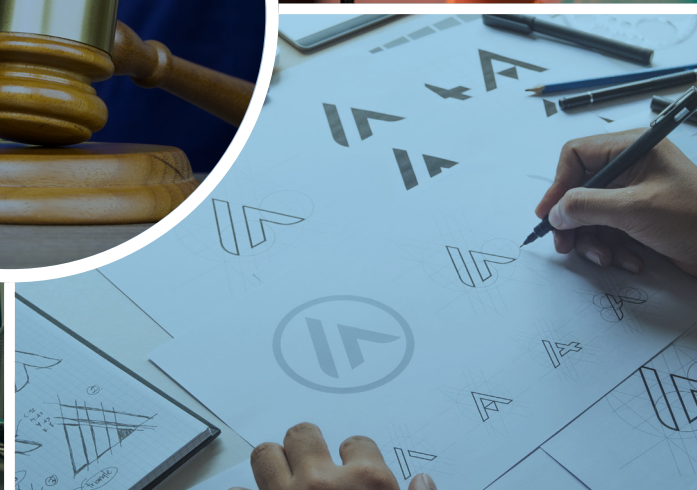




# INTELLECTUAL PROPERTY PRIORITIES

UNLOCKING THE EU'S INTANGIBLE  
ASSETS POTENTIAL





# INTRODUCTION

To deliver for society, the European Union (EU) needs strong companies as much as European companies need a strong European Union (see [BusinessEurope Stronger Business Stronger Europe strategy](#)). During the coming political cycle, it is crucial to improve Europe's competitiveness and attractiveness.

Intellectual property (IP) policy is key for making that happen. EU competitiveness can only be unlocked using different tools and policies and intangible assets<sup>1</sup> are an unavoidable element for any developed economy. Intangible assets are essential for innovation, and some go to the extent of naming it a form of currency. Intellectual property and innovation should be part of the conversation on competitiveness that is so much centering EU institutions' priorities for the coming 5 years. Intellectual property activity is an indicator of innovation performance of a company and the economy. A renewed focus on innovation and the development of intellectual assets would allow European and European-based companies to benefit from the resulting gains in productivity and acquire an advantage over international competitors.

For European companies to continue innovating and delivering enabling technologies in all fields, including in green and digital transition, they need rules and a framework on intellectual property that are fit for purpose. We welcome that the recent Draghi report highlights that Europe is failing to translate innovation into commercialisation for which intellectual property is a key element<sup>2</sup>.

It is also necessary to ensure that investments in research and innovation (R&I) are made. Legal uncertainty, the potential dilution of IP rights<sup>3</sup>, and the lack of emphasis given by decision-makers on IP issues may drive investments away from Europe.

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<sup>1</sup> See statement from WIPO Director General Daren Tang, according to which "One game changing but invisible trend in our global economy is the rise of intangible assets as the driver and holder of value in our global economy. Even in the current period of economic uncertainty, intangible investment is thriving and consistently outpacing total tangible investment, surging both in high-income economies like the United States and Europe as well as in fast-emerging economies like India.", June 2024, available at [https://www.wipo.int/pressroom/en/articles/2024/article\\_0008.html](https://www.wipo.int/pressroom/en/articles/2024/article_0008.html).

<sup>2</sup> See Mario Draghi Report on the "Future of European Competitiveness" ("Draghi report"), September 2024, page 202, available at [https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92\\_en?filename=The%20future%20of%20European%20competitiveness\\_%20In-depth%20analysis%20and%20recommendations\\_0.pdf](https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92_en?filename=The%20future%20of%20European%20competitiveness_%20In-depth%20analysis%20and%20recommendations_0.pdf)

<sup>3</sup> This dilution is expected to be caused by legislative proposals such as the Compulsory Licensing proposal, Data Act (in relation to trade secrets), Environmental Claims Directive (also in relation to trade secrets) and New Genomic Techniques proposal (the latter is expected to spillover effects beyond crop science).

# 1

## GROWTH AND COMPETITIVENESS IN A KNOWLEDGE-BASED ECONOMY

IP development is key to fostering the production of new knowledge which drives economic growth for incumbent and frontier firms. European businesses need to be at the cutting edge to remain competitive. Europe needs to grow and scale its enterprise base, as well as attract investment from global companies, which will contribute to employment growth. Europe must continue to provide the right framework conditions for these firms to specialise in the full lifecycle of business for high value-added products from R&D to production, and on to sales, marketing, logistics and finance. Currently the European economy is not performing as it should. The EU GDP is not growing in the same way as in, for example, the US and China.<sup>4</sup> This is linked to a lack of European competitiveness linked to multiple factors well portrayed in the recent Draghi and Letta reports<sup>5</sup>. Better awareness of IP and more adequate conditions for use and enforcement of intellectual rights could contribute to boosting European competitiveness.

