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Dear reader,

The European IPR Helpdesk team is pleased to announce that it has been awarded the contract to run the service also in 2014.

The consortium is composed of the same three partners as during the last three years: the project coordinator infeurope S.A., an SME specialising in international consultancy assignments, combining knowledge management, IT technologies, and IP services, the Centre de Veille Technologique, a joint initiative of the Public Research Centre Henri Tudor and the Luxembourgish National Office of Intellectual Property, and EURICE – European Research and Project Management GmbH, a German SME with a strong track record in international research and innovation management and a member of the Enterprise Europe Network.

This Bulletin issue is the first of a series of four to be published this year and will carry on with the same focus as before, tackling concrete aspects of the management and exploitation of intangibles, whether they belong to the assets of research organisations or small businesses. The beginning of this year has seen the start of Horizon 2020, the new EU research framework programme that will be running for the next seven years. The underlying policy, in accordance with the Europe 2020 flagship initiatives, is about helping organisations to perform better in research, innovation and competitiveness, so as to contribute to wider social objectives such as growth, employment and sustainability. Indeed, the key word for the forthcoming years will be innovation.

The European IPR Helpdesk is enthusiastic about actively participating in the shaping of an innovation-friendly Europe, which will prove fundamental to staying competitive and keeping its place in a fast changing world. It will do so by increasing awareness of the importance of innovating for SMEs and research organisations, and, consequently, of properly managing intangible assets for their optimal valuation. Undoubtedly, intellectual property is seen as a driving engine for the economic success of Europe in a competitive global economy where knowledge and its use is increasingly the single most important determinant of business success.

Your editorial team
EU and Intellectual Property: a New Year, new challenges and new resources

Elena Pastor
Public Research Centre Henri Tudor

With the arrival of the New Year, European policymakers are getting ready to revise and develop the solutions foreseen to improve the current Intellectual Property system in several areas and make it more effective, efficient, economical and coherent. Intellectual Property continues to be a dynamic and constantly evolving field, closely tied to technological, economic, political changes in the society.

The arrival of the digital technology and the consequent explosion in information and communication technology (ICT) has entailed radical changes in the access and distribution of copyrighted content. For the holders of copyright, all these changes implied an enriched new scenario full of opportunities for exploiting their works; however, this revolution also brought about important complications and downsides when trying to enforce their rights, these being dramatically affected by unauthorised copies. Copyright owners, especially from the entertainment industry, today demand a greater and more effective protection of their rights in the digital context.

After a long year of discussions, on the 13th November 2013, the Commission effectively confirmed that a provision of digital services and content across the single market requires the establishment of an updated copyright regime for the “digital age” addressing the following areas: cross-border access and portability of online content services; user-generated content and micro-licensing; online availability of European films; and the licensing required for text- and data-mining, which relates to the process of extracting information through automated scanning of text or datasets, used widely for scientific research. 2014 foresees the great challenge to address an intensive review of EU copyright law in the digital age, providing solutions that take into consideration the challenges faced by this sector without compromising the access rights to users in the more beneficial environment created by the digital technology.

Regarding the patent system, Europe is facing the most radical change concerning the European patent practice in over 40 years. For over a decade, the EU had as one of its priorities the creation of a single patent for the single market, together with a pan-European Patent Court for litigating such patents. In 2012, after several attempts and years of discussions, the two EU regulations – patent package – establishing a "unitary patent" to be effective in all EU countries were adopted (except for Italy and Spain which abstained). Likewise, in February 2013, the Unified Patent Court Agreement (UPC Agreement) was signed by all EU countries (excepting Spain and Poland), that will allow unitary patents to be litigated centrally (the court would be based in Paris and would have two specialised sections, one in London and the other in Munich). Recently, the European Commission has proposed an update of the EU rules on the jurisdiction of courts and recognition of judgements, which will pave the way for a specialised patent court to become operative. The next steps entail that the European Parliament agrees to this proposal, which is expected to happen in February 2014. Finally, the system will enter into force as soon as the UPC Agreement is ratified by at least 13 countries, including France, Germany and UK, where the court seats will be based. Accordingly, the entire implementation process is considered to take longer than was foreseen, so that the "unitary patent system" will have to wait until mid-2015, or even 2016, to be fully operational.

