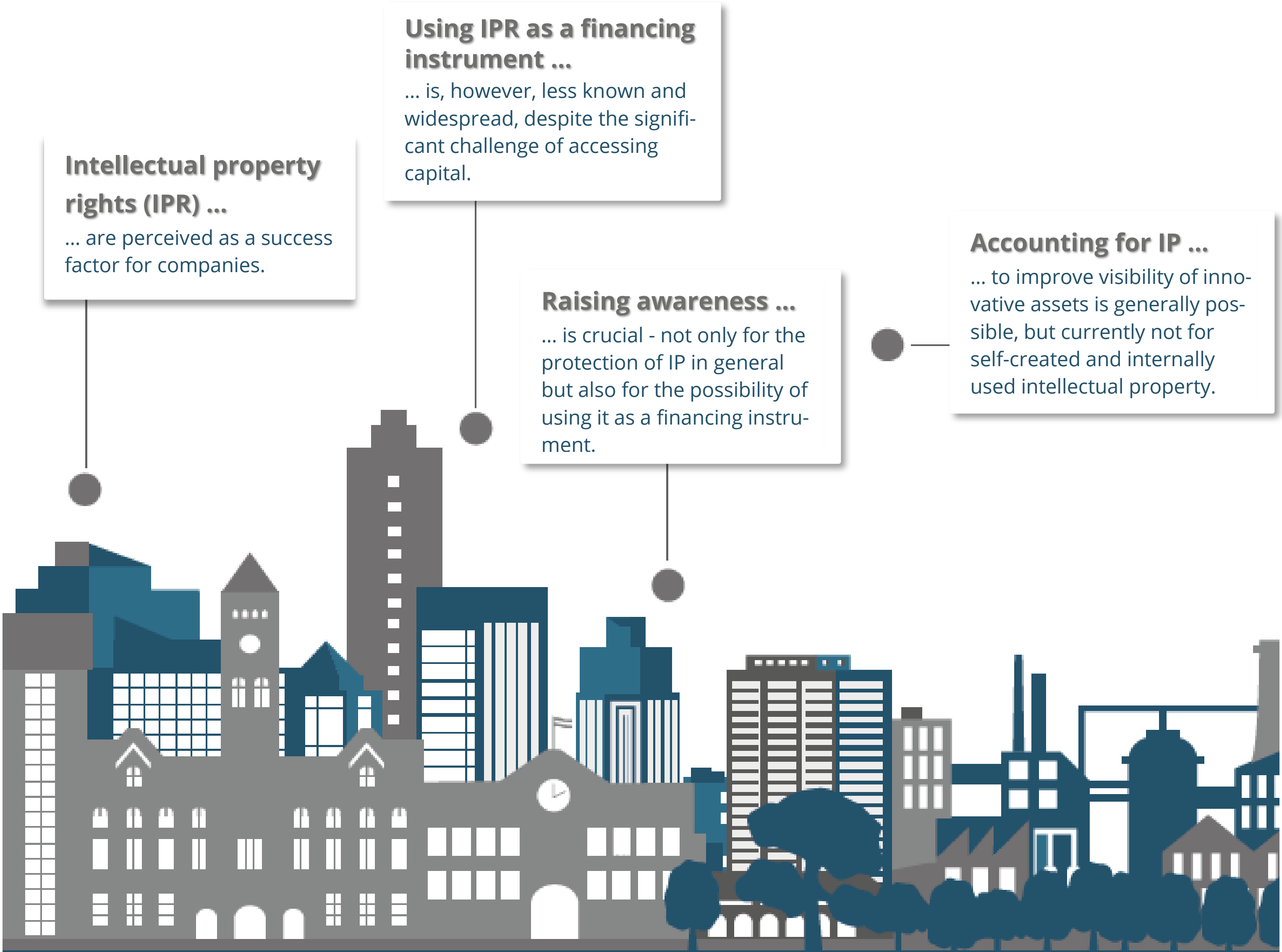
Wissen schafft Perspektiven



Intellectual Property Rights for Corporate Financing: Opportunities and Challenges

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„Failure is simply the opportunity to begin again, this time more intelligently“

(Henry Ford, American inventor and entrepreneur, 1863-1947)

„Hope and curiosity about the future seemed better than guarantees.“

(Hedy Lamarr, American actress and inventor, born in Austria, 1914-2000)

Wissen schafft Perspektiven is a series of publications by the Austrian Patent Office that attempts to present topics relating to intellectual property in such a way that they can be of use to an interested public without claiming to be exhaustive. Various data and studies from renowned IP organizations are analyzed and processed and underpinned with our own data analyses. Wherever possible, the focus is on the Austrian IP landscape and its stakeholders.

The statements and considerations contained therein do not necessarily reflect the opinions and views of the Austrian Patent Office. The data presented has been carefully and conscientiously compiled to the best of our knowledge, but errors cannot be completely ruled out.

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Intellectual Property Rights for Corporate Financing: Opportunities and Challenges
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Table of Content

List of Figures

List of Abbreviations

AG – stock corporation
APO - Austrian Patent Office
EIB – European Investment Bank
EPO - European Patent Office
EUIPO – Europ. Union Intellectual Property Office
FMA – Financial Market Authority
GDP - Gross Domestic Product
GmbH – limited liability company
HGB – German Commercial Code
IAS - International Accounting Standards
IFRS - International Financial Reporting Standards
IP - Intellectual Property
SMEs - Small and Medium-sized Enterprises
UGB – Austrian Corporate Code
WIFO - Austrian Institute of Economic Research
WIPO - World Intellectual Property Organization

1. The Storyline

Intangible assets are seen as a **success factor** at both macroeconomic and microeconomic levels. Investments in these assets have increased significantly over the past decades. When protected by industrial property rights, they are the tangible output of inventive and creative activity, indicating the innovative strength of a company or an economy.

Startups in Austria, in particular, register a high number of industrial property rights, as innovative technologies are often the core of their business activities.

