

## Empowering The Licensing Capabilities Of EIC-Funded Startup Companies

By John Cosmopoulos, Thomas Bereuter, Anne-Marie Sassen, Francesco Matteucci, Ivan Stefanic, Isabel Obieta, and Iordanis Arzimanoglou

### Abstract

The European Innovation Council (EIC) was established to address the European Paradox, i.e., the “Innovation Gap” in Europe, by aiding researchers, startups, and SMEs in translating high-impact technologies into successful businesses. With a budget of EUR 10.1 billion, it supports scientific innovations from early research to market scale-up through funding, strategic networking, and business acceleration services to equity investments. The EIC has supported numerous groundbreaking companies.

Licensing has a key role for many EIC beneficiaries, serving as a vital mechanism facilitating technology transfer, accelerating market entry, and enabling revenue generation. The Innovation Radar analysis revealed that 37 percent of EIC-supported innovations required or would benefit from licensing. Licensing is portrayed as a robust business strategy providing access to technology and intellectual property, highlighting various models like development partnerships, freedom to operate agreements, and horizontal as well as vertical commercial licensing strategies.

Case studies illustrate the need for access to: (i) IP (Intellectual Property) and strategy training, (ii) licensing mentors, (iii) model agreements, and (iv) sector-specific experts. That kind of support facilitates an alignment of the licensing strategy with the overall business strategy as well as coping with a complexity of tailored licensing agreements that comply with national and international regulations.

### 1. Introduction

While Europe has been a leader in terms of R&D funding and activities, and resulting scientific publications, it has often lagged behind in successfully translating research outcomes into marketable innovations and thriving businesses. This phenomenon is often referred to as the “European Paradox” or the “Innovation Gap.” With a total budget of EUR 10.1 billion, the EIC supports researchers, startups, and SMEs in bringing their innovations to market by providing funding, networking and partnership opportunities, and business acceleration services. The EIC supports innovations throughout the lifecycle from early-stage research to proof of concept,

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technology transfer, and the financing and scale up of startups and SMEs. The EIC fulfils its mandate by providing funding through its three instruments—Pathfinder, Transition and Accelerator—and by providing strategic intelligence-based support, including critical networking, catalysing partnership opportunities, and providing business acceleration services.

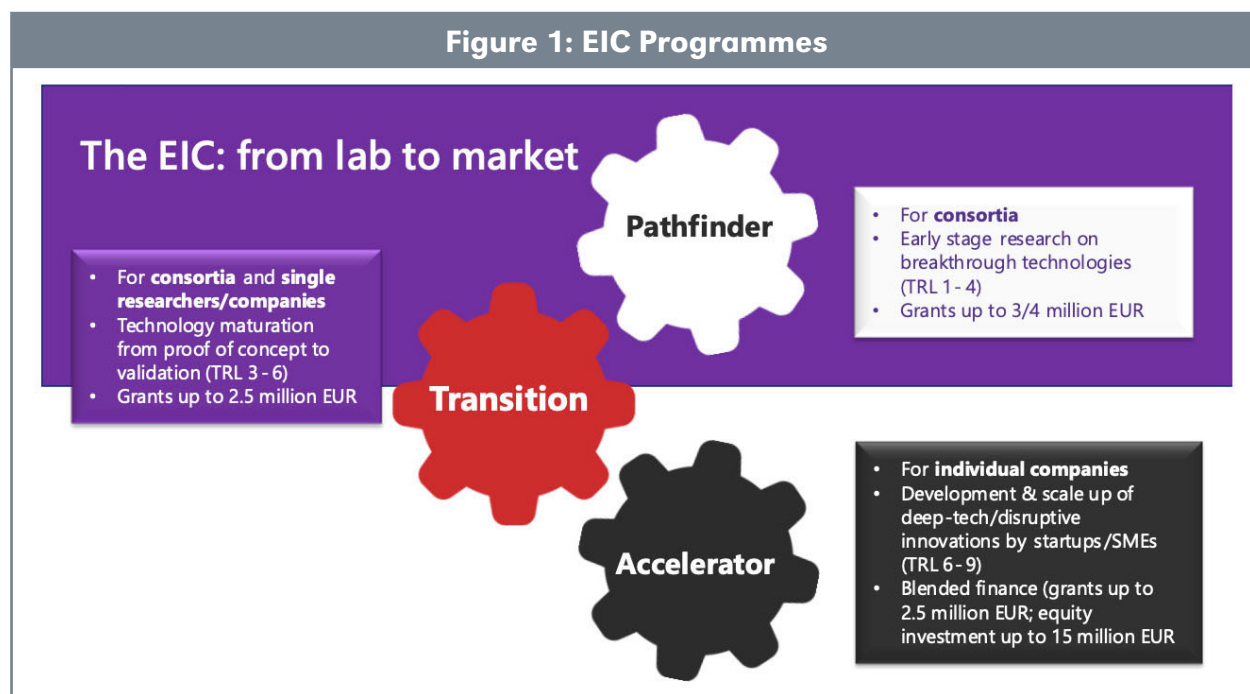
The fully-fledged EIC was launched March 2021 under Horizon Europe and is incorporated within the European Innovation Council and SMEs Executive Agency (EISMEA). The EIC’s primary goal is to support researchers and startups and scale up SMEs in bringing their innovations to market. It accomplishes this by providing funding and social-innovation-based support in the form of networking and partnership opportunities and business acceleration services. See Figure 1.

