



# Intellectual Property: BUILDING BLOCKS OF THE FUTURE

A GENERAL BACKGROUNDER ON INTELLECTUAL PROPERTY - 2007/2008



**Rudy Provoost, CEO, Philips Consumer Electronics:**

*“The high-tech industry employs over two million people in Europe and invests tens of billions of euros in research and development each year. Intellectual property is at the core of our business and is crucial to the future success of our company, job sustainability, and our ability to compete internationally.”*

## Why is intellectual property important?

**Intellectual property rights** or **'IPRs'** provide a foundation on which the knowledge economy is built, as Europe and other economies continue to evolve from low-value manufacturing to high-value technology and services.

Intellectual property (IP) gives the developers of innovative technologies and works the opportunity to decide how their innovations are put on the market and licensed to others for further development or manufacturing.

The international trading system, overseen by the World Trade Organisation and specialised UN agencies such as the World Intellectual Property Organisation, and almost every individual country, have well-developed and balanced systems for protecting intellectual property—for several important reasons:

- **Incentive to innovate.** Intellectual property allows the people that innovate new technology and creative content to earn a living—to make a return on their time and investment. This provides inventive individuals and commercial

enterprises the financial incentive to undertake innovation in the first place.

- **Reward for innovation.** The market determines the usefulness and value of inventions and creative works, and rewards them through sales and licensing revenues. This provides financing for further innovation and creativity—a virtuous circle.
- **Jobs.** Intellectual property creates high-value economic activity and jobs. The information, communication and consumer technology (ICT) industries rely heavily on intellectual property protection as a basis for research and development, and financial and job growth. EICTA's own members represent more than 10,000 enterprises in these sectors in Europe, with 2 million employees, and revenues of over €1,000 billion.
- **Competitiveness.** Europe's advantage in the global economy is not cut-price manufacturing, but rather creativity, invention, technology and other innovation—intangible in form, but valuable because of the protection that intellectual property rights give. Virtually every successful and growing sector in Europe depends

on intellectual assets. IP protection allows not just major companies, but individual inventors and small-and-medium sized enterprises (SMEs), to benefit from their innovation and creativity.

- **Societal benefit.** Every intellectual property regime reflects a balance between the commercial interests and other legitimate expectations of rights owners, and the broader public good. This balance is reflected both in the objectives of intellectual property law to promote creativity and invention for the general good of society, and in the careful delineation of rights and reasonable exceptions in intellectual property laws and treaties.

## What does intellectual property cover?

Intellectual property deals with a range of diverse inventions, creations and other intangible property. This white paper looks at four types of IP:

- **Patents:** Protection of new inventions, i.e. the functionality or underlying principle of how the invention works. Patents are obtained through registration, also including a search

and an examination process, with the relevant patent office, and are available for all technologies.

- **Copyrights:** Protection of creative and technical 'expression', which includes not only books, music and films but also the code and other expression of software.
- **Trademarks:** Protection of distinctive names, marks and trade dress that the owner has registered with a relevant trademark office.
- **Industrial designs:** Protection of the aesthetic or ornamental appearance of a product, rather than its technical design or function.