However, **access to capital** remains a significant hurdle for companies in Austria, particularly for SMEs and startups, as well as high-tech companies with high capital requirements. This obstacle also affects later financing rounds. This is not just an Austrian issue but a European one: Europe has an excellent research landscape, is strong in patents, and brings more startups to the market than the USA, but lacks investment opportunities in the scale-up phase.[1] This subsequently impacts entrepreneurial innovation activities.

Intellectual property rights (IPRs) **generally help in finding investors and tapping new sources of capital, but opportunities in Austria are currently more limited than in many comparable countries.**

This paper analyzes some of the reasons for this and suggests possible courses of action, focusing on two aspects: **accounting for intellectual property rights** and **raising awareness – for IPRs in general and for using IPRs as a financing instrument**. This short analysis is based on the study "IP Financing in Austria," conducted by WIFO on behalf of the Austrian Patent Office and WIPO, published on May 16, 2024.[2]

2. Intangible Assets as a Success Factor

Material assets (machinery and manufacturing facilities, raw materials, etc.) used to be the central success criteria for companies. In the modern economic world, success factors are predominantly bundled in intangible assets. Depending on the type of business, **intangible assets can constitute a significant or dominant part of a company's assets**. This is also reflected in the development of investments in these areas, which has changed significantly over the past 30 years.

2.1. Investments in Intangible Assets

Evidence of this shift towards intangible values can be found in the consideration of **investments in intangible assets**. The development of investment figures for fixed assets is a good starting point, as **gross fixed capital investments** include not only investments in **equipment** (machinery and devices, incl. also weapon systems) and **buildings** (residential and non-residential buildings such as office/factory buildings, warehouses, schools, etc.) but also **investments in other assets**. In this investment category, investments in intellectual property are subsumed, such as research and development, software and databases, or copyrights and other intellectual property. Looking at these

[1] Pacher, Martin. (31.7.2024).

[2] WIFO. (May 2024).

figures for Austria, one can see a tripling of the **share of investments in intellectual property** from just under 5.6 billion euros (share of fixed capital investments: 9.1%) in 1995 to 25.1 billion euros (share: 27.4%) in 2023.[3]

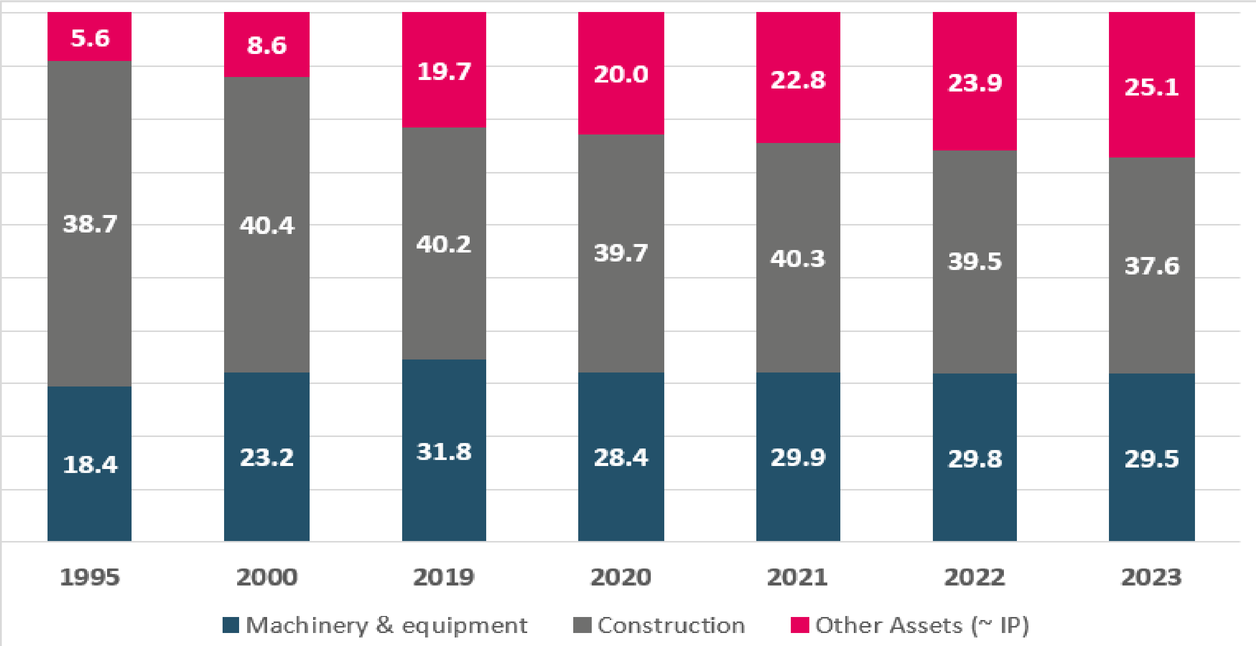

Figure 1: Gross fixed capital formation in Austria (real; in % and billion euros)
Column height = 100%, colored areas = percentages; figures in billion euros.

In addition, investments in intellectual property (subsumed in 'other investment') appear to be far **less sensitive to economic fluctuations** than investments in buildings and equipment (see Figure 2).

