

# **SME RISK MANAGEMENT: HOW INTELLECTUAL PROPERTY CAN HELP BUILD RISK RESILIENT SMES**

**FACTSHEET**

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## **HIGHLIGHTS**

Small and medium sized companies (SMEs) are facing a wave of [new emerging risks](#) that they need to take into account. These add to the conventional challenges of running a business such as expansion, business transfer, financial planning and solvency.

One of the most efficient ways to manage and mitigate risks is to reinforce overall business resilience. Accountancy Europe and the European Union Intellectual Property Office (EUIPO) believe that intellectual property rights (IPRs) are key to building this resilience.

This paper aims to inform small and medium sized accountants (SMPs) on the importance of IP for SMEs. They have the expertise to advise and guide their SME clients through IPR.

Our publication outlines:

- what IP is
- how accountants can help SMEs with IP access
- IP's benefits for SMEs
- the risks of not registering IP

## **WHAT IS INTELLECTUAL PROPERTY?**

IP is [defined](#) as a set of intangible assets owned and legally protected by a company from outside use or implementation without consent. An intangible asset is a non-physical asset that a company owns. EUIPO [clarifies](#) that IP consists of “creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce”.

Innovation is often a challenge for companies, especially SMEs. But it is also key for businesses' success as it enables them to be more competitive and agile.

IP is a vital tool that goes hand in hand with innovation. From the initial phases, through the entire business lifecycle, it can protect businesses' innovations by providing legal protection for a company's intangible assets. IP allows the IP right owner to exclude others from copying, performing or distributing their work without permission. Even more, IP is a mechanism that allows companies to share their solutions and reach collaborations without risks of misappropriation.

IP can thus provide incentives for people to innovate and produce creative works that benefit society, by allowing them to benefit from these ideas. However, only 9% of SMEs in Europe have registered IP, while over 30% see themselves as innovative businesses. The main reason for this is their lack of knowledge around IP.

## WHAT TYPES OF INTELLECTUAL PROPERTY ARE THERE?

There are several ways for SMEs to protect their IP. These different IP types include:

- patents: technical inventions such as products and procedures for the industry
- trade secrets: information that is valuable and worth keeping secret
- copyright: creativity of the human minds, books, paintings, software
- trademarks: products' and services' commercial identity
- designs: products' appearance

Patents, copyrights and trade secret protection play an important role during the research and development (R&D) phase of innovative processes. They are critical prior to launching a product on the market, where competitors may try to misappropriate or infringe on the company's innovation efforts.

Trademarks and designs are most relevant during the innovation process' commercial use phase. This means when products are distinguished from the competitors' in the market.

## HOW DOES IP PROTECTION LOOK LIKE?

Some IP types are automatically protected by law from the moment of their creation, but others require a specific grant on rights. It is also important to note that IP rights are territorial in nature. IP protection is limited to the jurisdiction in which the IP right is registered. Therefore, it is essential to register IP rights in each territory where the company deems it to be needed. Otherwise, the invention can be copied and used in other territories without it constituting an IP infringement.

Most IP rights expire after a specified period. This allows society to benefit from the work after the owner has had an opportunity to earn a fair reward for their innovation. The one exception to IP rights duration is in the trademark law. Trademark rights never expire, as long as they are renewed every 10 years and the merchant continues to use the trademark to identify a given product or business model.

## HOW CAN ACCOUNTANTS HELP SMES ACCESS IP RIGHTS?

Accountants can play a key role to facilitate SMEs access to IP rights as they:

- can raise awareness on the importance of protecting IP rights to their clients, as trusted advisors. This is because each SME accountant can serve hundreds of clients, which allows them to draw on experience of many business models when explaining the importance of protecting IP rights in a global market. They have experience of what tends to work and what does not
- are the main professional source of information for business development among non-IP owners, according to EUIPO's [SME scoreboard](#)
- can inform SMEs on the EUIPO SME programme, initiatives, and benefits of IP for SMEs
- provide expertise, services (financial planning, bookkeeping, business advice etc.), and understand the business' underlying fundamentals
- can play an important role in building up a relationship with IP experts and IP institutions (see checklist below)

## CHECKLIST FOR SMES ACCOUNTANTS

This checklist is designed to help accountants guide SMEs through the IP protection process. This is a generic list that does not outline detailed steps per se. Each step involves specific processes that may differ from jurisdiction to jurisdiction, market to market. We encourage accountants to consider the specificities of their respective jurisdictions.