In a highly competitive world, it is important to evaluate what really constitutes competitiveness. Since Europe and many other countries are part of a knowledge-based economy, it can be argued that making the most of knowledge is what constitutes competitiveness. To keep up with international competition, companies must quickly and effectively turn the good ideas of their employees, their research (including collaborations with universities) and development investments, into marketable products and secure their competitive position and further financing<sup>6</sup>. Patents, trade marks, designs, copyrights and related rights as well as trade secrets provide for the legal framework to enable this.

Many countries and regions have identified the importance of intellectual property in order to enhance competitiveness. For example, this can be seen in some parts of the world, showing the fast growth when it comes to the registration of different intellectual property rights. The highest growth of registrations is no longer found in Europe or the US any longer, but other regions in the world<sup>7</sup>.

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<sup>4</sup> In 2023, the EU GDP grew by 0.5% only, while the US GDP grew by 3.1% and China GDP by 5.2%.

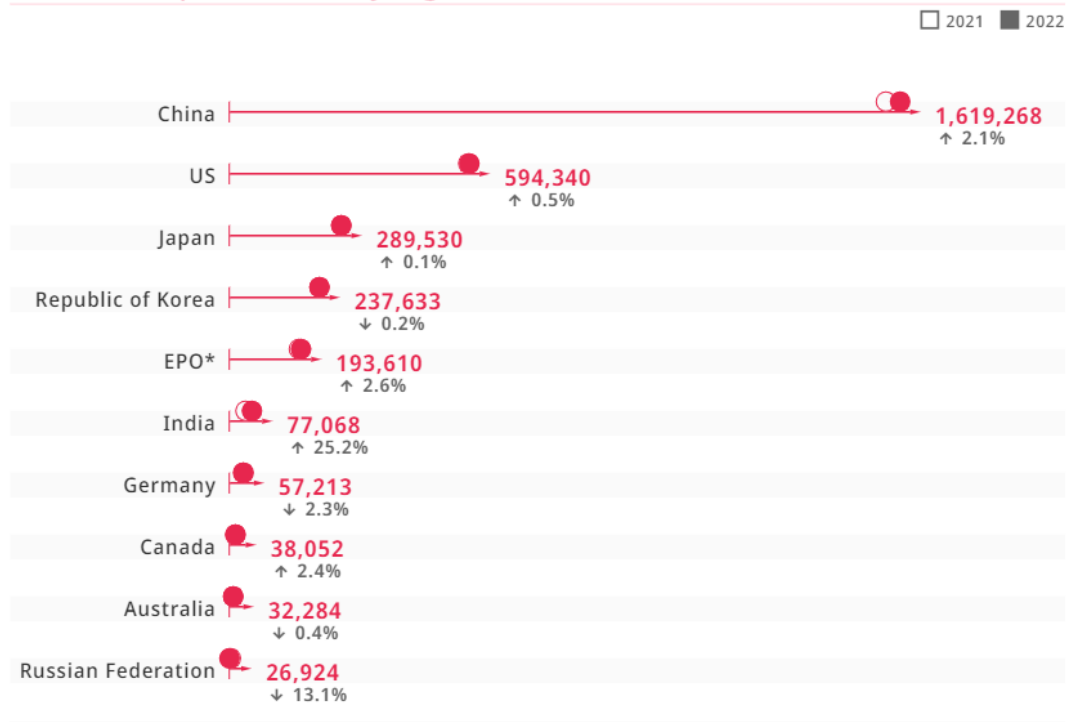
<sup>5</sup> Enrico Letta report "Much more than a market", April 2024, available at ([https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead\\_en](https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en)).

<sup>6</sup> The EPO-EUIPO study "Patents, trade marks and startup finance" shows that European startups applying for patents and/or trade marks during their initial seed or early growth stages are up to 10.2 times more likely to secure funding from investors. What's more, the ownership of European patents and EU trade marks is associated with an even higher advantage, with a rate of securing early-stage funding exceeding five times that of those with only national intellectual property rights. Further, The filing of patent and/or trade mark applications is associated with a more than twice as high likelihood of successful exit for investors (EPO-EUIPO study "Patents, trade marks and startup finance", October 2023, available at <https://link.epo.org/web/publications/studies/en-patents-trade-marks-and-startup-finance-study-executive-summary.pdf>).

