

INTELLECTUAL PROPERTY RIGHTS: WHAT THEY ARE AND SOME PRACTICAL TIPS

1. What are Intellectual Property Rights?

1.1 Intellectual Property Rights (IPRs) are the legal rights that may exist in certain types of creative works. Some of these works exist automatically and others need to be registered to be effective. It is also possible that a number of these rights may exist simultaneously in one type of work.

1.2 There are five main categories of Intellectual Property Rights which are as follows:

Patents

1.3 Patents protect inventions. Inventions relate either to a product or a process to make a product. These products and processes should deal with new functional and technical aspects and so mainly relate to:

- a) How things work;
- b) What they are made of;
- c) How they are made;
- d) What they do; or
- e) How they do it.

An invention must be new and inventive to be protected by a patent. This means that the invention must not have been made available to the public anywhere else in the world and must not be an obvious product or process to have been invented.

1.4 A patent gives an absolute monopoly right. Protection is only available if registration is obtained and then lasts for 20 years starting from the date the patent application was filed.

1.5 As the invention must be new, it is essential that the details of the invention developed are kept secret until the application for the patent is made. Earlier disclosure of the invention will result in the patent being refused or becoming open to challenge if granted. Disclosure can mean making it available to the public in any form.

So, for instance:-

- a) publishing in a journal;
- b) giving a presentation to students; or
- c) even informing a colleague who is not a University employee, will be disclosure.

1.6 Here are some practical tips to safeguard the invention for patenting.

Practical Tips

- a) Keep all details of the invention secret.
- b) Keep both originals and copies of all notes, reports, drawings, lab books etc, and keep them in a secure location.
- c) Ensure all notes, reports, drawings, lab books, etc are dated and sufficiently detailed to identify the invention and how it works.

Copyright

1.7 Copyright protects a vast array of different works. Copyright only protects the form in which the ideas are expressed and not the idea or concept itself. However, ideas and concepts can often be protected as confidential information (see Know-how section below).

1.8 Copyright can arise separately in each of the following:-

- a) Books, articles, theses, presentations, lecture notes, course materials, test results, research notes, computer software and examination papers;
- b) Diagrams, drawings, blueprints, charts, artwork and photographs; and
- c) Performance works, artistic works, videos and films.

1.9 Copyright also exists in music, broadcasts, sound recordings and typographical arrangements of published editions. Generally copyright does not protect against 3-D reproduction of items portrayed in industrial drawings or plans (e.g. models created from blueprints). They are instead protected by design right or as registered designs (see the section regarding designs below).

1.10 All of the above types of work are protected by copyright as soon as they are created, i.e. written down, drawn, filmed etc. Registration is not required. All that is required is that the work be original i.e. not copied from another source.

1.11 There are different periods of duration of copyright depending on the type of work. For instance, copyright in drawings (such as those of a surgical instrument) would last for the life of the "author" (i.e. the person who made the drawings) plus another 70 years.

1.12 As copyright is an unregistered right, it is harder to prove ownership of it than a registered right. So, here are some practical tips to protect the copyright.

Practical Tips

- a) Keep all originals of the copyright works such as notes, drafts, sketches, drawings, videos etc in a secure location.
- b) Record the date of creation of the copyright work - this is crucial.
- c) It also helps where practicable to clearly identify materials with a copyright notice on them such as:- © [year] [insert name of owner]. All rights reserved.

Moral Rights

1.13 Personal rights (which attach to the author of a copyright work), called moral rights, exist alongside copyright works. They do not apply to works created as an employee or to computer software. These rights cannot be transferred but they can be waived. These are:-

- a) Right of Paternity - the right to be identified as the author or director of a work. This right must be asserted by the author for it to be effective.
- b) Right of Integrity - the right not to suffer any derogatory treatment of a work (i.e. not to have it amended or changed by others).
- c) Right of False Attribution - the right not to have a work falsely attributed to someone who did not create it.
- d) Right of Privacy - in relation to photographs and films commissioned for private and domestic purposes, the right not to have the work issued to or shown in public.

Database Rights

1.14 Information presented in a database format can be protected separately by a database right. The database right protects the collection of independent works, data or other materials which are arranged systematically or methodically. A database can be accessible by electronic or other means. As well as the obvious types of database, it has been suggested it could cover such things as collections of biological materials.

1.15 It is similar to copyright, in that this right arises automatically on its creation. There is no requirement for registration. The database right lasts for 15 years from when it is made.

Like copyright (because the database right is unregistered), you will need to take steps to safeguard the database.

Practical Tips

- a) Keep records of all information, materials and data that are used to assemble the database to clearly show the date the database was created or updated.
- b) Keep all such materials and information in a secure location.
- c) NB: Be careful not to extract materials or information to create or populate your database from other database sources - this could infringe database rights in that other database.

Designs

1.16 Designs of 3-D objects can be protected by unregistered design rights or by registered designs. These are explained more fully below.

UK Design Right

1.17 Any 3-D object can, in principle, be protected by design right. This right generally applies to industrial designs in place of copyright. The design must be original and it is automatic (like copyright) in that it is effective from the moment the design is created. It can exist in any aspect of the shape or the configuration of the object whether the design relates to an internal or external aspect in the whole or even part of the object. However, the design must not be a common design in the design field of that object at the time of its creation.

