

Intellectual Property

Positive aspects of IP rights

The primary, well-known function of an IP right is to give its holder a competitive advantage in its commercial activities, by preventing unauthorised exploitation by thirds. This is especially important for SMEs, which IP rights provide with powerful weapons to compete with much larger companies.

However, IP rights have other, **less frequently mentioned benefits**, including :

(1) Providing guarantees regarding the quality and safety of products

Many counterfeit products place our children's and citizens' **safety or health at risk**, for instance where vehicle spare parts or drugs are concerned. Enforcing IP rights in respect of such products guarantees at least that the products' origin is known and that the products are genuine, whereas counterfeit products often do not comply with the applicable safety standards. This is especially true for trade marks, but patent licensing contracts, for instance, may also include quality insurance clauses.

(2) Enabling indirect exploitation

Where a company has protected its products (or processes, etc.) by IP rights, it can derive revenues not only from their direct exploitation (by that company), but also from their indirect exploitation by third parties, under licensing contracts. These **additional indirect revenues** sometimes exceed the profits resulting from the direct exploitation, especially as they do not require additional internal manufacturing capacities. Such an approach may therefore be particularly relevant for **SMEs**. It is also important for universities and public research centres, which usually do not have any direct exploitation activities.

(3) Cost-free mechanisms

While certain procedures required for the registration of IP rights are considered to be expensive, in particular by **SMEs**, it should be noted that certain IP rights can be enjoyed without any formal procedure and **without paying any official fees**. This is in particular the case for copyright and for unregistered designs.

(4) Dissemination of technical information

Even where a company (or university, etc.) does not intend to protect its own inventions, its staff (researchers, etc.) can still make use of **patent information**.

Patents are the most prolific and up-to-date source of technological information, and contain detailed technical information which often cannot be found anywhere else: it is estimated that **up to 80%** of current technical knowledge can only be found in patent documents. Moreover, this information is **rapidly**

available, as most patent applications are published 18 months after the first filing.

Searches in patent literature can be conducted by anyone by using for instance the free-of-charge [esp@cenet patent database](mailto:esp@cenet.com). It provides access to more than 60 million patent documents from all over the world, classified by technological areas on the basis of the sophisticated *International Patent Classification*.

There are good reasons to search patent literature:

- Avoid duplication of R&D efforts and spending (it is estimated that up to 30% of all expenditure in R&D is wasted on redeveloping existing inventions).
- Find solutions to technical problems (especially as the majority of all patents – around 85% – are no longer in force, a vast number of inventions is thus available for free).
- Gather business intelligence (as patents not only reveal technological information areas, but also make it possible, at a very early stage, to identify potential competitors, customers and partners; to monitor the innovation strategies of competitors; etc.).

(5) **Facilitating technology transfer**

Patents often constitute a convenient means to not only protect but also describe in a very **accurate** way technologies which are the subject of technology transfer and similar agreements (licensing, assignment, etc.). This "technology packaging" / trade facilitation function justifies that patents have sometimes been considered as the "**currency**" of the knowledge-based economy. (To some extent, the same reasoning also applies to IP rights other than patents.)

(6) **"Open source" relies on IPR**

Open source mechanisms are becoming popular in certain sectors such as software (cf. GPL licences, etc.). While the common perception is that such mechanisms are characterized by the absence of any IP protection, it is worth noting that a typical GPL (General Public) licence **actually relies on IP rights** as it is typically a copyright license which remains valid as long as certain conditions are complied with (e.g. freedoms received by the licensee must be passed on to subsequent users, even where the software is modified).

(7) **Collateral to obtain financing**

As intangible assets, IP rights often play an instrumental role for SMEs (including start-ups and spin-offs) trying to convince third parties to provide financing to them (equity investment, loan granting, etc.).