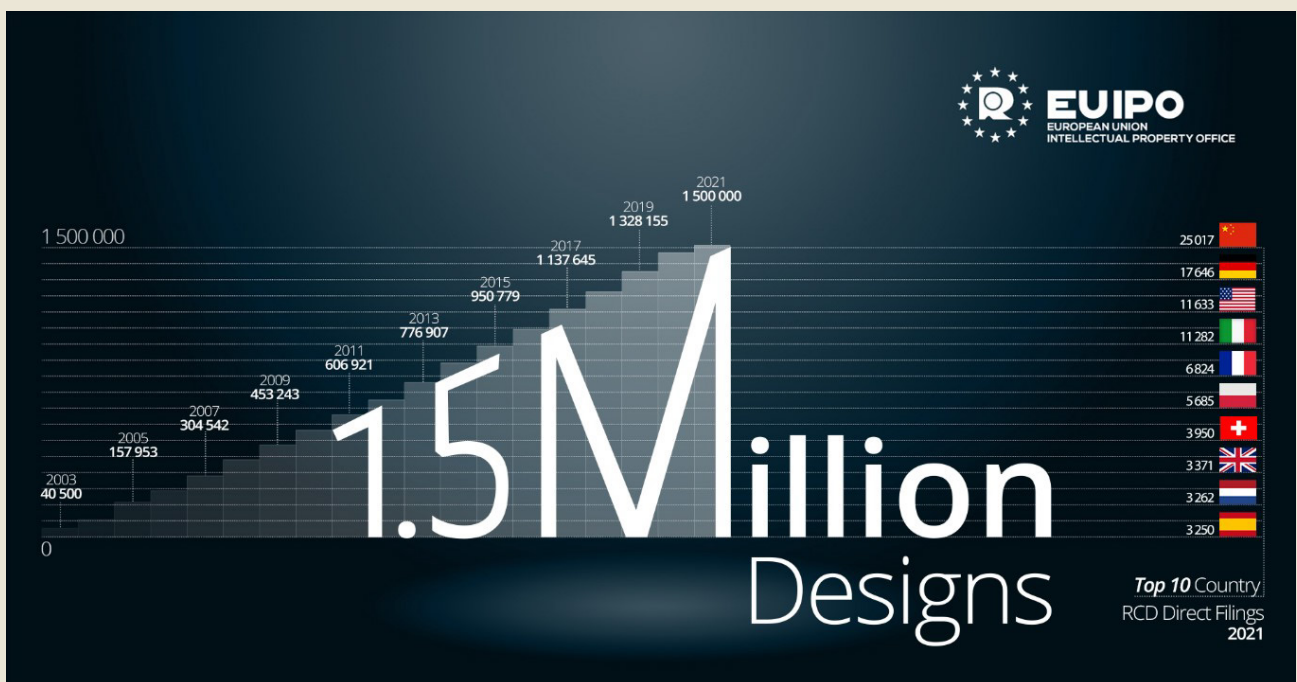
<sup>7</sup> See EPO's press release "Innovation in digital and clean-energy technologies boosts demand for patents in Europe in 2023", March 2024, available at <https://www.epo.org/en/news-events/press-centre/press-release/2024/1101722>.



## Where was patent activity highest?



Source: WIPO Statistics Data Base, March 2024.<sup>8</sup>



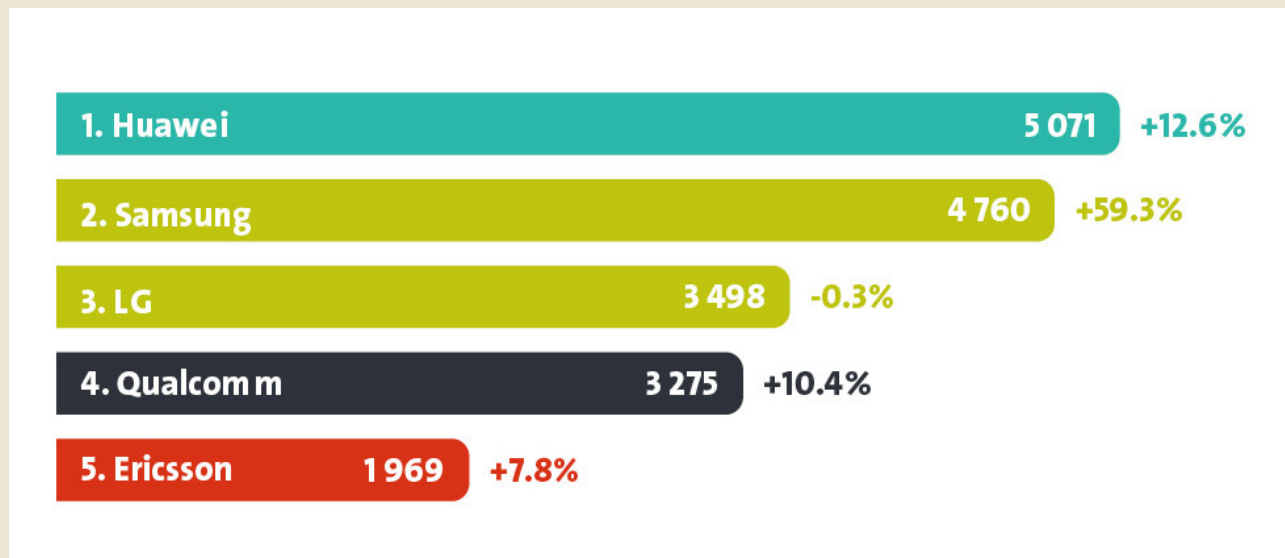
Source: EUIPO Annual activity report 2021<sup>9</sup>.