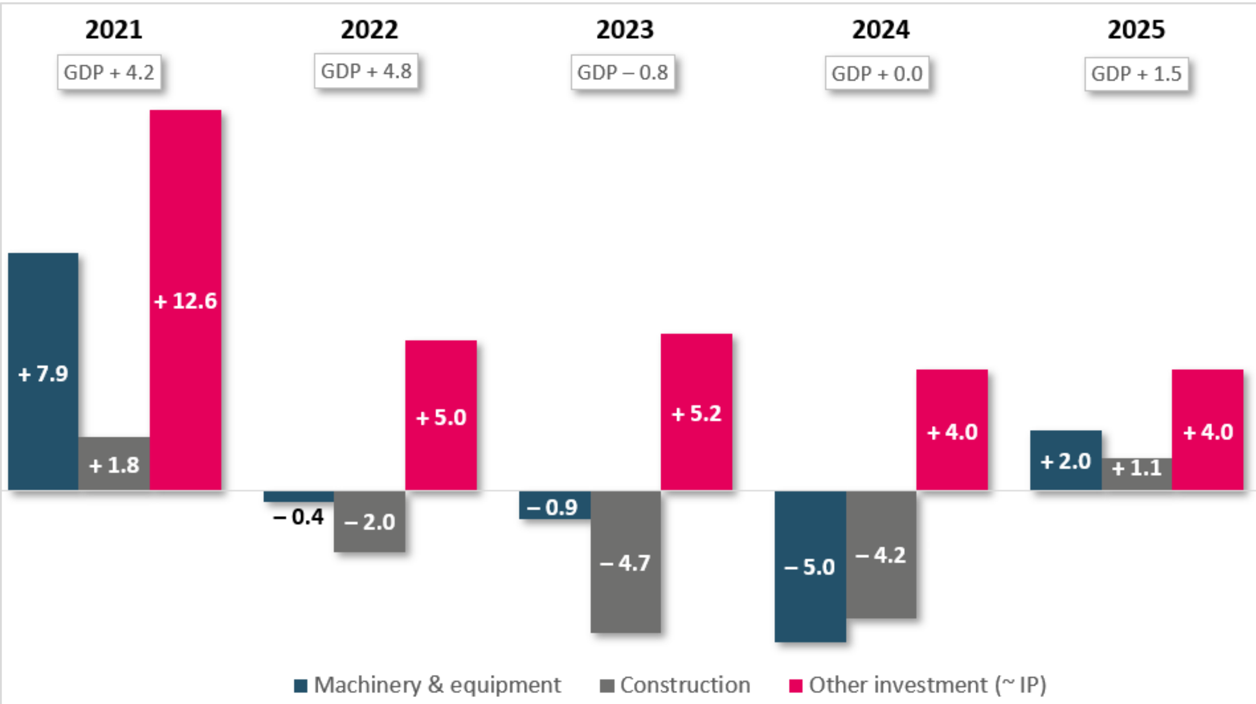

Figure 2: Growth in gross fixed capital formation, real, year-on-year change in %; 2024/2025: forecast.

[3] WIFO Economic Data Service. (2024).

2.2. Intellectual Property Rights as a Success Factor

Intangible assets such as intellectual property and industrial property rights are widely recognized as success factors in Austria. This is confirmed by numerous empirical studies.

For example, **40% of all Austrian startups register industrial property rights**, the second-highest rate in Europe after Finland. In comparison, an average of 29% of European startups have registered IP rights. There are significant differences depending on the technology sector: in biotechnology, almost half of European startups use patents or registered trademarks. Other IP-intensive sectors include science & technology (25% of patent and 38% of trademark users), healthcare (20% of patent and 40% of trademark users), and manufacturing (20% of patent and 36% of trademark users).[4]

Companies that own intellectual property rights generate 20% **higher revenues** per employee than those without these rights. Additionally, companies with intellectual property rights pay an average of 19% **higher salaries**. About 60% of large companies own intellectual property rights. Although less than 9% of small companies own intellectual property rights, their revenues per employee are 68% higher than those of companies without such rights.[5]

The contribution of intellectual property rights is also recognized at the **EU level**. The Council of the European Union, in its conclusions of May 2024, points out that *"intellectual property rights, and patents in particular, are the 'currency' of our knowledge economy"* and emphasizes that *"that the protection and valorisation of knowledge and intellectual property rights and trade secrets are an essential factor for industries, and in particular SMEs, to attract investment, to generate value and to increase their competitiveness."*[6]

3. The Use of Intellectual Property Rights for Corporate Financing

3.1. How Do Austrian Companies Finance Themselves?

Austria has a **strong bank-based corporate financing system** - companies primarily finance their liabilities through equity and credit but have a **weakly developed venture capital market**.[7] This is also confirmed by the OECD, which states that more than 60% of Austrian SMEs rely on bank financing as their primary source of external financing.[8] Financial liabilities, i.e., all obligations of the company on which interest is usually payable, are covered by Austrian companies on average as follows:

- **Debt Financing:** Around 43% of liabilities are financed through debt, particularly long-term loans. The problem arising from the reliance on banks is that if loans are rejected or reduced, companies are forced to adjust or delay their investment volumes. This also affects the development of innovations. (Figure 3)
- **Equity Financing:** Nearly 50% of financial liabilities were covered by equity in 2022,

[4] EPO/EUIPO. (October 2023).
[5] EPO/EUIPO. (February 2021).
[6] Council of the European Union. (May 2024).

[7] WIFO. (May 2024).
[8] OECD. (March 2022).

according to data from the Austrian National Bank. The largest share (about 70%) consists of equity investments in partnerships and corporations (equity securities). **External equity financing** through investment financing, such as venture capital, crowd investing, or business angels, is also included in equity financing:

- Venture capital companies invest in young companies (startups), especially in the early stages of the company, with the aim of generating profits from the invested capital when the investment is resold. The umbrella term here is private equity, which generally refers to private equity capital that is invested in companies in the form of equity (across all company phases).
- As a rule, business angels are often private individuals who invest equity in a young company. In addition to the contribution of equity, a business angel usually supports the young company with know-how and its network.
- Public participation in the form of equity capital is known as 'crowdinvesting' (or equity-based crowdfunding).

What most of these forms of capital have in common is that external parties (investors or venture capitalists) provide equity to a company and receive shares in the company in return for their capital. These investments are associated with a high level of risk (hence the term venture capital): the companies in which investments are made are often at an early stage of development, do not yet have a long track record and the possibility of failure cannot be ruled out. Consequently, high returns are often demanded for the capital provided. However, there is also the possibility of high returns if a company is successful and increases significantly in value.