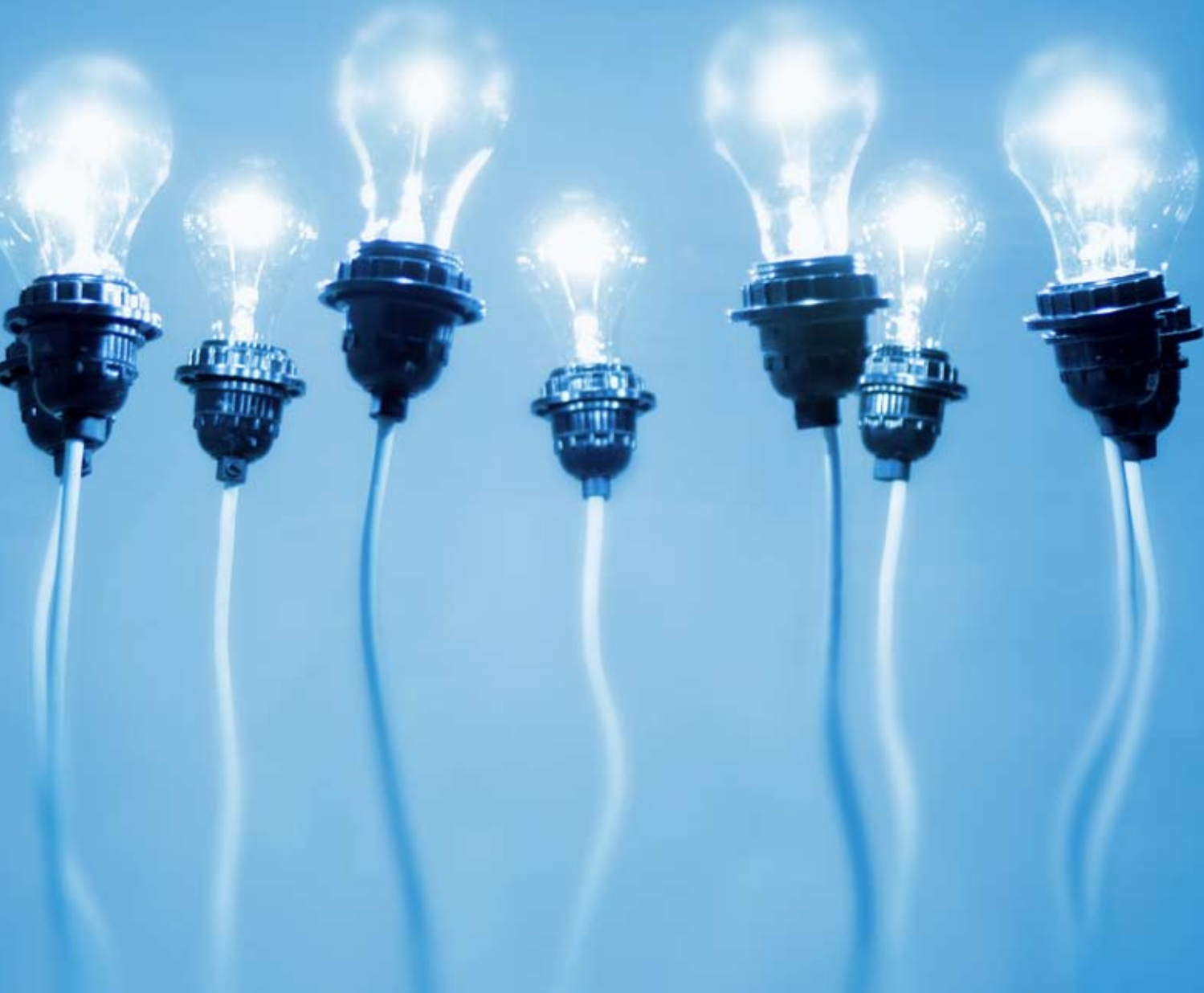
**It is noted, however, that in addition to the rights described in this paper, there are other ways in which intellectual assets can be protected including, for example:**

- **Trade secrets:** Protection of methods, formulas, specifications and similar information that has economic value because it is kept confidential. Not only famous consumer products, but hardware and software products, often contain trade secrets.

- **Utility Models:** Protection of inventions that may have a lesser 'inventive step' than needed to secure a patent, but which otherwise meet the criteria for patenting. Utility models are generally granted more quickly than patents, without examination.

- **Semiconductor Topographies:** Protection for the layout (design) of a semiconductor device, commonly known as a silicon 'chip'.

# Patents: Incentive for Invention



## Brenda Hopkins, Chairman FeONIC plc:

*“IP, and in particular patent protection, trademark, copyright and associated design rights, is very close to our heart as FeONIC develops new smart material technology for consumer devices. Through IP licensing agreements, this smart material technology is incorporated into various consumer products. Without the protection of our IP, we would have no commercial bargaining power when dealing with our manufacturing and distribution partners, especially given the fact that we are a relatively small company with only 8 employees.”*

### What are patents?

Patents are rights granted for **inventions**, which are typically products or processes that provide a new technical solution to a problem or a new way of doing something. In order to qualify for a patent, an invention must be

- **New**—it must not form part of the state of the art, which is the body of existing knowledge often called the ‘prior art’. This ‘newness’ characteristic is called ‘**novelty**’.
- **Inventive**—it must not be obvious to a person skilled in the art and must make a **technical contribution**.
- **Industrial application**—it must be capable of industrial application.

