



European IPR Helpdesk

Fact Sheet

Intellectual property management at trade fairs

*This fact sheet has been developed
in cooperation with*



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Introduction

European Union (EU) industries having a high use of intellectual property rights (IPRs) such as trade marks, designs, copyright, utility models or patents, among others - that is, the so-called IPR-intensive industries - were alone responsible for nearly 28% of all jobs in the internal market during the period 2011-2013, as shown in the recent study published by the European Union Intellectual Property Office (EUIPO) and the European Patent Office (EPO)¹. This represents 60 million jobs being directly created by these industries. In the same period, the study shows that IPR-intensive industries “generated almost 42% of total economic activity (GDP) in the EU”.

Several consequences can be drawn from these numbers. On the one hand, the positive effects and competitiveness that IPRs bring to European companies and the EU market are visible in the numbers of jobs being created and trade being made. On the other hand, it is evident that today’s EU market is increasingly driven by IPRs and more generally by intangible values like knowledge, inventiveness and creativity.

Protecting intellectual property and properly managing IPRs can indeed make a real difference in companies, increasing their ability to create new jobs, make more business and ultimately allowing them to grow. By granting a time-limited form of exclusivity, IPRs offer the chance to benefit from a return on the investment done, while helping to prevent others from free-riding on the company’s efforts.

Indeed, today infringers can more easily produce similar products at a significantly lower price, which can certainly put businesses at a disadvantage in the market. It is therefore of utmost importance that companies take steps to know the intellectual assets they own, protect them and enforce their rights.

Infringement refers to the unlawful use of IPRs belonging to others, such as patents, utility models, trade marks, designs or copyright.

Counterfeiting is commonly used in connection with the infringement of trade-marked products.

Piracy is a term that tends to be used in relation to the infringement of copyright and design rights. The most pirated goods are music, films and software.

¹ *Intellectual property rights intensive industries and economic performance in the European Union, Industry-Level Analysis Report, October 2016, available [here](#).*

Trade fairs and exhibitions facilitate trade at all levels and represent the most effective marketing tool for companies, especially for SMEs. They help to attract new customers, raise the image, profile and popularity of a company or product, analyse the competitive situation and enhance competitiveness. Exhibitions are showcases for innovations, R&D and trends. They can also be market research tools, helping companies to test products in the market, to access new markets and raise their turnover. On the other hand, trade fairs, as mirrors of the market, are not immune to infringements of IPRs. They have the advantage of allowing companies to get more evidence than what they would usually get from the infringers' website and to potentially avoid the spread of infringing goods by large scale commercialisation.

As trade fairs are being held only for a short period of time, often even over weekends, it is crucial for right holders to react immediately and to take effective measures against infringements as quickly as possible or to defend themselves should there be an infringement claim against themselves at the exhibition.

It is therefore essential to properly manage intellectual property when participating in trade fairs. This fact sheet aims to help you in preparing your participation in these events, by providing an overview of the preventive and immediate measures to take, including the specificities on the EU territory.

1. Things you should know before participating in a trade fair

1.1 Knowing the IPRs you own

IPRs have an essential role in generating incentives for innovation, by granting monopoly rights to their owners. These rights help companies in maintaining competitiveness and their place in the market, at a time where competition has no frontiers and is global.

Before participating in a trade fair, it is essential to make sure that you are aware of the IPRs which you own in the products or services that you intend to show. The main reason for this is that owning IPRs allows you to take effective measures against counterfeiters and pirates.

On the other hand, even if you have registered a trade mark or a design, for example, registration alone will not prevent others from trying to copy your product. It is the responsibility of the owner of the IPR to enforce it against unlawful uses and not the responsibility of public authorities, registration offices or trade fair organisers.