The European Commission considers that it is also time for a review of the trade mark system, thus it has been decided that on 27th March 2014 a proposal to revise the existing EU legislation on the field will be adopted, in order to improve conditions for business to innovate, and for further improvement of cooperation between the OHIM and national Intellectual Property offices. Community trade marks represent nowadays around a quarter of all trade marks filed in the EU each year. The system is therefore popular and important for the European economy, which relies on powerful brands, requiring strong and effective trade mark protection. The main objective of the review is to foster innovation and economic growth by making trade mark systems all over the EU more accessible and efficient for businesses, meaning lowering costs and complexity, and increasing speed and legal security. This can be achieved mainly by streamlining and harmonising national registration procedures, taking the Community system as the benchmark.

The Intellectual Property system’s update plans for 2014 also include action at EU level to improve the protection of trade secrets. The initiative is aligned with Europe 2020 and the flagship initiative “Innovation Union”, that the Commission undertook to improve the framework conditions for business to innovate, including inter alia, the optimisation of Intellectual Property protection. Although trade secrets are not generally protected as Intellectual Property Rights, their protection against misappropriation is complementary to patent protection, and it is highly and particularly important to SMEs. This is the reason why they were included in the Commission’s Intellectual Property Strategy aiming at creating a Single Market for Intellectual Property Rights.

Until that moment, no initiative on protection of company know-how, trade secrets and
confidential business information had been taken in the EU. Europe is aware that, given the revolution on information and communication technologies, trade secrets have also become increasingly vulnerable, and that national laws in EU countries need to be harmonised to prevent the theft and misuse of confidential business information in order to guarantee the competitiveness of knowledge-based European businesses. After a public consultation which took place in 2012, the Commission presented a proposal for a Directive on 28th November 2013 introducing a common definition of trade secrets, as well as means through which victims of trade secret misappropriation can obtain compensation. That will make it easier for national courts to deal with the misappropriation of confidential business information, to remove the trade secret infringing products from the market and make it easier for victims to receive damages for illegal actions. The next steps are to submit the proposal to the Council of Ministers and the European Parliament following the usual legislative procedure.

As a final point, Europe has taken another step forward concerning the enforcement of Intellectual Property Rights, by strengthening the conditions and procedures for EU customs action. This new regulation is applicable from the 1st January 2014. When fully implemented, it will further contribute to a single market which ensures more effective protection to rights holders, fuels creativity and innovation, and which will provide consumers with reliable and high-quality products, which should in turn strengthen cross-border transactions between consumers, businesses and traders.

Intellectual Property Rights have gained prominence as an important issue in the international arena, whether in discussions on public health, education, trade, industrial policy, traditional knowledge, biodiversity, biotechnology, the internet, the cultural industries, or climate change. It became apparent that with the increased recognition of Intellectual Property Rights as a powerful tool for economic growth, the need to efficiently harness, protect, and promote the creativity has become a critical subject for policymakers.

Proper intellectual property management for derivative software creation - the case of licensing interoperability issues

Dr Matthieu Farcot
SMILE

Licences are an essential means for managing the distribution and market recognition of software. As the legal transposition of a market strategy for the licensor, licences create frameworks embedding more or less strict obligations to licensees. Intellectual property management for software creations need to manage licensing incompatibility issues accordingly.

The legal environment for software developments is conceived around several key intellectual property rights, among which copyright protects the creative dimension embedded within, industrial patents certain functional dimensions, and trade marks related branding and commercial aspects.

Free and Open Source software consists of code that users can not only use for any purposes, but also study, modify, improve and distribute, with or without modifications. The technical and legal means by which a given user is granted these rights on a piece of code is through one or several licences, each relating to one or several of the embedded intellectual property rights. Such licences might therefore create specific exceptions or boundaries to the monopolies granted by a heterogeneous and complementary framework of legal protection, implying various degrees of obligations for the licensees.

Following market trends requiring interoperability and sustainability for software developments, software tends to be created by relying on pre-existing components. This act of taking and modifying pre-existing code implies the creation of a derivative work. In order to be able to develop such a derivative code, a compatible chain of licensing frameworks therefore needs to be used for the various intellectual property rights concerned.

Beyond the flow of rights

As explained in the fact sheet [IPR management in software development](https://www.smile.org.uk), three main categories of free and open source software licences exist. Academic licences comprise licences which are extremely permissive, implying mostly a proper recognition of authorship on a given piece of code. On the other end, reciprocal licences imply an obligation for the licensee to re-license derivative works under the same or a compatible licence (an effect commonly called copyleft). Finally, contextual licences rely upon the context of use of a code under licence, and might trigger reciprocal licensing obligations depending on the use made by the licensee of the concerned software code.