Patents only come into existence if they are **registered** with the relevant patent office, for example the European Patent Office or the patent office in the particular country in which patent protection is claimed. The application for a patent is examined by the patent office to ensure the invention meets the patentability criteria before a patent is granted. Registered patents give the inventor the **exclusive rights** to use, license or prohibit the use of the patented product or process. This includes making, offering, selling or importing items that contain the patented technology.

Patents can be and regularly are **transferred or licensed** to others, so, for example, small companies or

inventors without large manufacturing or marketing operations can reap the rewards of their inventions, for example by licensing their patents.

Patents are generally granted for a period of **20 years** from their filing date, but are subject to the payment of annuities to keep them in force. Most patents are not kept alive for the full term.

### What do patents cover?

Patents generally cover inventions in ‘**all fields of technology**’.

The **ICT** field is the most active area in creating patentable inventions at present. According to the OECD, ICT-related (computing, communications and consumer electronics) inventions

accounted for **35% of all patent applications** filed in the European Patent Office in 2003.

Other sectors are also active in patenting their inventions. Basic electrical industries, pharmaceutical companies, engineering firms, and the automotive industry, for example, produce a large number of patentable inventions each year.

Certain subject matter is treated as unpatentable under some countries' patent laws and thus are not patentable—for example, discoveries of natural substances, mathematical methods, plant or animal varieties, or medical treatment methods (as opposed to medical products). In Europe software and business methods are not patentable 'as such'.

The EPO received 194,000 patent applications in 2005, and in the same year it granted about 53,000 of the applications in its pipeline.

Note that 'utility model' (sometimes called 'petty patent') registration offers similar but quicker protection, typically for mechanical inventions, but provides less legal certainty and can be problematic because no patent-style examination takes place.

## Why is patent protection important?

**Patents provide three major benefits for Europe:** they promote innovation, they promote the free flow of information about new technologies, and they promote licensing.

**1. Promoting innovation.** European companies spend billions of Euros annually in research and development (R&D) in ICT and other technology development. It is inconceivable that they and their investors would fund such research if others could simply free-ride on their R&D. Patents—which provide the exclusive right to use, sell or license new technology for a limited period of time—are the mechanism for protecting innovation which encourages investment in R&D and promotes innovation generally.

**2. Promoting free flow of information.** All patented inventions must be **disclosed publicly** through publication of the patent application. Other researchers and the public can learn much about new technologies through access to databases of published patents. The European Patent Office maintains

such a database of 55 million patent documents, accessible to everyone at no charge over the internet.

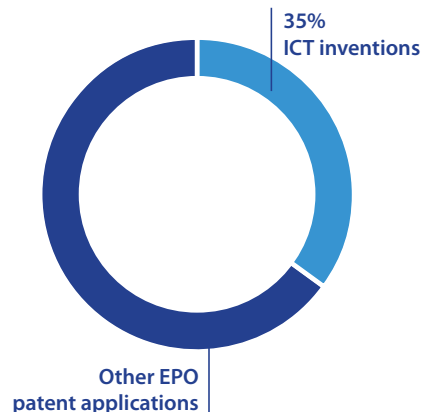
**3. Promoting licensing.** The disclosure required in order to benefit from patent protection results in many technology transfers and knowledge-sharing licences between companies in particular sectors—as companies and individuals discover inventions in each others' products that they may wish to use. This also fosters pooling of patent licenses on particular technologies.

**Europe is prominent in creating patentable inventions.** Approximately 50% of the patents granted by the European Patent Office (EPO) each year, and 20% of all patents issued worldwide, are issued to European businesses and residents.

**Europe is a prominent player in computer-implemented inventions** in many areas, including computing, telecommunication, mobile phones, health care, motor vehicles, aviation and consumer electronics. Large parts of today's industries in Europe protect their computer-implemented inventions by patents.