| | |
|--------------------------|--|
| Trade Mark | Trade marks are words, letters, numbers, logos or other distinctive signs, such as the shape of goods, their packaging, or even sounds and smells. They allow you to distinguish your goods from those of your competitors. A registered trade mark can potentially give you a monopoly for an unlimited period of time (renewable for a fee each 10 years), helping you build a strong brand. |
| Industrial Design | Industrial designs protect the outward appearance of products, which can result from its colours, shapes, textures, lines and ornamentation. In the EU, designs can be protected through national design protection, as well as Community protection of Registered and Unregistered Designs. While an unregistered Community design is protected for 3 years, a registered Community design can be protected up to 25 years (renewable for a fee every 5 years). |
| Patent | Patents protect inventions that are new, involve an inventive step and are capable of industrial application. Inventions can take the form of devices, methods and processes that have a technical effect. Patents in general can last 20 years. |
| Utility Model | Utility models also protect technical inventions, but in most countries the criteria of registration are less stringent than for patents. Not all countries in the EU offer the possibility to be granted a utility model and the ones that do apply different registration criteria and offer different time limits for protection. |
| Copyright | Copyright protects original expressions, which can take the form of books, brochures, software, photographs, and paintings among others. In Europe copyright grants protection up to the life of the author, plus 70 years. |

The laws of unfair competition or unfair commercial practices can also assist you protecting your intangibles, particularly against look-a-likes that may not be infringing your IPRs but mislead consumers as a result of their similarity to your product. Indeed, these laws provide an extra line of defence against copycats that can be relied on in court proceedings.

1.2 Registration is the easiest and most effective way to fight against infringers

There are several IPRs that require registration, including patents, utility models, trade marks and registered designs rights. Registration has several advantages. Indeed, on the one side registration grants you exclusive rights, allowing you to prevent others from using your rights without prior permission. On the other side, you can show easily evidence of ownership since you have a title, which facilitates the resolution of disputes in trade fairs and makes it easier to take legal action if necessary.

| IPR | What for? | Registration? |
|--------------------------|---|--|
| Trade Mark | Distinctive signs | Registration is required, even though some degree of protection can be achieved for unregistered trade marks |
| Industrial Design | Appearance of products | Registration is usually required, but it is possible to acquire an unregistered design right |
| Patent | New inventions | Registration is required |
| Utility model | New inventions | Registration is required, but conditions are less stringent than for patents |
| Copyright | Literary, artistic and scientific works | Not required, but it can be registered in some countries |

1.3 IP protection is territorial

IPRs are territorial in nature. That is, they are effective only in the country or region where protection has been applied for and granted. For example, a national patent granted by the Spanish Patent and Trade Mark Office has effect only in Spain. Consequently, the patentee does not have rights outside of Spain and cannot block others from using the invention in another country.

Hence, if you are planning to participate in a trade fair in another country, it is strongly recommended that you register your rights also in that country in order to prevent any abusive use there and take full advantage of your intellectual property. Furthermore, it is useful to already think about all countries in which you aim to sell your product.

1.4 Time limits for extending protection in another country

The market is global, including for small and medium-sized enterprises (SMEs), which means that the intellectual property system must also find solutions to facilitate the protection of rights by the players in the market. With this in mind, European countries, among many other countries, have established several international treaties and agreements dealing with intellectual property.

On the basis of such arrangements, it is possible to extend the protection granted in one country to another one. In fact, applicants who have properly filed in one of the signature states enjoy a priority right allowing them to seek protection within a fixed period in other countries².

Consequently, it is not necessary to file applications simultaneously in all countries where the applicant seeks protection. Besides patents, the rule also applies to utility models, industrial designs and trade marks. The periods of priority are twelve months

² The priority right is established in Article 4(1) of the Paris Convention.

for patent and utility models, and six months for industrial designs and trade marks. Thus, you are able to apply for intellectual property protection in other countries during the priority period and be treated as if you had filed all the applications on the date of the first application.

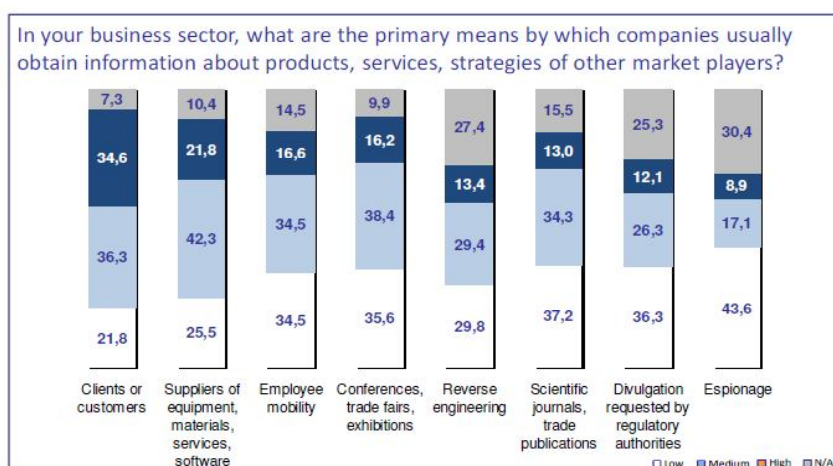
After the priority period, you not only lose your priority right, but also, as is the case for patent applications, the novelty of your invention since it was already disclosed with the first patent application. In the case of trade marks, even though you lose your priority right after this period, you can still file trade mark registrations in foreign countries individually, since no novelty is required.