Non-free licences, meaning licences which would not explicitly grant all of the rights granted to licensees in terms of freedom of use, modification and distribution, are all grouped for the sake of simplicity under the very broad category of proprietary licences. This ranges from “all rights reserved” licences to licences which are liberal but restricted for certain use (such as freeware).
In the case of such a flow of rights, academic licences (such as the BSD or MIT licences) are compatible with reciprocal and contextual licences, but also proprietary ones. Contextual licences (such as the L-GPL) are mostly compatible with reciprocal licences, as compatibility with academic and proprietary licences is only possible to a very limited extent. Finally, reciprocal licences (such as the GPL) tend to be compatible only with themselves, enforcing the re-use of the same licensing framework for derivative creations.

The general pattern of the previously exposed compatibility obligations is the following: the stricter the copyleft regime implied within a licence on an original component, the less options a licensee has for relicensing derivative developments under a different licence. The same logic applies to trade marks and/or industrial patents. A licence which would grant reciprocity of rights for all users on industrial property used within a given piece of software has to be respected for derivative developments.

This highlights a very important fact: free and open source licensing frameworks are not homogeneous. It is not because a licence is recognised by the Free Software foundation as free (or by the Open Source Initiative as Open) that it is necessarily compatible with all of the other licences also recognised by such an organisation.

A technically complex legal maze

The core economic advantage of free and open source licensing consists in the decrease of transaction costs by allowing third parties to use, modify and distribute the code under licence in original or derivative form. However, various software components (such as pre-existing applications, libraries, ...) might be licensed under various licences, and the development of the final software product using those different components might be technically perfect but legally, therefore, markedly unusable. Interoperability issues of licences pose a serious threat to software developments, and need to be managed accordingly. Indeed, although software development is a process far too complex to be managed only by lawyers, lack of appropriate intellectual property and licensing management can jeopardise all chances of marketability.

This is one of the main reasons why certain projects might be licensed under several free and open source licences not compatible between each other. In such a case, it will be up to the licensee to decide which licence he will choose for derivative developments. This choice can either be forced through the licence of other pre-existing software components used by licensees, or embed a specific market strategy for the final product.

Finally, a copyleft system might be activated depending on the context of code use. Most copyleft systems require the distribution of derivative software in order to trigger reciprocal licensing obligations on such software. Making a derivative software available through a dedicated web service, without technically distributing the code, might limit reciprocity obligation, depending on the licence used for the original development.

In all cases, several good practices need to be followed in order to ensure a minimal level of maturity for software IPR management.

Third party code needs to be tracked accordingly, identifying where it was acquired, who are the authors, and under which licence is the code released;

- Final product licensing strategy should be made as soon as possible, in order to allow the selection of compatible licences and avoid interoperability issues;
- Contributors and the rules of code contribution should be identified and acknowledged accordingly;
- Software projects should be audited from a legal standpoint. Free tools such as Fossology can be used in order to simplify such treatments ensuring a necessary level of high legal certainty.

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Impact of intellectual property rights intensive industries in the European Union

Office for Harmonization in the Internal Market (OHIM)

A joint study, produced by the Office for Harmonization in the Internal Market (OHIM) and the European Patent Office (EPO) has revealed the extent of the contribution made by intellectual property rights (IPR) intensive industries to the EU economy.

According to the results of the study, IPR-intensive industries are directly responsible for 26% of all jobs in the EU – around 56 million direct jobs. They further support 20 million indirect jobs, meaning that one in three of all EU jobs rely on IPR-intensive industries. The study also found that these industries generated almost 39% of total economic activity in the EU – worth 4.7 trillion euro. Moreover, IPR-intensive industries pay higher wages – up to 40% more – than non-IPR intensive ones. And the study’s results show that IPR-intensive industries account for 90% of the EU’s trade with the rest of the world.

This is the first research of its kind to be carried out at EU level, in that it quantifies the overall contribution made by IPR-intensive industries to the EU economy, in terms of output, employment, wages and trade, taking into account the major IP rights (patents, trade marks, designs, copyrights, geographical indications). It was prepared by the Chief Economists of OHIM and EPO and their teams, and released by OHIM through the EU Observatory on Infringements of Intellectual Property Rights and the EPO. The research teams also cooperated with the European Commission, particularly the Directorate General for Internal Market and Services, the EU’s statistical arm Eurostat and the Directorate General for Agriculture. The report also received input from other IP offices, the Organisation for Economic Cooperation and Development (OECD) and the United States Patent and Trademark Office.

