

PROBLEMS AND PROSPECTS OF THE USE OF INDUSTRIAL INTELLECTUAL PROPERTY BY SMALL AND MEDIUM-SIZED ENTERPRISES WHEN ENTERING FOREIGN MARKETS

Daria M. Soldatenko

MGIMO University

Abstract

Nowadays, intellectual property (IP) is becoming an integral part of almost every aspect of the development of international economic relations. At present, in the context of the development of the real sector, industrial intellectual property is of particular relevance. Protected industrial IP is a key tool and an important competitive advantage that small and medium-sized enterprises can use to enter foreign markets, raise additional capital, develop and scale their activities in global markets. Research from a number of industrialized countries shows that the vast majority of small and medium-sized enterprises (SMEs) that are holders of registered IP assets report that such assets have a positive impact on the company's goodwill and reputation, prospects for doing business, and capitalizing on existing intangible assets. However, to maximize the benefits from the use of industrial IP in foreign markets, companies from developing countries should take certain actions and measures, including those adopted in close cooperation with their governments.

Keywords

Small and medium-sized enterprises, intellectual property, foreign economic activity, global trade.

INTRODUCTION

At present, one of the features of the global economy is that the conditions for foreign economic activities may quickly change, which often occurs unpredictably, thus posing new tasks and opening up previously untapped development prospects for global players. In this context, the need to change the role and scale of participation of small and medium-sized enterprises in global trade has been increasingly discussed lately on the sidelines of multilateral trading platforms [1]. It can be stated that the realities of the global economy development in the 21st century (trade wars, the COVID-19 pandemic, outbreaks of instability around the world, geopolitical conflicts) have revealed a certain resilience and adaptability of SMEs to rapidly changing business conditions. Quite importantly, along with the competitive advantage of SMEs to respond to changing market conditions faster than large businesses do, they (SMEs) often have undervalued assets in the form of IP and, in particular, industrial IP.

Nowadays, industrial property, which is a result of creative, innovative, and intellectual activity, is represented at almost any level of doing business: starting from the use of industrial equipment in production and ending with after-sales service or product improvement in response to changing market demands, as the entire process of macroeconomic reproduction in the modern context is associated with various industrial IP assets in one way or another. For example, small and medium-sized enterprises have virtually unlimited possibilities to use their trademarks and service marks in international trade, which ultimately allows copyright holders to create a number of competitive advantages and establish continuous communication with their consumers in foreign markets.

Thus, according to a survey by the European Union Intellectual Property Office (EUIPO) [2], almost all SMEs (93%) with registered IP assets experienced their positive impact on their business. In particular, the following positive effects are reported: improving the company's reputation or goodwill (60%), revenue from registered IP (36%), and improving long-term business prospects (48%).

Taking into account the above specifics of the use of industrial IP in developed countries, it is necessary to identify the main problem of the use of industrial IP by small and medium-sized enterprises in developing countries: companies often have little or no awareness of the opportunities for cross-border commercialization and use of their IP. In this regard, SMEs need to systematically monitor the use and protection of industrial IP assets held, as well as exercise proper management control in foreign markets. Apart from that, SMEs should not underestimate the opportunities to legally leverage other companies' industrial IP when entering new markets, which can help them significantly reduce costs. Thus, in addition to traditional IP assets such as trademarks or commercial names, SMEs can make competitive advantages out of existing assets in the form of valuable business information, confidential databases, customer lists, as well as successful sales tactics and marketing policies in general, which also may be traded internationally.

Despite the fact that physical assets in the traditional sense (equipment, buildings, financial assets) play a major role in determining the value of a company and forming its competitive advantages when entering foreign markets, in recent decades, intangible assets have become increasingly important: know-how, production secrets, industrial designs, trademarks, brand, and innovative ideas of the company. In other words, the role of the innovative potential of enterprises is increasing, which, largely as a result of the active digitalization of the world economy, has assumed decisive role in the

development of new business strategies [3], including those related to IP.

A major factor in these changes is considered to be the rapid development of the global services market and the increasing share in the trade in services of developing and newly industrialized countries. The old paradigm, where the physical scale of production and the warehouse capacity determined the profits and development prospects of a company, has been replaced by a new paradigm, where the key positions of market players depend on the effective use of intellectual capital, powerful and secure software, as well as the degree of innovation of the goods produced and/or services provided.

SMEs have a variety of potentially profitable intangible assets, which are quite diverse. Potential IP asset categories may be broken down into the following groups. Firstly, these are innovative products, completely new technologies, or innovative process stages. Secondly, the system of copyright and related rights in most countries protects the following: existing proprietary software; data collection, processing, and analysis systems; as well as microchips (through the protection of integrated circuit topologies). Thirdly, industrial design rights protect creative, aesthetically attractive elements of manufactured products. Of none, in terms of geographical indications, the geographical origin largely determines the quality characteristics of goods and the reputation of their manufacturer, therefore allowing SMEs to create additional competitive advantages in foreign markets. Therefore, it can be argued that the benefits received by SMEs when registering intangible assets as industrial property are undeniable, as evidenced, for example, by new data on the relationship between the financial performance of SMEs and patents [4].

For all established categories of assets, SMEs can acquire IP rights through a registration system (national, regional, or international) or other legal procedures for the protection of intangible assets. Moreover, IP may be invested into, thereby increasing the enterprise value and the future profitability of the business.