1.5 Intangible assets to be kept confidential

Information about technology that makes a company's product unique, prototypes, or a list of key customers are just a few examples of potentially confidential business information or trade secrets. Often, inventions are also kept confidential, for instance when it is not considered worth a patent or is not patentable at all, as well as an alternative option to patenting. Yet, they also play a fundamental role before filing a patent application. During this period in fact, disclosure of patent features can destroy patentability. Confidential business information has therefore the peculiarity of being potentially used by any kind of businesses and for any kind of information³.

Confidential business information does not require registration but *ad hoc* measures for protection. Indeed, any kind of information can be considered as confidential information, as long as:

- it is kept secret, i.e. it is not in the public domain;
- it has commercial value because it is secret; and
- the owner has taken reasonable steps to keep it secret.



Study on Trade Secrets and Confidential Business Information in the Internal Market, April 2013.

In a survey undertaken in the context of a study on trade secrets, European companies who participated clearly indicated trade fairs as one of the most important sources of information spill-overs across businesses.

³ Study on Trade Secrets and Confidential Business Information in the Internal Market, April 2013, available [here](#).

It is therefore essential to take measures to protect any unwanted disclosure of valuable information at trade fairs, which are indeed a potential threat to confidential information.

1.6 The limitations of trade fair organisers

When dealing with infringers at trade fairs you might expect assistance from the organisers of the trade fair. Even though many trade fair organisers take very seriously the problem of counterfeiting and the commercial relevance of IPRs for exhibitors, they are limited regarding the type of assistance, which they can provide to you.

Trade fair organisers themselves have no legal basis to take action against IPR infringements such as removing products or closing stands. They do not have public authority and therefore they can be liable for damages if they accuse an exhibitor of intellectual property infringement.

Clauses in stand rental contracts and general terms and conditions highlight the danger and consequences for infringers to all participants in the trade fair. Usually this includes a declaration of awareness, understanding and compliance of IPRs, commitment not to show copies or to remove them immediately, information on possible exclusion from the show in case of repeated infringement and – if applicable – the involvement of arbitration courts. Only the right holders with the assistance of a lawyer can assert their rights.

2. Dos and don'ts

2.1 Before the trade fair

2.1.1 Do identify and protect your intellectual property

We recommend you take an active role in the preservation and defence of your intangible assets, since the protection of IPRs is usually not automatic and its enforcement depends on the measures you take.

The first necessary step is to identify the subject matter involved in the technology, product or service and any material, which you intend to show at the trade fair. This analysis will allow you to identify the forms of protection potentially available for each type of subject matter, since often more than one form of protection could be applicable.

| Subject Matter | Patent | Utility Model | Industrial Design | Copyright | Trade Mark | Confidential Information |
|---|----------------|---------------|-------------------|-----------|------------|--------------------------|
| Functional invention (e.g. device, process, method) | X | X | | | | X |
| Software | X ⁴ | X | X | X | | X |
| Name of a technology/product | | | | | X | |
| Design of a product | | | X | X | X | |
| Posters, brochures | | | | X | | |

If you are not already protected, you should seek to secure protection in the country where the trade fair is being held. It is therefore best practice to file registration application for patents, utility models and registered industrial designs and trade marks as soon as possible before the trade fair.

Once granted protection, it is important to attach notices that your products and materials are protected by IPRs. Even though attaching such notices is not mandatory in most countries, nor do they confer protection, they can be very beneficial. Indeed, this is an easy way to tell customers and competitors that a product has been registered, thus helping to prevent infringements.

Examples of intellectual property notices

Patents: the terms '*patent pending*' or '*patent applied for*' can be attached to the product once registration application has been filed.