<sup>8</sup> WIPO Statistics Data Base, March 2024, available at <https://www.wipo.int/en/ipfactsandfigures/patents>.

<sup>9</sup> EUIPO "Annual activity report 2021", available at [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/contentPdfs/about\\_euiipo/annual\\_report/annual\\_activity\\_report\\_2021\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euiipo/annual_report/annual_activity_report_2021_en.pdf).

This is linked to, among others, the adoption of effective policies on innovation and intellectual property by our competitors. Even developing countries, like Botswana, have adopted policies in this field aiming at having an IP-driven economy in 10 years<sup>10</sup>.

Europe is, seen from an international perspective, lagging behind in a number of areas<sup>11</sup>. EUIPO and EPO figures are indicative of this reality by showing that top patent and design filers in Europe are since a while largely composed of thirdcountry companies.



Source: The EPO Patent Index 2023 shows that, in 2023, only one European company ranked among the Top 5 patent applicants at the EPO<sup>12</sup>

It is possible to change this scenario, whilst at the same time ensuring that Europe is a global IP hub. This has been also emphasised in the recent Draghi report<sup>13</sup>.

Another indication that Europe is lagging behind is the number of Science and Technology Clusters. World Intellectual Property Organisation rank these clusters yearly and it is evident that other parts of the world are moving forward.<sup>14</sup>

In its latest priorities paper for the coming legislature, BusinessEurope is calling to put competitiveness<sup>15</sup> at the heart of European policies, building on EU achievements, with targeted actions to tackle the structural weaknesses that are undermining companies' efforts to deliver for people. The EU IP system should also be the object of targeted actions which could be covered under an updated **IP Comprehensive Strategy** which strengthens the use and the enforcement of IP rights, while ensuring competition.

<sup>10</sup> In 2022 Botswana adopted a comprehensive IP Strategic Plan, available at [https://inventa.com/uploads/63d7951a5b429\\_IP%20Policy%20BIPP%202022%20\(1\).pdf](https://inventa.com/uploads/63d7951a5b429_IP%20Policy%20BIPP%202022%20(1).pdf).

<sup>11</sup> See, European Parliament paper "AI investment: EU and global indicators", 2024, stating that "Economic indicators show that the United States (US) is the front-runner for both private investment in artificial intelligence (AI) and venture capital in generative AI, followed by China" (available at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760392/EPRS\\_ATA\(2024\)760392\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760392/EPRS_ATA(2024)760392_EN.pdf)).

<sup>12</sup> The EPO Patent Index 2023 is available at <https://www.epo.org/en/about-us/statistics/patent-index-2023/statistics-and-indicators/applicants>.

<sup>13</sup> See, Draghi report page 289.

<sup>14</sup> WIPO Science and Technology Cluster Ranking 2024 is available at <https://www.wipo.int/web/global-innovation-index/2024/science-technology-clusters>.

<sup>15</sup> See BusinessEurope "Reboot Europe - Stronger businesses, stronger European Union" available at <https://www.businesseurope.eu/publications/reboot-europe-stronger-businesses-stronger-european-union>.

This comprehensive strategy should aim at making sure that the innovative power in Europe is not lost due to lack of awareness regarding the intangible assets.

In other parts of the world, countries have developed strategies and policies to strengthen the connection between research, innovation, competition and intangible assets. These policies, e.g. from South Korea and Singapore, should serve as positive examples for policy development in Europe. They have strengthened their competitiveness, so could do Europe.

It is also **important that the impacts on intellectual property are not overlooked** when developing what in appearance are non-IP initiatives. During the last political cycle, we have seen Agendas and Action Plans in other policy areas where there was not enough consideration of the impact that it might have on competitiveness in a knowledge-based economy. Some examples were the European Innovation Agenda (proposals there on innovation procurement), the Pharma package, and the Data Act.

