

IP as an asset and how businesses can protect it

Intellectual Property protects the fruits of creative endeavours, and in doing so helps businesses. Some IP is automatic, such as copyright, whilst other IP can only be granted after application to the relevant Intellectual Property Office. Identifying or obtaining IP means that a company has something to offer people, be they investors, funding bodies, potential licensees or competitors trying to enforce their own IP. In addition some IP can provide direct financial advantages to companies, for example through schemes like the Patent Box which recognises the cost of investing in research and development. A company can also bring attention to its IP so as to deter others from copying and ultimately rights can be enforced through the Courts, although that is something to be avoided if possible.

Types of Intellectual Property

Copyright is automatic. Original works of art, music and literature are protected for the life of the author plus 70 years. Computer software counts as a literary work and technical drawings count as artistic works. In the UK and many other countries, however, copyright cannot be used to protect the shapes of industrially made products even though they are reproductions of the technical drawings. In the European Union there is automatic *Unregistered Design* protection for three years of the appearance of such products, and UK national legislation gives protection for ten years. Copyright and Unregistered Design Right are only infringed by copying.

More secure protection for the appearance of a product can be obtained through a *Registered Design*. These can be obtained in most countries of the world and particularly useful protection can be obtained through a *Community Registered Design*. This provides good value protection throughout the European Union, and registration can often be obtained very quickly. Multiple designs can be included in a single application on payment of supplementary fees. In many countries of the world a design application must be filed before a design has been made public but in the United States and the European Union, protection can be sought up to a year after publication.

To protect technological advances, *Patents* are required. A patent is a combined technical and legal document, and is granted after examination by the relevant Patent Office. A patent describes an invention and how to put it into effect, and also defines the invention formally in words in a patent claims. Correct formulation of the patent claim is vital. The invention as defined must be new and this means that there must be no disclosure of the invention, whether by the inventor or anybody else, before a patent application is filed. The invention must also be inventive and so must not be obvious over the state of the art at the time the application is filed. Judging whether something is obvious or not is a complex matter and it is often worthwhile filing an application and arguing matters with the patent office examiner, even for simple developments. Once granted, a patent lasts for twenty years from the filing date.



Within one year of filing a patent application in the UK, protection can be sought in other countries, claiming the benefit of the UK filing date. Typically an *International Patent Application* is filed, designating most countries of the world. A year after that, steps have to be taken in selected individual patent offices. These will usually include the United States and the European Patent Office. The EPO is not an EU body, and once granted a *European Patent* becomes national patents in the countries which the applicant chooses.

A UK national patent can often be obtained relatively quickly, and may be an option even if a European patent is being sought. If a patent is granted in respect of the UK, companies will be able obtain tax breaks under the *Patent Box* system in respect of the profits on sales of patented products.

A company also needs to protect its name and the *Trade Marks* of any products it markets. Registration of a company name or of a domain name gives very limited protection. Trade Marks can be registered in most countries of the world for specified products or services. A *Community Trade Mark* provides cost effective protection throughout the European Union. It is advisable to search for existing registered trade marks, or pending applications, before selecting a trade mark to use.

Another aspect of IP is *Confidential Information*, which can be commercial or technical. This needs to be documented and only revealed to somebody who has signed a *Non Disclosure Agreement*.

The benefits of recognising Intellectual Property as an asset

IP is relevant to many aspects of a company's operations. Searching through IP rights of others will ensure that rights are not infringed when marketing a product, and obtaining IP rights will have many benefits. It is also essential to obtain ownership of rights if using third parties, for example to write software, design a logo or website, or help develop a product. Given the potential benefits of IP to a company it is worthwhile having an IP audit carried out to identify all the IP that a company has and to check on ownership.

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