for ensuring food security by developing new varieties that are higher-yielding, resistant to pests and diseases (this involves resistance to bacteria, viruses and insects among others), drought-resistant, regionally adapted to different environments and growing conditions, and less dependent on the use of pesticides and fertilizers.

A recent research paper on “The economic, social and environmental value of plant breeding in the European Union”, by HFFA Research GmbH1, has highlighted that the existence of a strong intellectual property right framework concerning plant varieties promotes innovation which offers both socio-economic and environmental benefits. Among the socio-economic ones, plant breeding is fundamental to ensuring food security, especially in the face of climate change and the growing world population. It contributes to improving market conditions and avoiding price increases. As regards the environmental benefits, plant breeding supports saving land resources, and preserves valuable and scarce natural resources such as land habitats and

1 Find further information on the paper and download it here: www.plantetp.org/hffa-research-paper-plant-breeding-eu.
water reservoirs with a positive effect on the preservation of biodiversity and the reduction of global water demand.

**Benefits for European SMEs**

In addition to some large companies, the EU breeding sector consist of many SMEs. These companies depend on plant variety rights that enable them to achieve good returns on their investment in various breeding programs. Breeding companies need a return on the successful varieties launched on the market to pay for research, breeding and development costs. The breeder’s exemption reduces SMEs’ barriers for entering into the market and stimulates the development of the local breeding industry by freely incorporating existing varieties into their breeding programs. This is of fundamental importance as it guarantees access to the latest available improvements. Therefore, as a return on investment, PVRs may be used to promote and finance SMEs’ activities.

As regards the legal and administrative framework, the harmonisation of registration systems under the UPOV Convention enable SMEs to save administrative costs and resources. The creation of regional systems of protection such as that of the European Union, contributes to the harmonisation of practices in the conduct of technical examinations followed by the national authorities concerned. This harmonisation enables several means of cooperation such as centralised testing, mutual recognition of technical reports, testing on behalf of another authority or use of the results of a technical examination by the authority of another member state of the UPOV system by means of the purchase of the technical reports.

The cooperation in the handling of testing procedures benefits SMEs by saving costs and procedural time in the filing of applications. The said benefits support investments in the breeding sector to spur innovations which in turn benefit growers’ and consumers’ choice with yet more new varieties.

**Contact**

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The benefits of patents for SMEs

A new publication from the EPO provides concrete examples of how intellectual property can be leveraged for business success

European Patent Office (EPO)

Around a third of all applications at the EPO originate from small- and medium-sized enterprises (SMEs). A set of 12 case studies published by the European Patent Office (EPO) highlights the benefits of patents for these SMEs in Europe.

The publication aims to further raise awareness among SMEs of the importance of patents and other intellectual property rights, and to help them use the experiences and good practices of the companies described to support their own development and growth. It also serves to inform readers about the role the planned Unitary Patent is expected to play for smaller businesses. It forms a part of the EPO’s overall efforts to support smaller companies in better protecting their inventions.

The studies, based on extensive interviews with senior managers, showcase SMEs from 11 different countries across Europe. The companies are active in a wide range of industries, from medical technology and biotech to ICT, energy and the environment, and employ different business models.

Providing detailed information and recommendations, the studies illustrate the different ways in which patent protection can be employed by smaller companies, beyond the mere protection of their inventions. Secondly, they highlight several key principles of good IP strategy and management.

Leveraging patents for a wide range of benefits

Besides relying on patents to protect their products and services in the market, the selected SMEs have developed additional ways of further benefiting from their IP:

- **Licensing**: SMEs can license out patented inventions to external partners (Aerogen, Fractus, Marinomed).
- **Enabling collaboration**: Companies can use patents as a bargaining chip to obtain freedom to operate (Webdyn), make use of third parties’ patents (Lithoz, Orcan Energy, Voltea), or set up collaborations (Aerogen, Ekspla, Fractus).
- **Attracting investment and customers**: Patents help SMEs to attract investors (Orcan Energy, Fractus, Marinomed, Voltea) and support their image towards consumers as companies offering high-quality products (Cosmed).
- **New markets**: In several cases (Ekspla, Picote, Fractus), patents have been pivotal in enabling companies to renew their business models and enter into new markets.