The EIC provides grants up to EUR 2.5 million to selected breakthrough innovation startups and scaling-up companies through its highly competitive Accelerator instrument. The EIC Fund complements the grant with further financing in the form of equity or quasi-equity (which may also be blended with a grant component) to bridge the funding gap for startups developing disruptive technologies and prepare them for market entry and subsequent scale up. The

equity investments range from EUR 500,000 to EUR 15 million per company (more in justified cases). The EIC Fund aims to attract private co-investors with a view to risk sharing and building a large network of capital providers and strategic partners for the ultimate benefit of the EIC-funded SMEs.

Sifted<sup>1</sup> listed the EIC Fund as the fifth-largest tech investor by deal volume in Europe in the second quarter 2023, followed by Revival Healthcare Capital (United States) and Gilde Healthcare Partners (Netherlands).<sup>2</sup> Moreover, the EIC is in the top spot of Sifted’s 10 most active tech-bio investors in Europe, making it the largest European investor in companies using cellular processes to develop life-enhancing technologies.

From 2018 to 2023, the EIC and precursor programmes supported around 700 Pathfinder and Transition projects, in addition to 3,000 startups and scaling-up SMEs. Combined with measures introduced in the EIC work programme, this creates greater flexibility for the EIC Fund in managing the portfolio of investments, already comprising over 500 of Europe’s most promising startups and high-growth companies. The EIC Fund has made numerous investments in game-changing companies, which span a range of technologies including ATXA Therapeutics, BREVEL, Cellevate, Hardt Hyperloop, Qarnot Computing, Sonio, and Xeltis.



1. Media brand for the European startup community, backed by the *Financial Times* <https://sifted.eu/about> (accessed 22.04.2024).

2. <https://sifted.eu/articles/6-europe-most-active-investors-q2-2023> (accessed 22.04.2024). [https://pitchbook.com/news/articles/global-league-tables-q2-2023?utm\\_medium=nl-na-premium&utm\\_source=reports&utm\\_campaign=global-league-tables-q2-2023](https://pitchbook.com/news/articles/global-league-tables-q2-2023?utm_medium=nl-na-premium&utm_source=reports&utm_campaign=global-league-tables-q2-2023) (accessed 22.04.2024).

## Unique EIC Characteristics

The EIC has some unique support features at the pan-European level:

- A) It funds startups and scaling-up SMEs as single legal entities with up to a maximum of EUR 17.5 million provided in the form of blended finance (*i.e.*, combining grants with equity investments).
- B) It applies a proactive portfolio management supervised by the EIC Programme managers who bring their domain expertise in innovation strategy and management. An example of the resulting strategic plans for the first EIC Pathfinder portfolios, the outcome of the respective EIC challenge-based calls, is made public.<sup>3,4</sup>

## 2. The Importance of Licensing for EIC

Licensing is a vital technology transfer mechanism that enables EIC beneficiaries to efficiently commercialise their innovative technologies by granting rights to partners, thus accelerating market entry and revenue generation, leveraging the expertise and resources of established companies, and fostering the broader dissemination of impactful innovations beyond the direct reach of the beneficiaries. Licensing expertise is a critical component of deep-tech-based companies<sup>5</sup> in gaining a competitive advantage in their relevant markets, as is further illustrated by the case studies presented in this paper. Established companies rely increasingly on external innovation, which means greater collaboration

with external partners in order to gain access to technology and commercialise their technology broadly, thereby sharing success and risk by pooling those assets that are required to successfully launch new products and services.<sup>6</sup>

As concerns the EIC, the importance of licensing expertise is demonstrated by a study from the Innovation Radar,<sup>7</sup> which, since 2016, has been systematically conducted with the help of innovation experts during the review meetings of all projects funded under the EIC Pathfinder and its predecessor Future and Emerging Technologies (FET) Open and Proactive. An analysis in April 2023 showed that the 397 screened projects generated 1,417 unique innovative solutions (*i.e.*, on average 3.6 novel solutions per funded project). Commercial exploitation was planned for 981 (69 percent) of these innovations. When asked about the steps needed to bring these innovations closer to the market, the experts recommended licensing to a third party as necessary or desirable for 364 (37 percent) cases of planned commercial exploitation.

## 3. Licensing as a Business Strategy

At its core, licensing represents a business strategy that provides access to technology and intellectual property in exchange for money and/or non-monetary consideration, such as access to other technology (known as cross-licensing).<sup>8</sup> See Table 1.