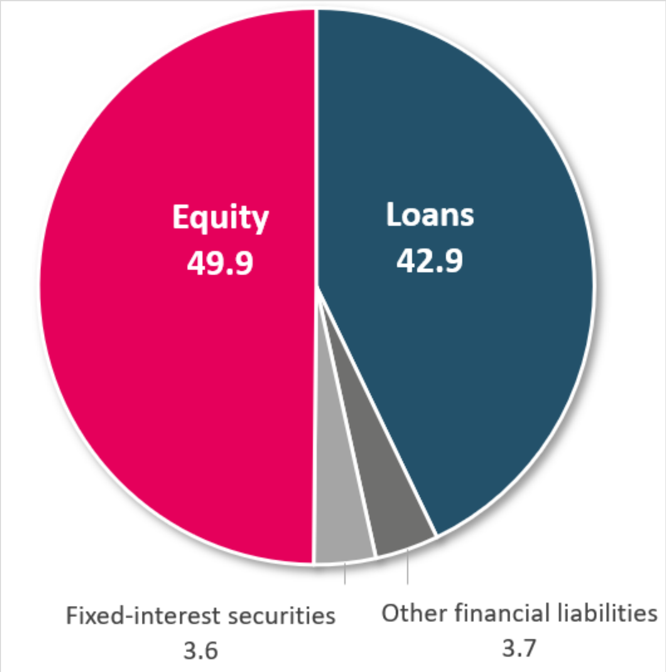

Figure 3: Financial liabilities of Austrian companies 2023. Source: WIFO. (May 2024).

According to Startup Monitor 2023, the proportion of startups that have raised external equity is currently 56%. For scale-ups, this figure is 89%.[9]

3.2. Access to Capital as an Obstacle

Numerous studies show that **access to capital** remains a significant hurdle, especially for startups and scale-ups. This is not only the case in Austria but also in Europe, where the financing of startups lags behind other regions of the world.

[9] Scale-ups are defined here as companies that have at least 15 employees and have shown an annual growth in employees or turnover of at least 20% in the last three years or have raised at least EUR 3 million in external equity in the past. Austrian Startup Monitor. (2023).

Many companies struggle to secure early-stage investments, particularly venture capital, which is crucial for scaling their operations, product development, and entering new markets. Lenders and investors often disadvantage small, innovative, young companies due to their higher risk profile, lack of track record, and high proportion of intangible capital in their assets.

A study published jointly by the EPO and the EIB in April 2024 also highlights the difference between Europe and other regions of the world regarding the financing possibilities of innovative companies. Special attention was given to companies in the field of clean and climate-friendly technologies, known as cleantech firms.

According to the study, cleantech innovators in the EU received almost equal shares of debt and equity financing, unlike US firms, which rely more on equity financing. The tendency towards debt financing is more pronounced among larger cleantech innovators in the EU and reflects the financing patterns during a company's lifecycle: young start-ups tend to finance themselves with (external) equity because it shares the risk and does not create immediate repayment obligations. Especially when they (still) lack collateral or (still) do not generate sufficient revenue for debt financing (bank loans or bonds) that require regular interest and principal payments, **external equity is often the only option**.[10]

Therefore, **venture capital markets** play a crucial role. However, for Austrian SMEs and startups, this is a particular challenge, as the OECD also notes in its latest SME Scoreboard for Austria:

„The capital structure of SMEs in Austria is traditionally biased towards debt financing, and limitations on access to risk-financing are still apparent."[11]

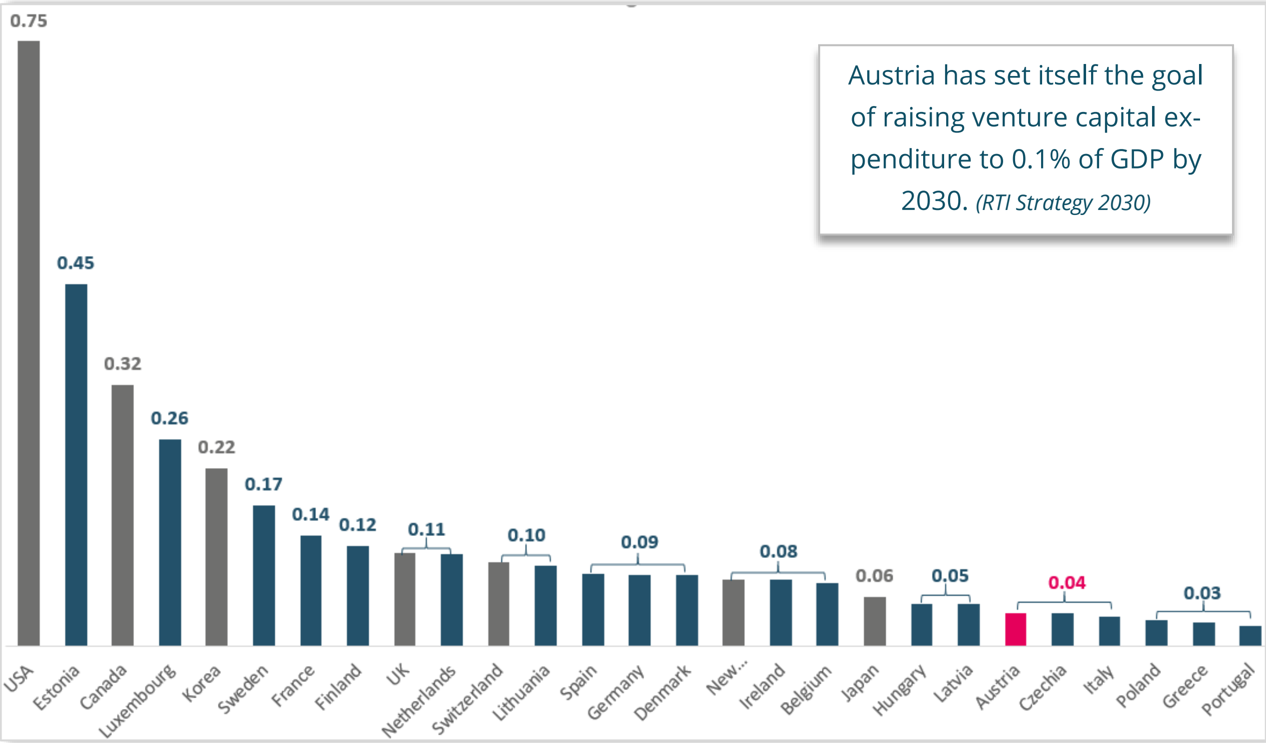

Figure 4: Venture capital investments as % of GDP 2022, selected OECD countries; Source: OECD. (2022).