**Good practices in IP strategy and IP management**

Good practices in IP strategy and management have proven instrumental in the ability of these SMEs to successfully derive value from patents. As shown in the case studies, they are based on common principles:

- **Aligning IP strategy**: All the SMEs recognise the importance of defining a clear and proactive IP strategy that is aligned with corporate goals, involves planning with other corporate departments as well as external experts, and is promoted by the top management.
- **IP in the decision-making process**: The studies likewise demonstrate the importance of effective IP management to feed the strategic decision-making process with relevant and timely information. Both time and money can be saved by keeping up to date with changes and developments, for example in the patent system (Skeleton, Marinomed, Ekspla, Micrel Medical Devices).
- **Holistic IP management**: Most of the SMEs use a holistic approach to IP management and strategy, involving in-house as well as external experts and covering the business, legal and R&D areas (Aerogen).
- **Future IP possibilities**: SMEs are examining the benefits that can be brought by forthcoming developments in IP. There is awareness that the Unitary Patent and Unified Patent Court will simplify administration, reduce costs and provide greater legal certainty. Such benefits are seen as a potential tool for helping SMEs to enter previously unconsidered markets.

Unlocking untapped value

More information:
epo.org/sme

Find a list of the SME case studies on the following page highlighting their key takeaways.

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1 Unlocking untapped value: EPO SME case studies on IP strategy and IP management, September 2017.
**List of SME case studies**

1. **Aerogen (Medical technology, Ireland)**
   - Customers, investors and partners consider it very important for a young company to have strong IP.
   - Company scale-up must go hand-in-hand with building the IP portfolio.
   - The successful commercialisation of an innovative technology requires a clear IP strategy that is aligned with other key functions of the business.
   - Competitor watches and patent searches are essential components of IP management.

2. **Cosmed (Medical technology, Italy)**
   - It is important to take both internal and external influences on the patent portfolio into account.
   - In-depth prior art searches must be conducted early in the creative process and then professionally verified during the patenting process.
   - External expertise and support is important for obtaining feedback on IP strategy and implementing strategic choices.
   - When creating and maintaining a portfolio, it is vital to keep costs down without sacrificing quality.

3. **Micrel Medical Devices (Medical technology, Greece)**
   - Continuous innovation supported by patents allows technology-based SMEs to compete with large companies.
   - Patent protection can help safeguard investments and reduce risk when introducing new products to the market.
   - Well-thought-out filing strategies enable companies not only to speed up the granting process but also to postpone decisions where needed.
   - Regular searches in patent databases enable competitor monitoring and reveal opportunities for future innovations.

4. **Marinomed (Biotechnology, Austria)**
   - Flexible licensing models increase the chances of creating win-win situations.
   - Involving an IP specialist in the early drug R&D stage can improve patent protection for later commercial applications.
   - Negotiation is the preferred way to solve potential infringement issues, as litigation is regarded as a last resort.
   - Trade marks can add value to patents and extend protection beyond the patent’s lifetime.

5. **Webdyn (Digital communication, France)**
   - Patents can be useful for securing freedom to operate, for example by means of cross-licensing agreements.
   - They can contribute value when developing a marketing strategy.
   - Options to postpone decisions in the patenting process can be used strategically in order to gain time or to optimise procedural and validation costs.
   - Even a pending patent can contribute a significant business value.

6. **Fractus (Telecommunications, Spain)**
   - It is essential to have a proactive, long-term IP strategy which is consistent with the overall corporate vision.
   - A patent portfolio based on continuing R&D allows companies to focus on technology licensing and helps secure financing.
   - Litigation is a last but important resort when it comes to fighting wilful infringement.
   - The Unified Patent Court (UPC) has the potential to remove the disadvantages of the current fragmented European litigation system.

7. **Ekspa (Optics, Lithuania)**
   - IP strategy and management skills can help overcome the challenges presented by business model changes.
   - Patents can be used to shape a company’s technology competency profile.
   - Combining trade secrets and patents can be a cost-efficient and effective way to protect IP.
   - Joint ownership of a patent is an acceptable option if there is a clear agreement benefiting both parties.

8. **Orcan Energy (Electrical machinery, apparatus, energy, Germany)**
   - Early access to university IP is essential for creating spin-off companies.
   - Patent attorneys must understand the invention and the company’s business case.
   - Patents help to communicate a company’s technical advantage and innovation skills.
   - Access to joint inventions without joint patent ownership can be achieved using cross-licensing agreements.