## 2 BUSINESSES IN A KNOWLEDGE-BASED ECONOMY: PROMOTING IP LITERACY IN COMPANIES

Running a business is the responsibility of the owners. At the same time, the legislator's responsibility is to make sure that both the material and immaterial infrastructures are in place and that they are fit for purpose.

When considering the factors creating the immaterial infrastructure in a knowledge-based economy, it is evident that there is big room for improvement in Europe.

For any business, it is of paramount importance to be selected, to stand out among your competitors. All companies need to protect their assets, which can be their commercial advantage resulting from technical or scientific innovation. If a company's products or services gather the preferences of its customer base and business partners this means revenue, growth, and survival. When customers make their choice, intellectual property rights are often crucial. It can be a trade mark being the selling point, a patented technical functionality or a copyright-protected piece of content. Numerous studies/reports have established that businesses having registered rights have significantly higher revenues than companies that do not.<sup>16</sup>

Intellectual property rights, and patents in particular, are an important asset not just for large companies. Low levels of formal IP ownership amongst SMEs are a pan-European phenomenon which is explained by a multitude of factors such as lack of resources put on R&I, lack of access to financing, lack of awareness on IP, cost of filing of IP and maintenance fees. This should not be interpreted as that IP ownership is not relevant to SMEs or that they are not innovating.

SMEs could and should register rights to a much larger extent than what they are doing now.<sup>17</sup> It is demonstrated that IPR-intensive industries tend to be more profitable, generate higher revenue,

<sup>16</sup> See, for instance, EPO-EUIPO "Intellectual property rights and firm performance in the European Union", October 2022, available at [https://link.epo.org/web/ipr-intensive\\_industries\\_and\\_economic\\_performance\\_in\\_the\\_EU\\_2022\\_key\\_findings\\_en.pdf](https://link.epo.org/web/ipr-intensive_industries_and_economic_performance_in_the_EU_2022_key_findings_en.pdf).

<sup>17</sup> According to the EUIPO "2022 Intellectual Property SME Scoreboard", only 10% of EU SMEs own registered IP rights (this study can be accessed at [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IP\\_sme\\_scoreboard\\_study\\_2022/IP\\_sme\\_scoreboard\\_study\\_2022\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_sme_scoreboard_study_2022/IP_sme_scoreboard_study_2022_en.pdf)).

attract more investment, employ more people, and pay higher wages than non-IP owning firms.<sup>18</sup> It can also be noted that Europe is falling behind when it comes to education among companies and citizens on intellectual property, no matter what level of education.

The context described above should necessarily lead to action at EU level. It is important to raise awareness among SMEs, but this can only be done by activities also aimed at educating on the knowledge-based economy. During the last years, efforts have been made in this direction. However, these efforts are to be found in places where those who already know what they are looking for can find it, for example at webpages of the intellectual property offices.

Lack of awareness has negative effects. Many lack the ability to know when to ask questions regarding intellectual property. SMEs and researchers often do not know what question to ask or even who they should ask<sup>19</sup>. The problem is also that, even if they manage to ask the right question to the right person, they do not have the ability to evaluate the answer. The objective should not be that SMEs become experts in IP, but to ensure that they are aware of the importance and benefits for them of IP and motivate them to look for expert and reliable advice.

**Raising awareness is to be done directly aimed at the SMEs, where they are.** It must also be a part of education, from lower school levels to universities which themselves need to have more suitable IP strategies (through better advice) that help valuing and making the most of innovative ideas nurtured within the academic world. Prior efforts, like the work on knowledge valorisation, can serve as a good example of how this can be done.<sup>20</sup> This should benefit not only the SMEs but all companies and therefore be a part of promoting growth.<sup>21</sup>

Intangible assets can be what some call a currency of innovation. Intellectual property rights are a key component in the discussion about innovation. Innovation is not just having ideas. Innovation can greatly benefit from intellectual property as a tool to monetise and bring ideas to market and to facilitate collaboration, given that it can be licensed or made available in crisis situations such as Covid-19. A balanced and agile IP policy that properly considers competition rules can ensure that downstream innovation by manufacturing businesses will not be blocked. Measuring innovation is a difficult task and IP filing rates can be seen as just one indicator.<sup>22</sup> For European competitiveness it is important that research, innovation, competition and IP are seen in connection with each other. For example, this has successfully been done by Singapore.<sup>23</sup>

A renewed focus on innovation more broadly, and the development of intellectual assets and manufacturing could underpin European competitiveness. As explained above, this can be done in a holistic way by informing, educating and exploring different types of incentives.

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<sup>18</sup> EPO-EUIPO “Intellectual property rights and firm performance in the European Union”, 2022.

