

## PATENT-INSURANCE VIABILITY IN SPAIN

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At times of crisis, when quality, research and innovation are seen as key factors in turning things around, a *Fundación Mapfre* study on patent insurance presents an insurance formula for supporting the R&D of innovative SMEs

One of the keys to competitiveness is “knowledge”. Its protection is essential for lasting economic growth, since it generates value for consumers, producers and society in general. Obtaining excellent and patentable R&D results is always a sterling challenge but for SMEs and other small-scale innovation agents the challenge is even stiffer. After granting of the patent, they lack financial resources to defend their intangible assets from any threats or usurpation. The *Fundación-MAPFRE* sponsored study by Elena Pérez-Carrillo from *Universidad de Santiago de Compostela* and Frank Cuypers from PRS Prime Re Services – Zurich gives guidelines for the introduction (formulation, contractual-, actuarial- and marketing-aspects) of a patent-insurance policy. The design has been tailored to meet the needs of Spanish SMEs trading in innovative sectors where they obtain patentable and commercially exploitable results. Under the title “Patent-Insurance Viability in Spain” this study will be presented to the public in Madrid on 19 September.

The amount of patent-defending legal action brought by holders gives market information on their strategies against violation of their intangible property rights. Those not prepared to sue run a greater risk of usurpation, cutting down their capacity of channelling and realising R&D investments. To materialise patent benefits, SMEs and university researchers need a legal framework that facilitates legal defence at an affordable cost. If the legal system comes up with no suitable solution, they then need private resources, their own or others’, to meet the high costs of industrial property litigation and its consequences (shutdown of production lines, claims and conflicts with licence holders, sky-high procedural costs, etc.).

The insurance of risks bound up with obtaining, developing, exploiting and defending patents (and other intellectual and industrial property rights) thus comes across as one of the best and surest ways of encouraging fruit-bearing R&D. As already pointed out by *Aventin Arroyo* “*Alongside the general interest in protecting patents, in the overall pursuit of encouraging and developing innovation and creativity, the particular interest of patent insurance resides in the financial security it provides for patent holders, cutting down their sense of legal defencelessness and thus contributing to the overall interest in technological development and innovation*”<sup>1</sup>.

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<sup>1</sup> AVENTÍN ARROYO, JA “La esencia de la actividad aseguradora y su potencialidad para ofrecer remedios a los innovadores. Experiencias y posibilidades”, RM COUTO GÁLVEZ, and C SÁNCHEZ-RAMOS RODA(cordinators) *Seguros y Patentes*, Colección Propiedad Intelectual e

The need of protecting innovative SMEs usually gets much less attention than it deserves, especially in countries like Spain that do not feature among the world's leading innovators.

From the point of view of policyholders and insureds, patent insurance is a financial instrument that offers a guarantee against diverse loss events (depending on the coverage given by each particular policy). Several different arrangements are known on the international market, differing mainly in terms of their type (defence, compensation), coverage (single-risk, multi-risk) and management system (generic, specific, etc.). Patent insurance is worthy of our attention above all as a boost and leverage to research leading to top-quality, industrially-exploitable patents.

“Patent-Insurance Viability in Spain” runs through the legal and actuarial bases of patent-insurance experiences and other related financial products in various European countries and the US, and also their effects on the promotion of research applied to industry. The study is based on suitable contractual and actuarial formulae for taking out an affordable and prudentially reasonable insurance policy, and draws up a prototype policy for encouraging the R&D of SMEs and universities in Spain, cutting the management load to the bone.

The authors point out synergies for marketing patent insurance and bringing it to wider notice (not excluding dissemination through patent agents, input from the Spanish Office of Patents and Marks [*Oficina Española de Patentes y Marcas*: OEPM] and the European Observatory on Violations of Intellectual Property Rights, among others). After an initial induction period with basic coverage, these synergies can then be tapped into for increasing the system's scope in line with the most successful experiences elsewhere.

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Industrial de la obra científica, Madrid, Universidad Complutense, Elzaburu, 2012. Pp. 107-139. The original quote in Spanish is taken from page 107.