## ICT-related inventions (computing, communications, consumer electronics) constituted the largest proportion (35%) of patent applications filed in the European patent office in 2003

OECD Compendium of patent statistics (2006),  
<http://www.oecd.org/dataoecd/5/19/37569377.pdf>



**Patent quality and cost-effectiveness are vital.** For the patent system to work effectively, it is important that patents that are granted cover inventions that are truly novel and include an inventive step, which is what the European system for examining applications seeks to ensure. Trivial patents devalue the patent system generally and need to be avoided. Moreover, the cost of patents needs to be kept under control, translation requirements kept to a minimum, and fees—especially for individuals and SMEs—possibly even reduced, in order to maintain accessibility of the patent system for all. There is scope for improvement in all these areas.

### Can software be patented?

In Europe, software as such cannot be patented. However, since the early days of computer technology the EPO has granted patents on what are called **'computer-implemented inventions' or CII**. These are not patents on software as such; they do not cover the code or other expression of a computer program in its own right.

It is the inventions that reside in or otherwise are implemented by computers and software that are patentable. Simply because they happen to be implemented by software rather than some other way does not

mean that they do not qualify for patent protection. This is consistent with the WTO TRIPs Agreement requirement that patents be available for inventions in 'all fields of technology'.

**Tens of thousands** of CII-related patents have been granted in Europe, mainly in the ICT sector. Approximately **20%** of CII patents each year are granted to **small-and medium-sized enterprises** (SMEs).

### The patent system in Europe?

There are two alternative routes for obtaining patents in Europe. One is

<sup>1</sup>The three official languages of the EPO are English, French and German. Applicants from countries with a language other than English French or German are entitled to a 20% reduction in fees.

<sup>2</sup>This is the case for most countries; Luxembourg and Monaco are exceptions.

## Good patent protection in Europe is essential for European competitiveness

to file a separate patent application in each of the **national patent offices** where protection is required. The other is to file a single application at the **European Patent Office (EPO)** based in Munich, indicating the countries where protection is required.

The **EPO route** is a more cost-effective route if protection is required in several European countries because the process for obtaining a patent can be carried out essentially in one language<sup>1</sup> and in a single procedure. Once a European patent has been granted, it becomes necessary to file **translations** in each of the languages of the countries where the patent is to take effect.<sup>2</sup> This translation 'phase' is an expensive, and arguably unnecessary, part of the European patenting process, because most translations are never used or even consulted. The **London Protocol**, currently being proposed, would do away with most translation

requirements and so dramatically reduce the cost of obtaining a European patent.

On average, it takes **several years** to be granted a patent. This may seem a long time, but the Patent Office has to **examine** the application carefully to ensure that the invention is patentable. This involves the Patent Office carrying out a comprehensive search of the **'prior art'** and entering into a dialogue with the applicant to better understand and define the invention. Only when the Patent Office is convinced that the invention meets all the criteria for patentability is a patent granted.

One hallmark of the European patent system, which helps to balance the interests of the public against those of the patent owner, is that it is possible for anyone who is interested to make observations to the EPO during the patenting process or to oppose a patent they think may have been wrongly

allowed at any time up to nine months after the patent has been granted.

The EPO was established in 1977 after a long political process which started in 1947 and concluded in 1973 with the European Patent Convention (EPC), sometimes referred to as the Munich Convention. By the end of 2006, that agreement has been ratified by **31 States**, extending beyond the EU.

The EPC underwent its first significant revision in 2000 in a major international project lasting several years, in order to bring it up to date for the 21<sup>st</sup> century.

The European patent system has established a world-class reputation over its 30-year existence, and the national patent laws of all EU Member States are harmonised with the EPC. The patent laws of most countries outside Europe, most notably China and Japan, are modelled on the EPC.

Whereas there is a common system (the EPO) for granting European patents, there is **no common system for enforcing** them. To enforce a European patent, it is necessary to go to the national courts which have jurisdiction only for the country concerned. The proposed **European Patent Litigation Agreement (EPLA)** would introduce a single, common procedure for enforcing European patents, which could reduce duplicative lawsuits and improve litigation certainty.