Rather than assigning technology to a buyer at an

**Table 1: Forms Of Licensing From A Business Perspective**

Aspect	In-Licensing	Out-Licensing	Cross-Licensing
Definition	Acquiring Rights To Use Intellectual Property	Granting Right To Use Intellectual Property	Mutually Exchanging Right To Use Intellectual Property
Parties	Licensee (Acquirer)	Licensor (Owner)	Multiple Parties Involved
Primary Objective	Obtain access to external technology or IP to have a competitive advantage while avoiding the cost and risk of corresponding R & D	Generate revenue and /or leverage unused or underutilized IP assets	Facilitate collaboration and mitigate litigation risk by obtaining freedom to operate
Example	A pharmaceutical company licensing a drug patent	A software company licensing its technology	Two technology companies exchanging patents

3. "EIC Pathfinder portfolio strategic plans," [https://ec.europa.eu/eic-funding-opportunities/eic-pathfinder/eic-pathfinder-portfolio-strategic-plans\\_en](https://ec.europa.eu/eic-funding-opportunities/eic-pathfinder/eic-pathfinder-portfolio-strategic-plans_en) (accessed 17.03.2024).

4. Iordanis Arzimanoglou, "European Innovation Council's strategic actions: A game-changer for cell and gene therapy," *Mol Ther* 30(6):2111-2112. doi: 10.1016/j.ymthe.2022.03.022 <https://pubmed.ncbi.nlm.nih.gov/35417666/> (accessed 17.03.2024).

5. Ruiz de Apodaca, O.B., F. Murray, L. Frolund, "What is 'Deep Tech' and what are Deep Tech Ventures?," 2023, *MIT Management Global Programs*, [https://reap.mit.edu/assets/What\\_is\\_Deep\\_Tech\\_MIT\\_2023.pdf](https://reap.mit.edu/assets/What_is_Deep_Tech_MIT_2023.pdf) (accessed 06.02.2024).

6. Wim Vanhaverbeke, "Managing open innovation in SMEs," *Cambridge University Press*, 2017, ISBN 9781139680981.

7. The EU Innovation Radar Platform <https://www.innoradar.eu/> (accessed 17.03.2024). Data is taken from the presentation of Martin Lange at EISMEA extended management meeting, 22.05.2023, Innovations in the EIC Pathfinder—An analysis of Innovation Radar data 2016-2023.

8. "Cross-Licensing Agreement: Everything You Need to Know" <https://www.upcounsel.com/cross-licensing-agreement> (accessed 17.03.2024).

agreed price, licensing allows parties to share success and risk and, in most cases, avoid having to ascribe a price to the technology, which can be complicated and problematic for early-stage technologies.<sup>9</sup> Globalisation, increasing complexity, and the increasing speed of innovation and the convergence of technologies further motivate companies to rely on licensing models to address the full potential of their technologies by pooling together those assets that are required to successfully launch new products and services, as well as pave the way for improved versions.<sup>10</sup> This is particularly important for enabling technologies that have many applications across different markets. Thus, some technology startup companies find it possible, and advantageous, to build a business model based entirely on licensing, as reflected by the EIC case studies presented in this article (Linari Engineering and Elthera). Other startup companies establish a business model that combines licensing with other business cases in ways that operate symbiotically. In this way, a company may develop a business model that symbiotically employs licensing in certain markets or specific subfields of the entire scope of use and applications of the underlying technology, while at the same time directly commercialising the technology in other markets or subfields. Such a hybrid business model provides the opportunity to employ licensing revenues to fund commercial development in the core markets or core products in ways that will reduce further investment requirements and consequently also reduce dilution of equity holders. The EIC case study presented in this article, Infinite Foods, follows such a hybrid business model.

Licenses may be granted exclusively or non-exclusively, depending on many factors, such as the industry sector, the technology, the licensee's capabilities, and planned uses of the licensed technology. Well-drafted licence agreements are ones that define the licensed subject matter carefully to ensure that the licence agreement is clear on which rights are granted to the licensee and to what precise extent and scope (as well as, by extension, which rights are not granted). From a technology perspective, the licence grant may primarily consist of a patent or a patent application in all fields (*i.e.*, in whole), or in some specific subfields (*i.e.*, in part), and technical knowledge and material that is separate and distinct from the patent rights (*e.g.*, biological material, software, databases, algorithms). Additionally, the licence grant may consist of or include other forms of intellectual property

rights such as copyrights, design rights, trade marks, and plant breeding rights. The clearly defined licensed subject matter, together with defined milestones securing minimum criteria for commercialisation and co-operation, form then the basis for the financial terms putting a price tag on what is made available.

Key concepts for research organisations, startups, and SMEs when approaching licensing are to:

- Carefully consider all exploitation routes, and adapt the strategy as required to reflect the market situation, as licensing is normally not the only way forward.
- Understand how licensing can support various business models (see above and below).
- Aim for win-win collaborations, and make use of the many options to tailor licence agreements to the business use of the parties but also your own needs.
- Allow for time to get to know and build up understanding with the other party.
- Maintain momentum in the licensing transaction before the licensors lose interest, or the window of opportunity closes.
- Manage the relationship actively once the licence deal is closed.
- Ensure licensors are prepared for the possibility of more inquiries (or oversight) in the future for exclusive licenses granted for publicly funded IP (*e.g.*, in the health care sector or when related to critical infrastructure).

