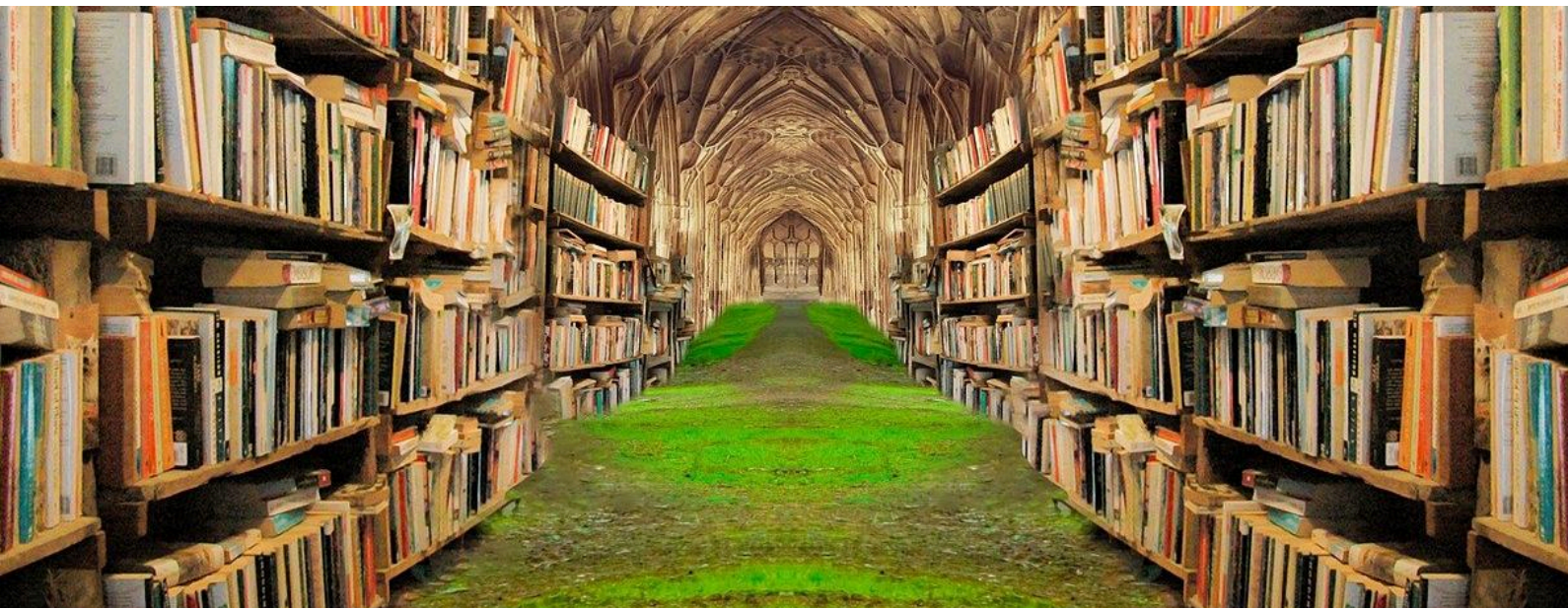


BACKGROUND ON INTELLECTUAL PROPERTY



LEGALESE & CATEGORIES

The finesse of intellectual property and technologies

First Industrial Revolution was driven by steam power, the Second by electricity, and the Third by machinery. Now, the Fourth Industrial Revolution is being shaped by the rise of intelligent computers, ushering in a new digital era.

From individual researchers and inventors to cutting-edge startups and multinational giants, the ability to understand and harness the power of intellectual property is the ultimate game-changer in the quest for economic global lead.

Intellectual property is a creation of one's mind. It is intangible, one can't smell it, one can't see it, can't feel it, but it is very valuable, indeed. Take a book for example, where one's intellectual property is embedded in a physical product where a third party can legally become a property owner of the physical property (that is the book itself) but is not the owner over the intellectual property part of the book (the content which is protected by copyright). Intellectual property is the ownership over the intangibles and in many, if not majority instances, the most important asset of many businesses.