Trade Marks: the symbol ® is commonly attached once registration is granted.

Design Right: the design registration number can be attached to the product or packaging.

Copyright: © [name of copyright owner], [year of creation].

2.1.2 Do not infringe the rights of others

While preparing your participation at the trade fair, it is important to not only carefully protect your IPRs, but also to avoid infringing the rights of others in the country where the trade fair is being held.

This means that, since you intend to offer products for selling, you can already be infringing the IPRs of others at the trade fair. Think about patents for example. The

⁴ Software patentability is still a debated issue given its exclusion as subject matter by Article 52(2)(c) and (3) EPC. However, the Enlarged Board of Appeal of the European Patent Office is inclined to its patentability as long as the claim that is related to a computer program defines or uses technical means (hardware).

fact that you have been granted a patent in your technology does not mean that you can in fact use it in the market, since the patent only grants you negative rights to prevent others particularly from selling and offering for sale a product embodying your patented invention. Therefore, it is essential to verify if the product, which you intend to show in the trade fair, infringes the rights of others, which can be performed through freedom-to-operate searches⁵.

Performing freedom-to-operate searches is therefore recommended before the trade fair, allowing you to consider the potential risks involved and the further steps that you need to take in order to safely participate in the event. This search is also useful as an anticipation of potential claims against you, allowing you in collaboration with your intellectual property advisor to take measures to prevent or efficiently react against such claims at the trade fair. In fact, if another company manages to be successful in an injunction or to show at the trade fair that your product is infringing its rights, you may be forced to withdraw the product from display, which can certainly damage the reputation of your company. The risks are not merely legal, but also commercial.

2.1.3 Do avoid disclosing confidential information

To avoid the risk of potentially losing your ideas and the novelty associated with them, all public disclosures should be reviewed. Indeed, any product, material and publication (e.g. brochures and flyers) which you intend to display at the exhibition should be checked to ensure that you do not disclose unprotected and valuable information inadvertently. Moreover, employees participating in the event should be reminded of the importance of not disclosing unprotected information.

2.1.4 Do protect your products from being photographed during the trade fair

Many trade fair organisers have the policy of not allowing photos to be taken on their premises. These restrictions are useful to thwart copycats, but can be hard to enforce given the number of people holding a mobile phone with a camera nowadays. It is therefore important to know in advance the conditions of entry of the trade fair to verify whether there is a policy against photography and what are the consequences against such behaviour, helping you define what to do in these situations.

2.1.5 Do get familiar with the trade fair regulations and services

Most trade fairs take seriously the problem of counterfeiting products. It is therefore best practice to read carefully the trade fair's terms and conditions for exhibitors and visitors, and to contact the organisers to learn about the services, which they can provide to you if you come across an infringement at the event. In the terms and

⁵ For further information on freedom-to-operate, see the European IPR Helpdesk fact sheet on "How to deal with IP-related issues in transnational negotiations", available in our online [library](#).

conditions for exhibitors and visitors, you can verify if in the event it is possible to take photographs and to know if the trade fair organisers will take measures if infringements are identified, such as providing legal and practical support or alternative dispute resolution mechanisms. This can help you in planning your strategy on how to deal with infringers at the trade fair.

2.1.6 Do consider Exhibition Priority Certificates

Moreover, it is important to know before participating in the trade fair if this event is considered as a recognised international exhibition⁶ or an official national exhibition, since in events of either type inventors may be able to rely on a grace period for seeking patent protection. In fact, in the EU there are two main cases of “non-prejudicial disclosures” where patent novelty is not destroyed by public disclosure, which are: evident abuse by a third party, and presentation in recognised exhibitions.

This means that the disclosure of the invention in this kind of exhibition would not hamper the patentability, but an exhibition priority certificate from the trade fair organiser must be requested and then shown in the patent application as support of priority. However, only specific trade fairs issue priority certificates that confer this grace period. These exhibitions are defined by national law and a list is usually published every year in the national official journal. Therefore it is highly recommended to consult with an intellectual property advisor before deciding to disclose the invention in trade fairs, since this will generally destroy its novelty for patent protection purposes.