<sup>19</sup> Many SMEs are not aware of the key requirements for patentability, such as inventive step, industrial applicability, and novelty. Additionally, they are often unfamiliar with the procedures for securing protection and the available safeguarding measures.

<sup>20</sup> More info on the Knowledge Valorisation Platform can be accessed at [https://research-and-innovation.ec.europa.eu/research-area/industrial-research-and-innovation/eu-valorisation-policy/knowledge-valorisation-platform\\_en](https://research-and-innovation.ec.europa.eu/research-area/industrial-research-and-innovation/eu-valorisation-policy/knowledge-valorisation-platform_en).

<sup>21</sup> For example, it has been shown that startups with intellectual property rights are much more likely to attract financing than those without intellectual property rights (see The EPO-EUIPO study “Patents, trade marks and startup finance”, 2023).

<sup>22</sup> See the methodologies applied by both the Global Innovation Index and European Innovation Scoreboard.

<sup>23</sup> Singapore IP Strategy 2023 is available at <https://www.ipos.gov.sg/docs/default-source/default-document-library/singapore-ip-strategy-report-2030-18May2021.pdf>



### 3 HOW DO WE MAKE EUROPE STRONGER THROUGH IP POLICY?

Even though the Intellectual Property Action Plan was adopted in 2020 and offered the basis to several actions, there is still much to be done. There is a need for an updated IP Strategy for the coming policy cycle and the main purpose of this strategy should be to: target (minimise) fragmentation; raise the level of IP awareness and education; contribute to making knowledge-based assets a fully integrated part of the Single Market; and, at the same time, ensure that European companies' IP is respected both in the EU and at a global level whilst addressing abuses.

During the now closed political cycle, several legal initiatives have been adopted or are in the process of adoption that would rather increase the fragmentation than made it simpler for European actors to enhance their innovations. There is a lack of analysis when it comes to the effect certain legal proposals whether in IP areas (e.g. the Compulsory Licensing proposal) or in other areas (e.g. Data Act) may have from an intellectual property perspective as well as how these affect the performance of European companies' IP on a global level<sup>24</sup>. This must be avoided for the coming political cycle.

A renewed focus on innovation and the development of intellectual assets would allow the European economy to benefit from the resulting gains in productivity and acquire an advantage over international competitors. Focusing on the framework conditions for IP will help boost competitiveness, resilience, and innovation of EU's enterprise base at this key juncture. There is a correlation between IP ownership and high-growth enterprise.

**TABLE 1: DIRECT AND INDIRECT CONTRIBUTION OF IPR-INTENSIVE INDUSTRIES TO EMPLOYMENT, 2017–2019 AVERAGE, EU27**

IPR-intensive industries	Employment (direct)	Share in employment (direct)	Employment (direct and indirect)	Share in total employment (direct and indirect)
TM-intensive	43 606 597	21.1%	59 705 627	28.9%
Design-intensive	26 768 543	12.9%	40 142 839	19.4%
Patent-intensive	22 824 753	11.0%	36 076 680	17.4%
Copyright-intensive	12 924 552	6.2%	16 917 340	8.2%
GI-intensive*	n/a	n/a	n/a	n/a
PVR-intensive	1 933 519	0.9%	2 541 175	1.2%
All IPR-intensive	61 499 614	29.7%	81 592 215	39.4%
<b>Total EU employment</b>			<b>206 899 343</b>	

\* Not calculated due to gaps in employment statistics for agriculture (farm structure statistics).

Note: Due to overlapping use of IPRs, the sum of the figures for the individual IPRs exceeds the total figure for IPR-intensive industries.

<sup>24</sup> Examples of how Europe can deliver on this: withdrawing the proposed EU-regime for compulsory licensing; no technology- or application-specific restrictions of IP protection rights (e.g. NGT-Regulation); no TRIPS-Waiver; practical and balanced unitary SPCs; strengthening of IP awareness regarding values of IP for economy and society; strengthening the protection of trade secrets.

**TABLE 2: EU EXTERNAL TRADE IN IPR-INTENSIVE INDUSTRIES, 2017–2019 AVERAGE**

IPR-intensive industries	Exports (€ million)	Imports (€ million)	Net exports (€ million)
TM-intensive	1 547 270	1 551 618	-4 348
Design-intensive	1 232 068	1 014 158	217 910
Patent-intensive	1 559 811	1 341 864	217 947
Copyright-intensive	229 082	249 340	-20 258
GI-intensive*	13 126	1 769	11 357
PVR-intensive	43 248	50 743	-7 495
Total IPR-intensive	2 163 517	1 939 655	223 862
<b>Total EU trade</b>	<b>2 701 959</b>	<b>2 408 212</b>	<b>293 747</b>

\*Goods only.

