

Contribution to the European Commission Intellectual Property Action Plan

1. 4iP Council is an organisation made up of 23 supporters and ecosystem partners, whose aim is to develop high-quality academic insight and empirical evidence on topics related to intellectual property and innovation. Patent rights are where the main competence of 4iP Council research has focused initially.¹ Nevertheless, 4iP Council has developed many tools and resources dedicated to start-ups² and SMEs covering copyrights, trademarks, design rights and patents. This is part of the [4SMEs initiative](#), through a dedicated page³ that helps SMEs to better understand what are the different types of IPRs,⁴ the benefits of IPRs, and how they can be fully used by SMEs to grow their business.⁵
2. IP is the pillar of the EU economy and our research has shown that to continue to sustain European inventiveness and innovation across all sectors, particularly in the technology-focused sectors, a strong cohesive IP framework is vital for European Industrial policy. 4iP Council has a deep understanding of the value of a strong IPR system and what it implies for future economic growth, and based on our research we have compiled recommendations for the use of IP Policy in ‘Revitalising European Inventiveness’.⁶ We have conducted empirical research and curated materials which can lend support to the Commission’s creation of the IP roadmap.
3. SMEs are the “backbone” of the European economy and their growth and success are vital to moving forward.⁷ However, as recognised by the Commission and shown by 4iP’s

¹ At its core a patent right forms part of a “social contract” between society and inventors, with society recognizing that invention and its public disclosure is socially beneficial and that protection should be granted to the owner of the invention, given that the knowledge is intangible and can therefore be copied once disclosed. Indeed, patents have a broad social welfare-enhancing function well beyond manufacturing. Understanding the dynamics of the broad “market” opportunities provided by the patent system – perhaps better understood as a multisided and multilevel eco-system – is critical in developing policies that foster European technology leadership given how the impact of policies in one area can affect the whole innovation ecosystem. See 4iP Council’s “[Principles for Research in Patent Markets](#)”.

² See 4iP Council’s [resources](#) for SMEs.

³ See 4iP Council’s dedicated page for [SMEs](#).

⁴ See 4iP Council’s interactive guide and resources on different types of IPRs through the 4 Reasons series ([4 Reasons to Patent](#); [4 Reasons 4 Copyright](#); [4 Reasons 4 Trademarks](#); and [4 Reasons 4 Design Rights](#)).

⁵ See 4iP Council’s guide on “[How do I use intellectual property to grow my business?](#)”.

⁶ See 4iP Council’s “[Briefing Note for the New European Commission: Revitalising European Inventiveness: Recommendations for the European Commission 2019-2024](#)”.

⁷ A recent joint report by the European Patent Office and the European Union Intellectual Property Office on High-growth firms and intellectual property rights; IPR profile of high-potential SMEs in Europe’ shows how significant it is for growth prospects for SMEs to build an IPR strategy into their business model. See “[High-growth firms and intellectual property rights](#)”.

research,⁸ SMEs' and research centres' use of IP is limited due to their lack of knowledge of IP or the complexity of the IP system, which can be costly and difficult to navigate.

Protection of IPR Investments

4. As the EU embarks on creating the new digital single market, 4iP emphasises that improving patent protection and encouraging patent growth is integral to digital innovation. Patents have a social welfare enhancing function beyond manufacturing. While the current patent system is flexible and can adapt to meet evolving market needs the process of inventing and obtaining a patent both within Europe and outside is a risky, costly and complex process. The value of patents to an inventor/company can be greater than manufacturing and *'can range from reputation to technology transfer and from access to capital insolvency'*.⁹
5. Notably, patents are effectively the “currency” of the Digital Economy technology base. The success of the system depends on patent quality that needs to be maintained and, where possible, further improved. The patent system has shown huge flexibility (exclusivity, licensing, access to capital, knowledge transfer, reasonable access to technology etc). Patents are assets and thus provide an investment basis by creating the opportunity to provide a return for successful technological solutions. However, patents cannot prevent free-riding once an idea is published and available to the public, unless, of course, patent rights are respected. SMEs and start-ups need patent protection for their technology to compete against and/or have bargaining power versus large competitors and/or licensees. The possibility for a patent holder to enforce its patent/s in a timely and efficient manner is critical for the right to have value.¹⁰