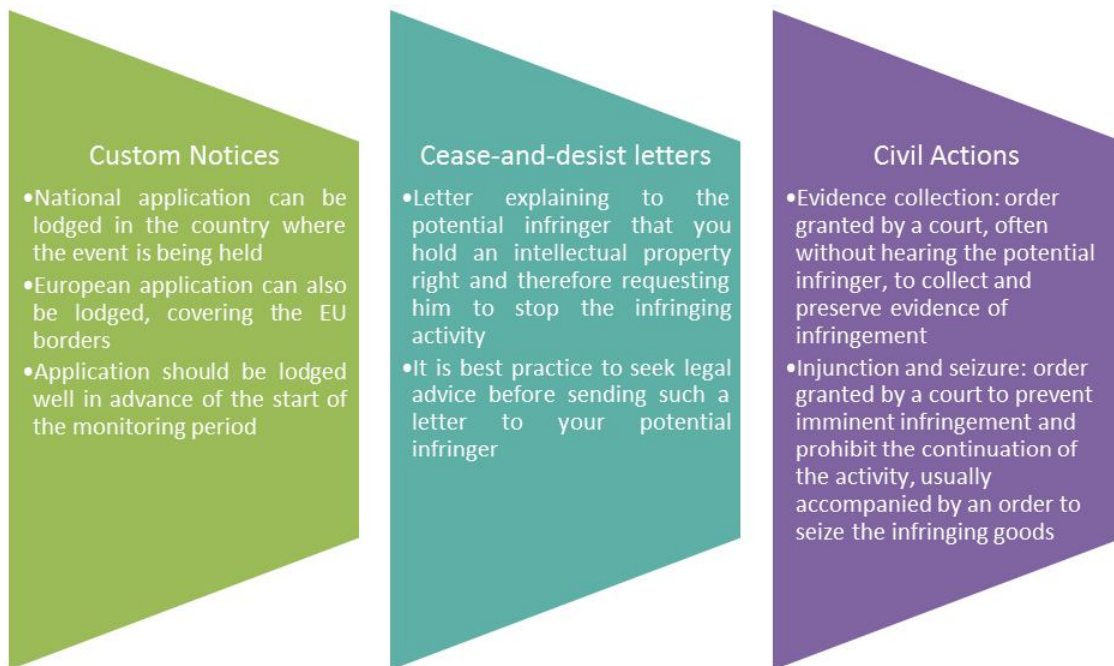
Exhibition priority certificates can also be requested for designs and trade marks in the EU. These can also prove to be useful if you decide to register the design or trade mark after the exhibition: you will receive protection from the date of the first day of the trade fair from the relevant national patent offices (not EUIPO). Companies that do not have the intention to register the design commonly use the Exhibition Priority to document that they have created the design in a given time, should potential future disputes arise.

2.1.7 Do start to identify potential infringers even before the exhibition

Before the trade fair it is best practice to investigate if potential infringers are participating in the event. Trade fair organisers provide exhibitor directories on the internet, where you can sometimes have a glimpse of products expected to be presented.

⁶ For a list of the officially recognised international exhibitions, you may visit the Bureau International des Expositions website [here](#).

These searches help you in the planning on how to deal with infringers. With the assistance of an intellectual property advisor you can prepare cease-and-desist letters, claims for evidence collection at the trade fair or injunctions (with seizure of goods) prohibiting the continuation of the infringing activity. You can also inform the customs authorities, with the purpose of preventing the entry of the infringing goods into the country. If these measures are not appropriate or if you do not have enough time, you can use the trade fair to at least collect evidence of the infringements.



2.1.8 Do prepare in advance documentation on your IPRs

It is important to prepare in advance documentation showing the ownership and validity of your IPRs. These will certainly help you in case you need to take action against infringers at the trade fair or to protect your company in the case of infringement allegations.

What are the kinds of documents to take to the event?

- Certificates of registration;
- Confirmation of payment of registration fees, annuities or renewals;
- Documentation showing ownership and any licensing deal;
- Documentation of any measure taken before the exhibition to enforce your rights.

2.1.9 Do seek the assistance of IP experts

Intellectual property lawyers can be of assistance to you when planning to participate in a trade fair. In fact, they can help you not only in protecting your intellectual property, but also in case you need to take measures against infringers or to defend yourself at a trade fair. It is therefore advisable to keep their contact details and check their availability also on weekends, as timely intervention may be necessary.

