

THE BENEFITS OF A STRONG IPR POLICY IN EUROPE:

EU IP action plan and the view of innovative start-ups

Cecilia Sofia Ruta¹

Introduction

In recent times, Intellectual Property (IP) has taken on a central role in discussions about innovation and entrepreneurship. This could be attributed to the fact that we live in an information or knowledge society wherein immaterial goods are often as important as material goods. Intellectual Property Rights (IPRs) can be classified into five main categories: patents, copyrights, trademarks, designs, and trade secrets.

Patents protect technical inventions, which can be described as products or processes, which have not been disclosed to the public, can be applied in industry, and offer a new manner of doing something or a novel technical solution to a problem.² For instance, magnetic levitation, virtual reality, and 5G-enabling technologies are protected by patents.

Copyright protects original artistic intellectual creations. Some examples are books, photographs, paintings, music, computer programs, technical drawings and advertisements.³

Trademarks protect distinctive signs capable of representing a product's business origin.⁴ Brand names such as Nike or the world-famous logo of LEGO are typical examples of valid trademarks being applied in the course of trade.

¹ Cecilia Sofia Ruta is researcher at 4iP Council. The views expressed in this article are those of the author and do not necessary reflect the opinions of 4iP Council or any of its supporters.

² 4iP Council, 'What is intellectual property and which types do I need?' available at <<https://www.4ipcouncil.com/4smes#what-is-ip>>. See also: WIPO, 'Patents' available at <<https://www.wipo.int/patents/en/>>

³ 4iP Council, 'What is intellectual property and which types do I need?' available at <<https://www.4ipcouncil.com/4smes#what-is-ip>>. See also: WIPO, 'Copyright' available at <<https://www.wipo.int/copyright/en/>>

⁴ 4iP Council, 'What is intellectual property and which types do I need?' available at <<https://www.4ipcouncil.com/4smes#what-is-ip>>. See also: WIPO, 'Trademarks' available at <<https://www.wipo.int/trademarks/en/>>

Designs protect the visual appearance of a product, and they may consist of three-dimensional or two-dimensional features.⁵ A design can be, for example, the particular shape of a wine bottle, or the material used to build the lampshade of a table lamp.

Trade secrets protect confidential information that is deemed to be commercially valuable and known only to a limited number of persons who have taken reasonable steps to keep it secret.⁶ An example of a trade secret is the formula for Listerine or Coca-Cola.

Despite their particularities, all share a common goal: to protect the owner from unauthorised exploitation of its creations.⁷ IP also increases social welfare and significantly contributes to the economy of a country. In fact, IPR intensive industries generate 45% of gross domestic product (GDP) – EUR 6.6 trillion – in the European Union (EU) annually and account for 63 million jobs (29% of all jobs).⁸

This article will explain the importance of a solid IPR policy by first addressing the latest measures adopted by the EU aimed at incentivising the use of IPRs by small and medium size enterprises (SMEs). Subsequently, it will describe the correlation between IP and innovation. Then, it will emphasize the importance of having the right IPR strategy and a strong IPR system for SMEs by way of reference to the advantages it brings to research and development, competition, and business growth. Finally, a conclusion will be provided.

I. IPR Policy for SMEs in Europe

The fundamental importance of a strong IPR policy has been acknowledged multiple times by the EU. The EC stressed that IPRs play a fundamental role in promoting innovation and

⁵ 4iP Council, ‘What is intellectual property and which types do I need?’ available at <<https://www.4ipcouncil.com/4smes#what-is-ip>>. See also: WIPO, ‘Industrial Designs’ available at <<https://www.wipo.int/designs/en/>>

⁶ 4iP Council, ‘What is intellectual property and which types do I need?’ available at <<https://www.4ipcouncil.com/4smes#what-is-ip>>. See also: WIPO, ‘Trade Secrets’ available at <<https://www.wipo.int/tradesecrets/en/>>

⁷ This is possible thanks to the ‘exclusivity rights’ granted to the IPR owner. 4iP Council, ‘What is intellectual property and which types do I need?’ available at <<https://www.4ipcouncil.com/4smes#what-is-ip>>. All links have been on accessed on June 1, 2022