<b>PRE-IP REGISTRATION</b>	<b>Learn the basics</b>	Refer to national IP and patent offices and/or <a href="#">EUIPO's information resources</a> to acquire a better understanding of the IP landscape and the registration processes.
	<b>Develop relationships</b>	Meet with your local IP specialists such as patent lawyers, IP attorneys and IP authorities or refer to those that offer <a href="#">free personalised IP support</a> .
	<b>Raise awareness</b>	Tell your SME clients about the benefits of IP for their business and risks arising from not protecting IP (see p. 4-7).
	<b>Learn about available IP support</b>	Find out about IP support financing made available for SMEs e.g. EUIPO <a href="#">funding</a> to help SMEs with IP registration costs. Identify possible sources of support funding for legal fees if IP breach is identified.
<b>IP REGISTRATION PROCESS</b>	<b>Have a first conversation</b>	Identify with your SME client what aspects of their business could be eligible for IP protection.
	<b>Identify suitable IP protection types</b>	Analyse together the business' products and processes. Help your client identify what type of IP protection (see p. 2) would fit best. Liaise with the local IP office or EUIPO for <a href="#">support tools</a> and further help e.g. <a href="#">free personalised IP support</a> or IP Scan (IP Pre-diagnostic) services offered in some EU IP national offices and <a href="#">funded by EUIPO</a> ..
	<b>Help set internal controls</b>	If relevant, advise and help set up internal controls and systems e.g. non-disclosure agreements, to protect the IP item e.g. business process, algorithm, client lists, from being leaked.
	<b>IP support funding</b>	Inform the client of available <a href="#">IP support funding opportunities</a> , and help them go through the funding application process.
<b>POST-IP REGISTRATION</b>	<b>Communication</b>	Encourage the SME to communicate about the registered IP to external stakeholders e.g. investors or banks when seeking funding, B2B/B2C clients..
	<b>Monitoring</b>	Help the SME monitor and identify potential breaches of its IP, e.g. with the help of IP attorneys who provide IP monitoring services. If breaches occur, advice on the next steps with the help of local IP experts, including IP lawyers if relevant.
	<b>Review</b>	Periodically e.g. annually, review changes and status of the SME's IP rights, new business elements eligible for IP protection, internal IP protection systems and procedures etc.

## WHAT ARE THE BENEFITS OF IP FOR SMES?

According to EUIPO's 2019 SME Scoreboard, 54% of SME owners claimed to have seen positive impacts following IPR. The main impacts mentioned include improved reputation (52%), turnover (39%) and access to new markets (37%).

[Studies](#) also show that brand-oriented companies are 40% more profitable, and can achieve double the turnover of competitors. Another EUIPO's and the European Patents Office's (EPO) recently published [study](#) confirms a strong, positive correlation between a company's IP right ownership and its economic performance. For example, the study demonstrates that SMEs owning IP rights have a 68% higher revenue per employee than those that do not own any IP rights. Moreover, SMEs owning a combination of patents, trademarks and registered designs generate almost double (98%) the revenue per employee compared with companies without any of these IP rights.

### COMPETITIVE ADVANTAGE

IP grants its owner a competitive advantage by preventing third parties from exploiting the innovation without permission. An IP holder is the only one in the market with the legal right to sell, exploit and manufacture an innovation in the case of patents, and to use a trademark, design or other forms of IP rights.

This is especially important for SMEs, whose IP rights provide them with a powerful tool to compete with larger companies. An IP holder may resort to legal action to obtain redress if any infringement has taken place.

### REPUTATION BUILDING AND MARKETING

IP is a powerful tool for marketing and reputation building, as it enables to differentiate the product or service provider from the competition. IP is thus essential in creating a unique image for the business on the market.