9. **Skeleton (Electrical machinery, apparatus, energy, Estonia)**
   - It is important from the outset for IP strategy to evolve together with business strategy.
   - Providing all innovation team members with up-to-date IP knowledge and bringing in external expertise will contribute to the quality of a company’s IP portfolio and improve efficiency.
   - Intelligence from patent information can be used for R&D and IP creation purposes.

10. **Voltea (Electrical machinery, apparatus, energy, The Netherlands)**
    - Strong patents aligned with a company’s products help secure exclusivity in core markets.
    - IP strategy should evolve with company development, with IPRs contributing in different ways at different stages.
    - Patents can help establish commercial partnerships which provide additional funding, R&D support and new business networks.
    - A holistic approach to IP management means constantly developing new and advanced skills and tools.

11. **Lithoz (3D printing machines, Austria)**
    - A university’s IP strategy can have a big impact on the success of any spin-off.
    - It is good practice to have dedicated IP managers who take IP issues into account during the company’s day-to-day business.
    - An open climate can foster employees’ creative ideas and channel them into successful projects.
    - Even minor technical improvements can meet a market need and be worth patenting.

12. **Picote (Tools for repairing pipes, Finland)**
    - Patents can help expand a service company’s business model to include high-value products.
    - Customers and resellers can provide important information about infringement which can be used to enforce patent rights into account.
    - Integrating IP experts into the core team can be an opportunity to streamline IP management processes and make them more efficient.
    - Customers and IP landscaping can provide vital input for future innovation.
Could you tell us briefly about Sacha Lakic Design and the different fields covered by its designs?

My design approach is very much characterised by movement and speed, with these two elements being the ground where ideas are built up.

Automotive design was where my work first took me but it was when I met François Roche that he suggested I delve into furniture design. The project satiated my constant need to step into new challenges and explore new creative fields, and to this day furniture design has become one of our key activities. I have also remained in the automotive field through collaborations with Venturi on the design of their electric vehicles as well as the launch of our motorcycle brand Blacktrack Motors. But my design studio is progressively penetrating new areas such as electric mobility for bikes, in partnership with Michelin, high tech and nomadic products.

As a design company with a passion for “future technologies”, how do you protect your creations?

My designs are systematically registered here in Luxembourg. It is essential to protect the models because the strategic and financial stakes are important for me but also for the manufacturers with whom I collaborate. Meanwhile, the success of my designs depends on a large extent on their power of seduction and relies heavily on aesthetics as well as on their technical aspects. We must also protect ourselves at the very beginning of the collaboration with the client and/or manufacturer, because product design is often a collaborative process that extends beyond our design studio. When discussions about embarking on a project are initiated, it is important to establish mutually respectful dialogue where both parties are protected by a non-disclosure or confidentiality agreement.

Do you think intellectual property is important to support innovation?

Successful design is the best way to talk about a project, a brand, a technology and a designer. Intellectual property is both the showcase and the foundation of a project. The focus should of course always be on creating the idea, the concept, but intellectual property is a tool that can also protect creators navigating business opportunities with potential partners. Ownership of intellectual property can establish the credibility and may contribute to the deciding factors of whether a project gains financial support or acquires other highly skilled partners for a project.

What are the main aspects to take care of in the process of innovation?

Before accepting and investing in a new project, I ask myself several questions: is this new product useful? Will its technology or its use better serve the lives of my fellow citizens, and do them well both mentally and physically? Does this product use a new technology? Does it have integrity? Does it have a positive impact on the environment? If the answers are positive then yes, I agree to work on this new project... this is where my role begins in the creation phase and where my mission will consist of creating emotion through form.

On a personal level, I always try to do something that nobody did before, and which perfectly adapts to today’s lifestyle. Sometimes I draw inspirations from the two very different design fields to establish interconnections. The Speed Up collection for Roche Bobois, inspired by movement and speed, turned to the world of automotive design. Many elements of the furniture collection, such as the legs of the dining table, contained carbon fibre - a material that is used more typically for cars and motorcycles.

Have you faced any particular intellectual property issue and, if so, how did it turn out?