⁸ European Patent Office and European Intellectual Property Office, ‘IPR-intensive industries and economic performance in the European Union: Industry-Level Analysis Report, September 2019 – Third Edition’ available at <[https://documents.epo.org/projects/babylon/eponet.nsf/0/9208BDA62793D113C125847A00500CAA/\\$File/IPR-intensive industries and economic performance in the EU 2019 en.pdf](https://documents.epo.org/projects/babylon/eponet.nsf/0/9208BDA62793D113C125847A00500CAA/$File/IPR-intensive%20industries%20and%20economic%20performance%20in%20the%20EU%202019%20en.pdf)>

protecting investments, especially with regard to the digital economy.⁹ According to the EC's vision, having a reliable IP framework harness creativity and enable innovative enterprises to grow.¹⁰ Conversely, businesses as well as individuals would not be able to benefit from their inventions, and they would not focus as much on research and development (R&D).¹¹ For this reason, in its Communication 'Making the most of the EU's innovative potential' presented in 2020, the European Commission (EC) established an IP action plan aimed at increasing IP protection to make the most of the EU's innovative potential.¹² In particular, the EC proposed to: (1) upgrade the system for IP protection, (2) incentivise the use and deployment of IP, (3) facilitate the access to and the sharing of intangible assets while ensuring gains from investments, (4) guarantee better enforcement of IPRs, and finally, (5) provide fair play at a global level.¹³

Regarding the second area, the EC pointed out that many companies did not fully take advantage of the several opportunities stemming from IP protection, such as commercial exploitation and valorisation and deployment of R&D.¹⁴ As a matter of fact, according to the European Union Intellectual Property Office (EUIPO), in 2019 SMEs represented 99% of all businesses in the EU and accounted for 57% of the total GDP,¹⁵ yet only 9% of them had

⁹ European Commission, 'Internal Market, Industry, Entrepreneurship and SMEs – Intellectual Property' available at <https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property_en>

¹⁰ European Commission, 'Internal Market, Industry, Entrepreneurship and SMEs – Intellectual Property' available at <https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property_en>

¹¹ European Commission, 'Internal Market, Industry, Entrepreneurship and SMEs – Intellectual Property' available at <https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property_en>

¹² European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final; European Commission, 'Intellectual property: Protecting Europe's know-how and innovation leadership' (EC Press Release, 29 November 2017) available at <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_4942>

¹³ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final, p.4

¹⁴ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final, p.3

¹⁵ EUIPO, '2019 Intellectual Property SME Scoreboard' (October 2019) available at <https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_sme_scoreboard_study_2019/IP_sme_scoreboard_study_2019_en.pdf>, p.14

registered IPRs.¹⁶ In this regard, 38% of the companies without registered IPRs admitted a lack of knowledge about the benefits of IP, while 11% argued IP is too costly and burdensome.¹⁷ Indeed, as Vincent Ryckaert, Director of Intellectual Property Business and Intelligence at a Belgian research and innovation hub in nanoelectronics and digital tech –IMEC IP –, recognizes “[o]ften IP is still perceived as a problem, whereas it should be perceived as an enabler for business.”¹⁸ On a positive note IP awareness “has improved over the past years, even for SMEs and research institutes”.¹⁹

Against this background, the EC IP action plan offers several advantages for SMEs. Firstly, it helps SMEs manage their IP portfolio through the offering of financial support or IP vouchers. In practice, the budget of 20 million euros operational for one year between January 2021 and January 2022 covered the partial reimbursement of expenses arising from the registration of designs and trademarks.²⁰ Secondly, the action plan provides tailor-made IP advice at different stages of the R&D process to assist innovative SMEs. Some selected companies even benefit from both these financial funds.²¹ During the same period, the EC developed a European IP Information Centre in collaboration with the EUIPO so as to provide SMEs with the necessary

¹⁶ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU’s innovative potential – An intellectual property action plan to support the EU’s recovery and resilience’ COM(2020) 760 final, p.3

¹⁷ EUIPO, ‘2019 Intellectual Property SME Scoreboard’ (October 2019) available at <https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_sme_scoreboard_study_2019/IP_sme_scoreboard_study_2019_en.pdf>), p.10