[10] EPO/EIB. (April 2024).

[11] OECD. (March 2024).

Other forms of financing that would be more suitable for young and innovative companies have struggled to establish themselves due to this historically grown bank and credit-based system.

In fact, Austria still ranks rather low in **venture capital investments** (measured as a percentage of GDP): in 2022, these accounted for just 0.04%, while innovation leaders like Sweden, Finland, or the Netherlands are already more strongly positioned in this indicator (see Figure 4). Europe's lag behind countries on other continents is also evident.[12]

3.3. IPRs as an Instrument for Financing

From what has been presented so far, we can observe: on the one hand, intellectual property and intangible assets in general are becoming increasingly important for companies; on the other hand, start-ups/scale-ups and SMEs often struggle - generally in Europe and especially in Austria - to finance their innovations because this would require a well-developed risk capital market.

Public funding in Austria tries to compensate for this shortcoming, and several steps have been taken in recent years to improve the legal and regulatory framework for risk capital financing, such as the creation of the possibility of crowdfunding through the Alternative Financing Act 2015 or, most recently, the Venture Capital Fund Act (2023).[13]

Industrial property rights can also contribute to improving the financing situation of companies, as they are a kind of "proof" of their innovative activity. Possessing intellectual property rights increases the ability of start-ups to raise funds (especially for high-tech industries with higher capital requirements). This is also shown by a recent study by EPO/EUIPO: s**tart-ups with patents and trademarks are up to 10 times more successful** when it comes to obtaining funding.[14]

Nevertheless, industrial property rights are still little used in this regard in Austria. One of the reasons for this is the above-mentioned practice of bank and credit dependency in Austria when it comes to corporate financing. According to WIFO, it is **less legal aspects** that stand in the way of using intellectual property rights accordingly - industrial property rights are used, for example, as collateral to secure loans. **Rather, it is the knowledge and awareness** of the existing possibilities. Austria is also one of the few countries in the EU where the **accounting of self-created intangible assets** is not yet possible for every company for which it might be strategically sensible.

In the following, therefore the topic of accounting as well as the possibilities for improving the know-how on how IP can be used as a financing instrument will be addressed.[15]

[12] No data for China available.
[13] See also: WIFO. (May 2024).
[14] EPO/EUIPO. (February 2021).
[15] WIFO identifies five challenges. Improving the visibility of IP in company balance sheets and maintaining awareness, information and training measures on IP are two of them. The following were also identified: improving the Austrian venture capital market, creating markets for industrial property rights and thinking along with the European dimension (e.g. European IP markets). WIFO. (May 2024).

4. Focus: Visibility of IP in Balance Sheets

In the following, intangible assets are considered from an Austrian accounting perspective.[16]

4.1. Definition of Intangible Assets

From an accounting perspective, a definition of intangible assets can be found at the **international level** in the International Accounting Standards (IAS).[17] Essentially, they are non-monetary assets without physical substance. They must generally possess three characteristics:

1) Identifiability,[18]
2) Power of disposal (available to the company), and
3) Future economic benefit.

Examples mentioned include patents, copyrights, computer software, as well as film material, franchise agreements, customer lists, etc.[19]

At the **national level**, the term interpretation can be found in the UGB (Austrian Commercial Code). There, intangible assets are listed as a separate item in fixed assets, including concessions, industrial property rights and similar rights and benefits as well as licenses derived from them, goodwill, and advance payments made.[20]

4.2. Current Regulation in Austria

Acquired intangible assets can be capitalized in the balance sheet of a company (Example: a patent is purchased by a company). Here, the principle of completeness applicable in accounting law comes into effect, according to which the annual financial statement must contain all assets, provisions, liabilities, accruals and deferrals, expenses and income, thus also intangible assets. They are capitalized at acquisition cost, reduced by scheduled depreciation **(1)**. (see Fig. 5)

However, it is prohibited to capitalize **self-created (and internally used) intangible fixed assets**[21] (Example: the company develops a technological innovation - and protects it with a patent - and this invention is used in the company itself only). Here, the principles of prudence and creditor protection come into effect. The argument behind this: since there is no "(sale/purchase) price" (consideration), the production costs are often not clearly attributable (identifiability) and the future benefit and thus the useful life are uncertain (uncertainty), no objectified value can be assigned **(2)**.

For **self-created intangible current assets**, however, there is a **capitalization requirement (3)**. In other words: if the company sells the patent (for consideration), it must be included in the balance sheet. In this case, there is usually an identifiable sales price.

Self-created intangible assets can, however, be capitalized in the balance sheet **as**

[16] The tax law perspective is not dealt with here. See for example: WKO. (2024).
[17] The IAS form the core of the International Financial Reporting Standards (IFRS). They contain accounting regulations. They were issued between 1973 and 2000 with regular revisions and amendments since then. Rechnungswesen-Portal.de. (2023).
[18] An intangible asset is identifiable if it is separable (capable of being sold, transferred, leased or exchanged separately and individually or as part of a group) or has a contractual or legal basis.
[19] Deloitte. (2024a).
[20] UGB. (2024). § 224 (2).
[21] UGB. (2024). § 197 (2).