⁸ See 4iP Council's summary of [“Intellectual Property Management in Small and Medium-Sized Enterprises A Systematic Literature Review”](#), Rocha Lime Francisco, Belmino Dos Santos João, IJIER, Vol 6, No-09, 2018. 4iP Council aims to help European SMEs/Start-ups optimise their IP assets and find a wide range of materials and support mechanisms.

⁹ See 4iP Council's Briefing [“Note The varied multiple functions of patents”](#), November 2015.

¹⁰ See 4iP Council's post on [“Patents and the Digital Single Market”](#), 17 March 2015.



6. Obtaining a patent is the first step for inventors/companies to create a viable commercial product. Further capital investment and the development of effective IPR strategies are necessary for an inventor/company to monetise and reap the full benefits of their invention. Companies that are actively engaged in the creation of IP and usage of IPR, are proven to become more successful and so contribute more to the European GDP.¹¹ To properly support the investors/companies taking on this risky initiative, Europe must both create an environment which can effectively deter free-riding or unfair competition and ensure timely and efficient protection of intangible property. This will limit the risks which cause European start-ups to fail, while also improving uptake and investments in IPR by SMEs. This will help European companies to fully compete on a global scale.
7. This growth will only occur in the EU if technology creation is valued and protected by the regulatory framework and ultimately the courts. The ability of patent holders to seek judicial redress and have effective access to courts and remedies is core to have meaningful intangible property protection. The Enforcement Directive makes this clear: intellectual property requires a high level of protection throughout the EU. It is strongly recommended that the Commission ensures strong respect and protection of IPR. A climate of respect for invention and intellectual property would also enable the Commission to ensure that intangible assets are a greater asset for European inventors.
8. Robust rule of law, access to courts, and respect for property rights are essential for a strong IPR system.¹² Therefore, projects such as the Unified Patent Court should be supported and implemented. This will help with the Commission's Roadmap initiative of creating a Unitary Patent System.
9. In relation to a balanced approach regarding injunctions, and highlighting that one of the aims of the Roadmap is to counter IP theft, it is important to emphasise that courts in

¹¹ A recent joint report between the European Patent Office and the European Union Intellectual Property Office on the performance of IPR intensive industries to the EU economy shows the significant contribution which IPR-intensive industries makes to the total economic activity (GDP) in the EU. See '[IPR-intensive industries and economic performance in the European Union](#)' September, 2019.

¹² See Dr. Claudia Tapia, '[Impact of perceived high invalidity rates in business and innovation](#)', [2016]The Patent Lawyer.

European member states have, on the whole, a balanced approach towards injunctions.¹³ Further limitations to the right to seek, obtain and enforce an injunction may weaken IPRs, thereby reduce their attractiveness and forego the potential benefits they offer for a healthy investment and innovation climate.

10. 4iP Council is willing to further help the European Commission to upgrade the European IP system, promote its smarter use, ensure and strengthen better IP enforcement as well as promote fair play globally for intellectual property rights. 4iP Council's creation of free tools, educative instruments (with the help of webinars), academic papers, promotion of companies' behaviour and success stories greatly help to make intellectual property rights better understood by all.

¹³ See 4iP Council's summary of the paper '[Injunction in European Patent Law](#)' Prof. Dr. Lea Tochtermann, May 2019; and '[The practice of claiming a court injunction ordering an implementer to cease and desist from infringing a patent](#)', Uwe Scharen, November 2018. Further, 4iP Council shows its commitment to being an up-to-date library and guide for European case law decision through the dedicated page '[Case Law post CJEU ruling Huawei v ZTE](#)'.