¹⁸ 4iP Council, ‘Introducing IMEC, the pioneering research and innovation hub in nanoelectronics and digital tech based in Europe’ (4iP Council Features, 2 July 2020) available at <<https://www.4ipcouncil.com/features/introducing-imec-pioneering-research-and-innovation-hub-nanoelectronics-and-digital-technologies-based-europe>>

¹⁹ 4iP Council, ‘Introducing IMEC, the pioneering research and innovation hub in nanoelectronics and digital tech based in Europe’ (4iP Council Features, 2 July 2020) available at <<https://www.4ipcouncil.com/features/introducing-imec-pioneering-research-and-innovation-hub-nanoelectronics-and-digital-technologies-based-europe>>

²⁰ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU’s innovative potential – An intellectual property action plan to support the EU’s recovery and resilience’ COM(2020) 760 final, p.9

²¹ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU’s innovative potential – An intellectual property action plan to support the EU’s recovery and resilience’ COM(2020) 760 final, p.9

information on both IP formalities and related services.²² Thirdly, the plan aims to facilitate the ability of SMEs to leverage their IPRs when accessing financial products.²³ To this end, the EC emphasizes the importance of IP valuation to better take into account SMEs' intellectual assets.²⁴ Simultaneously, it is exploring how bank guarantee mechanisms can be better used to support these innovative enterprises.²⁵ This initiative is intended to address the following situation: since the majority of SMEs do not generally consider IP as an asset,²⁶ they miss the benefits of having an IP portfolio when accessing financial services.²⁷

All these initiatives addressed to SMEs seek to improve the management of IP in the R&D community as a whole: publicly-funded IP is regularly supervised so as to ensure its fair and effective use and to guarantee that the result achieved with the help of these funds will also benefit the entire EU economy.²⁸

II. The Importance of IPRs to Innovative SMEs

²² European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final, p.9

²³ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final, p.9

²⁴ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final, p.9

²⁵ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' COM(2020) 760 final, p.9

²⁶ European Union Intellectual Property Office, '2019 Intellectual Property SME Scoreboard' (October 2019) available at https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_sme_scoreboard_study_2019/IP_sme_scoreboard_study_2019_en.pdf, p.98-99

²⁷ European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs; Sophie Manigart et al., 'Financing intangibles: is there a market failure?' European Union Publications Office (2020) available at <https://op.europa.eu/en/publication-detail/-/publication/6a29075f-1f15-11eb-b57e-01aa75ed71a1>

²⁸ European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs; Sophie Manigart et al., 'Financing intangibles: is there a market failure?' European Union Publications Office (2020) available at <https://op.europa.eu/en/publication-detail/-/publication/6a29075f-1f15-11eb-b57e-01aa75ed71a1>, p.10

IP protection is relevant to SMEs for several reasons. For instance, IP (i) fosters R&D and innovation, (ii) provides a competitive advantage, and (iii) helps business growth.

a. *Research and Development*

R&D activities are an integral part for any company that wants to compete in innovative markets. Innovation is commonly generated through a process of research to discover flaws of an already existing product or service. Innovation can also arise from the need to fill a gap of a specific sector. Research may create ideas, which are then developed, tested, and improved, so as to obtain a final product or service tasked with solving such problems.

IP often plays an essential role in enabling investments in R&D. As Maria Mazo Oscoz, the Associate Operations Manager of Empatica – a digital healthcare company – highlighted, *“protecting our IP rights is an important part of our Research & Development cycle. On the one hand, protecting our IP means our technology and innovations become harder to imitate, helping us maintain a competitive advantage; at the same time, knowing that our inventions are protected enables us to invest more resources in R&D.”*²⁹ Actually, IPRs give innovative firms the economic incentives they need to continue researching and developing new solutions.³⁰ It has been found that patents generally have a positive impact on the expenditure related to R&D in several industries, but especially in the pharmaceutical sector.³¹ Conversely, the spending would decrease by circa 20%-30% without patent protection.³²

In light of the above, a case study by WIPO on FKB Biotecnologia S.A. – a Brazilian biotechnology start-up specialised in immunodiagnostic kits – stressed that the success of the company is linked to its use of IP to foster R&D.³³ One of the original points in FKB’s IP