The ® symbol informs the public that the brand owner believes in the product and does not want competitors to ride on its reputation. Statements such as patent pending or patented, on the other hand, give a message about a product's innovativeness. Indicating that a product's appearance is a protected design makes it clear that the product holds individuality.

These are powerful messages that appeal to customers and investors alike. Customers in particular associate a certain value with their favourite brands. This is where factors such as goodwill, trademarks, designs and logos come into place. Customers recognise brands, and IP rights help businesses differentiate their products and services within a market, while promoting them to target customers.

Finally, IP provides certain guarantees about the safety or health of a product, as many counterfeit products pose risks in these areas. Enforcing IP rights guarantees at least that the product's origin is known, and that the product is genuine. Counterfeit products, by contrast, often do not comply with applicable safety standards.

## **ACCESS INTERNATIONAL MARKETS**

IPR can expand opportunities for SMEs' export operations. The condition is that the IP is protected in the territories where the SME plans to export. With the help of IP, the business' designs and brands can be used to market its products and services in foreign markets. It also ensures that no one else gets those rights to innovation in these countries. This is especially important for large markets, as it creates the opportunity for SMEs to scale up their business quickly and extensively.

## **ATTRACT INVESTORS**

IPR can help turn ideas into revenue. IP protection increases the business' value by strengthening investors' confidence. For investors, companies with an IP portfolio are attractive investment targets since the products or services are protected by IP. Investors seek guarantees that the investment is secured, and that they have a privileged position in the market.

IP rights are also a guarantee of a product being new as the technology is protected by patent. Also, IPR ensures that the brand or visual aspects have exclusive rights in the market under trademark or design protection.

## **ATTRACT PARTNERS**

Companies that have IP rights are perceived as more trustworthy partners as protecting IP also means protecting their business partners' interests. A company that does not protect its innovations is difficult to have faith in as this can put business partners such as resellers and distributors in a difficult position in case of infringements. Finally, EU and national governments can ask IP owners to use their IP to their advantage while applying for government or public funding such as loans, subsidies and grants.

## **IP AS A SOURCE OF INCOME**

IP can constitute a source of income for SMEs by enabling them to sell or license their IP rights to third parties through royalties. This can also help them better access new markets.

A EUIPO study [Licensing activities by SMEs: evidence from EU trademark owners](#) reveals that 7,5% of SMEs owning EU trademarks also licensed them to others. The annual average revenue from licensing EU trademarks is estimated at EUR 64 924 per firm, or an equivalent of 5,7% of the average turnover of European SMEs.

## LICENSING EXPLAINED

License is a contract in which the licensor authorises the licensee to perform certain activities in a defined territory, time, scope, to manufacture, sell, market etc.

Additional indirect revenues from a license sometimes exceed the profits resulting from the direct exploitation. This is because it does not require additional internal manufacturing capacities and as such, relatively few additional costs arise from licensing arrangements. Such an approach may be particularly interesting for SMEs. It is also important for universities and public research centres which usually do not have any direct exploitation activities.

Benefits to the licensor (IP owner):

- opens new markets with no expenses
- provides additional income - royalties
- helps overcome the challenge of accessing different markets, especially in foreign countries
- owns costs and risk, and enables savings on distribution and marketing expenses

Benefits to the licensee are:

- savings on R&D and creativity
- elimination of risks associated with infringement
- quick exploitation and ensures that products are the latest

## WHAT ARE THE RISKS ARISING FROM NOT REGISTERING IP?

The first and most imminent risk for SMEs linked to IPR is a lack of awareness and understanding around IP. EUIPO's [2019 SME Scoreboard](#) study carried across 27 EU member states and the UK on over 8,000 SMEs showed that:

- around 60% do not make it past year five due to insufficient funding and support
- only 9% of SMEs have registered IP. The main cited reason (38%) for not going through IPR was lack of knowledge about IP and its potential benefits

SMEs also tend to have a negative perception of the system and do not see its added value to their business. All this consists a missed opportunity, since IP is part of the solution towards building more resilient businesses, and the only legal tool available to protect SMEs' creations and inventions efficiently. As such, there are significant risks stemming from failing to protect one's IP rights or not being aware of others.