#### Four Licensing-based Business Models<sup>11</sup>

The simple framework of basic license-based business models for *high-growth technology* businesses includes four relationships technology companies can establish (see Figure 2).

##### A. Access to Technology from a Development Partner

In this partnership-based licensing approach, the technology owner collaborates with “development partners” that contribute resources or capabilities, which the technology owner does not have available internally due to cost, time constraints, complexity, or risk. The development partner that in-licenses the technology benefits from the licensing transaction because it can minimise the expense required to develop a comparable technology internally, shorten time-to-market, and improve value propositions. There are various technology transfer case studies<sup>12</sup> that focus on this aspect.

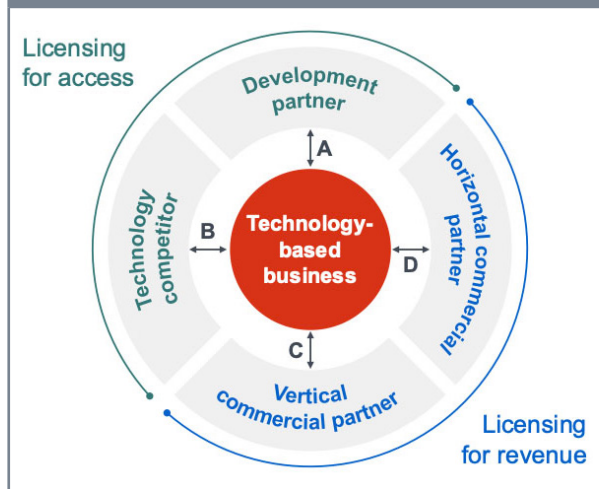
9. LESI, “IP Valuation Business Briefing,” May 2020, <https://www.lesi.org/publications/business-briefings> (accessed 17.03.2024).

10. Wim Vanhaverbeke, “Managing Open Innovation in SMEs,” Cambridge University Press, 2017, ISBN 9781139680981.

11. Bowman Heiden and Thomas Bereuter, “Licensing-Based Business Models,” *les Nouvelles* 57/2 (2022), 116-120, <https://ssrn.com/abstract=4099753> and <https://epo.org/sme> (accessed 22.04.2024).

12. Technology transfer case studies, EPO, <https://www.epo.org/technology-transfer-case-studies>.

**Figure 2: License-Based Business Models For Technology Businesses**



### B. Freedom to Operate (FTO) from a Technology Competitor

FTO agreements, aimed at avoiding potential patent infringement or validity challenges, grant licence rights to patents to prevent costly legal actions and safeguard a company's products and services. Unlike agreements for technology access, FTO deals prioritise legal security. FTO agreements often involve payments or mutual cross-licensing of IP rights. If the agreement includes access to technology along with payments, it combines elements of both model A and model D.

### C. Vertical Commercial Partner—Primary Licensing Model

This model centers on leveraging technology licensing as a primary revenue source, minimising the need for additional investment, and often reducing equity dilution. The licensor can exclusively license technology to a single company for the royalties of product/service sales, as commonly seen in life sciences.<sup>13</sup> Alternatives include non-exclusive licenses to multiple firms in the same market (common in ICT, Information and Communication Technology), exclusive licenses across different geographic regions, or exclusive licenses for a specific field of use. This approach can blend a company's direct commercialisation in some markets with licensing in others (a hybrid strategy).<sup>14</sup> Infinite Foods, an EIC-funded case study presented in this article, exemplifies this model. The sale of technology components

13. "Dermis Pharma—Healing wounds," ISBN 978-3-89605-275-9, <https://www.epo.org/technology-transfer-case-studies#dermis> (accessed 19.03.2024).

14. "Marinomed—Using red algae to fight the flu," ISBN: 978-3-89605-190-5, <https://www.epo.org/sme-case-studies#marinomed> (accessed 19.03.2024).

or materials to downstream actors can also benefit from technology licensing, covering usage, rights to further developments, and associated trade marks.

### D. Horizontal Commercial Partner—Complementary Licensing

Like model C, this approach aims to generate secondary revenue by licensing technologies outside a company's core focus or projected commercial scope.<sup>15</sup> It serves to support growth or highlight proof-of-concept for other markets. Alternatively, companies can opt to sell non-core IP instead of licensing.<sup>16</sup> Licensors use this model to generate revenue to support growth in the licensors' core focus. Outside of the core focus, licensees might also be technology competitors. That can even be a strategic move, as the resulting larger production volumes might decrease production costs and facilitate market penetration.

Tailored licensing agreements can be complex, as many different, non-obvious options must be considered, and compliance with national and international regulations is crucial. Therefore, legal advice must come from specialised lawyers that have corresponding experience.