Sometimes things are in the “air” and several designers around the world can have similar ideas around the same time. But each will always have their own formal interpretation and there will always be differences in execution, even if the original idea or source of inspiration is the same. On the other hand, a true intent to copy can be recognised immediately.

This is a problem that I have quite regularly with my best sellers at Roche Bobois, which have been copied by European and Asian companies many times. There are striking cultural differences when it comes to how copying is perceived. On a trip to China, I once got talking with a European lawyer who was flying in to give a lecture about the cultural differences surrounding intellectual property in Europe and China. In China copying is not necessarily perceived as a negative thing but a rather rational move after considering which designs are working well elsewhere in the world. My designs are registered in Europe so tackling infringement cases at the European level can be relatively easy. This includes designs that are manufactured and sold in Europe as well as those that are manufactured outside Europe and then imported into the region.

However, if a design is copied, manufactured and sold outside Europe, things tend to get a bit trickier. It is important to weigh the pros and cons of tackling an infringement case at such level. Would it be financially viable or worth it, considering the potential duration of the legal proceedings versus the life cycle of the product?
Luckily, my partnership with Roche Bobois and their global activity makes tackling infringement cases outside Europe a lot more feasible. Having strong partners and support can be extremely beneficial, but this is not always the case for everyone. Registering intellectual property on a global scale to cover Asia, Europe and the United States comes at a large cost. The most important thing to do is to register it at a local/regional level, while creating an online and offline footprint through press, social media and exhibitions. There is a risk in putting your designs on a global stage, but by creating a footprint you strengthen your brand image and the identity of your designs as yours.

Could you name some of the most common challenges faced by designers on a daily basis?

With whatever design project, the challenge to create a near-perfect product remains the same. The design needs to be fully developed in terms of aesthetics, and to integrate seamlessly all key elements such as ergonomics, comfort and functionality. Being a designer means creating emotional products in an otherwise cold and industrial environment. Playing with constraints is part of what makes this profession so exciting.

How important to you as a designer are technology and innovation in product design?

Technology and innovation are all about pushing the boundaries of product design. Technology and design are closely linked. I often take the Panton Chair by Verner Panton designed in the 60s as an example. The S-shaped cantilevered plastic chair was the first moulded plastic chair. This liberated designers’ creativity and shifted the perspective away from the traditional four-legged design. I see 3D printing as the new industrial revolution which has enabled the designer to become both creator and manufacturer. It is a small revolution in the same way as when the first computers arrived, gradually making our office work easier and enabling us to unleash our creativity.

What advice could be given to design companies regarding the management of their IP rights?

Intellectual property registration is a vital step in protecting your designs. However, the reality of today is that despite registrations of intellectual property, it could be that creations and designs are still copied. While it is important to pursue the legal route, one of the best tactics in dealing with intellectual property infringement is to harness your unique creativity and to develop new designs and projects.

www.lakic.com

Celebrating European Diversity


As the first part of a new publication series, the European IPR Helpdesk has released a collection of material on the IP and innovation background of Croatia.

With the aim of maximising the outreach and impact of our services in Europe, the new series will focus on individual European countries, their respective “hot topics” and challenges. The first IP Country Special on Croatia consists of an infographic giving an overview of the Croatian IP landscape, a previously unreleased SME case study as well as an interview with our Croatian ambassadors Ivan Stefanic and Vedran Đidara.

The first Country Special “IP in Croatia” can be accessed here.

**Industrial Design**

1,026 Registrations

256 Applications

**Trade Mark**

2,596 Registrations

2,871 Applications

**Patent**

105 Registrations

188 Applications
IPforBusiness - IP Training Roadshow for Innovation Support

Why? & What?
Reflecting the strong demand for business-oriented IP training, the European IPR Helpdesk and the European Patent Academy are organising the Europe-wide IPforBusiness – IP Training Roadshow for Innovation Support, consisting of 12 IP training events in 12 different European countries.

The training content is based on reviewed training modules of the IP4innov platform, a selection of SME case studies just elaborated by EPO experts, a first-hand update about the Unitary Patent and various contributions of local IP and innovation support stakeholders such as the National Patent Offices or the Enterprise Europe Network.

Hands-on approach by the SME case studies: These companies have used patents and the European patent system to their benefit and created value by successfully including patents in their business strategy.