The study’s methodology mirrors that of the USPTO’s report into the contribution of IPR-intensive industries to the American economy, released in 2012. In order to determine which industries were IPR-intensive, the study compared the register databases of OHIM and EPO for patents, trade marks and designs, with the commercial database ORBIS at EU level. This allowed the study team to correlate IP registrations to industries. Copyright-intensive industries were determined using another approach developed by the World Intellectual Property Organization (WIPO). For Geographical Indication (GI) intensive industries, the study used regulatory sources and information provided by the European Commission’s Directorate General for Agriculture and Rural Development (DG AGRI). The study also used Eurostat data on employment per industry, in order to calculate the number of designs, patents and trade marks in each industry. Approximately 240,000 companies were analysed with these parameters, along with the industry classification and various financial and economic variables. The definition of IPR-intensive industries was based on the number of IP rights per 1,000 employees in each industry, in order to control for the effect of industry size. Industries with an above-average number of filings per 1,000 employees were considered to be IPR-intensive.

The report also detailed the extent to which IP is present in the EU’s economy. As the EU Commissioner for Internal Market and Services, Michel Barnier, pointed out: “What this study shows us is that the use of intellectual property rights in the economy is ubiquitous: from high-tech industries to manufacturers of sports goods, toys and computer games, all are making intensive use of not just one, but often several types of intellectual property rights”.

Indeed, one of the mandates of the European Observatory on Infringements of Intellectual Property Rights is to do just that – to provide evidence-based data on the impact, role, and public perception of intellectual property in the economy of the European Union. The Observatory is now a department within OHIM, having been transferred there from the Commission on the 5th of June 2012, and its programme of socio-economic studies aims to fill the current research gap with reliable, verifiable, methodologically sound data.

A follow-up to this study, looking at the contribution of IPR-intensive industries at firm level in the EU, will be released in 2014.
New developments in IP financing

Martin Brassell
CEO, Inngot

In October 2013, the UK Intellectual Property Office published the first detailed examination of the relationship between IP and business funding in Great Britain. It is currently in consultation with financiers and industry bodies to formulate its response and determine how to take forward the recommendations of the Banking on IP? report.

The report is one of a number of recent publications which have underlined just how important IP development is for growth. Many will be familiar with the statistic that IP licensing accounts for around 5% of global trade, but last year’s report from EPO and OHIM also highlighted that IPR-intensive industries account for almost 90% of the EU’s trade with the rest of the world. Earlier evidence gathered by UKTI also showed the synergistic relationship between IP and exports: it found that active IP management makes an SME 10% more likely to report overseas turnover, and over 50% of the firms that do export have evidence that a new product or service evolved because of their overseas business.

To grow, companies also need finance – but often lack the type of fixed, tangible asset that banks like to hold as security for lending. This link with innovation explains why a great deal more international attention is now being paid to unlocking the security value inherent in IP. It also seems that two different schools of thought are emerging in terms of how best to go about it.

Asia and South-East Asia

In Asia, government agencies are now directly involved in trying to help SMEs to unlock the value in their IP. In Korea, for example, Korea Development Bank (KDB) and the Korean Intellectual Property Office (KIPO) are operating on funding-related initiatives. KIPO provides an IP valuation service, and KDB either buys the IP or provides guarantees of up to 95% of the valuation to enable others to lend against it or securitise it. There is a separate guarantee organisation, KODIT, which places emphasis on the value and quality of the international patent portfolio, because support for overseas expansion is the primary motive for operating the scheme.

Malaysia’s 2013 budget allocated MYR 19 million (about €4.2 million) to its Intellectual Property Office, MyIPO, to develop and introduce a programme of IP valuation training and to create a pilot IP rights market platform. MYR 200 million (about €44.4 million) was also provided to Malaysian Debt Ventures to develop an IP fund scheme which announced its first three loans last December, partly underwritten by the Credit Guarantee Corporation. Here, the focus is on ICT, biotechnology and green technology.

Also in 2013, the government of Singapore accepted the recommendations of its IP Steering Committee, which drew up a 10-year strategy to establish the island as a central “hub” for Intellectual Property in South East Asia. Its planned initiatives also include an IP financing scheme, underwriting 80% of the value of patents used as collateral for bank loans in event of default. The Intellectual Property Office of Singapore (IPOS) also aims to set up a new Centre of Excellence for IP valuation, invest SGD 40 million (about €23.1 million) to build up patent search and examination capabilities in technology areas considered to be strategically important to Singapore, and spend another SGD 12 million (about €6.9 million) strengthening the IP Academy to be the central agency to orchestrate the delivery of education and training.

US and Europe

The need for some sort of guarantee in the event of default appears to be widely recognised, since transparent markets do not currently exist for IP in the way they do for widely traded tangible assets. As Banking on IP? points out, the UK already has an Enterprise Finance Guarantee which is Government-underwritten, though this is not (yet) specifically related to IP (it seeks to cover the absence of tangible collateral, which is not quite the same thing).