## EIC Case Studies

### Linari Engineering (Advanced Materials Sector)

Linari Engineering (LE) NanoWings<sup>17</sup> is coordinator for the EIC-funded NanoWings Transition project and was interviewed to obtain its perspective on a past licensing transaction with an unintended outcome. About 10 years ago, LE developed a technology related to a "robotic knob" to remotely control valves on gas stoves and was granted a five-year exclusive licence for a large European multinational company (Partner) to incorporate the technology into Partner's consumer products. The Partner funded the development of a commercial prototype by LE in co-operation with the Partner's Italian division. LE and Partner developed an excellent co-operation over two years, with frequent meetings and interactions. However, the Partner decided after two years, upon completion of the development

15. "Oxeon—Textiles for the Extreme," ISBN 978-3-89605-271-1, <https://www.epo.org/technology-transfer-case-studies#oxeon> (accessed 19.03.2024).

16. "fos4x—Fibre Optic Sensors And Measurement Solutions For Wind Turbines," ISBN 978-3-89605-290-2, <https://www.epo.org/technology-transfer-case-studies#fos4x> (accessed 19.03.2024).

17. Linari Engineering: <https://nanowings.eu/> (accessed 21.02.2024).

programme, that it would not market the jointly developed product, assuming that the market would not yet be ready for the technology and ended further support for this program. Everyone was surprised by this decision, including the employees at the Italian division with whom LE had collaborated so closely over the previous two years. LE now realised that it had executed an exclusive licence agreement that did not provide adequate safeguards for such a worst-case scenario. While LE's licence agreement provided reasonable financial returns if the Partner commercialised the jointly developed product incorporating LE's technology, it did not provide LE with a right to terminate for "non-performance" by the Partner. The licence agreement only involved modest annual payments and therefore provided no financial incentive for the Partner to terminate the licence agreement on its end until its natural expiration after five years. LE ultimately wasted five years. LE acquired full rights to the IP after the licence agreement expired but did not find another licensee. Critical time was lost, momentum was wasted, and the window of opportunity had closed.

In conclusion, LE would have benefited tremendously from access to licensing expertise and guidance to structure its licensing transaction with the Partner, which would not only have provided LE with a share of the upside, but also offered adequate protection against under-performance in the case that the licensing and development partnership did not move in the right direction because the Partners' interests became misaligned with their own.

### **Infinite Roots (Agri-Food Sector)**

Infinite Roots (formerly Mushlabs)<sup>18</sup> is a biotech company from Hamburg that was founded in 2018 and now employs over 60 people. Infinite Roots is a beneficiary of EIC funding and VC funding (for a total of approximately EUR 64 million) to use biotechnology to develop the mushroom mycelium (*i.e.* mushroom roots), which are currently underutilised as a food source, and exploit its full potential for the production of a new generation of natural and sus-

tainable food products. Mushroom roots possess unique characteristics for food production such as fast growth, a natural umami taste, holistic nutrition, and high customisability. Infinite Roots uses the power of mushrooms and biotechnology to replicate optimal growth conditions in nature as a basis for a sustainable and secure food system for a growing global population. Infinite Roots intends to commercialise its own products B2C in core markets and use licensing models for their technology in other regions. Infinite Roots will develop their licensing model for their proprietary technology to allow even more rapid scaling. Although a solid strategy and business development team are in place, a licensing expert with the right background is missing. While Infinite Roots has participated in EIC coaching/mentoring programmes, a very specific need for support remains, namely to develop a licensing model that appropriately manages reward and risk. The reward will come in the form of royalties from licences granted to strategic partners in selected markets. The potential risk is the misappropriation of Infinite Roots' intellectual property by licensees. Therefore, the licensing model must be tailored to best suit its technology and market, while protecting Infinite Roots' IP rights. To successfully develop and implement its licensing strategy, Infinite Roots needs access to experts with specialised experience in licensing such technologies in the chosen markets.

### **Elthera (Health Biotech Sector)**

Elthera is a biotech startup founded in 2016 to develop *immunotherapies*<sup>19</sup> directed against LICAM, a transmembrane protein expressed on most solid tumors, that harness the patient's own immune system to actively eliminate cancer cells and stop tumor progression. Elthera in-licensed a panel of murine monoclonal antibodies targeting LICAM from a preeminent European cancer center. Elthera raised 5 million Euro from private investors as well as a substantial Eurostar grant from the Horizon 2020 funding instrument. Elthera used these funds to humanize the murine antibodies, conduct *in vivo* efficacy testing, and identify a clinical candidate. Elthera explored several options for further development of its drug assets from outright sale, further venture capital investment, industry partnership with co-development, and licensing. Elthera also considered a business model involving a grant of

18. "Using biotechnology to create the next generation of sustainable foods from the roots of mushrooms," Mushlabs, Project, Fact sheet, CORDIS | European Commission [euhttps://cordis.europa.eu/project/id/190118690](https://cordis.europa.eu/project/id/190118690) (accessed 21.02.2024).

regional rights only, with Elthera retaining rights for the rest of the world; except it couldn't find a partner interested in such a business model.