The SMEs have agreed to share their experience with us. This will increase your understanding of the potential impact of IP for your business, both in the current and possibly more in the future Unitary Patent regime. This includes the simplification of administrative procedures, reduced filing costs and the streamlining of litigation.

We are convinced that any kind of SME could benefit from patents in similar ways and exploit them for greater prosperity of their business if developing the right IP strategies and installing sound IP management.

The long story in short

• Why does IP matter? Being an SME, why should you bother with IP/IP management?
• What needs to be done? Understanding IP strategy and IP management as a business asset for SMEs (with a clear focus on specific needs and challenges for SMEs)
• How can SMEs implement an IP strategy? Concrete case studies demonstrating successful IP management implementation activities in specific technology/business sectors as well as in different environments (Start-up vs. medium-sized company)

Who?
The main target groups of the training scheme are IP managers of SMEs and their advisors.

How?
You need to register for each event individually, just click on the event you would like to attend.

When?
25 September 2017: DUBLIN, Ireland
12 October 2017: TALLINN, Estonia
05 December 2017: LILLE, France

... more events and information will be available soon on our website.

Your IPR Queries Matter to Us: Ask the Helpline

The European IPR Helpdesk Helpline answers your questions concerning intellectual property (IP) within three working days. You get practical, and free-of-charge, first-line support directly from our IP experts.

If you are curious about the type of IP queries that the Helpline has recently been dealing with, these are shown in this illustration.

If you would like to talk to one of the IP experts of our helpline, please dial +352 - 25 22 33 – 333

www.iprhelpdesk.eu/helpline
FREQUENTLY ASKED QUESTIONS

IP RIGHTS IN GENERAL:

We have applied for a national (Hungarian) trade mark (TM), and another company opposed our application based on a similar European trade mark (EUTM) that they hold for the same services. Even if we revoke our application, we have been using this company name for some years now and it is a well-established name on the Hungarian market. Do I understand correctly that even if we revoke our application, the EUTM holder can still initiate infringement proceedings against our company?

In principle, the right holder of a TM can initiate infringement proceedings whenever he/she thinks that the exclusive rights attached to the trade mark have been violated. Such a violation can occur when another party puts on the market similar products and/or services using the same, or a confusingly similar trade mark, without the authorisation of the right holder. The infringement has to take place within the geographical territory where the prior trade mark is registered. Hence, even if you revoke your application but you continue to do business under the same mark, the other party can still initiate infringement proceedings in front of the court. The fact that the EUTM is not active in the Hungarian market is irrelevant.

What you can do is to contact the TM owner and try to negotiate the share of the market. If the owner is not interested in the Hungarian market, then both TMs could co-exist, provided that there is an agreement on that. Moreover, there is also the possibility of requesting a proof of use once the opposition/invalidation proceedings are started, if the trade mark is registered for more than five years. In such a case the TM owner will have to prove that he used the TM for the goods/services at stake within the EU.

Another option would be to try to invalidate the registered TM by using article 53(1)(c) EUTM Regulation in conjunction with Article 8(4) EUTM of the same Regulation. In this case you should manage to prove that you have a non-registered trade mark or other sign used in the course of trade and your national legislation allows the proprietor of the earlier non-registered trade mark or another sign to prohibit the use of the subsequent EUTM.

You could start these proceedings right now, or as a counterclaim in case the infringement proceedings against you are started by the TM owner. It is up to you to choose which option fits you best. You are the one that knows all the background of your trade mark (e.g. investment on a specific market) and based on this, you should choose the most adequate solution. Please note that your situation is quite complicated and hence it is definitely worth asking for advice from a TM practitioner that has experience with EUIPO.

EU-FUNDED PROJECT:

I am the co-ordinator of a Marie-Sklowodoska Curie ITN and we are finalising our Consortium Agreement/Partnership Agreement. This agreement includes the standard clause “8.2.2 it may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) to this Consortium Agreement. The other Beneficiaries hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement Article 30.1.”

One of our Partner Organisations (X) has its participating operation in France but has other companies in the group around the world. Being aware of the restrictions of Article 30.1 in the EC-GA, they have this query: “Other X Inc group’s companies can be interested to commercialise the Results but they are not from an EU member state. Is it possible for a non-EU member state company to be a third party according to this article 8.2.2 and so listed in attachment 3 (DESCA Model CA)?”

