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## **SUBREGIONAL SEMINAR ON SMALL AND MEDIUM - SIZED ENTERPRISES AND INTELLECTUAL PROPERTY**

organized by  
the World Intellectual Property Organization (WIPO)

in cooperation with  
the Estonian Patent Office

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THE IMPORTANCE OF INTELLECTUAL PROPERTY FOR THE COMPETITIVENESS  
OF SMALL AND MEDIUM - SIZED ENTERPRISES (SMES)

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## INTRODUCTION

1. Does every enterprise, big or small, rely on intellectual property (IP) assets in developing a link between the market, technology and its business strategy? The answer is yes. So, does this also imply that in today's highly competitive market every business needs to understand and effectively use the IP system? Well, the plain answer is again YES. Matters concerning IP assets arise in almost every business activity. If one or more of the following types of activities are considered or undertaken by a business, then it must squarely deal with IP issues to reduce the risks associated with doing business and/or to gain a competitive edge over its competitors:

- Starting a new enterprise;
- Buying or selling a business;
- Selecting or creating a suitable name and/or logo for a new product, service or business;
- Developing and commercializing a new product or services; improving an existing product or service;
- Entering a new market or developing a new product line;
- Hiring new employees in areas such as research, design, development, marketing, accounting, finance, etc;
- Sharing business or technical information with banks, venture capitalists, business partners, contractors, consultants, employees, etc;
- Developing a new advertising and/or marketing campaign;
- Maintaining a list of customers, suppliers, etc;
- Buying proprietary software products or getting customized software developed;
- Gathering business intelligence;
- Creating and maintaining computerized systems, websites, etc;
- Developing original designs, artistic works, or other creative output of interest to competitors;
- Safeguarding business secrets, databases, etc.;
- Developing and maintaining brand equity;
- Entering into a new business relationship or modifying an existing business relationship with another company, supplier, R&D institution, etc;
- Exit planning: Closing a line of business or company, mergers and acquisitions, bankruptcy; and
- Developing export strategy and pursuing global ambitions.

2. It is a truism that for competing in the knowledge-based economy of the 21<sup>st</sup> century, successful companies cannot afford to rely solely on the traditional factors of production, namely, land, labor or capital. They have to supplement their tangible assets with effective management and exploitation of their intangible assets, notably IP assets. Integrated management of all the resources of the enterprise, therefore, must encompass its intangible IP assets as well.

## THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

3. Before explaining what is intellectual property (IP) a few words about the World Intellectual Property Organization (WIPO) are in order. WIPO is an intergovernmental organization dedicated to promoting the use and protection of innovative and creative works of the human mind - intellectual property -, such as inventions, designs, trademarks, artistic and literary works, etc. With headquarters in Geneva, Switzerland, WIPO is one of the specialized agencies of the United Nations (UN) system of organizations. It administers 23 international treaties dealing with different aspects of IP protection. The Organization now counts 179 Member States, over 90% of the world's countries.
4. The activities of WIPO fall into four main categories. Firstly, a fundamental part of WIPO's activities is the **development and application of international norms and standards**. IP rights are territorial rights, i.e., they exist and can be exercised only within the jurisdiction or country under whose law they were granted. But works of the mind, including inventive ideas, do and should cross borders with ease in a world of interdependent nations. This is why it is crucial that countries engage in international harmonization and mutual recognition of rights and duties through international treaties and norms.
5. A second focus for WIPO's activities is to **facilitate the acquisition of IP rights** by companies and inventors in various countries. A number of treaties, covering inventions, trademarks and industrial designs, ensure that one international registration or filing will have effect in any of the relevant signatory States. The services provided by WIPO to companies and individuals under these treaties simplify and often also reduce the cost of making individual applications or filings in the countries in which protection is sought.
6. Thirdly, through its cooperation for development activities, WIPO **assists countries** in the implementation of treaties, the enhancement of the development of the IP system, the modernization of IP offices and in raising awareness in the private sector of the importance of IP and the benefits that may be drawn from its use.
7. Fourthly, through its Arbitration and Mediation Center, WIPO provides services which can help individuals or companies from any country in the world to resolve their IP-related disputes. The Arbitration and Mediation Center represents a response to the vital need for quick and inexpensive ways of **settling commercial disputes involving IP rights**, and providing private parties with an alternative to lengthy and costly court proceedings.
8. Given the nature of WIPO's activities, and in particular its services to the private sector, WIPO differs significantly from other UN specialized agencies in terms of its funding. In fact, over three-quarters of WIPO's funding is derived directly from the services rendered by WIPO to the private sector. For more information on WIPO please visit the website at [www.wipo.int](http://www.wipo.int).