In terms of moving the debate on in Europe, a considerable body of work now exists on intellectual capital statements, particularly in Germany (the “Wissensbilanz” project) and progress has also been made in France where three loans last December, partly underwritten by the Credit Guarantee Corporation. Here, the focus is on ICT, biotechnology and green technology.

Also in 2013, the government of Singapore accepted the recommendations of its IP Steering Committee, which drew up a 10-year strategy to establish the island as a central “hub” for Intellectual Property in South East Asia. Its planned initiatives also include an IP financing scheme, underwriting 80% of the value of patents used as collateral for bank loans in event of default. The Intellectual Property Office of Singapore (IPOS) also aims to set up a new Centre of Excellence for IP valuation, invest SGD 40 million (about €23.1 million) to build up patent search and examination capabilities in technology areas considered to be strategically important to Singapore, and spend another SGD 12 million (about €6.9 million) strengthening the IP Academy to be the central agency to orchestrate the delivery of education and training.

The Basel III framework, published in December 2010, sets out capital rules and standards on bank capital adequacy, stress testing and market liquidity risk, to strengthen bank capital requirements by increasing bank liquidity and decreasing bank leverage.


**IP illiquidity**

If IP is considered purely in terms of its resale value, a number of challenges immediately become apparent. There are not (currently) well-established and liquid markets for IP in the way that there are for many fixed assets; IP is often developed by the business and fairly integral to its operations, so it is not readily separable; it is, by definition, unique rather than a commodity that can be valued; and it tends to come in interrelated “bundles”.

Greater liquidity matters because the main reason banks often cite for taking security is that it provides them with a secondary exit route. This, however, is not the whole story. Interviews for *Banking on IP?* highlighted that security also matters because it creates “skin in the game” – in other words, it helps the bank obtain a company’s full attention should it get into difficulties. The number of occasions on which the security actually gets called in and resold is in fact quite limited.

IP has quite a lot to offer in this context, especially if the bank wishes to sell a business as a going concern. Also, when things do work out, IP with a clear relationship to income generation often becomes the most valuable asset the company has. Couple this with the fact that directors or partners have often been personally involved in its creation, and the substantial revenues generated by global licensing and securitisation deals, and IP begins to look like a must-have for a lender.

**Available types of IP debt**

Whilst mainstream banking still has some way to travel in recognising the value and importance of IP, a number of avenues are available to companies who need to raise funding based on their IP but do not wish to go down the route of further equity dilution. Venture debt (for which Silicon Valley Bank is well known) is one option, though this normally requires there to be venture capital backing present too.

A number of asset-backed lenders are starting to take a closer interest in IP. Being accustomed to focusing entirely on the quality and value of the assets which are being financed, most companies operating in this space have seen instances where taking charges over the IP has been desirable in order to obtain the required degree of company control or influence. In addition, where directors or proprietors have a pension, a number of companies now specialise in setting up schemes which can use some of the available funds to structure a business loan.

**IP awareness**

Given all these possibilities, it’s difficult to understand why so few companies (particularly smaller ones) register IP. Data newly collated by UK IPO for *Banking on IP?* showed that as companies increase in size, their propensity to hold registered rights increases considerably, but even so, only 17% of large companies own patents and/or trade marks overall. The figure for small businesses is around 9%, and for micro-enterprises it is just over 2%.

The problem is not that the assets don’t exist. Analysis of a cross-section of audits sponsored by IPO (focused on micro and small businesses) found an average of one potential patent and two unregistered trade marks per company, and only 30% of the sample did not have the potential to register at least one design. Inngot’s own data (also published in *Banking on IP?),* looking at company profiling of identifiable intangibles more generally, found that when the different assets were presented to SMEs, 73% discovered five or more discrete types within their business, and 37% identified ten or more.

The biggest barrier to a real breakthrough, though, is general ignorance. The inconvenient truth is that too many businesses do not recognise the vital contribution IP and other intangible assets make to their business. They are even less likely to make the connection if they do not work in an area that is knowledge-intensive. They are unlikely to be discussing their investment in R&D with their accountant, owing to the very limited circumstances under which intangibles can be brought onto the balance sheet.

Ultimately, then, one of the biggest benefits of greater bank interest in IP assets may be that it gives SMEs a compelling reason for getting their house in order.

**As an endnote**

For an overview of the different IP financing tools you can read the European IPR Helpdesk fact sheet on “IP assets for financial advantages” available at www.iprhelpdesk.eu/node/2141.