We understand that you are currently drafting the consortium agreement for a Horizon 2020 MSCA ITN project, which the partner organisations are also expected to sign (this document will then also serve as a partnership agreement). In this context, you are wondering whether a partner organisation which will co-own results is allowed to list its non-EU affiliates in Attachment 3 (list of third parties for which transfers of results will be simplified).

The consortium agreement is a document supposed to be signed among project beneficiaries – the ones which signed the grant agreement – as it is meant to complement the provisions of the GA. In other words, many of the provisions of the CA refer to the rights and obligations of the GA, which apply strictly to project beneficiaries and not to third parties involved in the project (e.g. partner organisations).

At the same time, we are aware that many project consortia involved in MSCA ITNs adopt the practice of involving partner organisations in the signing of the CA – in order to avoid concluding separate partnership agreements. This is possible, but in this case it is preferable to ensure that the terminology used in the CA makes a distinction between project beneficiaries on the one hand and partner organisations on the other hand. This means that for each clause of the CA, you should consider whether this clause should apply to all signatories or only to one of the categories mentioned above.

The issue you have raised provides a good example: the obligation to notify partners before a transfer is made to a third party is an obligation arising from the GA (article 30.1); it only applies to project beneficiaries. This obligation is not applicable to partner organisations, which are not bound by the GA’s rules in relation to transfers of results. Therefore third parties/partner organisations do not need to use Attachment 3 – they are free to transfer their results without restriction. If the issue was arising in relation to a beneficiary (with affiliates outside of the EU), it would be possible for this beneficiary to list EU and non-EU affiliates in attachment 3 in order to simplify the notification/objection requirements of article 30.1 (obligation to inform consortium partners). Please note that this would however not change anything to the obligation to notify the EC/REA in case of a transfer to a third party located outside the EU – see article 30.3 of your grant agreement. In other words, Attachment 3 only serves to alleviate internal notification requirements in case of transfers.
The European IPR Helpdesk on tour: Take a look at a selection of our recent events

In the last three months the European IPR Helpdesk Team participated in a number of IP events all over Europe, and provided several IP workshops building capacities in IP management among SMEs and researchers.

Meet us at these upcoming conferences
- 24-26 October 2017: Tallinn, Estonia - Manufuture 2017
- 25-27 October 2017: Bucharest, Romania - 15th European Innovation Forum
- 31 October 2017: Valetta, Malta - SME Week 2017
- 07 November 2017: Cardiff, UK - Health Information Day 2017
- 09 -10 November 2017: Budapest, Hungary - ICT Proposers Day

Upcoming IP training events
- 09 November 2017 - Brussels, Belgium - Societal Challenge Info Day 2017
- 15 November 2017: Brussels, Belgium - IP&Coffee: on-site IP training session: Consortium Agreements
- 11 December 2017: Brussels, Belgium - ITN Coordinators Day

Upcoming webinars
- 25 October 2017: Geographical Indications
- 08 November 2017: IP in EU-funded Projects/H2020
- 15 November 2017: Consortium Agreements
- 22 November 2017: IP Management in H2020 – with a Focus on MSCA

For further information, please have a look at our online event calendar.
PATENT QUIZ

Fancy a Little Quiz?

As you know, in every issue we include a quiz to help you develop your patent searching skills using Espacenet. Why don’t you try using Espacenet today? Here comes our new quiz:

IP AND INNOVATION QUIZ

Letter Soup

To conclude this learning experience, why not strengthening your knowledge on IP and innovation with this letter soup? The concepts in bold capital letters below are hiding in this chaotic soup, try to find them!

1. TRADE SECRETS and PATENTS are likely to be used in companies with internal R&D, with high innovation expenditure or when the innovation is new to the market.
2. The effective use of IP TOOLS plays an important role in reducing risk for players involved in the success of INNOVATION in the market.
3. TRADE MARKS and industrial DESIGNS play an important role in the marketing process.
4. The breeder’s exemption has always been relied upon by breeders for further improvement to each other’s PLANT VARIETIES and to foster innovation in plant BREEDING.
5. Patents help SMEs to attract investors and support their image to consumers as companies offering high-quality products.

Fancy a Little Quiz?