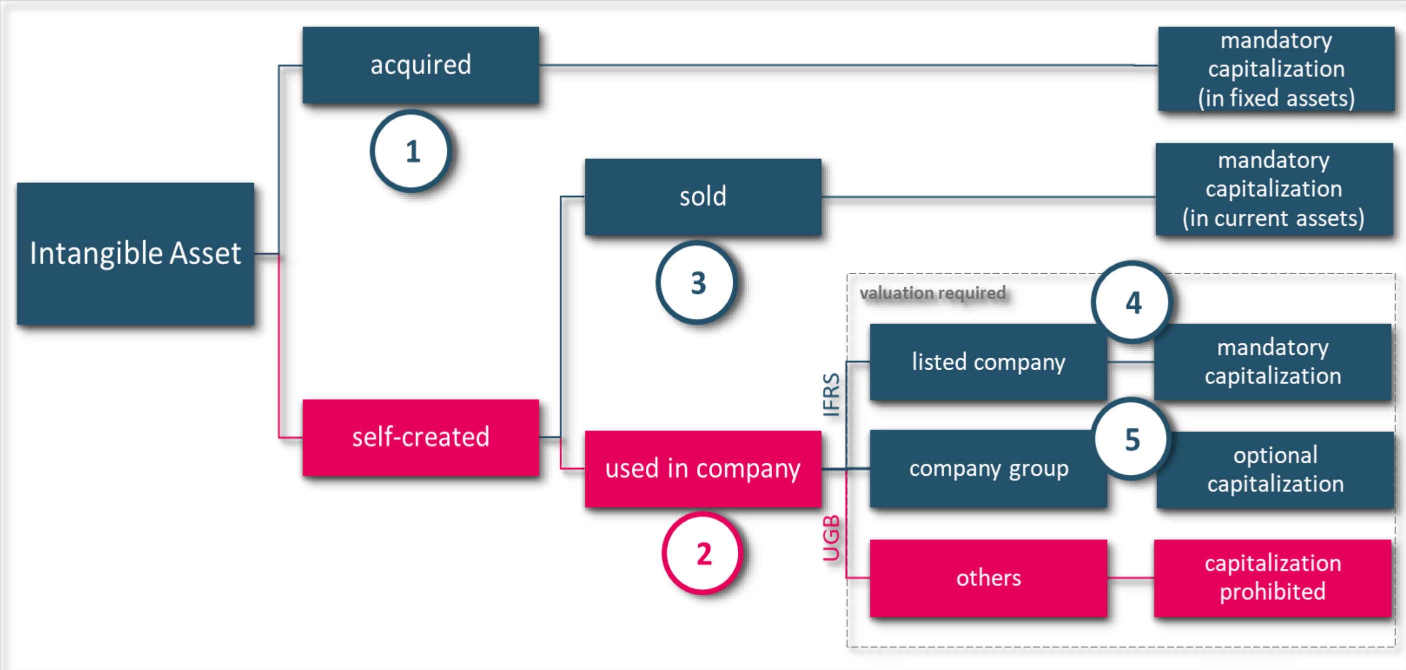

Figure 5: Overview - Who must/may report according to IFRS in Austria. Own illustration.

fixed assets if the company prepares its financial statements in accordance with **IFRS (International Financial Reporting Standards)**. Whether the company may or must prepare its financial statements in accordance with IFRS depends on whether the company is listed on the stock exchange **(4)** or whether it prepares consolidated financial statements **(5)**.

Because according to the IAS Regulation:[22]

- all listed companies have been **required** to prepare their consolidated financial statements in accordance with IFRS since 2005.
- non-listed company groups can **choose** to prepare their financial statements either according to IFRS standards or according to UGB (Austrian Commercial Code),[23] and
- IFRS accounting is **prohibited** in individual financial statements. This also applies to the subsidiary/ies of a company group.[24] [25]

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[22] EC. (2008).
[23] "Whether the benefits of voluntary IFRS accounting outweigh the costs depends on the individual case. As a company making the leap to the capital market or with an international focus, it is advisable to examine the possibility at an early stage." Landgraf, Christian & Raum, Fabian. (June 2016).
[24] All companies with an annual turnover of more than 700,000 euros are required to prepare a balance sheet (exception: liberal professions and farmers and foresters). All others may voluntarily prepare a balance sheet. Unternehmensservice Portal. (2024a).
[25] A company group is defined as the combination of a company with one or more dependent companies to form a single economic entity. In simple terms, the consolidated financial statements are the aggregation of the individual financial statements. The principle of unity set out in Section 250 (3) UGB applies, according to which the consolidated financial statements must present the net assets, financial position and results of operations of the consolidated companies as if these companies were a single entity.

Box 1: IFRS and UGB

IFRS are primarily capital market-oriented accounting regulations. This means that the annual financial statements should provide investors with an overview of the company's profitability in relation to the capital provided. This is because the primary interest of investors concerns the amount of future distributions or price increases. For this reason, financial statements prepared according to IFRS tend to show an earlier profit, higher assets, and thus a higher equity base. [26]

In the **UGB** (Austrian Commercial Code), on the other hand, the principle of prudence prevails. As a result, unrealized gains may not be reported in the annual financial statements. Consequently, assets can be included in the balance sheet at most at their acquisition or production costs. This deliberately accepts the formation of "hidden reserves". The distribution of unrealized profits and thus premature capital withdrawal should be avoided in the interest of creditor protection. [27]

Due to the earlier profit realization in IFRS financial statements (compared to UGB financial statements), higher assets and equity are generally expected.

Implementation of IFRS in EU law: The European Commission, by issuing a regulation in 2002[28], stipulated the adoption of IFRS into EU law with the aim of increasing the efficiency of EU capital markets and the EU internal market. Accordingly, consolidated financial statements of listed companies (group financial statements) from the EU have been prepared according to IFRS since 2005. Member states can (at their discretion) extend the application of IFRS to annual financial statements (individual financial statements) and non-listed companies.[29]

4.3. Valuation and Examination

If the basic conditions are met for the company to capitalize self-created intangible assets under IFRS, further conditions must be fulfilled, such as the economic benefit and an objective valuation of the costs. Both acquired and self-created assets can only be capitalized if:

- the company will derive future economic benefits from the asset, and
- the acquisition or production costs of the asset can be reliably measured.[30]

If these criteria are met, these assets are initially recorded at their acquisition or production costs.[31] Subsequent valuation is carried out at amortized cost[32] or using the revaluation model[33]. Depreciation is only

