AN INTRODUCTION TO INTELLECTUAL PROPERTY

Cyrille DUBOIS
Onur EMUL
TETRA services to accelerate your business

Training
- Managerial/entrepreneurial skills, transversal competencies & soft skills
- How to access to new markets, public tenders
- Investment readiness – attracting funding
- Guidance on equity funding
- Intellectual property (IP) rights

Mentoring
- Speed mentoring during bootcamps, and tailored remote mentoring for 20 selected teams that participated in bootcamps

Networking
- Matchmaking with corporates and investors, connecting with DIH, pitching guidance

More on: https://business.ngi.eu
IP is YOU!
by encouraging **invention** and **creativity**, and thereby benefitting society

**HOW?**
Limited **MONOPOLY**
in return for **disclosing**
details of the new creation

Promote **INNOVATION**, **NEW PRODUCTS** and **DESIGNS**
**Inspire** **NEW IDEAS**

WIN-WIN

**Why IP?**
IP is **YOU!**

One product – many IP rights

**Patents**
- Data-processing methods
- Operating system
- Operation of user interface
  - Touch screen

**Trade marks**
- Brand name
- Mobile jingles
- Application brands

**Copyright**
- Software
- User manuals
- Ringtones
- Images

**Designs**
- Form of overall phone
- Arrangement and shape of buttons
- Position/shape of screen

**Trade secrets**
- Some technical know-how kept "in-house" and not published
TRADE MARKS

What is “a trade mark”?

Protects signs which identify goods and services of a particular source and differentiates them from the others.

What can be a “trade mark”?

✓ Able to be represented by any type of technology (letters, numbers, words, slogans, logos, shapes, holograms, sounds, colours, etc.)
✓ Distinctiveness
✓ Non-descriptiveness
✓ Not deceptiveness
✓ Not against public order and morality
“Best app” Not distinctive

“Mobile app” Not distinctive, and descriptive

“LinkedOn” Similar to LinkedIn

Trade marks

Trade marks are registered according to categories of goods and services (defined in the 45 Classes of the Nice classification)

The owner of a registered trade mark is granted exclusive rights to:

✓ use the mark in relation to the goods or services with respect to which it is registered, and
✓ prevent others from using a substantially identical or deceptively similar mark in relation to identical or similar goods or services as those registered under the mark.

TERRITORIAL RIGHTS!
Filing a trade mark

NATIONAL TM
- National rules
- National IP office

EU TRADE MARK
- Single application
- One language
- Members of the EU27
- Through EUIPO

INTERNATIONAL TM APPLICATION
(MADRID SYSTEM)
- Single application and single set of filing fees
- One language
- Members of the Madrid System
- National rules after application – national TMs
- Through the national IP offices, EUIPO or WIPO

Majority of countries: 10 years of protection extendible unlimitedly

DESIGNS
What is “a design”?

Protections the appearance of products – not the product itself.

- Ornamental
- Aesthetic
- Non-functional

✓ Novel in design
✓ Having an original / individual character
✓ Not against public order / morality

TERRITORIAL RIGHTS!

Designs

NATIONAL DESIGN
- National rules
- National IP office

REGISTERED COMMUNITY DESIGN (RCD)
- Single application
- One language
- Members of the EU27
- Through EUIPO

Unregistered Community Design (UCD)
3 years of protection from the public disclosure without extension

INTERNATIONAL DESIGN APPLICATION (The HAGUE SYSTEM)
- Single application and single set of filing fees
- One language
- Members of the Hague System
- National rules after application – national designs
- Through the national IP offices, EUIPO or WIPO

Majority of countries: 5 years of protection
with 4 times 5-year extension (5 + 4x5 years)
What is “a patent”?

Protects technical inventions for a limited period of time in a limited geographic area.

In order for an invention to be patented:
- NEW (novel)
- INVENTIVE STEP (non-obvious)
- INDUSTRIAL APPLICABILITY

Patent documents are published: all technical knowledge available to the public.

A patent confers to its owner the exclusive rights to prevent others from making, using, offering for sell, selling or importing defined invention.
What is patentable, what is not?

Only technical inventions are patentable ...

Not inventions:
- Discoveries, scientific theories
- Mathematical methods
- Literary / Artistic / Aesthetic works (different protection form)

Non-patentable inventions:
- Diagnostic/treatment methods (on human/animal body)
- Plants & animal varieties (different protection form)
- Inventions contrary to public order/morality

Schemes, rules or methods for playing games/doing business
- Presentations of information
- Computer programs (as such)

Patents are territorial
Not to be confused with the world-wide novelty requirement!

Patents are only valid in countries (like other IP rights!) in which the application is filed – and then be granted.
Territoriality vs novelty

You invented a chipset.
But then, you noticed that there is already a patent/patent application for the same/similar chipset in Greece:

You cannot grant a patent anywhere in the world because your invention is not novel!
You can commercialise the chipset in Germany because there is no patent filed/granted in Germany.

The owner of the Greek patent can enforce patent rights only in Greece, nobody can get a patent in any country for the same/similar invention.

