



Rigorous empirical
research on
intellectual property

4 SMEs ✓

Research paper summary and key messages. Unlocking untapped value



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SUMMARY			
Document Title	Unlocking untapped value Experts: A. Gasnier, M. Granieri, K. Hofmann, C. Hackl, J. Mcmanus, P. Ollivier, P. Simon, A. Svensson, European Patent Office Editors: Thomas Bereuter, Yann Ménière et Ilka Rudyk		
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Overview

Each year, around one third of all patent applications received by the EPO come from small and medium-sized enterprises (SMEs).

This series of case studies aims to highlight how SMEs are effectively leveraging the power of patents to support their corporate strategy and achieve business success. The cases reflect the diversity of European SMEs, encompassing energy and environment, to biotechnology, optics, electrical machinery, telecommunication and digital communication technologies. The authors' analysis enables two main conclusions to be drawn.

- Firstly, SMEs have leveraged the patent system to deliver a range of benefits, going beyond relying on patents to protect their products and services, such as engaging in licensing; using patents as a bargaining chip to obtain freedom to operate and to enable collaboration; attracting investment and customers; enabling entrance into new markets.
- Secondly, a holistic approach to IP management and an effective IP strategy, aligned with corporate goals, is instrumental to enable SMEs to successfully derive value from their patents.

All the featured SMEs face the same challenge of building and administering an international patent portfolio with limited resources. This series of case studies shows how European SMEs can address these challenges with the result that they unlock the value of patents and use patents as the foundation on which they build their business.

Furthermore, it reveals 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.

Key messages

Customers and investors consider it very important for a young company to have strong IP protection.

A company's ability to scale-up must partly focus on building a strong IP portfolio. The larger the company, the greater customers expectations are for strong properly defended IP. It is also important

that companies have strong, high-quality patents flowing from sound IP management that allows companies to keep internal and external influences on the patent portfolio under control.

Continuous innovation is a major success factor. Listening to clients, partners and key opinion leaders can lead to new inventions, as well as to adaptations of existing products. Co-operation with partners can often result in co-inventorship. In such situations, clear legal agreement will allow both parties to understand their positions and define a win-win situation by focusing on each other's interest and developing mutually beneficial synergies. In addition, the ability to quickly adapt to changing market requirements distinguishes SMEs from large companies and gives them a competitive advantage.

It is often vital to have a patent granted as quickly as possible. Most patent systems offer applicants the opportunity to accelerate the patent granting procedure. Alternatively, filing routes are available which enable the substantive examination of the patent application to be postponed. Having a patent application pending can, sometimes, be advantageous since it allows more time for the claims to be amended within the boundaries of what is described in the application and postpones the patent validation decision, meaning that market feedback can be taken into account. Patents can also be used as tools for negotiating with rival companies as well as in planning strategic filing in countries important to competitors.

It is critical for SMEs to build trusted and transparent relationships with dedicated patent attorneys who have the technology-relevant expertise required for claim drafting. Clear communication about the technology, product goals and business needs establishes correct expectations and sets the focus moving forward. Prior art searches must be conducted early in the creative process, before research begins. Furthermore, it is advisable to conduct regular searches and analysis of new prior art, since it can help find "*white spots*" in the patent landscape which may reveal opportunities for further innovations.

Patents should be treated as part of a larger and complex commercialisation system with multiple internal stakeholders.

A company's IP policy should have its origins in its corporate vision. It should be proactive, rather than merely reactive to external factors and should preferably form an integral part of the corporate and technology strategy. The innovation team, then, needs to think in terms of IP rights and be competent in the use of patent search tools to release the full potential of their R&D.

The role of IP changes as a company evolves. At an early stage, it is uncertain whether patents might attract the interest of investors. However, at a later stage, investors tend to favour companies ready for higher IP governance. That means that patents and IP should be part of the business strategy in order to help companies mature rapidly.

The cost of patenting is a major factor. Although IP strategy cannot be outsourced, collaboration with universities and research organisations provides an opportunity to perform early-stage research at a reasonable cost, without having to compete for overstretched internal resources.

Trademarks can add value to patents. They can also extend protection and licensing revenues beyond patents' lifetime.

Freedom To Operate and infringement analysis are crucial for any technology company. Negotiations can often solve potential infringement problems. Litigation must always be a last resort. However, the credibility of patent holders, whether licensing or engaged in other forms of activity to exploit their IP, depends on their determination to fight for their rights and take wilful infringers to court.