## INTRODUCTION TO INTELLECTUAL PROPERTY

9. In today's knowledge-driven economy IP rights have become valuable business assets. Most successful companies in recent years have relied heavily on their creative and innovative capacity as their main source of competitiveness. Such inventiveness, know-how and creativity are captured and transformed into exclusive business assets through the acquisition of IP rights. This is why **IP protection offers an important tool for businesses to enhance competitiveness and strengthen the position of their products or services in the marketplace.**

In legal terms, IP is divided into two main categories: *industrial property*, which includes inventions (patents), trademarks, industrial designs and geographical indications; and *copyright*, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

10. Valuable undisclosed information (often referred to as trade secrets) of an enterprise that provides it competitive advantage is IP in its own right or is the precursor of other types of IP rights and therefore needs to be adequately identified, protected and managed. Trade secrets refer to any confidential business information that provides an enterprise a competitive edge and may include sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes.

11. Within a business, IP assets may include a wider range of intangible assets, ranging from the innovative features of its products to the trademark it uses for making its products or services distinguishable and recognizable by consumers, to its creative designs that assist the company in making its products more appealing. By formally registering and protecting certain categories of IP assets a business acquires the exclusive right to exclude all others, generally for a limited period of time, to use its IP without its prior permission. This may provide an enterprise with a wider range of business opportunities.

### A. Using the Intellectual Property System

12. Entrepreneurs having a good understanding of the IP system will be able to establish an IP strategy suitable to the needs, possibilities and capacities of their business. The central question is how an effective IP strategy can assist small and medium-sized enterprises (SMEs) to face some of their key business concerns, including raising finances, increasing the market value of the enterprise, marketing products and services, finding partners and suppliers, exporting, acquiring technology and conducting business transactions on the Internet. The following overview briefly describes ways in which IP rights may be used by SMEs to pursue their business goals:

13. **Increasing market value of the firm**: Ownership of a portfolio of IP assets increases the market value of an enterprise. Companies with a high innovative capacity operating in high technology sectors and companies with an established brand name with a good reputation often find that, in case of a merger or acquisition, the value of IP assets are higher than the value of their physical assets. On occasion, as in the case of a single key patent, it may significantly increase the market value of an enterprise as well as its overall image vis-à-vis investors, other companies and shareholders.

See: [http://www.wipo.int/sme/en/ip\\_business/ip\\_asset/sme\\_market\\_value.htm](http://www.wipo.int/sme/en/ip_business/ip_asset/sme_market_value.htm)

14. **Marketing and product differentiation** : Trademarks and designs help in marketing a product. They are the 'face' of a good or service and what makes it distinguishable from other similar products or services. They are often the crucial elements of a branding and marketing strategy. Without protection of their trademarks and designs, SMEs may find that their investments in marketing their products or services fail due to confusion among consumers. See: [http://www.wipo.int/sme/en/ip\\_business/marketing/marketing.htm](http://www.wipo.int/sme/en/ip_business/marketing/marketing.htm)

15. **Acquiring new technology and finding suppliers** : SMEs seeking access to innovative technology developed by other companies should consult patent databases to identify the necessary technology. They may have to negotiate licensing agreements with the patent holder in order to obtain the right to use the technology. IP rights are an essential part of any contract for the acquisition of technology and SMEs acquiring technology should be well aware of the IP implications during licensing negotiations. Information in patent documents may also assist entrepreneurs in their search for alternative suppliers of identical or similar technologies. See: [http://www.wipo.int/sme/en/ip\\_business/patents/patent\\_information.htm](http://www.wipo.int/sme/en/ip_business/patents/patent_information.htm) and [http://www.wipo.int/sme/en/ip\\_business/licensing/licensing.htm](http://www.wipo.int/sme/en/ip_business/licensing/licensing.htm).

16. **Commercializing innovative new products** : An invention on its own has little value for an SME. The acquisition of a patent gives the SME exclusivity over the commercialization of an innovative new product or a new and improved process of manufacture and also opens the possibility for allowing its commercialization by other firms through licensing. See: [http://www.wipo.int/sme/en/ip\\_business/importance/inventions.htm](http://www.wipo.int/sme/en/ip_business/importance/inventions.htm).

17. **Exporting goods and services** : SMEs that intend to export their products or services should consider IP protection in their export markets. IP protection will not only provide exclusivity in the commercialization of the inventions, trademarks or designs in those countries but will also provide the opportunity for licensing, franchising or establishing joint ventures with foreign companies. This may be particularly the case for companies lacking the capital to commercialize the product or service directly in the export market. See: [http://www.wipo.int/sme/en/ip\\_business/export/export\\_opportunities.htm](http://www.wipo.int/sme/en/ip_business/export/export_opportunities.htm)

18. **Raising finances** : obtaining financial resources for the development of innovative products/services may be significantly assisted by exploiting IP assets, particularly patents. Patents provide exclusivity for the commercialization of inventions and may be important to convince investors/lenders of the market opportunities open to the entrepreneur for the commercialization of the product or service in question. See: [http://www.wipo.int/sme/en/ip\\_business/finance/ip\\_assets\\_financing.htm](http://www.wipo.int/sme/en/ip_business/finance/ip_assets_financing.htm)

## WIPO AND SMALL AND MEDIUM -SIZED ENTERPRISES (SMEs)

### B. Objective and Strategy

19. WIPO's SME strategy has a clear and overarching objective: to assist SMEs in all sectors to enhance their competitiveness through a wider and more effective use of the IP system. This is largely to be done through a two-fold approach: (a) by enabling SMEs to make informed decisions concerning how to fully exploit their innovative and creative potential through an effective use of the IP system and (b) improving the policy framework and business environment to make it conducive and easier for SMEs to use the IP system.