In 1793, the American Constitutional Framers, unknowledgeable about ways of economic and technological progress, realised the paramount importance of establishing and codifying the patent system. The Framers did not know a lot about ways of economic and technological developments, but with little they knew they understood the meaning of an organised and functional patent system. The only mention of 'science' in the American Constitution emerges in the intellectual property clause.

***“Congress shall have the power...
To promote the Progress of
Science and useful Arts, by
securing for limited times to
Authors and Inventors the
exclusive Right to their respective
Writings and Discoveries.”***

The US Constitution

The reference to the term 'science' is meant to encompass the broad eighteenth century meaning of 'knowledge' or 'learning' in general and not merely refer to the natural sciences as they are defined today. The term 'technology' roughly equates to the 'useful arts' in the clause.

Similarly, Article 17 of the European Charter of Fundamental Rights, which is legally binding on European Union Member States, addresses the protection of intellectual property, by stating that, 'intellectual property shall be protected'.

This provision emphasises the importance of safeguarding intellectual property rights within the European Union. It reflects the recognition of the economic, social, and cultural significance of intellectual property.

Globalised legal system

Intellectual property law stands out as one of the most sophisticated fields within the realm of globalised legal systems. Intellectual property refers to the creations of the intellect, such as inventions, literary and artistic works, designs, symbols, names, and images. Intellectual property rights offer an opportunity to commercially exploit this.

However, intellectual property isn't just about protecting the rights of inventors – it's also about striking a balance between innovation and public benefit.

By granting inventors a temporary monopoly in exchange for contributing to the greater good, intellectual property law ensures progress while safeguarding societal interests. This concept traces back to the English Statute of Monopolies in 1624, where the term 'public good' first gained prominence.

Similarly, prior to the adoption of the French patent law of 1844, the French Chamber of Deputies in their debates expressed that:

“every useful discovery is, in Kant’s words, the presentation of a service rendered to Society. It is therefore, just that he who has rendered this service should be compensated by the Society that received it. This is an equitable result, a veritable contract or exchange that operates between the authors of a new discovery and Society.”

Looking at it from the lens of international law, the comprehensive treaty-based framework for intellectual property protection, along with the role of intellectual property in addressing market deficiencies, the intellectual property system is inherently utilitarian. The system is designed to promote the overall public welfare of society.

Regulations, regulations

In 1883, a historic treaty, called the Paris Convention was signed by 11 countries. The treaty laid the cornerstone for modern intellectual property rights. Fast forward to today, and 179 countries are part of this global pact!

The Paris Convention covers patents, trademarks, industrial designs, and more. It introduces the concept of national treatment, ensuring that creators and innovators receive equal protection across borders. So whether you're a trailblazing inventor from Brazil or a visionary artist from Spain, the Paris Convention is there for you.

Then we have something called the Berne Convention for literary and artistic works. This treaty echoes the Paris Convention's mission, extending protection to creators worldwide.

And let's not forget the TRIPs Agreement, or the Agreement on Trade-Related Aspects of Intellectual Property Rights which sets the stage for a unified approach to intellectual property enforcement on the global stage. From copyrights and trademarks to patents and trade secrets, the TRIPs Agreement revolutionises the way we safeguard intellectual creations in the digital age.

What is intellectual property then?

When talking about intellectual property, we are talking about an array of categories, from patents, to trademarks, from copyright to trade secrets, from databases to design rights and so on.

For example, copyrights protect original works of authorship, patents protect inventions, trademarks protect brand names and logos, and trade secrets protect confidential business information.

These intellectual property rights aren't just tools – they're the key ingredient that sets companies apart and fuels their competitive edge. Interestingly, though, only a small fraction – just ten percent – of smaller businesses in the European Union officially register their intellectual property rights.

Patents

“not granting patents, coupled with disclosure, would make the IP unattractive to a company.”