Note: Due to overlapping use of IPRs, the sum of the figures for the individual IPRs exceeds the total figure for IPR-intensive industries.

**TABLE 3: INTRA-EU TRADE IN IPR-INTENSIVE INDUSTRIES, 2017–2019 AVERAGE**

IPR-intensive industries	Intra-EU trade	Share in total intra-EU trade
TM-intensive	1 942 032	53.0%
Design-intensive	1 802 177	49.2%
Patent-intensive	2 044 794	55.8%
<b>All IPR-intensive</b>	<b>2 781 639</b>	<b>75.9%</b>

Source: EPO-EUIPO, *Intellectual property rights intensive industries and economic performance in the European Union, 2022*.<sup>25</sup>

To complement and further perpetuate this growth, it **is imperative that the whole ecosystem properly supports not only the creation and capture of IP but also its management, exploitation and, when necessary, its enforcement.**

There must also be a broad understanding of the links between intellectual property and other areas which are intertwined. For example, more funding for research (e.g. in collaboration between business and universities) may be wasted if the results are not possible to use due to poor handling of (potential) intellectual property rights.

<sup>25</sup> EPO-EUIPO “Intellectual property rights and firm performance in the European Union”, 2022.



## 4 LOST OPPORTUNITIES ON EMERGING TECHNOLOGIES

Companies are committed to innovating and delivering technologies for the green and digital transition. To do so, the legal framework for handling these innovations has to be fit for purpose.

The different intellectual property rights are created to be able to function in relation to new technologies and innovations. The two recent EU updates on design protection and trademark protection tried to embrace and keep up with the challenges new technologies are presenting.

However, we also have seen examples where emerging technologies keep creating turmoil. The Draghi report underlines this reality<sup>26</sup>. Europe should aim to ensure that IP rights can also cover innovations in new fields of technology and legislation is carried out with a sense of proportion that refrains from over-regulation and does not inhibit innovation.

About one year ago, the Unitary Patent and Unified Patent Court entered into operation. These systems should be allowed to flourish, including equipping them with sufficient means to guarantee efficiency and to encourage more participation.

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<sup>26</sup> According to the Draghi report, “The fragmentation of jurisdictions and diverging regulations across Member States is the third barrier to EU innovative tech companies’ growth and ability to scale up”, page 81.

# 5

## WHAT DO WE PROPOSE TO BETTER UNLOCK THE POTENTIAL OF INTANGIBLE ASSETS IN THE EU?

The coming European Commission must continue to recognise the importance of, and to advance work done in the field of Intellectual Property. BusinessEurope's proposals are summarised below:

### OVERARCHING POLICIES/INITIATIVES

#### 1 A NEW INTELLECTUAL PROPERTY STRATEGY, which:

- Strengthens the use and the balanced enforcement of IP rights.
- Aims at making sure that the innovative power in Europe is not lost due to lack of awareness regarding the intangible assets.
- Promotes respect for IP globally including keeping Europe's assertive role in defending IP in face of the discussions on TRIPS-Waiver.
- Acknowledges that we must avoid technology or application-specific restrictions of IP protection rights (e.g. NGT-Regulation).
- Geared towards strengthening IP awareness regarding values of IP for economy and society.
- Strengthens the protection of trade secrets.
- Explores different types of incentives around IP, for example on information, advice etc.

#### 2 A NEW INNOVATION AGENDA

The Innovation Agenda that was presented in 2022 lacked aspects of intellectual property and competition. This is especially clear regarding innovation procurement (e.g. the public sector usually claims all of the IP for itself in procurement cases, and it might not make the most effective use of the IP).

#### 3 RESEARCH FINANCING

When money is invested in research, it is important to make sure that the knowledge acquired can be used. Linking funding of research to knowledge valorisation is key.

#### 4 RESEARCH SECURITY

Research is an important part of creating a competitive Europe<sup>27</sup>. To strengthen competitiveness, without falling into protectionist measures or the use of IP as a tool to that end, it is important that the assets represented in research results are not lost on the way.

<sup>27</sup> See Proposal for a Council Recommendation on enhancing research security, Brussels, 24.1.2024, COM(2024) 26 final, 2024/0012(NLE).

Research security plays a key role in this. The current Commission has taken several initiatives in the field. However, much more has to be done. Pressure has also to be put on Member States to actually take action.

## 5 EMERGING TECHNOLOGIES

The uncertainties regarding emerging technologies and intellectual property rights in Europe also cause problems in attracting investments. These uncertainties must be addressed to promote investment in innovation.