²⁹ 4iP Council, ‘Caring for the future of health technology’ (4iP Council Features, 6 May 2022) available at <<https://www.4ipcouncil.com/features/caring-future-health-technology>>

³⁰ International Chamber of Commerce, ‘Intellectual Property: Powerhouse for Innovation and Economic Growth’ (2011) available at <<https://iccwbo.org/content/uploads/sites/3/2011/02/Intellectual-Property-Powerhouse-for-Innovation-and-Economic-Growth.pdf>>, p.12

³¹ International Chamber of Commerce, ‘Intellectual Property: Powerhouse for Innovation and Economic Growth’ (2011) available at <<https://iccwbo.org/content/uploads/sites/3/2011/02/Intellectual-Property-Powerhouse-for-Innovation-and-Economic-Growth.pdf>>, p.12-13

³² International Chamber of Commerce, ‘Intellectual Property: Powerhouse for Innovation and Economic Growth’ (2011) available at <<https://iccwbo.org/content/uploads/sites/3/2011/02/Intellectual-Property-Powerhouse-for-Innovation-and-Economic-Growth.pdf>>, p.12-13

³³ WIPO, ‘Intellectual Property and R&D: A Path to Success’ available at <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2559>>

strategy is utilizing information gathered on the patent database to understand what technology and improvements are currently missing in its field.³⁴ Moreover, studies have demonstrated that innovative SMEs are more likely to experiment and generate new inventions and processes compared to large companies, and therefore they would have to rely more on IPRs.³⁵

Furthermore, before protecting the output of R&D efforts with IP, confidentiality is a must-have. Thus, prior filing an application for the protection of an idea, the latter should not be disclosed, as unintentional leaks may jeopardise the entire process. At the same time, IP not only protects against external, but also from unauthorised appropriation of creations by employees within the company. According to Didier Tranchier – Founder and President of the French angel investment company ADELIT – *“patents are more important internally for start-ups than they are externally. Start-ups are volatile with high employee turnover. Founders can be very trusting and it happens quite often that code or ideas get stolen by former co-founders, employees or interns. There is a strong need to protect ideas and related work from employee theft.”*³⁶

b. Competitive Advantage

Strong IPRs are associated with having a better competitive advantage. It has been shown that companies that protect their assets are more competitive. However, the process is not as straightforward as it seems.³⁷ The protection of IPRs is relevant for gaining a competitive advantage only if: (i) the protection is appropriate to the products and the field in which the company operates, and (ii) it is complemented by effective enforcement of IP rights.³⁸

³⁴ WIPO, ‘Intellectual Property and R&D: A Path to Success’ available at <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2559>>. Similar views were shared by Laura MacDonald, General Manager at ASTP. 4iP Council, ‘Laura MacDonald, MD at ASTP-Proton explains the need for a good ecosystem and talks about industry’s increasing interest in university research’ (4iP Council Features, 15 June 2017) available at <<https://www.4ipcouncil.com/features/interview-laura-macdonald-md-astp-proton>>

³⁵ Federica Masucci, ‘Towards Europe’s Industrial and Digital Sovereignty: The Role of Intellectual Property Rights for Innovative SMEs’ (November 30, 2021) available at <<https://www.digitalsme.eu/towards-europes-industrial-digital-sovereignty-the-role-of-intellectual-property-rights-for-innovative-smes/>>

³⁶ 4iP Council, ‘Investor’s perspective’ (4iP Council Features, 25 September 2015) available at <<https://www.4ipcouncil.com/features/investors-perspective>>

³⁷ Aurora A. Teixeira & Cátia Ferreira, ‘Intellectual property rights and the competitiveness of academic spin-offs’ (2019) 4 Journal of Innovation & Knowledge 154, 155

³⁸ Aurora A. Teixeira & Cátia Ferreira, ‘Intellectual property rights and the competitiveness of academic spin-offs’ (2019) 4 Journal of Innovation & Knowledge 154, 156