[26] Hofmann, Ines. (2018).
[27] Hofmann, Ines. (2018).
[28] Regulation (EC) No. 1606/2002.
[29] EC. (2015).
[30] Deloitte. (2024a).
[31] „Cost includes all costs necessary to bring the asset to working condition for its intended use. This would include not only its original purchase price but also costs of site preparation, delivery and handling, installation, related professional fees for architects and engineers, and the estimated cost of dismantling and removing the asset and restoring the site." Deloitte. (2024c).
[32] These are acquisition and production costs less accumulated depreciation and impairment losses. Deloitte. (2024c).
[33] The revaluation method is only applied to intangible assets if their value can be determined on the basis of an active market, which is a limitation. According to IFRS, an active market is a market "in which transactions involving the asset [...] occur with sufficient frequency and volume for pricing information to be continuously available". However, an active market for intangible assets does not normally exist, as assets such as brand names, newspaper print titles, music and film publishing rights, patents or trademarks are unique and transactions are relatively rare. Kußmaul, Heinz. (2024).

allowed if a reliable usage pattern is given.[34]

In Austria, the correctness and proper accounting are reviewed by several institutions and actors, such as:

- Auditors: auditors are external experts engaged by companies to audit their annual financial statements. This audit is legally required for corporations, such as stock companies (AG) and limited liability companies (GmbH), except for small GmbHs. The auditor checks the bookkeeping and the annual financial statements for accuracy and compliance with applicable accounting regulations.[35]
- Tax Office: the tax office has the authority to review tax returns and the underlying financial statements of companies. In case of discrepancies or during tax audits, the financial statements are examined in detail.
- Company Register (Commercial Register): corporations must submit their annual financial statements to the Company Register. This ensures transparency and verifiability by checking the formal correctness of the submitted documents and publishing them.
- Regulatory Authorities: certain industries have specific regulatory authorities that can also audit financial statements. An example is the Financial Market Authority (FMA), which is responsible for banks and insurance companies.
- Internal Audit: larger companies often have an internal audit department that continuously reviews internal processes and compliance with guidelines, including bookkeeping and accounting.

Box 2: What is <u>not allowed</u> to be capitalized under IFRS?

- Internally generated brands, mastheads (publishing titles), publishing rights customer lists, and internally generated goodwill, as well as
- research expenditure and certain expenses for human capital and market share creation or company formation costs.

There may be some delineation issues here: research costs must be clearly distinguished from development costs.

4.4. Current Situation in Other European States

In countries like the United Kingdom, the Netherlands, Luxembourg, Ireland, Greece, and Denmark, accounting according to IFRS was already possible in 2008 for both capital market-oriented and non-capital market-oriented companies, for both consolidated and individual financial statements.[36]

Currently, aside from Austria, only three EU countries (Sweden, France, and Spain) do not make use of the option to allow non-publicly listed companies and those required to prepare individual financial

[34] In Germany, this regulation was implemented as follows: If "one cannot make a reliable estimate of the useful life, then the legislator prescribes in § 253 paragraph 3 sentence 3 of the German Commercial Code (HGB) a standard useful life of ten years. In such a case, one typically depreciates 10% of the production costs annually." Besau, Sacha. (2024).

[35] Unternehmensservice Portal. (2024b).

[36] EC. (2008).

statements to choose to account according to IFRS.[37] [38]

The issue at hand is less about whether accounting according to IFRS should be permitted for all companies (and thus implicitly also self- (=internally) created intellectual property) but rather whether self-created and internally used intellectual property should be recognized as an asset under national law. Here, IFRS could provide a guideline for formulating regulations. Germany, with its approach of implementing IFRS rules into the HGB (German Commercial Code), could serve as a model.[39]

Example of Germany:[40]

In Germany, since 2010, accounting companies have had the option (**capitalization choice**) to not only capitalize the costs of patent applications but also internally created intangible assets on the balance sheet (§ 248 para. 2 HGB): [41] [42] *"Self-created intangible assets of fixed assets can be recognized as assets on the balance sheet. Self-created brand names, mastheads, publishing rights, customer lists, or similar intangible assets of fixed assets must not be recognized."*

The following applies here as well: if the costs of research and development of the intangible asset cannot be reliably distinguished from each other, the capitalization of a self-created intangible asset is entirely excluded (§ 255 para. 2a HGB).[43] [44]

Additionally, the option to capitalize is accompanied by a distribution restriction to ensure creditor protection, because:

"In the case of capitalizing such assets, the question of their value is always relevant. The capitalization of 'empty' costs that do not generate future returns should be avoided. To achieve increased transparency, specific information about the capitalized costs must be disclosed. In particular, the legally mandated distribution restriction is intended to prevent abusive accounting policies."[45]

Example of Switzerland:

In Switzerland, self-created intangible assets may (but do not have to) be capitalized since 2015. According to IFRS requirements, the asset must be identifiable, belong to the company, provide measurable benefits to the company over several years, and the expenses incurred in creating the intangible asset must be separately recordable and measurable. Additionally, it must be likely that the means necessary for the completion and marketing or for the internal use of the intangible asset are available or will be made available. If these conditions are met, development costs may also be capitalized. In contrast, there is a strict prohibition on the capitalization of research activities, as the probability of achieving future economic benefits is considered too low.[46]

[37] Overview of the use of the options provided for in the IAS Regulation (1606/2002) in the EU. EC. (2023).

[38] Deloitte. (2024b).

[39] Germany is currently conducting a study with the aim of evaluating how much use is made of the voluntary application of IFRS and whether a change/extension of the IFRS accounting options to other types of companies would make sense. The focus here is on the internationalization of accounting. DRSC. (March 2024).

[40] Ritterbach, Carola et al. (2016).

[41] Handelsgesetzbuch. (2024). § 248.

[42] Patentschutzengel.

[43] Handelsgesetzbuch. (2024). § 255.

[44] In addition, tax deductibility has been retained so that companies are not penalized with higher taxes for capitalizing development costs. Schmitt, Matthias.

[45] TPA Group. (June 2020).

[46] Findea. (18.06.2016).