Fast forwarding to the present time Elthera signed a license agreement with LegChemBio (LCB) a Korean biopharma company to develop and commercialize a novel antibody-drug conjugate (ADC) therapy using its monoclonal antibody. Under the terms of the agreement, LCB will be responsible for the future development and commercialization of any products incorporating this antibody. Elthera received an upfront payment and is eligible to receive progress-dependent development and regulatory milestone payments as well as cumulative commercial milestone payments. Elthera will additionally receive royalties on net sales of products covered by the license agreement. The licensing partnership and LCB's progress thereunder is managed by a Joint Steering Committee that meets quarterly. Elthera remains as a corporate entity to administer the agreement, prosecute the licensed patent estate and manage payments received from LCB. Elthera initiated its business development activities in the second quarter of 2021. Negotiations with LCB were laborious, requiring about two years to build up trust, develop a win-win relationship and close a licensing transaction with LCB. Elthera stated that its success in closing a licensing transaction was strongly supported by experienced co-founders and legal advisors. In conclusion, Elthera would have benefited from the following advice and guidance in order to conclude a better/faster licensing transaction: how to engage with licensing consultants earlier, structure a licensing transaction, intelligently manage multiple negotiations with different groups at the same time, accelerate a licensing negotiation, and more coaching and mentoring along its journey to a successful licensing transaction.

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19. Elthera: <https://cordis.europa.eu/project/id/858753> (accessed 21.02.2024). For a more detailed case study in the field of immunotherapies see the "OncoQR—Boosting The Immune Response To Fight Cancer Case Study," ISBN 978-3-89605-345-9, [https://link.epo.org/elearning/technology\\_transfer\\_case\\_study\\_OncoQR\\_en.pdf](https://link.epo.org/elearning/technology_transfer_case_study_OncoQR_en.pdf) (accessed 22.04.2024).

## Lessons learned from the EIC case studies

Our interviews strongly support the conclusion that EIC beneficiaries often lack knowledge of licensing. The successes we identified have resulted from access to high-quality expertise that became available for those EIC beneficiaries. The lessons learned from the EIC case studies can be summarised in four distinct categories /success factors. See Figure 3 on page 91.

### Success Factor #1: Access to IP and Strategy Training

Several organisations offer licensing training (*e.g.* LESI, ASTP).<sup>20</sup> The EIC collaborates with the EPO (European Patent Office),<sup>21</sup> EUIPO (European Union Intellectual Property Office), and other players in the IP sector in Europe to enhance the licensing capabilities of EIC beneficiaries. The EIC's co-operation with the EPO occurs under the umbrella of the Letter of Intent<sup>22</sup> in effect between the two organisations that aims to further empower the EIC beneficiaries by providing training and support services. The European Patent Academy possesses a wealth of expertise, resources, programmes, and case studies that could, with EPO support and agreement, be used to empower EIC beneficiaries in the development of licensing-related expertise.<sup>23</sup> The EPO has many successful programmes that

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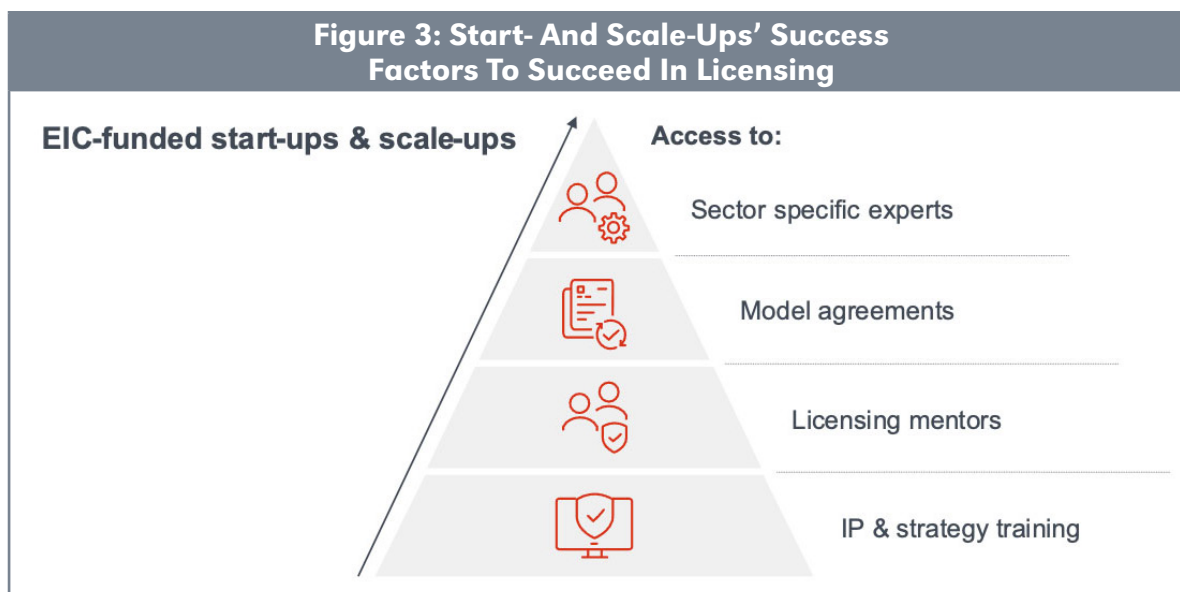
20. Licensing Executives Society International, <https://www.lesi.org> (accessed 22.04.2024); Association of European Science and Technology Transfer Professionals ASTP, <https://www.astp4kt.eu> (accessed 17.03.2024).