Therefore, the above industrial IP assets represent a full-fledged system of intangible assets of SMEs, which can be used in almost all aspects of the development of economic activities in both domestic and foreign markets: product development, its adaptation to the social and cultural environment of a new market, design improvement, or export expansion by selling licenses or entering into franchising agreements. Of note, in many countries it is possible to use IP assets as collateral to attract additional financing, which is an extremely important factor for small and medium-sized enterprises from developing and least developed countries, which usually have limited financial resources.

Another problem associated with using industrial IP by small and medium-sized enterprises when entering foreign markets is the correct assessment of the value of their existing assets and their further management in order to maximize the return on invested capital. Innovative and knowledge-intensive enterprises are typically characterized with a significant excess of the value of their intangible assets over that of their tangible assets. Investors and financial advisers increasingly tend to recognize that the assets of such emerging market companies often remain undervalued in domestic markets due to low demand.

If SMEs regularly reassess the value and perform a qualitative analysis of the use of existing industrial property, as well as check potential intangible assets for commercialization in all markets they operate in, they can develop the following competitive advantages:

- the exclusive right to dispose of registered (if provided for) industrial IP assets throughout the territory of registration, not limited to their home country
- the capacity to undertake legal measures against unlawful use of their IP assets by other SMEs in foreign markets, thus reducing competition

- opportunities to ensure a faster return on investment in research and development, which increases the return on investment
- securing extra income from partial or complete transfer of IP rights to existing assets, primarily through the sale of licenses to partner countries
- using existing industrial property rights for a stronger position when negotiating mutual licensing or cross-licensing with foreign rightsholders
- attracting additional funding from investors and government/commercial financial institutions by incorporating existing intangible assets in the form of IP into business plans or future projects when expanding into foreign markets
- ability to successfully contest in court the illegal use of registered assets of SMEs in the territory of other states, where for some reason economic activity was suspended
- strengthening the company's goodwill and creating a positive perception by partners and potential investors as a conscious and technologically competent market player at the international level.

Another difficulty associated with using industrial IP by SMEs in foreign markets is the need to conduct regular IP audits. As a rule, this problem can be solved through an internal audit by in-house experts, although this procedure is often complicated by the lack of qualified personnel competent in matters of international economic relations and cross-border movement of industrial intellectual property. On the other hand, the services of professional IP auditors are often expensive and are not always recognized as an appropriate use of funds for SMEs, which need to find an efficient way to organize their innovation capabilities and properly address technological bottlenecks [5].

However, it is worth noting that identifying, monitoring, and assessing a company's IP allows it to gain greater opportunities to capitalize on potential competitive advantages in foreign markets. Regular audits of industrial IP of SMEs will help solve the following problems.

Firstly, making economically appropriate decisions regarding the management of existing IP assets: which should be transferred, for example, under a license agreement to a resident in a foreign market, and which should be retained for exclusive use for the purposes of foreign trade expansion.

Secondly, a qualified audit will help determine and form a full-fledged portfolio of IP assets, identifying the strengths and weaknesses associated with the use and disposal thereof. This aspect is also important when assessing potential mergers and acquisitions, which is especially typical for SMEs intending to enter foreign markets.

Apart from that, as noted above, a correctly formed portfolio of IP assets following an audit can be used as collateral or security for borrowings. Therefore, there is a direct connection between the level of a company's creditworthiness and the quality of its IP assets.

An additional benefit of knowing the quality and value of existing industrial IP can be an informed assessment of the advisability of initiating an international trade dispute or proceeding in the event of IP infringement. Since this procedure at the international level involves a number of particular details and specifics (from determining the jurisdiction of the proceedings to the search for experts competent in international law), a high-quality audit of assets will help SMEs minimize the potential costs or completely avoid them as a result of determining that initiating proceedings is not economically feasible.

Competent management of industrial IP can also help small and medium-sized enterprises organize an effective and balanced disposal of illiquid, obsolete assets and, as a result, reduce the costs of their maintenance and servicing in foreign markets (for example, reduce regular payments for renewing registration of respective IP assets in an international register).

ЗАКЛЮЧЕНИЕ

To summarize the above, it can be argued that the role of industrial IP for small and medium-sized enterprises when entering foreign markets will only increase. This conclusion is especially likely to be the case as SMEs from developing countries expand their foreign economic activity, and the Asia-Pacific region is most likely to remain the unchallenged leader. Despite the proven role and importance of SMEs for the economies of industrialized countries, these enterprises will increasingly experience pressure from, first of all, Chinese and Indian small and medium-sized enterprises [6] in the competition for new markets. Definitely, competition will only intensify, and industrial IP can serve as an additional factor in increasing the competitiveness of an enterprise.

However, considering the problems identified in the use of industrial IP by small and medium-sized enterprises in developing countries, they require adequate support from the state, which has been implemented effectively for quite a long time in a number of industrialized countries [7]. The most significant and effective measures include the following: organizing consultations with highly qualified IP experts on matters of assessment, audit, and registration of industrial property in foreign markets; assistance in collecting and preparing documentation necessary for filing an application for international registration; removal of administrative barriers and red tape with a one-stop-shop system if possible; raising awareness and establishing business partnerships between SMEs and government in the domain of IP.

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About the author:

Daria M. Soldatenko - Ph.D. in Economics, Associate Professor, N. N. Liventsev Department of International Economic Relations, MGIMO University, 76 Vernadsky Avenue, Moscow, Russia, 119454.

RSCI Author ID: 718047

spin-code: 8895-8021

ORCID ID: 0000-0002-3029-376X

Scopus Author ID: 57322971200

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