4.5. Benefits of the Capitalization Option

As mentioned above, young companies and startups typically generate little revenue and often incur losses in the first few years, which can lead to negative equity and debt in the balance sheet. This, in turn, makes it difficult to obtain, for example, loans and to attract investors, and domestic companies may find themselves at a disadvantage in negotiations with suppliers compared to foreign companies.[47]

- **Improved external representation** (balance sheet accuracy) – making the actual asset value of the company more visible: potential investors are generally interested in how profitable the company is in principle, how profitably it operates with the available capital, and whether or to what extent the company is expected to generate future dividends or capital gains. The ability to capitalize even self-created intangible assets would facilitate the external representation of the company's economic situation to capital providers. This would give the company an improved starting position in raising capital.
- **Strengthening the equity base**: by capitalizing development costs, i.e., the investments made in development as assets, expenses are reduced, and the period profit is increased, thereby strengthening the equity base. Germany has also regulated that the higher profits generated by this cannot be distributed, thus increasing the company's substance.[48]
- **Strengthening the business location and incentivizing innovation**: giving companies the same opportunity to report their assets as in other countries increases Austria's and Austrian companies' attractiveness as an investment destination, including for foreign investors. It also motivates companies to invest more in innovation. Furthermore, no significant direct impacts on the state budget are expected or known from the examples of other countries.

The key elements in a possible implementation in Austria would include, among other things, **optionality** – as in the example of Germany – to choose whether or not to capitalize internally created intangible assets (with the exception of those that must already report according to IFRS), and a **regulation for valuing intangible assets** similar to IFRS or the German Commercial Code (HGB), namely **according to acquisition/production costs** (both at initial recognition and subsequent valuation) and the **distribution restriction** (to ensure creditor protection).

What is the scope?

To estimate how many companies would be affected by an option to capitalize self-created intangible assets, only some kind of approximation is possible due to insufficient data:

- In 2022, there were 66 domestic companies listed on the Vienna Stock Exchange.[49] These companies must

[47] Hölzl, Barbara und Gloser, David.
[48] Schmitt, Matthias.
[49] TheGlobalEconomy.com. (2024).

report according to IFRS and thus include self-created intangible assets in the balance sheet.

- The number of groups in Austria (which would then have the option to report according to IFRS) is currently not available.
- Statistics Austria reports 730,741 businesses in Austria in its latest business census for 2022.[50]
- One-person companies (which, in any case, would not prepare consolidated financial statements but may only need to prepare individual financial statements) account for 61% of these (445,906 individual companies in 2022).[51]

5. Focus: Awareness and Knowledge Dissemination

5.1. Awareness, Information and Training Measures

Another challenge identified by the WIFO in relation to the use of IP as a financing instrument is the availability of **low-threshold information, consulting, and training** measures to generally increase the use of industrial property rights and the associated existing funding and services. According to the interviewees in the course of the WIFO study, the knowledge about the importance of IP is particularly present among technology-oriented startups, but there is a need to catch up in traditional technology segments. Both founders and companies, as well as investors, would benefit from this knowledge.

The report says: *"Knowledge of the relevance and pitfalls of industrial property rights is essential for founders, companies, but also for investors - particularly with regard to venture capital providers - and universities in knowledge-based economies. Therefore, raising awareness and providing training on intellectual property remains a challenge."*[52]

The IP Academy of the Austrian Patent Office was founded in 2018 to bring the expertise of the Austrian Patent Office and external lecturers in the field of intellectual property to the target groups who need it. To this end, the IP Academy offers numerous free seminars and workshops (physical

[50] Statistik Austria. (2024).
[51] Statistik Austria. (2024).
[52] WIFO. (May 2024).

and online) that provide a comprehensive overview of invention, design and trade-mark protection and offer guidance in the field of IP.

The seminars are aimed at different stake-holder like startups, SMEs, pupils, students and universities. Participants learn from IP experts from the Austrian Patent Office and other institutions what IP rights can do for them and what they need to pay atten-tion to.

5.2. Possible New Approaches for the APO

With the IP Academy, the Austrian Patent Office is already broadly and well posi-tioned in terms of general knowledge dis-semination on industrial property rights for specific target groups. However, know-ledge about IP as a possible financing in-strument is still little known. The following initiatives are therefore an initial impetus to address this issue specifically:

1. **Study** (national/international): with the commissioned study and its publication on the WIFO website as well as on the website of the Austrian Patent Office, the Austrian Patent Office is attempting to take a further step in the dissemina-tion of knowledge and awareness-rais-ing. The study was also prepared with the aim of Austria becoming part of the WIPO country report series on "Unlock-ing IP-backed Financing". Reports of this kind have already been published by Singapore, Jamaica, Great Britain, Switzerland, Turkey, Luxembourg and China.
2. **Podcast:** a specially recorded podcast in the series "IP Frequency by Patent Office" with one of the authors of the WIFO study, Dr. Werner Hölzl, also fol-lows this line. Here, the results of the study are presented in an understand-able way to a broad audience.
3. **Paper of the APO series "Wissen schafft Perspektiven"** ("Knowledge Creates Perspectives"): this paper aims not only to analyze and process various sources and data on this topic but also to present it in a way that can serve as an informational basis for potential further discussions – not only at the national level but also at the European/international level. Thus, the WIFO study and this paper will also be presented at the annual Chief Economist Meeting of the WIPO.
4. **IP-Academy:** furthermore, it is plan-ned to incorporate basic information on IP financing into existing courses of the IP Academy to directly bring knowledge to those affected. It is in-tended that the lecturers will also sharpen the participants' perspective that intellectual property rights can be useful as a financing instrument.
5. **New Partners:** attracting the IP stake-holder group of auditors and tax ad-visors as cooperation partners of the IP Academy is another approach to di-rect attention not only to general in-formation on IP rights but also to their importance in terms of corpo-rate financing. Auditors and tax advi-sors play a central key role as know-

ledge transmitters for companies and can thus generally focus on the importance of protecting intellectual property in their advisory activities. In particular, they can best inform as experts, especially on the topic of financing and the use of IP rights.

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