

OVERVIEW OF INTELLECTUAL PROPERTY



J A • K E M P

PATENT ATTORNEYS • TRADE MARK ATTORNEYS



Intellectual property (IP) rights are legal rights which provide protection for your innovative and creative endeavour. For example, IP could relate to something that you have created, such as a brand, an invention or a design, or could relate to information that you have developed or collated. When people talk about IP, they usually mean IP that can be registered: trade marks, patents and designs. However some IP rights arise automatically (so-called unregistered rights), such as copyright and unregistered designs. Each form of IP right has a different purpose in protecting a different aspect of your work and can be highly valuable to your business.

DIFFERENT TYPES OF IP

Registered Rights

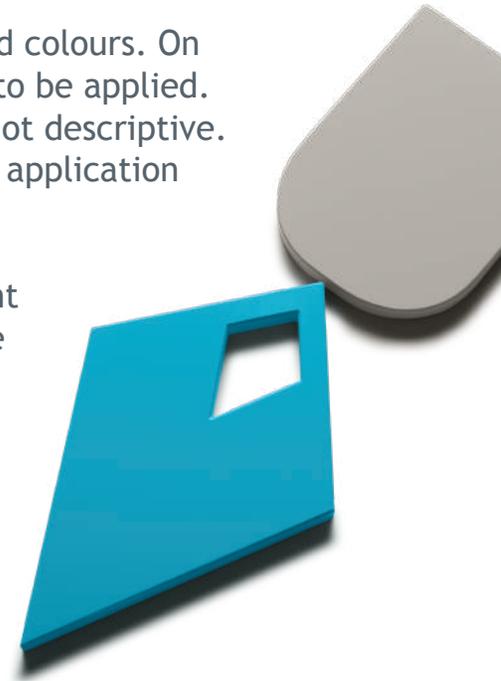
Registered rights are granted by appropriate government bodies, and have to be applied for. It is generally necessary to pay government fees, and to incur cost in securing professional advice, to secure and maintain such rights.

Registered Trade Marks

A trade mark, such as a name or sign, allows consumers to distinguish your goods or services from those of another. By registering a trade mark, you can prevent others from using your mark and benefiting from the goodwill attached to it. A registered trade mark provides a monopoly right and can last indefinitely.

Examples of trade marks include words, logos, jingles, shapes and colours. On registration, you indicate goods or services to which the mark is to be applied. An important requirement is that the mark must be distinctive, not descriptive. A mark may not be available if there exists an earlier trade mark application or registration.

Trade marks offer legal protection for some of the most important aspects of the brand of a company, and, in reality, multiple trade marks are usually employed to protect a single brand. Good examples of brands with multiple (in some cases hundreds of) trade marks are the top three highest value brands in 2016 (per Interbrand): Apple (178,119 million USD), Google (133,252 million USD) and Coca Cola (73,102 million USD).



Patents

If you have an invention, you can use a patent to protect its technical function. The invention could, for example, be related to a mechanical device, a pharmaceutical product or some sort of process. Computer software inventions are also patentable in many cases.

A patent provides a monopoly right. This means that no one can exploit your invention in the relevant territory without your permission, even if they later come up with the same idea independently. Patents are territorial - there is no such thing as an international patent - and so it is necessary to get a patent in each territory of interest. A patent usually lasts for up to 20 years, during which time you can maximise profit from the invention before it is overtaken by new technology.

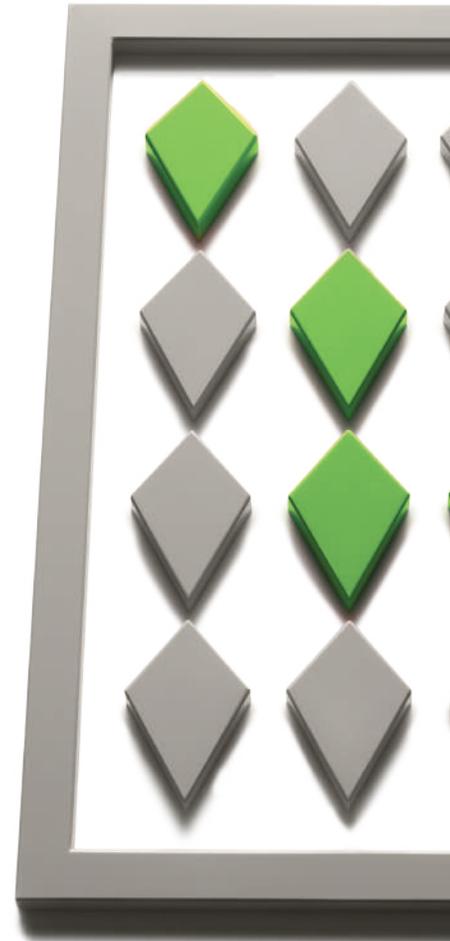
Patents can be expensive to obtain, particularly if wide territorial coverage is required. However, they can of course be highly valuable, for example through licensing and/or sales. Interdigital is reported to have sold nearly 2,000 patents to Intel for 375 million USD - the patents related to wireless data transmission technologies that are used extensively by both computers and smart connected devices. Kodak's patent portfolio is reported to have sold for 525 million USD to a consortium including Apple, Google and Microsoft.

