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Patent and SMEs. What do we know and do not know? (A review of the literature)



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SUMMARY

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Abstract

In the present paper, the author summarizes the current status of research regarding the challenges that small and medium-sized enterprises (SMEs) face in connection with the creation, use and protection of Intellectual Property Rights (IPRs), particularly patents. Findings indicate that several factors (such as costs, complexity of procedures and difficulties in the enforcement of rights) prevent SMEs from using IPRs and especially patents effectively. The author shares these concerns and argues that the current patent system needs improvement, in order to meet the needs of SMEs in the modern global economy.

Summary

In the last decades, following the introduction of new technologies and the transformation of the global value chain, small and medium-sized enterprises (SMEs) have gained growing importance in innovation and economic development.

Although evidence suggests that SMEs tend to lag behind larger companies both in innovation and R&D expenditure, they are, on average, more innovative than one might think. According to surveys, about 33 % percent of companies with 10 to 49 employees and around 40 % of companies with 50 to 249 employees introduced new or significantly improved products or processes between 2002 and 2004.

In the context of innovation, Intellectual Property Rights (IPRs), and particularly patents, are of key importance to SMEs. Surveys suggest, that SMEs owning IPRs have 32 % higher revenue per employee than SMEs that do not own IPRs.

SMEs benefit in various ways from IPRs, especially patents. Owning IPRs gives SMEs the freedom to operate, opens up new commercial pathways or segments existing markets, grants access to knowledge markets and networks and allows SMEs to position themselves competitively vis-à-vis larger companies in global markets. In this way, IPRs signal current and prospective value to investors, competitors and partners. Furthermore, by owning IPRs SMEs can protect their ideas from imitation (according to surveys, almost 1/3 of SMEs that registered IPRs declared having suffered infringement) and generate revenues through licensing activities.

Nevertheless, several studies suggest that SMEs often neither register or license, nor enforce IPRs. Indeed, a number of studies indicate that patenting activity is relatively uncommon among SMEs (for

instance, the EU Intellectual Property Office reported that only 9 % of SMEs have registered IPRs, in contrast to 40 % percent of larger companies). The only exception are the solid patenting activities of SMEs in certain high technology sectors (for example pharmaceuticals, biotechnology, semiconductors and information technology), where patents owned by SMEs tend to outnumber and outperform patents of larger companies in a series of categories, including growth, citation impact, and originality.

In general, SMEs appear to refrain from using IPRs, because they fail to see any benefit in protecting innovations, lack knowledge on how to do so and/or consider the costs attached as being very high. It is, therefore, not surprising that most SMEs protect their intangible assets not through IPRs, but through informal methods, such as developing high-trust relationships or maintaining lead-time advantages.

Particularly with respect to patents, different studies show that the main reasons for refraining from patenting are (1) the complexity and costs of patent filing procedures, (2) the costs for maintaining patents, especially patent portfolios and (3) the costs and low effectiveness of patent protection and enforcement. These factors appear to have an even greater negative impact on patenting, when filing, maintaining and enforcing patents has to take place in several countries and jurisdictions. Further factors speaking against patenting are considered to be the possibilities given to competitors to legally invent around most patents and the limits posed on patent protection by the rapid changes in technology.

Surveys suggest that SMEs, primarily, wish for a simplification and shortening of registration and filing procedures and better access to IPR databases. Other means to support patenting include granting of financial support as well as enhancing information, guidance and support services to SMEs.

In terms of cost reduction, some patent offices already support SMEs through discounted filing and maintenance fees (for example in the USA, Brazil and Canada). The majority of patent offices offer, however, reductions only on filing fees (in some cases, also on the fees for the renewal of a patent in the first years). Considering that maintenance costs place the strongest burden on most SMEs, cost reductions limited only to filing fees do not appear to have a significant impact on the patenting activities of SMEs, as a study indicates.

In terms of improving access to patent litigation for SMEs, the planned European Unitary Patent Court will grant SME's a 40 % reduction on court fees.

In terms of providing support services to SMEs, surveys identified respective needs of SMEs particularly with respect to the following: (1) Awareness-raising and training in IP, (2) technological information services, (3) financial assistance, (4) customized advisory services in IP, and (5) assistance for IP exploitation and technology transfer.

Based on the above, the author comes to the conclusion, that the current patent system does not protect SMEs in a sufficient manner. This system, which was designed to protect inventors of any size, but in a limited space, seems not able to cope with the challenges posed by profound changes in the conditions of innovation and the globalization of the economy.