21. The EPO is continuously expanding the offers for SMEs. For example, the new Deep Tech Finder (<https://epo.org/deep-tech-finder>) helps investors find high-tech startups with European patents (granted or pending) and series A funding. The introduced "New to patents?" section of *epo.org* addresses the needs of businesses on an entry level (<https://www.epo.org/en/new-to-patents>). The unitary patent section <https://www.epo.org/en/applying/european/unitary> not only explains how it works but also dives into cost reductions and rebates for some applicants. Information about newly-introduced fee reductions for SMEs and startups are also highlighted on <https://www.epo.org/en/news-events/news/faq-fee-reductions-now-available> (accessed 31.03.2024).

22. European IP Helpdesk News, "EPO and EIC Signed Letter of Intent To Strengthen Their Collaboration," [https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/epo-and-eic-signed-letter-intent-strengthen-their-collaboration-2023-07-06\\_en](https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/epo-and-eic-signed-letter-intent-strengthen-their-collaboration-2023-07-06_en) (accessed 17.03.2024) EIC News article, 21.02.2024, "European Innovation Council Joins Forces With EPO To Combat Cancer" [https://eic.ec.europa.eu/news/european-innovation-council-joins-forces-epo-combat-cancer-2024-02-21\\_en](https://eic.ec.europa.eu/news/european-innovation-council-joins-forces-epo-combat-cancer-2024-02-21_en).

23. At <https://www.epo.org/sme> business decision-makers and IP professionals can find resources to boost their understanding of business-aligned IP strategies and efficient as well as effective IP management practices.

**Figure 3: Start- And Scale-Ups' Success Factors To Succeed In Licensing**



the EIC could emulate or connect with, *e.g.*, the high-growth technology business (HTB) initiative, developed in cooperation with the Licensing Executives Society International (LESI). It is designed to encourage business decision-makers in the deep-tech field to engage with IP to create value and train IP professionals in business-focused IP management systems. The EIC has signed a memorandum of understanding with EUIPO, an EU organisation responsible for trade marks. EUIPO is running the SME Fund<sup>24</sup> aimed at financially supporting the trade mark and patent applications of SMEs.

EIC, with the help of external licensing experts, could further support its beneficiaries by offering training on various licensing aspects to help its beneficiaries advance their know-how about licensing, and make best use of the opportunities while minimising the risks that go along with it. Interviewees expressed the clear opinion that it would be good to access licensing agreement checklists prepared by legal experts and deal makers who know how to close win-win deals. A non-exhaustive sample of checklists is the following:

- How to structure a term sheet.
- Top 10 deal terms that are negotiated in a licensing agreement and why.
- Top 10 pitfalls in licensing.
- Key issues to determine royalty rates and associated terms. When to accept royalty stacking and why.
- How to license in different applications or in different subfields, or how to separate subfield offers to different licensees.

24. SME Fund <https://www.euipo.europa.eu/en/the-office/help-centre/websites/faq-sme-fund> (accessed 17.03.2024).

- When to license exclusively and when non-exclusively.
- How to develop appropriate diligence milestones.
- When to terminate and why, or when to renegotiate and why.

The EIC has already organised two well-appreciated workshops on licensing such as, “Licensing in biotech: Experiences and lessons learnt from selected EU and U.S. cases”<sup>25</sup> and “Licensing as exit strategy for the EIC beneficiaries.”<sup>26</sup>

### **Success Factor #2: Access to Licensing Mentors<sup>27</sup>**

EIC beneficiaries are confronted with individual and specific challenges which cannot be fully addressed through the IP and strategy training activities outlined above. Our case studies therefore indicate a need to offer specialised clinics to EIC beneficiaries hosted by patent, business, licensing, and legal experts, etc., in

25. “Licensing In Biotech: Experiences And Lessons Learnt From Selected EU And US Cases” [https://eic.ec.europa.eu/news/licensing-biotech-experiences-and-lessons-learnt-selected-eu-and-us-cases-2022-07-07\\_en](https://eic.ec.europa.eu/news/licensing-biotech-experiences-and-lessons-learnt-selected-eu-and-us-cases-2022-07-07_en) (accessed 17.03.2024).

26. Webinar “Licensing As Exit Strategy For The EIC Beneficiaries,” [https://eic.ec.europa.eu/news/webinar-licensing-exit-strategy-eic-beneficiaries-2023-02-03\\_en](https://eic.ec.europa.eu/news/webinar-licensing-exit-strategy-eic-beneficiaries-2023-02-03_en) (accessed 17.03.2024).