Registered Designs

A registered design can protect the appearance of a product (or part of a product). It provides a territorial monopoly right (in the way that a patent does), preventing others from making articles that have your protected design.

A registered design is much cheaper than a patent, however it only protects the appearance of your product, not the way it works. A registered design can last for up to 25 years.

Like patents and trade marks, registered designs can be a significant financial asset. An example of the importance of registered designs is in the series of Apple versus Samsung lawsuits. Apple sought to use their registered design for the iPad to prevent Samsung selling their Galaxy tablet in Europe. Apple was unsuccessful in Europe, but did achieve some success in corresponding litigation in the USA.



UNREGISTERED RIGHTS

Unregistered rights arise automatically without the need for registration with any government body, but are generally weaker than registered rights. There is therefore little or no cost involved in obtaining and maintaining such rights. However, it is generally much harder to enforce an unregistered IP right than a registered IP right.

Copyright

We are all familiar with copyright, which exists for works in the fields of literature, drama, music, art, film and even broadcasting. It is usually decades after the death of the creator before others are free to use their work. As you might guess from its name, copyright only protects against others copying your work. You cannot use copyright to prevent others from exploiting work which they developed independently, without copying.





In general, most 2D works (such as pictures and documents) are protected by copyright regardless of how “artistic” they may be. Thus, if you write text books or scientific papers, produce teaching aids or write software, copyright will probably be relevant to you. A 3D object generally needs to have some sort of artistic quality to be covered by copyright, for example a sculpture or an engraving.

Unregistered Design Right

In the UK non-artistic 3D objects are protected automatically by the UK unregistered design right. This works in a similar way to copyright, except that it lasts for only 10 to 15 years from when the design was created.

An EU-wide unregistered design right automatically protects the appearance of a product (or part of a product) for three years provided that the design was first made public within the EU. This is similar to a registered design right, with the important difference that it only provides protection against copying. In practice it is very difficult to prove that someone has copied your design even if theirs is suspiciously similar. An unregistered design right can therefore be hard to enforce.

Confidential Information

A competitive edge in the marketplace may rely on your business having certain information which your competitors do not. Unless the information qualifies for protection by any of the IP rights discussed above, information will usually only be protected as a business asset if it is kept confidential. Examples of confidential information include product recipes, software code and marketing strategies.

Confidential information can relate to any subject matter and be stored in any form that maintains its secrecy. Under circumstances where it is necessary to disclose the information, for example to clients, investors or third party contractors, the disclosure should be carried out in a careful manner that maintains its confidential status. You should, for example, impose specific confidentiality obligations on the intended recipient before the information is disclosed to them.



USES OF IP

There are many uses of IP, the main use being to protect your market(s) by denying competitors access to your products or processes and potentially deflecting competitive research and/or development. IP can also generate income through assignment, licences and/or royalties.

For example, if you own a patent to a product, you could develop your own manufacturing capacity and enjoy monopolistic profits, or you could create revenue from other manufacturers by licensing your patent. You could alternatively “sell on” the technology (and the patent), to an established manufacturing company, once enough development work has been completed to establish that the product has commercial potential.

IP rights can constitute a significant fraction of a company’s assets. They can be mortgaged, or used as security for loans like any other asset.



ROLE OF THE IP PROFESSION

The role of the IP profession is to help you get the most out of the IP system. Once you have created an idea or made an innovation, we can work to establish IP rights for you. The profession can also help you to exploit and enforce the IP rights. Another important role of the IP profession is to help people negotiate other parties' IP rights, for example by challenging or designing around those rights.



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