The patent owner can confiscate the German chipset on the Greek border, if the German manufacturer wants to enter into the Greek market. But the patent owner cannot claim his patent rights for the German market.

Same invention? Similar invention?

• No definition/criteria of “similarity” for inventions
• Not easy to determine
• Needs expertise

Patentability criteria

• Novel ✓
• Industrial applicability ✓
• INVENTIVE STEP (non-obviousness) ?

“Shouldn’t be obvious for the skilled person in the state of the art”

Is my invention sufficiently inventive over the other inventions?

Patent databases
**Computer Implemented Inventions (CII)**

Computer programmes *(per se)* **cannot** be protected by patents

**BUT**

patents **can protect** computer implemented inventions

“*inventions, whose implementation involves the use of a computer, a computer network or other programmable apparatus, realised by means of a computer programme (i.e. software)*”

**Condition:** It must have a technical character and a technical effect.

Copyright protects the **expression of the method** (the code, design, graphics, user manuals, etc.) **not** the method itself.
Computer Implemented Inventions (CII)

Protection will be on:

- Processes
- A device for executing a process
- A computer program, executed on a processor, that execute a process
- A support function executing an action

✓ Treatment of physical data
  - Control of an engine
  - Data compression (image, sound...)
  - Telecommunication protocol (WiFi, 4G...)
  - Increasing time of treatment (big data)

✓ Computer architecture
  - Management of cache memories

COPYRIGHT
What is “copyright”? 

Copyright relates to literary and artistic creations

- novels and poems
- music, paintings, sculptures, photographs
- artistic performances
- cinematographic works, TV and radio broadcasts
- architectural works, maps, plans, drawings
- computer programs / software (expression)

What is “copyright”? 

- no formal registration (in most of the countries)
- automatically arises upon creation of the work, provided that it is original
- subsists in the physical expression of the work (not mere ideas!)
- in general, protection lasts 70 years after the death of the creator
- Not completely harmonized at EU/international level → national rules

Copyright

Economic rights
Copyright owners can prohibit or authorise that their works be:
- copied or reproduced
- distributed to the public
- communicated to the public
- translated
- adapted, such as a novel into a screenplay

Moral rights
Right of Attribution: right to be mentioned as the author
Right of Integrity: right to object to derogatory actions in relation to the work
TRADE SECRETS

✓ confidential information
✓ know-how
✓ risk of information leakage

✓ responsibility is on the owner
✓ no registration, free-of-charge
✓ information protected as long as it is kept secret
  ✓ Internal management is important
  ✓ NDAs, etc. must be in use

Winners are known only to two accountants 48 hours in advance. The ballots that contain the votes are handled by two executives of PWC auditors. They count each vote by hand and note down the numbers on paper by a pen.

Only two executives know the formula and it is very fiercely guarded by keeping it under lock in the Sun Trust Bank in Atlanta.
PATENTS:
- EPO Espacenet: https://worldwide.espacenet.com (> 110 million)
- Google Patents: https://patents.google.com (> 17 million)

TRADE MARKS:
- EUIPO eSearchPlus: https://euipo.europa.eu\eSearch (EUIPO Database of TMs & Designs)
- EUIPO TMview: www.tmdn.org/tmview (TMs worldwide)
- WIPO Global Brand Database: www.wipo.int/branddb/en (TMs worldwide)

National Patent Office Databases
DESIGNS:
EUPO eSearchPlus: https://euipo.europa.eu\eSearch (EUPO Database of TMs & Designs)
EUPO Designview: www.tmdn.org/tmdsview-web (Designs worldwide)
WIPO Global Design Database: www.wipo.int\designdb\en\index.jsp (Designs worldwide)
National Patent Office Databases

IDEAS / for proving purpose:
WIPO Proof: www.wipo.int/wipoproof/en/ (new service)
BOIP iDepot: www.boip.int/en/idepot (free in June!)

A QUICK SUMMARY...

TRADE MARK
- Protects brands
- 10 yrs + indefinite renewal
✓ Representable
✓ Non-descriptive
✓ Non-deceptive

DESIGN
- Protects aesthetic character
- 5 yrs + 4 x 5 yrs = 25 yrs
✓ Novel
✓ Original / individual character

PATENT
- Protects technical inventions
- 20 yrs
✓ Novel
✓ Inventive step
✓ Industrial applicability

COPYRIGHT
- Protects literary and artistic creations
- No registration
- Death + 70 yrs
✓ Original
✓ Only physical expressions not ideas

TRADE SECRETS
- Protects confidential information
- No registration
- Not time-binding: as long as it is kept secret
- Management is particularly important
Follow our upcoming IP webinars for NGIs on:

- Introduction to IP Commercialisation (in July!)
- IP Protection in Software Development
- IP in Open Innovation and Partnerships
- IP and Software Code Management
- IP and Standards

+ Our bootcamp session (ONLINE! on 29 September-1 October)

Info and registration here:
https://business.ngi.eu/news-events/events/1st-build-up-bootcamp/

Q & A