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**Martin Brassell** FRSA recently co-authored the major new report for the UK Intellectual Property Office, *Banking on IP?*

He is Chief Executive of Inngot, which provides online tools to help companies identify, value and promote their IP and intangible assets.

Inngot works with SMEs, large corporates, professional firms, banks, investment networks, universities and government agencies.

www.inngot.com

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Intellectual Assets Treasure Trail tool from Scottish Enterprise: a tool for business intermediaries

Cyril Dubois
European IPR Helpdesk

Scottish Enterprise is an entity working with businesses across Scotland to stimulate economic growth. To that end, it understands the importance of providing advice and guidance in relation to intellectual property (IP) and wider Intellectual Assets by assisting companies to identify where their value lies, outline strategies for managing and protecting these assets, and how their brand and reputation can be used to promote them more effectively to existing and new customers.

In order to assist companies to understand the numerous types of Intellectual Asset, Scottish Enterprise has developed practical and simple tools, including the Intellectual Assets Treasure Trail.

Consequently, this tool is of more value for business intermediaries working directly with businesses when discussing IP, rather than for a direct use by SMEs (without facilitation). Nevertheless it is useful for any business to understand the different types of Intellectual Assets they already own without being aware of it, and thus their relevance in business activities.

The tool has the objective of assisting in the identification of Intellectual Assets within a working environment. The tool comprises of an image of a typical working environment, from the administrative activities of a company to production, and includes elements that can be found in a majority of businesses, such as technical and administrative documents, pictures, posters, products and raw materials, plants or flowerpots, customer lists, and so on.

The rationale behind this tool is to generate discussion around the picture in order to identify the types of Intellectual Assets that are of importance to the company visited by the intermediary. Indeed, each enterprise will identify many common elements reproduced on the picture. The interviewee(s) will also often be surprised to know that some elements are part of the company’s Intangible Assets portfolio.

The most important outcome of the discussion is that recipients of the advice recognise that their company owns Intellectual Assets, however steps may be required to secure them, legally or through adopting formalised processes to identify and record them.

Such a tool appears to be very useful for those interested in assisting companies in identifying their Intellectual Assets. It demonstrates that Intellectual Assets are all around us, they are numerous and that, like any asset, should be managed effectively.

Scottish Enterprise has made the Intellectual Assets Treasure Trail available to interested IP intermediaries in the Innovaccess IP toolbox, available on the innovaccess.eu website.
EPO WINTER SCHOOL: The efficient use of IP in Business Practice

Roberto d’Erme
European IPR Helpdesk

In December 2013, the Academia of the European Patent Office (EPO), in collaboration with the Executive Agency for Competitiveness and Innovation (EACI), organised a winter school that brought together 20 members of the Enterprise Europe Network (EEN).

The first day saw the welcoming speeches by Noël Campling, Director, IP Awareness, European Patent Academy, European Patent Office, and Pascale Fougils, Project Officer, Business Services, Executive Agency for Competitiveness and Innovation. The session was opened by a European IPR Helpdesk presentation given by Roberto d’Erme, IP consultant, who put forward some of the most important principles to communicate to SMEs and convince them that IP can leverage their business growth. He pointed out that small businesses have to be aware that IP is not only related to patents and related high costs, but entails other tools and aspects, like the management of confidential business information, that can be more significant to their business activities.

István Molnár, European patent attorney and consultant at the Regional Innovation Agency of South Great Plain, introduced the importance of Open Innovation (OI) for SMEs, intended as the use of internal and external technology sources to accelerate internal innovation, and expand the markets for external use of innovation. Since IP is an aspect of the company property, OI is able to create a market of intellectual property for companies, which may play an active role as a seller and purchaser at the same time.

The afternoon session was broken down into some interesting case studies, brought to the participants’ attention by Simon Cheetham from the China IPR Helpdesk; methods for evaluating and building tech-based businesses, by Eri Vázquez Muñoz, Director, FUNDITEC; and an introduction to IP rights (IPR) issues in day-to-day Enterprise Europe Network practice by Alison Orr, Enterprise Europe Network Yorkshire & Humber, Targeting Innovation Ltd.

This latter organisation has about six hundred member organisations across the EU and beyond, including chambers of commerce and industry, technology centres, universities and development agencies. The Network staff representative helps stakeholders – mainly small and medium-sized business (SMEs) – to trade and exploit their intellectual property (IP) on an international level, by assisting them with developing business in new markets, source or license new technologies, access EU finance and EU funding.

The Winter School aimed to provide the Network representatives with relevant information regarding IP in business practice. This would prove useful to better advise and pass to their clients the most comprehensive message on the importance of efficient IP management in their business activities.