## **ENDANGERING THE INNOVATION PROCESS**

An idea can either be discovered by competitors at the same time, get copied, stolen or reverse engineered. Counterfeiters and illegal actors such as hackers pose major IP risks to companies.

Additional risks can emerge during the company's growth stage: when it becomes necessary to share ideas with others for example with investors, subcontractors and business partners. This can give rise to insider risks. Examples of these include disgruntled employees leaving the company and taking its know-how with them, or potential investors walking away after asking a company about their trade secret policy.

## **COPYING BY COMPETITORS**

If an idea is not protected before it enters the market, competitors may take advantage of it. They can do so by using, manufacturing and selling it, thus rendering the original innovator's product impossible or difficult to differentiate from competitors.

At that point, without IP protection, there would be no possible legal means to stop the competitor from using the idea as they wish. This might have a negative impact on the inventor's reputation and revenue alike.

## **LOSING EXCLUSIVITY**

IP provides exclusive rights to its owner, and the rights belong to whomever protects them first. An inventor who does not register their IP might be driven out of the market by competitors registering it instead.

In this case, they would no longer be able to use, manufacture or sell their own invention or creation. For example, Apple had to pay \$60 million for its iPad trademark in China because another entity had registered it first.

## **INFRINGING OTHERS' IP RIGHTS**

An entrepreneur might unknowingly infringe someone else's existing IP rights on the same innovation if they do not register their IP. Failure to respect others' IP rights can have financial consequences, and lead to lawsuits irrespective of whether the violation was intentional or not. This might also put business partners in a difficult position, as they could also be considered as being part of the infringement.

## ADDITIONAL RESOURCES

- [5 reasons why investors love intellectual property](#), EU Startups, 2018
- [What are the Benefits of Intellectual Property Rights?](#) IPTSE, 2022
- [Positive aspects of IP rights](#), DG TRADE, 2014
- [Apple pays \\$60 million to settle China iPad trademark dispute](#), Reuters, 2012
- [Valuing Intellectual Property Assets](#), WIPO, 2022
- [Accountants are the key for SME IP](#), Accountancy Europe/EUIPO, 2021
- [From risks to resilience: benefits of intellectual property for your business](#), Accountancy Europe/EUIPO, 2021
- [SME risk management: how can your accountant help?](#) Accountancy Europe, 2020
- [SMEs' digital future: what role for accountants?](#) Accountancy Europe, 2021
- [SME risk management: insolvency](#), Accountancy Europe, 2021
- [SME risk management: sustainability](#), Accountancy Europe 2020
- [3-step sustainability assessment for SMEs](#), Accountancy Europe, 2021
- [2019 intellectual property SME scoreboard](#), EUIPO, 2019
- [Intellectual property rights and firm performance in the European Union](#), EUIPO/EPO, 2021

### ABOUT US

#### EUIPO

EUIPO is the European Union Intellectual Property Office, the EU's agency dedicated to IP matters. Created 25 years ago, EUIPO registers around 180,000 EU trademarks and close to 100,000 designs annually. We offer IP protection to companies and individuals in a market of more than 500 million consumers.

EUIPO works in partnership with national and regional EU intellectual property offices, user groups, the European Commission, European Parliament and other international organisations. Companies from around 200 countries, ranging from SMEs to major multinationals, make use of EUIPO's services. Our main offices are located in Alicante, Spain.

#### ACCOUNTANCY EUROPE

Accountancy Europe unites 50 professional organisations from 35 countries. We represent close to 1 million professional accountants, auditors and advisors with diverse backgrounds: small and large accounting and audit firms, in-house businesses and public sector.

Our SME work draws on the expertise of our thousands of small practitioner members, each serving hundreds of SME clients. We translate their daily experience to inform the European policy debate, and provide practical guidance, representation and insights to our small practitioner community.