**Walter and Eliza Hall
Institute of Medical Research**

What are patents and what do they represent? The modern economic rationale for the existence of a patent is to provide the patent holder with an exclusive temporary right or monopoly over the invention for a limited period of time. This short-term monopoly allows the patentee an opportunity to generate monopoly profits and thereby rewards the inventor and produces an incentive for further research and development, with ensuing economic and social benefits. Patents are government grants that give inventors exclusive rights to inventions that are deemed new, useful, and non-obvious.

Patent protection prevents others from copying the inventor's ideas and competing with the inventor without incurring the initial costs of invention and product development. Essentially, what it means is that a patent protects against

unauthorised making, using, selling and manufacture or importing of the patented invention.

Note the distinction, although you are granted a right to exclude others, you are not granted the right to use the patented invention. You might still be subject to other legal obligations before you can put your patented invention on the market (environmental and safety regulations, marketing approval, product liability laws, etc).

The patent protection lasts 20 years after filing the application. Patent protection applies only in the country that issues the patent. It's national so a US patent, for example, is only effective within the US and its territories and possessions. With respect to the European Union, national patent principles have changed somewhat last summer (2023) so we now have a European Patent with a unitary effect valid in 17 out of 24 Member States (Member States which have ratified and adopted the necessary rules and regulations).



How?

In order to obtain a patent, there are certain requirements that need to be fulfilled. You cannot just go to the Patent Office and ask to patent an idea, a great idea but still an idea, nonetheless. What you would need to do is to reduce your idea to writing and this has to be done in great many details. Basically, an invention has to fulfil the requirements of novelty, usefulness and inventiveness.

One key thing to remember, even if you forget everything else mentioned so far, is: do not disclose anything to the public until the patent application is filed.

That said, some countries allow for a 12 or 6 month 'grace period' that permit patent applicants to file a patent application after a public disclosure (without destroying the novelty requirement for patenting purposes), but it's always better to be cautious and check with your legal advisor.

Navigating trademarks

A trademark is like a stamp of identity for a product or service represented by any visible sign, that can be a word, phrase, symbol or design, or a combination thereof. Trademarks are literally everywhere, marking goods and services to distinguish them from others in the market. To be registered, a trademark must be capable of distinguishing the source of the goods of one party from those of others, avoiding confusion or deception among consumers about their quality or relationship with other parties. In simpler terms, it's equivalent to putting your signature on a product or service to make it stand out from the rest.

A well known trademark can exist without formal registration but this has limits. In any case, the mark has to be used in commerce or you lose it. Trademarks are not like patents where you have a fixed period of validity. Unlike patents with fixed periods of validity, trademarks need to be renewed every 10 years and if you miss a renewal, you just made things a lot more complicated for your business.

While it's widely agreed that managing intellectual property rights is crucial for business success, particularly concerning trademarks and brand names, only a small percentage (some 10%) of smaller businesses in the European Union have officially registered these rights.

This lack of registration can pose challenges when dealing with intellectual property infringements, especially regarding trademarks. If your mark isn't registered, you'll need to prove prior usage against competitors. However, with a registered mark, the burden of proof shifts to the other party to demonstrate prior usage in commerce before registration.

Trademarks in reality

Trademarks like Twinings Tea, Tabasco and Guinness Harp have stood the test of time, representing brands with rich histories and enduring legacies.

Twinings Tea, for instance, has been using its logo, featuring the Twinings wordmark and lion crest, since 1787, representing one of the oldest trademarks in the tea industry.

Tabasco Sauce, not only was the name Tabasco in use since the late 19th century, but in 1870, its founder also secured a patent. The trademark Tabasco had a bit of a rocky start at the start of the 1900s with registration in 1906, only to be withdrawn, subjected to lawsuits but, it all got resolved eventually and the rest is Tabasco history as they say.

Guinness harp trademark, on the other hand, was registered in 1876.

Some other trademarks we are all too familiar with include: Google, Nike swoosh, Apple's logo and wordmark, Pizza Hut, Adidas three stripes and so on.

Keep asking questions



**think and think
some more?**

*Does IP really
apply to me?*

*Can IP make a
difference to
my work?*

*Considering
commercialising
my research – should I
safeguard my ideas?*

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