

Launch of the SME FUND 2024: 22 January 2024- 06 December 2024

29 January 2024

The **SME Fund** is run by the EUIPO in collaboration with the European Commission, designed to support small and medium-sized enterprises ('SMEs¹ ') in the protection and exploitation of their intellectual property rights.

The **SME Fund for 2024** has been launched and applications may be submitted during the period **22 January 2024 to 06 December 2024**. As funds are limited, in the event that these are exhausted prior to the cut- off date, applications shall be closed earlier. In addition, in the event that funds run out in relation to a particular voucher, a relevant notice shall be published.

This grant mechanism provides financial support to SMEs which are based in the European Union in the form of partial reimbursement of fees for specific actions, namely:

- 1- **IP Scan** (IP pre-diagnostic service) and/ or **IP Scan Enforcement** (voucher 1)
- 2- Trade Marks and Designs (voucher 2)
- 3- Patents (voucher 3)
- 4- Plant varieties (voucher 4)

The amounts which may be reimbursed are as follows:

- 1- For IP Scan and IP Scan Enforcement the maximum reimbursable amount per SME, per service (applicants may request Voucher 1 twice, once per service), is equal to EUR 900 and an

¹ Definition of **SME**:

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

applicant may receive 90% reimbursement for either activity. It is important to note that an applicant may apply for both an IP Scan as well as for an IP Scan Enforcement Service (the application for each service however, must be filed within a different working week).

Per the EUIPO, the **IP Scan service** 'aims to guide SMEs on how to register and capitalise on their intellectual property assets and learn how to incorporate an IP strategy into the company's business plan. An IP Scan expert examines the company's business model, products/services and growth plans and produces a report that helps companies discover which intangible assets they need to protect and how IP can help their business grow.'

Per the EUIPO, the **IP Scan Enforcement** service 'is specifically tailored to address existing or potential conflicts related to IP rights infringement. This may include issues/ risks such as usage of intellectual property rights [trade marks, copyright, patents] without permission, counterfeiting, or disputes between registered IP rights.' It is important to note that the report generated under this service does not constitute official legal advice, even though only lawyers who are included on the list maintained by the Registrar of Intellectual Property ('RoIP') may produce such a report.

The following cases constitute examples where one may wish to obtain the IP Scan Enforcement service:

- The SME is accused of infringing another's IP right
- An opposition is raised against an SME's application for an IP right
- An application for cancellation is filed against an SME's IP right
- There is suspicion/ evidence that an SME's IP right has been infringed
- A third party intends to register an IP right which affects an SME's IP right
- There is a high risk that an SME's IP right may be infringed
- There is a high risk that the SME infringes another's IP right.

Beneficiaries of this service should expect to receive a report analyzing the IP enforcement case which would contain strategic recommendations for the SME. For example, the report would include an analysis of existing potential risks and recommendations for both IP enforcement and IP protection (e.g. description of next steps), recommendation of tools to use in connection to the case such as the IP Enforcement Portal, applicable timelines, rough estimation of costs, risks and benefits.

2- For **trade marks and designs- related activities**, the maximum reimbursable amount per SME is equal to EUR 1 000 and an applicant may receive:

- 75% reimbursement of EU trade mark and/or design application fees, additional class fees, and examination, registration, publication and deferment of publication fees
- 75% reimbursement of national or regional trade mark and/or design application fees, additional class fees, and examination, registration, publication and deferment of publication fees
- 50% reimbursement of trade mark and/or design basic application fees, designation fees, and subsequent designation fees outside the EU. Designation fees for EU countries are included in 2024 SME fund scheme. Handling fees charged by the office of origin are excluded.

2- For **patent-related activities** the maximum reimbursable amount per SME is equal to EUR 3 500 (in case of a European patent; in case of a national patent the maximum reimbursable amount equals to EUR 1 500) and an applicant may receive the following:

- 75% reimbursement of the fees for a 'Prior Art Search Report'. The report, prior to a patent application, is performed worldwide and must be conducted or coordinated by the RoIP
- 75% reimbursement of patent pre-grant (filing, search and examination), grant, and publication fees for national protection in an EU Member State

- 75% reimbursement of filing and search fees for European patents filed at the European Patent Office (EPO). All other fees for a European patent are excluded
- 50% reimbursement of legal costs for European patent application drafting and filing with a maximum amount of EUR 2 000 depending on the applicable cost at national level for these services. Reimbursement is subject to the following conditions:

- The service relates to the drafting **and** filing of a European patent application
- The service must be delivered by a professional representative, legal practitioner or association of professional representatives **established in the EU and entered in the EPO official list.**
- The request for reimbursement must be done online within the established time limits. 4 All other fees for a European patent are excluded.

- 3- For **Community Plant variety-related activities** the maximum reimbursable amount per SME is equal to EUR 1 500 and an applicant may receive 75% reimbursement of the online application and examination fee for a community plant variety right (EU level).

Eligible applicants are owners, authorized employees or external representatives. A 'representative' is defined as any third party, whether a natural or legal person, who is duly authorised by the SME to represent it legally. If an applicant uses the services of an external representative to submit the applicant, a 'declaration on honour' (there is a specific form for this declaration) which is duly signed by both parties, must be submitted alongside the electronic application form.

It is important to note that applications for any of the abovementioned vouchers must be submitted prior to the filing of any IP application or the securing of IP Scan/ IP Scan Enforcement services.

In addition, any applicant, prior to filing an application for a voucher should be ready or almost ready to file upon receiving a voucher since there are applicable time limits within which to file an application and/ or seek IP Scan/ IP Scan Enforcement services, as follows:

- The SME will have a time period of *2 months*, with a right of extension, up to 4 months to activate the grant vouchers by filing the first trademark, industrial design and/or patent application or conduct an IP Scan/IP Scan Enforcement.
- After the vouchers are activated, the SME will have the following time period to file *additional registration applications* so as to reach the maximum reimbursement amount:
 - * Vouchers no. 1 and 2: up to 6 months
 - * Vouchers no. 3 and 4: up to 12 months.

Once a claim for reimbursement has been submitted, assuming it is valid, the EUIPO has 30 days from submission to reimburse the funds due.

It is a precondition for the kick-off of the payment period that the relevant fees (services in case of IP Scan/ IP Scan Enforcement) have been fully paid to the issuing offices (national IP offices, EUIPO, WIPO, EPO, CPVO) 5 validating the registration process or the service provided. If payment is still needed to complete the filing, the request for payment would not be considered valid and the payment period shall be suspended until such payment is issued and confirmed by the above offices.

Should you wish to find out more about any aspects of the scheme, including your eligibility under the scheme and procedural aspects of the scheme, please contact **Maria H. Kyriacou** at mkyriacou@mhk-law.com. Maria H. Kyriacou is included in the list of national experts maintained by the RoIP who may provide the services under the SME Fund 2024.