20. At the heart of WIPO's strategy for SMEs is the conviction that IP represents an important tool for the development of dynamic SMEs. This conviction goes hand-in-hand with the understanding that WIPO's objective requires working jointly with other institutions providing services and support to SMEs. WIPO therefore works closely with institutions at a national level, including IP offices, chambers of commerce, associations of SMEs, NGOs, and (other) civil society institutions committed to promoting the development of the SME sector. The aim is that of including IP services (e.g., legal, technical and commercial advice as well as financial support) within the wider framework of services and support to SMEs.

21. Another crucial element of WIPO's strategy concerning SMEs is to demystify the IP system and to present its utility from the perspective of the business community. IP should not be perceived as a complex legal issue with little bearing on the daily business activities of SMEs. The IP system should be understood as an important tool for business, and entrepreneurs should begin to better appreciate the opportunities the system offers for their enterprises.

### C. WIPO's SME Website

22. In June 2001 WIPO launched its SME website targeting directly entrepreneurs and associations and institutions providing services to SMEs. The SME website explains basic issues and answers practical questions on IP in a simple, business-friendly language. The website currently contains over 500 pages of substantial information, advice, documents and links on various issues of interest to SME entrepreneurs, managers, investors and business consultants. The website may be visited at [www.wipo.int/sme](http://www.wipo.int/sme).

### D. Initiatives Aimed at Encouraging SMEs to Use the Intellectual Property System

23. On a regular basis, WIPO collects information on policies, programs and strategies adopted by a range of institutions to assist SMEs to use the IP system effectively. The information is gathered with a view to allowing for wider information sharing and exchange of experiences among and within countries. WIPO seeks to provide technical assistance to institutions (e.g., national IP offices, ministries in charge of SMEs, chambers of commerce, SME associations, etc.) to implement similar activities. Initiatives have been grouped into six broad categories. The following is a list of the types of activities conducted by a wider range of institutions from which information has been collected and for the planning and implementation of which WIPO would be willing to provide technical assistance:

#### (i) Awareness-raising and Training on IP:

- Awareness-raising seminars for entrepreneurs;
- IP guides and other information material on IP for SMEs;
- Websites with practical information and/or distance learning programs on IP for entrepreneurs;
- Collection and dissemination of case studies illustrating the success stories of SMEs using IP;
- General advice to applicants on administrative issues relating to the application process (e.g., help desks within IP offices);
- Multimedia products (e.g., CD-ROMs) with information and advice on management of IP assets;
- Participation in business fairs, contribution of articles to business magazines, and other promotional activities;

- Monthly radio and/or television program on issues relating to IP and innovation;
  - Inclusion of IP within national training curricula for entrepreneurs;
  - Proactive visits to SMEs;
- (ii) Technological Information Services:
- Regular workshops for entrepreneurs on how to use patent information services;
  - Free access to IP databases;
  - Provision of a range of technological information services for SMEs at a reduced price;
  - Establishment of Centers for Technological Information or decentralized branches of the IP office for the provision of technological information;
- (iii) Financial Assistance:
- Financial assistance to SMEs rendered by banks, venture capitalists, and SME support organizations for patenting their innovative products;
  - Fee reductions for SMEs applying for IP rights;
  - Partnerships between IP offices and associations of patent attorneys for the provision of legal advice for SMEs, free-of-charge or at reduced cost;
- (iv) Customized Advisory Services on IP:
- Legal and managerial assistance to enterprises on how to manage their IP assets and how to develop an IP strategy;
  - Promotion of and legal assistance on the use of collective marks, certification marks and geographical indications by small-scale businesses;
  - Pilot projects on IP management with a selected group of enterprises;
  - Assistance in the creation of trademarks or distinctive signs;
- (v) Assistance for Technology Transfer:
- Creation of databases on licensable technologies (e.g., virtual marketplaces for IP);
  - Tools for the evaluation of IP assets;
  - Business fairs of licensable technologies where potential licensees and licensors may meet;
  - Advice for licensing negotiations;
- (vi) Partnerships between Institutions:
- Partnerships between IP offices and other institutions providing services to SMEs such as chambers of commerce, incubators, research centers and science parks for the inclusion of IP within a wider range of services to SMEs;
  - Partnerships with universities and public research centers for the establishment of Technology Licensing Offices (TLOs), for the promotion of the development of spin-off companies and for the inclusion of IP issues within technical and management degrees; diplomas, etc.