The training was spread over three days in order to allow participants to acquire a good understanding of the main topics, by also engaging in practical exercises.

The second day started with the intervention of Mustafa Çakir, EEN Izmir, Ege University Science & Technology Center, on the IPR guidelines for Enterprise Europe Network advisors, which represents the outcomes of the second IPR working group of the Network partners coming from eleven European countries. Antoine Dintrich, Director General, IEEPI, presented two extremely interesting issues: the IP valuation and evaluation practices, for the allocation and estimation of an enterprise value, and strategic watch, patent information and patent mapping for strategic business decisions. This was followed by a practical class conducted by Lisa Mcdonald, Patent information section Head, Promotion, European Patent Office. Other practical exercises and case studies followed in a hands-on presentation by Olli Ilmarinen, Communication Specialist, IPR Expert, National Board of Patents and Registration of Finland.

The last of this three-day workshop engaged participants in an all-day business simulation, provided by Patentopolis B.V. IP trainings, and covering a variety of IP issues, including IP management and strategy, IP valuation, licensing, negotiations, budgeting etc. This session had a major focus on technology-based IP, in particular patents. It was carried out in a highly interactive fashion, through the use of teamwork assignments, group discussions and in particular to the business simulation itself, which allowed teams to experience IP strategy in a dynamic way.

The event was extremely successful and participants’ feedback has highlighted its capability to impart fresh knowledge to be passed onto SMEs when advising. The European IPR Helpdesk is pleased to have taken part to this workshop, which will certainly help intermediaries to assist SMEs with better shaping their business practices and making the most of their creative work.

1 To learn more about the set of tools that the Enterprise Europe Network has developed to improve its offer of IP services to businesses, have a look at the related article in the European IPR Helpdesk Bulletin No.11, October - December 2013.
Intellectual property eligible costs under Horizon 2020

The European IPR Helpdesk has received many questions concerning the intellectual property related costs that are eligible under the European Union Seventh Framework Programme for Research and Innovation (FP7). Being familiar with the regulations on the reimbursement of such costs can make all the difference when deciding on the protection strategy of the projects results.

The European IPR Helpdesk therefore contacted Mr Alexandre Marques, a Portuguese National Contact Point specialised in financial matters, to answer the most common questions asked on intellectual property eligible costs, transposing them to the Horizon 2020 financial regulations.

What intellectual property costs are considered eligible for reimbursement in Horizon 2020?

Horizon 2020 costs regarding protection of background and results are usually eligible during the time frame of a project, which means that expenses could be charged to the European Commission grant.

Some areas of research and technological development require indeed additional expenses related to intellectual property protection in order to successfully achieve the project results and these costs could be eligible. The most common examples of eligible costs I found in proposals are patent application filings, royalties, and licences. It is also common to have expenses like patent searches and legal advice, allowing participants to check the best way of protecting their results, reimbursed.

Horizon 2020 will have a specific focus on the market. In this sense intellectual property will be an important component on most collaborative projects and individual projects. The eligibility criteria for intellectual property costs in Horizon 2020 do not change considerably from FP7, so the necessary expenses on intellectual property may be taken into account, meaning that the “traditional” kind of expenses like patent filings, licences and royalties continue to be eligible in Horizon 2020. Only the costs charged before and after the project remain ineligible, like writing the Consortium Agreement, patent filing before the beginning of the project, etc.

Regarding the funding rate, Horizon 2020 will not differentiate upper funding limits by activities, so the funding rate will be defined on the Work Programme and on collaborative projects will be 100% for research and innovation actions, and 70% for innovation actions.

Are there any differences in terms of eligible intellectual property costs between the FP7 and Horizon 2020?

Horizon 2020 is the framework programme for research and innovation that will replace FP7, but this new Programme will be broader than FP7 with the inclusion of Competitiveness and Innovation Programme and European Institute of Innovation and Technology. This new Programme will have a specific focus on the economic impact and on the market. At the same time the rules for participation on Horizon 2020 reinforce the exploitation of results and make the IP protection mandatory, in most cases. In this sense I foresee an increase in the budget for intellectual property. Publications on open access platforms are also incentivised and consequently I expect the related costs also to increase.

At the same time there are additional obligations of protection and dissemination after the end of the project in order to make sure the intangible assets are used.

This is particularly important for the SME instrument, where the market exploitation of IP is the main goal. H2020 will have a specific theme on financial instruments, Access to Risk Finance, which will offer debt and equity to enterprises; in this type of support the IPRs play a determinant role in the economic evaluation of the proposals.