For example, a design for a surgical instrument such as a scalpel would probably be commonplace in the surgical field.

1.18 There are exceptions to protection though. Using a surgical instrument as an example to demonstrate, UK design right will not apply to:-

- a) Decoration on the surface of an object, i.e. any etchings or decoration on the surgical instrument would be excluded from protection; or
- b) A method of constructing the object, i.e. if the way the instrument is made dictates the design of it, that would be excluded from protection; or
- c) Any features of the object which enables it to fit with or match with another object to be able to perform its function, i.e. if there is an interconnecting aspect of the surgical instrument which meant it could fit into another instrument this would be excluded from protection.

UK Design right protection lasts for 10 years from when the object was first marketed or 15 years from when it was created.

As it is an unregistered right, it will be very important to safeguard the creation of the design.

Practical Tips

- a) Keep all originals of the design drawings, sketches, samples, models and prototypes, etc.
- b) Keep all these materials in a secure location.
- c) Record all dates of creation.

EU Registered Designs

1.19 Protection under this right does not start until registration is secured. Like patents and registered trademarks, registration gives an absolute monopoly protection.

1.20 A registered design protects more of the design of an object than UK design right. It covers the appearance of the whole or a part of an object resulting from the features of it i.e. the lines, contours, colours, shape, texture or materials of the object or its ornamentation, for example packaging, get-up, symbols and even typographic type-faces. Taking the surgical instrument example, i.e. any decoration, etching or engraving on the instrument and even the material of the instrument could be protected by registered design.

1.21 A registered design must:-

- be new, in that it must not have been previously made available to the public through registration, publication, exhibition, trade use or any other disclosure; and
- have individual character which means that if the object produces a notion of “dejà vu” it cannot be protected because it will be regarded as too similar to another object.

There is a 12 month “grace period” for disclosures made by the designer to enable a designer to exhibit and market the object, and apply for design registration if the object is then worth protecting.

However, such disclosure should still be made subject to confidentiality obligations to safeguard against potential abuse of the design.

1.22 There are certain exceptions to protection that are similar to UK design rights, such as where the design is dictated solely by the function which the object has to perform, for example, there would be no protection for the design of a surgical instrument where it had to be a certain shape for it to be used for its purpose in surgery.

As secrecy is key to protecting registered designs as it is for patents, here are some practical tips to safeguard the design.

Practical Tips

- Keep all details of the design secret.
- Keep all original drawings, sketches, prototypes, plans, etc, and keep them in a secure location.

A registered design can last for up to 25 years if renewal fees are paid every 5 years.
European Design Right

1.23 This right is a hybrid between the design right in the UK and the EU registered design. However, it only applies to designs created after 6 March 2002. It is a European wide right which means that the design is protected throughout the whole of the European Union.

Like registered design, it covers the appearance of the whole or a part of an object resulting from the features of it i.e. the lines, contours, colours, shape, texture or materials of the object or its ornamentation.

1.24 This right is unregistered. It arises automatically from when the design is made available to the public. This means from when it is published, exhibited or used in trade. However, this right must satisfy the same criteria for protection as with registered designs. It must be:-

- New (in the same way as with registered designs - see above); and
- have individual character (in the same way as with registered designs - see above).

Also, the same exclusions apply to this right as with registered designs. So, for example, if a surgical instrument satisfies the criteria for registered design protection, it would also be protected by EU design right as well.

As this right is unregistered, you need to consider the same factors for protection of it as with design rights.

Know-how

1.25 Know-how is not IP as such, but can be just as valuable. Know-how is effectively technical information, i.e. a procedure, a process, a knowledgeable way of doing things. Therefore, research and development projects and course projects can result in extremely valuable technical information being created. Potentially anything which is not public knowledge (which includes information which is scattered across a number of public sources but not drawn together) can be worthy of protection.

1.26 Protection only arises if before disclosing the confidential information, you inform the recipient of the information that it is secret and confidential. As the value is in the secrecy of the information, it is crucial to ensure that it is handled properly.

1.27 The most practical way to secure protection is through a written contract which stipulates what the information is and that it is to be held in confidence and how it is permitted to be used. This is commonly called a confidentiality agreement available form Research & Enterprise Development (RED).

1.28 A confidentiality agreement should be used whenever any disclosure is to be made. In this way, any information which relates to a potentially patentable invention or registrable design or even a brilliant idea or concept (which may not be protected by any IP) can be protected and the value in it can remain secure.

Trade Marks

1.29 Trademarks can be registered or unregistered. The registered variety confers a monopoly right which is only effective once the trade mark is registered. Protection will then start from the date the application (for registration) was filed.

1.30 Registered trademarks protect amongst other things a word, logo, sign, shape, colour, sound or smell which is capable of being represented graphically on paper. A registered trade mark needs to be able to distinguish the goods or services of one person to those of another person.

1.31 A trade mark cannot be registered if there is already an existing identical or similar trade mark registered for identical or similar goods or services.

1.32 A registered trade mark can last indefinitely if renewal fees are paid. The initial period of protection is 10 years, with renewals every 10 years.

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