As you know, in every issue we include a quiz to help you develop your patent searching skills using Espacenet. Why don’t you try using Espacenet today? Here comes our new quiz:

PATENT QUIZ

Fly electric

The Age of Flight has an extraordinary carbon footprint. Consider that when you fly round-trip from New York to Paris, that travel generates approximately the same greenhouse gas emissions as heating a residential home for a year. Why only drive electric when you can also fly electric. Major players like Airbus are working on such aircrafts. This field is of course patented. The challenge this time is to find the oldest possible patent covering this invention: the electric aircraft.

Using ESPACENET, try finding some old if not the oldest patents covering such aircrafts.
SOLUTION PREVIOUS PATENT QUIZ

Silence the drones

Drones, like their name indicates, emit a low buzz that will be a problem when fleets of delivery drones start operating in urban airspace. Drones can also be used for filming, performing surveillance, reconnaissance, and exploration tasks for military and civilian applications. The noise that a drone emits can be quite annoying. It could be interesting to develop noise cancelling systems to reduce the noise emitted by those unmanned aerial vehicles.

Using ESPACENET try finding patents covering such devices.

Step one: To find similar patents, identify the most pertinent aspects of the invention – common technical features that may be found in related patents – and for each aspect, define a comprehensive set of synonyms. To perform the search, the following concepts – groups of synonyms covering the different aspects of the invention – can be defined:

- drone*, unmanned aerial vehicle
- noise
- cancel, damp*

Several combinations can be tried. The combination noise cancel* drone* yields the following list of documents out of which you can find:

- WO2016118626 (A1) - MODELING AND REDUCTION OF DRONE PROPULSION SYSTEM NOISE
- EP3198588 (A1) - VEHICLE NOISE CONTROL AND COMMUNICATION
- EP2017154618 (A1) - ACTIVE AIRBORNE NOISE ABATEMENT
- US2017178618 (A1) - CARBON NANOTUBE TRANSUDERS ON PROPELLER BLADES FOR SOUND CONTROL

This one relates to a system to reduce the noise signature of the drone when the drone is used for recording.

The search can be directly pursued by combining similar concepts using classification symbols. There is one broadly covering noise cancelling/damping systems: G10K11/16 and another one covering drones or unmanned aerial vehicles: B64C2201/00. Combining both results in this list, you will find some additional documents such as:

- US2017174334 (A1) - PIEZOELECTRIC TRANSUDERS ON PROPELLER BLADES FOR SOUND CONTROL
- US9646597 (B1) - Delivery sound masking and sound emission

This search can be completed by multiplying the combinations of keywords and the classification symbols. Combining the classification relating to noise cancellation systems with unmanned aerial yields, you will retrieve this interesting additional document:

- CN105899965 (A) - Unmanned aerial vehicle (UAV) for collecting audio data

Similarly, you will obtain this additional document, when combining the classification covering drones with noise cancel* yields:

- US2017178618 (A1) - CARBON NANOTUBE TRANSUDERS ON PROPELLER BLADES FOR SOUND CONTROL

This clearly demonstrates that this field is patented, in particular by Amazon. More documents could be retrieved using the cited documents. It is likely we will soon see such types of “silent” drones above our heads.
SOLUTION SOFTWARE CROSSWORD

1. R
2. O
3. F O S S
4. S
5. P U B L
6. I C
7. M
8. F R E E
9. C
10. O P E N
11. M P L E M E N T E D
12. F S F

P  E  C
R  I  N
O  I  A
C  A  F
I  S
T  T
Y  O
Innovation is the action or process of making changes in something established, especially by introducing new methods, ideas, or products.

Plant variety rights (PVR) also called plant breeder’s rights (PBR), are a form of intellectual property right granted to the breeder of a new plant variety. Varieties which represent a defined group of plants, selected from within a species, with a common set of characteristics by which a variety can be defined as such, form the object of Community plant variety rights (CPVR). In order for a plant variety to be protected it shall be distinct, uniform, stable, and new. Moreover, the variety must be designated by a denomination.

Plant breeding is defined as identifying and selecting desirable traits in plants and combining these into one individual plant. Its purpose is to modify plants genetically in such a manner that they adapt more appropriately to the needs of human beings. Plant breeding techniques range from conventional breeding methods, such as crossing and selection, to modern breeding techniques which comprise biotechnological methods and genetic engineering, such as genome editing.

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