CERIM
Central Europe Research
to Innovation Models

# IPR-GUIDELINE

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# DIRECTORY

# INTELLECTUAL PROPERTY RIGHTS

Industrial property legislation is part of the wider body of law known as intellectual property. The term intellectual property refers broadly to the creations of the human mind. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define intellectual property, but gives the following list of the subject matter protected by intellectual property rights:

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- "all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."

Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them. Intellectual property rights are also characterized by certain limitations, such as limited duration in the case of copyright and patents.

Generally speaking countries do have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and also the rights for the public to access those creations. The second is to promote creativity, dissemination and application of its results as well as encourage fair trade which could contribute to economic and social development.

Intellectual property is usually divided into two branches named copyright and industrial property, where the last one and its property rights will be in the interest of these guidelines. Most frequent property rights in this group are patents, utility models, trademarks and industrial designs.

## 1. PATENTS

**What is a patent and what rights does a patent owner have?**

A patent is an exclusive right granted for an invention, either a product or a process, which must be industrially applicable (useful), new (novel) and exhibit a sufficient "inventive step" (be non-

obvious). A patent provides granted protection for the invention to the owner of the patent for a limited period, generally 20 years from the filing date.

Patent protection means that the owner of a patent has the exclusive right to prevent others from producing, make us of, offering for sale, selling or importing the invention. These patent rights are usually enforced in court, which, in most systems, holds the authority to stop patent infringement. Conversely, the court can also declare a patent invalid upon a successful challenge by a third party.

A patent owner has the right to decide who may – or may not – use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, a party which then becomes the new owner of the patent. Once a patent expires, the protection ends and the invention enters the public domain. This implies that the owner no longer holds exclusive rights to the invention which becomes available for commercial exploitation by others.

All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but also valuable information and inspiration for future generations of researchers and inventors.

**How is a patent granted?**

The first step in securing a patent is the filing of a patent application. The patent application normally contains the title of the invention and an indication of the concerned technical field, including the background and a description of the invention. The description should be presented clearly and enough detailed so that an individual with an average level of understanding of the field can use or reproduce the invention. These descriptions are usually accompanied by visual materials such as drawings, plans, or diagrams to better describe the invention. The application does also contain various “claims”, that is, information which determines the extent of protection granted by the patent.

**How can a patent be obtained worldwide?**

At present, no world patents or international patents exist.

In general, an application for a patent must be filed, and a patent shall be granted and enforced in accordance with the laws of each country for which you seek patent protection for your invention. In some regions, a regional patent office, for example, the European Patent Office (EPO) and the African Regional Intellectual Property Organization (ARIPO), accepts regional patent applications, and grants patents, which have the same effect as applications filed, or patents granted, in each member state of that region.

Furthermore, any resident or national of a Contracting State of the Patent Cooperation Treaty (PCT) may file an international application under the PCT. A single international patent application has the same effect as national applications filed in each designated Contracting State of the PCT. However, under the PCT system, in order to obtain patent protection in the designated States, a patent shall be granted by each designated State to the claimed invention contained in the international application.

Procedural and substantive requirements for the grant of patents as well as the amount of fees required are differ from one country/region to another. It is therefore recommend that you consult a practicing lawyer who is specialized in intellectual property or the intellectual property offices of those countries in which you are interested to receive protection.

## 2. UTILITY MODEL

A utility model is an exclusive right granted for an invention which allows the right-holder, for a limited period of time, to prevent others from commercially using the protected invention without authorization. Within the basic definition, (which may vary from one country to another, where such protection is available) an utility model is similar to a patent. In fact, utility models are sometimes referred to as "petty patents" or "innovation patents."

The main differences between utility models and patents are the following:

- The requirements for acquiring a utility model are less stringent than those for patents. While the requirement of a "novelty" is always deemed to be met, the requirements of "inventive step" or "non-obviousness" may be much lower or even absent. In practice, protection for utility models is often sought for innovations of a rather incremental character which may not meet the patentability criteria.
- The term of protection for utility models is shorter than for patents and varies from country to country (usually between 7 and 10 years without the possibility of extension or renewal).
- In most countries where utility model-protection is available, the patent office does not examine applications prior to registration. This means that the registration process is often significantly simpler and faster, taking, on average, six months.
- Utility models are much cheaper to obtain and to maintain than patents.
- In some countries, utility model-protection can only be obtained for certain fields of technology and entirely for products not for processes.

Utility models are considered particularly suitable for SMEs that make "minor" improvements to, and adaptations of, existing products. Utility models are primarily used for mechanical innovations.

# 3. TRADEMARK

**What is a trademark?**

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

A trademark provides protection to the owner of the mark by ensuring the exclusive right to make use of it in order to identify goods or services, or to authorize others to use it in return for a payment. The period of protection varies, but a trademark can be renewed indefinitely on payment of corresponding fees. Trademark protection is enforced by a court, which in most systems have the authority to block trademark infringement.

**What kind of trademarks can be registered?**

Trademarks may be one word or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors which serves as distinguishing features. In addition to trademarks with the purpose of identification of the commercial source of goods or services, several other categories of marks exist. Collective marks are owned by associations of whose members use the mark as an identification of a level of quality and other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects. Certification marks are given for compliance with defined standards, but are not confined to any membership. These may be granted to anyone who can certify that the concerned products meet certain established standards. The internationally accepted “ISO 9000” quality standards are examples of such widely recognized certifications.

**How is a trademark registered?**

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration, including used colors, forms, or three-dimensional features. The application must also contain a list of goods or services for which the sign will be used. The sign must fulfill certain conditions in order to be protected as a trademark or other type of mark. The mark must be distinctive, so that consumers can identifying it to a particular product, as well as distinguish it from other trademarks related to other products. The mark must not mislead nor deceive customers or violate public order or morality.

Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through search and examination by the national office or by the opposition of third parties who claim similar or identical rights.

# 4. INDUSTRIAL DESIGN

**What is an industrial design?**

An industrial design, is in general terms, the ornamental or aesthetic aspect of an article of use. This aspect may depend on the shape, pattern or color of the article. The design must have visual appealance and an efficient performance to its intended function. Moreover, the industrial design it must be reproducable by industrial means; this is also the essential purpose of the design, and expalins why the design possess the name industrial.

In a legal sense, industrial design refers to the right granted in many countries, pursuant to a registration system, to protect the original, ornamental and nonfunctional features of a product that result from design activity.

Visual appeal is one of the main factors which influence consumers in their preference for one product over another. When the technical performance of a product offered by different manufacturers is relatively equal, consumers will make their choice based on price and aesthetic appeal. Therefore, when registering their industrial designs, manufacturers protect one of the distinctive elements which determine success on the market.

By rewarding creators for effort in producing new industrial designs, this legal protection also serves as an incentive to invest resources in design activities. One of the basic aims of industrial design protection is to stimulate the design-element of industrial production. This is the reason why industrial design-laws usually only protect designs that can be used for industry purpose or for elements that can be produced on a large scale.

**How can an industrial design be protected?**

In most countries, protection under industrial design-law requires registration of the industrial design of a product. As a general rule, in order to be open for registration, the design must be "new" or "original". Different countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, "new" means that no identical or very similar design is known to have existed before. Once a design is registered, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years.

Depending on the particular national law and the nature of the design, an industrial design may also be protected as a work of art under copyright law. In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other.

Under certain circumstances an industrial design may also be protectable under unfair competition law, although the conditions of protection and the rights and remedies ensured can be significantly different.