On top of that, the IP strategy, including the filing for IP, must take place before entering into a market. As Alexandre Tsoukalis, speaking as the CEO and co-founder of Micrel Medical Devices – a French MedTech SME – explains *“to ensure your on-going business and leverage a disruptive innovation that has sound market acceptance, you need to survey the market at an early stage, plan your business strategy, and patent block competition from all possible alternatives and improvements to reserve as much space as possible for your business growth.”*³⁹

Moreover, a balanced IPR policy can also contribute to individualizing the business entity and building a positive reputation for new-born companies, which in turn constitutes a special type of competitive advantage typical of modern times.⁴⁰ Enjoying a positive standing means having a stable demand for products and thus stable profits.⁴¹ This is also evidenced by the statements of companies like the French software start-up Tempow. As its founders, Thomas Girardier and Vincent Nallatamby declare, *“IP is key for creating our technology partnerships with chipset and product manufacturers both because it protects our core product differentiations and because it increases our technical credibility.”*⁴²

Briefly stated, IP protection ensures that companies are able to differentiate themselves from other competing entities in the same market, and through this differentiation they are able to capture a market share and grow revenue from it.⁴³ Hence, granting them a competitive advantage.

c. Investments and Economic Growth

Studies show that IPRs are crucial for innovation and growth. IPRs help innovative companies to obtain a return on their investments, which can then be once again devoted to more research

³⁹ 4iP Council, ‘How a MedTech SME is using IP to drive change in treatment delivery’ (4iP Council Features, 9 October 2020) available at <<https://www.4ipcouncil.com/features/medtech-sme-driving-change-treatment-delivery>>

⁴⁰ Tetiana S. Novorodovska, ‘Using intellectual property as a competitive advantage of modern enterprise’ (2015) 11 Metallurgical and Mining Industry 208, 210

⁴¹ Tetiana S. Novorodovska, ‘Using intellectual property as a competitive advantage of modern enterprise’ (2015) 11 Metallurgical and Mining Industry 208, 210

⁴² 4iP Council, ‘Tempow – high tech earbuds for all’ (4iP Council Features, 3 December 2020) available at <<https://www.4ipcouncil.com/features/tempow-airpods>>

⁴³ Butlers, ‘Intellectual Property: Protecting your competitive advantage’ available at <<https://butlers.net.au/intellectual-property-protecting-business-assets/>>

and innovation, building a continuous circle of innovation.⁴⁴ As IP fosters innovation and economic growth, it is of utmost importance for Europe.

In this context, an effective IPR legal framework is a fundamental prerequisite for success because innovation often equals disruption. Although generally seen in a negative light, disruption can lead to positive outcomes.⁴⁵ For example, new technologies often bring disruption in the short-term. When focusing on fighting short-term negative impacts, long term higher benefits could be missed.⁴⁶ According to Broughel & Thierer, policymakers tend to have short term vision exacerbated by the opinions of those that are or claimed to be harmed by this disruption instead of focusing on the positive effects generally witnessed in the long haul.⁴⁷ Consequently, a positive attitude from policymakers towards technological developments could increase and incentivise the reliance on IPRs. This, in turn, would promote growth and prevent negative economic consequences, such as stagnation, stemming from short-term objectives and a disregard for the long-term benefits brought about by technological disruption.⁴⁸

Innovation and economic growth are two concepts that go hand in hand, especially in present times where technological innovation is rapidly evolving. Innovation is understood as “*finding new and better ways of doing things and introducing new ideas or new types of products and services into the marketplace*”.⁴⁹ However, innovation does not necessarily mean the latest technology but rather a proper phenomenon aimed at improving the welfare of society as a whole.⁵⁰ This is because, as Fumagalli (EPFL Vice President Innovation and Technology

⁴⁴ Fredrik Erixon et al., ‘The Benefits of Intellectual Property Rights in EU Free Trade Agreements’ (2022) 1 ECIPE (European Centre for International Political Economy) Occasional Paper 1, 19.