Can costs related to background (such as a patent application) be charged?

The participant’s existing knowledge necessary to implement the project is taken into account as the beneficiary contribution. If the costs are incurred after the start date of the project, then it is an eligible cost. For instance, renewal fees of an existing patent, necessary to implement the project, may be charged to the project. However, if the activities related to those costs took place before the starting date or the technical annex did not foresee those costs, they cannot be consider as eligible costs. It is therefore important to foresee those costs beforehand, in order to include them on the budget, including possible subcontracts with patent attorneys or other IP specialists. The important thing to remember is that costs, including those related with background, are only considered if incurred during the timeframe of the project.

How should intellectual property costs be budgeted? Can you give our readers some hints, for example when budgeting costs related to patent fees, industrial designs registration and payments for the services of patent attorneys?

In Horizon 2020 the IP costs are considered as other direct costs, the same category as in FP7. The main difference now is that in Horizon 2020 there is no distinction between activities, and all activities will be funded at the same level (100% or 70%). Participants just have to consider the IP costs as other activities (or personnel costs if it is the case) on the respective work package, research, exploitation, etc.

An intellectual property right strategy is a welcome element in a proposal. Since the accuracy in budgeting may avoid future problems on the implementation of such strategy, my advice is to detail as much as possible the financial and technical annex, that is, the Description of Work (DoW). Participants should also bear in mind that all subcontracts should be mentioned in the grant agreement.
beforehand.

**Is there any impact in the proposal the fact that a beneficiary needs to rely on the services of external patent attorneys for filing a patent application instead of relying on an in-house patent attorney?**

A proposal should minimize the subcontracts, mainly on the core activities. However, bearing in mind that most organisations have no internal legal resources, subcontracting may be necessary.

If the organisation allocates internal resources for patent application to an in-house patent attorney, the main advantage in financial terms is that the organisation can charge indirect costs to the European Commission grant, therefore reducing the overall subcontracting amount on the proposal.

Allocating internal resources for intellectual property related activities could be also an asset for the assessment of the organisation in the proposal, since it shows to the experts performing the evaluation of the proposal its capabilities in managing intellectual property beforehand.

**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:

**QUIZ**

**Transforming air into water**

An Australian student has won the James Dyson award for a brilliant low tech water harvester that extracts water from the ambient air. This device could be particularly valuable for arid areas where communities depend on agriculture for their living.

This harvester filters air via a turbine fed by solar-generated electricity, feeds it through copper tubing into the earth where the lower earth temperature condenses the atmosphere and releases moisture. The collected water is pumped to the plant roots to be fed.

More details are available from this [site](#) and this [video](#).

Try finding patents covering similar devices using Espacenet.

**A little recap: the EU IPR Helpdesk’s activities in the last quarter of 2013**

In last quarter of the year 2013, the EU IPR Helpdesk team took part in nine events reaching out to more than 1.200 participants. Among these events were such large-scale conferences as the Manufuture 2013, the Enterprise Europe Network Annual Conference and the ICT 2013 Conference all of which took place in Vilnius under the Lithuanian Presidency of the Council of the EU. Furthermore, the team provided 4 on-site training sessions as well as three web-based seminars before the close of 2013. Together these workshops attracted more than 240 participants.

In addition to workshops and events, the EU IPR Helpdesk library was extended by the following four new fact sheets:

- Commercialising Intellectual Property: Technology Transfer Process
- Financial aspects of IP
- Automatic Patent Analysis
- Commercialising IP: Franchising

The EU IPR Helpdesk will continue to build IP capacities and to promote the services of the Helpdesk also in 2014 and looks forward to many more successful activities in this New Year.
**GLOSSARY**

**Licence** refers to the agreement under which the holder of intellectual property (licensor) grants permission for the use of its intangible assets to another person (licensee), within the limits set by the provisions of the contract. Without such an agreement, the use of the intellectual property would be an infringement. Signing a licence agreement does not transfer the ownership of the intellectual property to the licensee.

**Copyright** refers to a set of exclusive rights granted by countries for the protection of the rights of authors in their literary and artistic works, such as books, dramatic works, cinematographic works, drawing, painting, architecture, etc. The exclusive rights granted to authors include:

- the right to authorise or prohibit reproduction of the work;
- the right of communication to the public of the work and the right of making it available to the public;
- the right to authorise or prohibit any form of distribution to the public by sale or otherwise.

**Trade secret** refers to confidential business information which meets the following requirements:

1. it is secret, meaning that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
2. it has commercial value because it is secret; and
3. it has been subject to reasonable steps under the circumstances, by the person in control of the information, to keep it secret.

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