## 6 TRADE AGREEMENTS

Intellectual property is an important part of trade agreements. However, the focus on European competitiveness in trade agreements has not always been a priority. This approach needs to be changed.

# PATENTS

## 1 IMPROVED IMPACT ASSESSMENTS

Patent protection is crucial for European competitiveness and growth. The patent system must result in a balance between different interests. Proposals must be developed in line with the Better Regulation agenda not to undermine the essentials of IP. It would also be appropriate to provide for a mechanism to respond to evolving policy developments taking place outside of the European Union whenever necessary.

## 2 BETTER USE OF PATENT INFORMATION

Patent information can be used much more efficiently. Actions should be taken to improve how researchers and companies use patent information (e.g. analysis of the patent landscape and state-of-the-art, the identification of potential risks for exploitation of a given technology and the identification of key, novel features susceptible to being patented).

## 3 Continued improvement in the quality in all patenting processes at the EPO remains a key priority.

## 4 USERS OF THE PATENT SYSTEM RIGHT TO BE HEARD

Seeking input from users of the system should be an ongoing exercise. Users should be heard on any patent related proposals or initiatives, and also in cases where such initiatives do not seem to impact IP directly. This would enable users to identify any unintended consequence at an early stage.

## 5 HARMONISATION AT INTERNATIONAL LEVEL

We support the continuous procedural harmonisation efforts within the framework of the IP5 Cooperation<sup>28</sup> (e.g. in the field of search of existing patents, and the recognition of electronic signatures).

We remain committed to the process initiated in Group B+<sup>29</sup> around substantive patent law harmonisation which could bring benefits to users provided that some minimum strong safeguards and legal certainty are ensured and only as a compromise within a balanced harmonisation package cooperation.

6 We believe that the EU institutions should reconsider to whom to award the task of central examination authority of unitary supplementary protection certificates. There could be other structures more suitable than the EUIPO to perform these tasks.<sup>30</sup>

## TRADE SECRETS

### 1 IMPROVED LEGISLATION AND IMPACT ASSESSMENT

Decision makers should be cognisant of IP impacts when designing new legislation. The Trade Secrets directive does emphasise the importance of trade secrets. However, during the last couple of years, there have been many legislative proposals directly undermining the protection of business secrets. Four examples are the Data Act, Corporate Sustainability Due Diligence, Green claims, and Compulsory licensing proposal<sup>31</sup>. There is also a fear among companies that the coming rules on digital product passports may diminish the possibility of protecting trade secrets. Improved impact assessments are required.

### 2 IMPROVED SUPPORT FOR BUSINESSES

Trade secrets are often not included in support of intellectual property. It is also a fact that industrial espionage is an increasing problem. In countries like South Korea, the protection of Trade Secrets is subject to specific support.

<sup>28</sup> More information of IP5 Cooperation can be accessed at <https://www.fiveipoffices.org/about>.

<sup>29</sup> More information on the harmonisation efforts within the Group B+ can be accessed at <https://www.epo.org/en/law-practice/harmonisation/group-b-plus>.

<sup>30</sup> For more information, please see BusinessEurope's position paper on the Proposals on Supplementary Protection Certificates, available at <https://www.businesseurope.eu/publications/proposals-supplementary-protection-certificates-businesseurope-position-paper>.

<sup>31</sup> At the time this paper was published, the Compulsory Licencing proposal had not been adopted. BUSINESSEUROPE strongly supports the Council general approach to remove trade secrets from the scope of the proposal and urges decision-makers to keep this knowledge asset out of the scope proposal during their trilogue discussions.

## COPYRIGHT

### ASSESSING HOW TO DIMINISH THE IMPACT OF FRAGMENTATION

Copyright is a concern for almost every business. Text, photos and computer programs are produced and/or used by them all. There have been many attempts to harmonise parts of copyright protection. However, within the EU, copyright protection remains fragmented. A reflection is needed on how to address these concerns.

## TRADE MARKS

- 1** **A protection fit for purpose:** trademark legislation is the crown jewel of the Single Market when it comes to IP. However, it may still need some improvement. Many areas require refinement to better protect both businesses and consumers in a rapidly evolving economic landscape. An issue to examine is whether brand bidding should be considered a trade mark infringement. 3D printing still poses challenges.
- 2** Businesses need improvements (also technological) which help reduce uncertainty regarding the validity of a trade mark.
- 3** Businesses also seek for the continued improvement of the **quality** of the trade mark registration system at the EUIPO.

## DESIGN PROTECTION

### IMPLEMENTATION OF NEW LEGISLATION

Design protection has been subject to a recent reform. It is key to ensure that any updates on emerging technologies are functioning as intended.



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