⁴⁵ James Broughel & Adam Thierer, ‘Technological Innovation and Economic Growth: A Brief Report on the Evidence’ (2018) Mercatus Research, Mercatus Center at George Mason University, p.17-18

⁴⁶ James Broughel & Adam Thierer, ‘Technological Innovation and Economic Growth: A Brief Report on the Evidence’ (2018) Mercatus Research, Mercatus Center at George Mason University, p.17-18

⁴⁷ James Broughel & Adam Thierer, ‘Technological Innovation and Economic Growth: A Brief Report on the Evidence’ (2018) Mercatus Research, Mercatus Center at George Mason University, p.18

⁴⁸ James Broughel & Adam Thierer, ‘Technological Innovation and Economic Growth: A Brief Report on the Evidence’ (2018) Mercatus Research, Mercatus Center at George Mason University, p.17-19

⁴⁹ James Broughel & Adam Thierer, ‘Technological Innovation and Economic Growth: A Brief Report on the Evidence’ (2018) Mercatus Research, Mercatus Center at George Mason University, p.5

⁵⁰ Sofia Ranchordás, ‘Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy’ (2015) 16(1) Minnesota Journal of Law, Science & Technology 413, 426-428

Transfer) rightly emphasized, “*ideas and inventions are clearly important but [...] the transformation into a viable product or service will be just as challenging and critical.*”⁵¹

IP is believed to be a key indicator of a firm’s technological and growth capabilities, as well as an asset in its enterprise value. A joint study of the European Patent Office (EPO) and the European Union Intellectual Property Office (EUIPO) released in February 2021 showed that those companies which own at least one trademark, patent, or registered design generally have 20% higher revenues per employee than those which do not have any IPRs.⁵² Even higher revenues are produced by SMEs that combine different intellectual property rights: small businesses that own both patents and trademarks generate 75% more earnings, while the additional revenue for those that have registered designs and trademarks amounts to 84%.⁵³ SMEs owning registered designs, patents, and trademarks generate almost double, namely 98%, the revenue per employee compared with companies that do not own any IP rights.⁵⁴

For this reason, IPRs have attracted the attention of investors, especially venture capitalists (VC), whose interest in this area has grown exponentially in the last decade.⁵⁵ Therefore, it is important for innovative start-ups to build a strong and balanced IPR portfolio, which will ensure they become attractive to investors. Erik Huneker, co-founder of Diabeloop – a French MedTech SME specialised in innovative solutions for type 1 diabetes treatment – emphasized that “*if you have not done your work on IP you will not get an investment*”.⁵⁶ Simultaneously,

⁵¹ 4iP Council, ‘Adrienne Corboud Fumagalli’ (4iP Council Features, 25 April 2015) available at <<https://www.4ipcouncil.com/news-events/features/adrienne-corboud-fumagalli>>

⁵² European Patent Office and European Intellectual Property Office, ‘Intellectual property rights and firm performance in the European Union: Firm-level analysis report – February 2021’ available at <[https://documents.epo.org/projects/babylon/eponet.nsf/0/7120D0280636B3E6C1258673004A8698/\\$File/ipr_performance_study_en.pdf](https://documents.epo.org/projects/babylon/eponet.nsf/0/7120D0280636B3E6C1258673004A8698/$File/ipr_performance_study_en.pdf)>, p.12

⁵³ European Patent Office and European Intellectual Property Office, ‘Intellectual property rights and firm performance in the European Union: Firm-level analysis report – February 2021’ available at <[https://documents.epo.org/projects/babylon/eponet.nsf/0/7120D0280636B3E6C1258673004A8698/\\$File/ipr_performance_study_en.pdf](https://documents.epo.org/projects/babylon/eponet.nsf/0/7120D0280636B3E6C1258673004A8698/$File/ipr_performance_study_en.pdf)>, p.51

⁵⁴ European Patent Office and European Intellectual Property Office, ‘Intellectual property rights and firm performance in the European Union: Firm-level analysis report – February 2021’ available at <[https://documents.epo.org/projects/babylon/eponet.nsf/0/7120D0280636B3E6C1258673004A8698/\\$File/ipr_performance_study_en.pdf](https://documents.epo.org/projects/babylon/eponet.nsf/0/7120D0280636B3E6C1258673004A8698/$File/ipr_performance_study_en.pdf)>

⁵⁵ Clara Neppel et al., ‘The Future of IP in Europe’ in R. Shimanami (Ed.), *The Future of the Patent System* (Edward Elgar Publishing 2012), p.110