It is also important before taking measures against infringers to consult with an advisor, since these may put your business at risk. In fact, in many countries if a threat, made in the form of a cease-and-desist letter for example, is found to be unjustified it can give rise to an award of damages. On the other hand, taking infringers to court might put the IPRs in a vulnerable position, since infringers tend to challenge their validity. Consequently, it is best practice to seek legal advice before enforcing your rights against an infringer at trade fairs.

We suggest that you check the list of intellectual property experts and authorities provided by the trade fair organiser, in case you do not already have any expert in the country where the event is being held.

2.2 During the event

2.2.1 Do not disclose confidential information

Since displaying your innovative products at the trade fair can invalidate future intellectual property protection, and disclosing confidential information can put it at the mercy of your competitors, it is essential to make sure that you do not disclose any secret at the event, either in oral or written form.

2.2.2 Do request Exhibition Priority Certificates

Should you wish the trade fair organiser to certify that you showed a certain product on the exhibition, do get in touch with the organiser in the beginning of the trade fair to ensure your request can be treated in time. A representative will visit your stand and check all exhibited items to be documented.

2.2.3 Do monitor the event for potential infringers

Irrespective of your enforcement strategy at the trade fair, these events are always excellent opportunities to collect evidence of suspected infringing goods, such as catalogues and brochures. You should discuss with your advisor the type of evidence which you should collect, since it is important to ensure that, should you need to use it in future, it is considered as genuine at court.

2.2.4 Do take appropriate action

If your strategy includes taking action against the infringer at the trade fair, you should be assisted by an advisor. The concrete action to take at the trade fair will

depend on several factors, including the country where the event is being held, since the measures available at trade fairs are not harmonised in the EU.

2.2.5 Do take into account “alternative dispute resolution mechanisms”

Many trade fair organisers offer an optional or obligatory system for dispute resolution during the exhibition. Very often, this mechanism ensures a quick and fair procedure to find a solution to the concrete conflict during the trade fair, which is worthwhile to follow. Do not forget that legal action must follow if you want to enforce your rights not only during the show but all year round.

2.3 After the event

2.3.1 Do take action

The evidence gathered should be analysed and passed on to your advisor, who should help you to take the enforcement measures necessary against infringers that have been identified. Swift action is generally important, to avoid the products entering the large commercialisation stage.

If you have already taken some steps at the trade fair to enforce your rights, it is important to verify with your advisor what the next steps are that must be taken. Enforcing your rights at trade fairs does not finish once the event is over. Furthermore, it is useful to inform the trade fair organiser about any measures and results achieved in court against any other exhibitor or visitor of the trade fair.

Useful Resources

For further information on the topic please also see:

- Intellectual property rights intensive industries and economic performance in the European Union, Industry-Level Analysis Report, October 2016
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance in the European Union/performance in the European Union_full.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance%20in%20the%20European%20Union/performance%20in%20the%20European%20Union_full.pdf)
- Study on Trade Secrets and Confidential Business Information in the Internal Market, April 2013
http://ec.europa.eu/internal_market/iprenforcement/docs/trade-secrets/130711_final-study_en.pdf
- Fact sheet on “How to deal with IP-related issues in transnational negotiations”
<http://www.iprhelpdesk.eu/Fact-Sheet-How-to-Deal-with-IP-Issues-in-Transnational-Negotiations>
- IPKey resources on trade fairs
<http://www.ipkey.org/en/resources/ip-information-centre/29-trade-fairs>

GET IN TOUCH

For comments, suggestions or further information, please contact

European IPR Helpdesk
c/o infeuope S.A.
62, rue Charles Martel
L-2134, Luxembourg

Email: service@iprhelpdesk.eu
Phone: +352 25 22 33 - 333
Fax: +352 25 22 33 - 334



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ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk is a service initiative that aims to raise awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR). It provides free of charge, first-line support on IP and IPR matters to current and potential beneficiaries of European collaborative research projects (FP7/CIP/Horizon 2020/COSME) as well as to European small and medium-sized enterprises (SMEs) involved in transnational business relations.

Helpline: The Helpline service answers your IP queries within three working days. Please contact us via registration on our website (www.iprhelpdesk.eu), phone or fax.

Website: On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

Newsletter and Bulletin: Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

Training: We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email at training@iprhelpdesk.eu

DISCLAIMER

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