27. EPO and LESI pioneered in Europe by offering IP clinics (later called IP Business clinics) to complement their conferences and combined trainings. Thomas Bereuter, Yu Sarn Chiew, Juergen Graner and Ilja Rudyk, “The Making Of The High-Growth Technology Business Conference 2019: Reengineering Conference Delivery To Maximize Impact,” *les Nouvelles* 55/2 (2020) 169-175 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3584444](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3584444) and <https://www.epo.org/en/learning/learning-resources-profile/business-and-ip-managers> (accessed 22.04.2024).



which EIC beneficiaries can ask these mentors questions and receive tailored guidance for specific challenges that relate to their own business on a *pro bono* basis. Such mentoring input is especially important because each licensing agreement is tailored to fit a particular situation and needs to be part of the overall IP strategy. EIC beneficiaries will use such clinics to discuss, dissect, and solicit feedback and guidance on each beneficiary's specific intellectual assets, business, or licensing strategy. The objective is to help EIC beneficiaries prepare themselves to successfully close future licensing transactions. Such clinics can allow EIC beneficiaries to better understand what they do not know and what new knowledge they should acquire to increase their chances for commercial success. This new knowledge can then be further refined using the existing EIC service of coaches and mentors who offer one-to-one guidance and support. The licensing clinics service builds on, and would utilise, the European IP Helpdesk<sup>28</sup> and the existing EISMEA's Ask Me Anything Catalogue<sup>29</sup> service. The EIC has further completed a call for IP experts, including experts with demonstrated licensing experience.<sup>30</sup>

### Success Factor #3: Access to Model Agreements

The negotiation of collaboration terms often encounters obstacles stemming from legal complexities, divergent perceptions of intellectual property (IP) value, disparate organisational cultures and missions and conflicts of interest. Experts overcoming the typical hurdles seldom start from nothing when going into negotiations and drafting contracts; instead, they often follow checklists, and learn from as well as adapt previous agreements to fit the current situation and terms negotiated. Model agreements are invaluable for those lacking well-drafted contracts, especially startups and scaling-ups that do not have dedicated support or budgets to buy in expertise. EIC beneficiaries would benefit from improved access to model agreements and supporting material.<sup>31,32</sup> Prominent examples of model agreements are:

- Term sheets and option agreements.

28. European IP Helpdesk [https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/european-ip-helpdesk\\_en](https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/european-ip-helpdesk_en) (accessed 28.03.2024).

29. Rita Catalao, Ask Me Anything <https://eic.eisma.eu/community/stories/ask-me-anything-get-exclusive-insight-fundraising-services-eic-service-catalogue> (accessed 17.03.2024).

30. [https://eic.ec.europa.eu/calls-tenders/intellectual-property-ip-due-diligence-service-experts-call-expression-interest\\_en](https://eic.ec.europa.eu/calls-tenders/intellectual-property-ip-due-diligence-service-experts-call-expression-interest_en) (accessed 22.04.2024).

- IP transfer agreements including licence and purchase agreements.
- Research co-operation and contract research.
- Non-disclosure and material transfer agreements.
- Inter-institutional agreements that govern the management of IP co-ownership relationships between different institutions.<sup>33</sup>

The EIC can gain inspiration from the experiences<sup>27</sup> of the U.S. National Venture Capital Association's (NVCA) Model Documents, which are embraced by the industry and used by venture capital financiers in the U.S. The NVCA successfully adopted this approach for a multitude of agreements used in the creation and financing of startup companies with the end effect of facilitating more transactions.

EIC beneficiaries with better access to such model agreements and accompanying material could enhance the number of licensing transactions in the EIC beneficiary ecosystem by avoiding bias toward one party, presenting potential options, reflecting a variety of financing terms, including helpful explanatory commentary, as well as anticipating and eliminating traps for unenforceable or unworkable provisions.

### Success Factor #4: Access to Sector Specific Experts

The case studies indicate that EIC beneficiaries need further access to sector specific expert advisors to work closely with them as integrated members of the commercialisation team to prepare for, develop, and exploit concrete licensing opportunities aligned with the overarching business strategy. Such experts could collaborate with the EIC beneficiaries in the trenches on a regular basis operating as fully integrated members of the team. Such rewarded expert advice moves

31. T. L. Bereuter, D. Jerolitsch, P. Heimerl, (i) "Collaboration of Publicly Funded Research Organizations (PROs) with Businesses, Part II, Model Agreements and Supporting Initiatives," in: CDIP/17/INF/3, 2 March 2016, *WIPO*, 30-63, annex, 71-81, 88-92 (ii) "Collaboration of Publicly Funded Research Organizations (PROs) with Businesses, Part I, IPR-Codes and Guidelines," in: CDIP/17/INF/3, 2 March 2016, *WIPO*, 2-29, annex: 64-70 [www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=331856](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=331856) (accessed 21.02.2024).

32. The U.S. National Venture Capital Association (NVCA) Model Legal Documents serve as the golden standard used in venture capital financings in the U.S. <https://nvca.org/model-legal-documents/> (accessed 24.02.2024).

33. The Model Inter-Institutional Agreement (Model IIA) generated by the AUTM in the USA is an example of a Model IIA that has streamlined the management of jointly owned IP among U.S. universities and research institutions [https://www.autm.net/AUTMMain/media/About/Documents/ModelIIA2013\(fnal\).docx](https://www.autm.net/AUTMMain/media/About/Documents/ModelIIA2013(fnal).docx) (accessed 21.02.2024).