⁵⁶ 4iP Council, ‘Life changing technical innovation in type 1 diabetes treatment uses and artificial intelligence to determine and administer insulin automatically’ (4iP Council Features, 4 June 2019) available at <<https://www.4ipcouncil.com/features/life-changing-technical-innovation-in-type-1-diabetes-treatment>>

a good IPR portfolio can also be successfully monetized. However, to do so it is fundamental “to understand and leverage all the different types of IP to build a total solution”⁵⁷ because a company’s value “is also in its trademark, design, trade secrets, brand, data and customer base”.⁵⁸ Thus, “the challenge is in creating and weaving together these different IP types and assets in order to monetise them”.⁵⁹

Turning to some noteworthy perspectives from investors, Jag Singh – one of Europe’s most active angel investors – declared that the most important thing investors think about is an effective and profitable exit strategy.⁶⁰ In order to do so, it is necessary to consider the most suitable type(s) of IPR for the business in question and decide at which stage of the process it is best to apply for such protection.⁶¹ Another crucial point is the definition of the claims related to a patent. For example, defining a technology too narrowly during a patent application might result in competitors easily designing around the patented technology, which is something that investors dislike during their due diligence assessments.⁶² Too broad claims, on the other hand, may make the patent more vulnerable to invalidation or a refusal to grant a patent (as it is easier to find prior art).

Conclusion

The present short paper addresses the importance of a strong IPR policy in Europe, in particular as it promotes the growth of SMEs and start-ups, which are the motor of European economy.

The current EC IP action plan is a welcome initiative as implementing an effective IPR policy fosters R&D, hence innovation. As shown in this article, IP allows companies to gain a

⁵⁷ 4iP Council, ‘Former Slovenian lawyer develops filters for washing machines to tackle microplastic pollution at the source’ (4iP Council Features, 21 June 2021) available at <<https://www.4ipcouncil.com/features/former-slovenian-lawyer-develops-filters-washing-machines-tackle-microplastic-pollution-source>>

⁵⁸ 4iP Council, ‘Former Slovenian lawyer develops filters for washing machines to tackle microplastic pollution at the source’ (4iP Council Features, 21 June 2021) available at <<https://www.4ipcouncil.com/features/former-slovenian-lawyer-develops-filters-washing-machines-tackle-microplastic-pollution-source>>

⁵⁹ 4iP Council, ‘Former Slovenian lawyer develops filters for washing machines to tackle microplastic pollution at the source’ (4iP Council Features, 21 June 2021) available at <<https://www.4ipcouncil.com/features/former-slovenian-lawyer-develops-filters-washing-machines-tackle-microplastic-pollution-source>>

⁶⁰ Jag Singh, ‘How startups and SMEs should think about IP: an investor’s perspective’ (WIPO Magazine, June 2021) available at <https://www.wipo.int/wipo_magazine/en/2021/02/article_0006.html>

⁶¹ Jag Singh, ‘How startups and SMEs should think about IP: an investor’s perspective’ (WIPO Magazine, June 2021) available at <https://www.wipo.int/wipo_magazine/en/2021/02/article_0006.html>

⁶² Jag Singh, ‘How startups and SMEs should think about IP: an investor’s perspective’ (WIPO Magazine, June 2021) available at <https://www.wipo.int/wipo_magazine/en/2021/02/article_0006.html>

competitive advantage, both in the traditional form, as well as in a more modernized reputation-oriented fashion. This ability to compete in a certain market combined with a recognition by other market participants ensure profits and growth. Moreover, investments, required at the start and for the well-functioning of a SME, are dependent on the reliability of their products and services, which is nowadays typically assessed through the SMEs' IP portfolio.

IPRs can therefore enable innovative companies to obtain revenues deriving from their investments, which can be channelled again towards more research and innovation.

For these reasons, innovative SMEs should take action and value, protect and monetize their IP so as to promote technological developments in a virtuous cycle of innovation and economic growth.

Finally, it is crucial to strengthen SMEs interaction with IP offices, investors and all the involved parties to better understand the causes hindering the reliance on IPRs and find suitable solutions. In this light, the initiatives implemented so far by the different EU institutions are already a step towards this goal and they will most certainly help the promotion of IP.