## FAQs

### **Q. Didn't the European Parliament ban software patents?**

A. No, the European Parliament vote in 2005 was not about banning software patents but rather was a proposal that sought to harmonise EU rules on computer-implemented invention (CI) patents in Europe. The proposal to harmonise these rules was rejected.

### **Q. Aren't patents expensive, particularly for SMEs?**

A. It can be costly, but nevertheless SMEs do participate in the patent

system—for example, SMEs secure 20% of the computer-implemented invention patents issued in Europe annually. The ICT industry supports fee reforms and less onerous translation requirements and similar measures that would make patents more affordable and accessible, especially for SMEs.

### **Q. Are patents incompatible with open-source software?**

A. No. For example, several patent holders have announced that they will license their patents to open-source software developers. Other vendors offer open-source software alongside patented software or service offerings. Suppliers and customers can choose on a case-by-case basis whether to use an open source business model or a proprietary business model, or a combination of both.

### **Q. Don't companies regularly make improper patent claims?**

A. This is the exception rather than the rule. The European Patent Office carefully screens out applications containing pre-existing technology ('prior art'), obvious inventions, and

technologies incapable of industrial application. It is open for anyone to challenge a patent throughout the patenting process and for 9 months after a European patent has been granted. Courts can throw out patents that should not have been issued when challenged by others.

### **Q. Don't patents put Europe at a competitive disadvantage with its international trading partners?**

A. Quite the contrary. European industry is exceptionally innovative, as reflected in the large percentage of patents granted to European entities (20% world-wide and 50% in the EPO). Good patent protection in Europe is essential for European competitiveness.

Copyright: Promoting Creative Expression



## What is copyright?

Copyright provides a **supportive framework underpinning** the creation of new literary, artistic and scientific works, and a market-based reward for such creativity.

Copyright protects **creative expression** that is one's own intellectual creation (i.e. original), such as books, music, films, photographs, and similar works. Sound recordings, performances and broadcasts are also protected, sometimes by copyright itself and sometimes by 'related rights'.

**Computer programs** are one type of material that copyright protects. As software has become widely available since the 1970s, national copyright laws have been updated to make clear that copyright protection applies to software. The 1994 TRIPs Agreement requires all member countries of the World Trade Organisation to protect computer programs as literary works under copyright.

Copyright gives the creator of the protected material a set of **exclusive rights**, typically the rights to determine whether and under what conditions others **copy, modify, distribute,**

**perform,** and **communicate** the material.

In recent years, these rules have been interpreted and updated to include similar internet-based activities. So, for example, copyright now covers **'making available'** and copying material digitally over the internet.

Engaging in an activity covered by an exclusive right without owning the copyright or having a licence, and without qualifying for one of the exceptions to copyright, is infringement. Infringers can be subject to civil compensation and injunctions, and in certain cases criminal penalties.

For most works in Europe, copyright lasts for 70 years (plus the lifetime of any identified author). Copyrights can be transferred to others, and any or all of the exclusive rights can be licensed for others to exercise.

## Are there exceptions to copyright?

National copyright laws typically contain a set of **limitations and exceptions** that permit activities otherwise controlled by the copyright

owner—such as copying, modifying, or performing a work—to be carried out without permission.

European copyright laws do not have blanket exceptions like 'fair use', a US concept, but contain lists of **specific exceptions** tailored to particular works and specifically defined activities.

To qualify for an exception, the person engaging in a protected activity must meet all of the conditions of the specific exception.

For example, private recording of broadcasts for time-shifting (a UK and Ireland exception) does not allow distribution of such copies; limited copying by educational institutions does not cover activities unrelated to such an institution; and private copying of music or films for one's own personal use (allowed by some but not all European countries) does not allow internet uploading.

The terms of some exceptions have been harmonised in a series of directives adopted by the European Union, most recently the 'Copyright Directive' of 2001. However, the list of exceptions varies considerably by country, and national law applies.

## 'THE [EU] MARKET FOR COPYRIGHT GOODS AND SERVICES RANGES COMMUNITY-WIDE FROM BETWEEN 5 AND 7% OF THE GNP'

### European Commission, Follow-up to the Green Paper on Copyright and Related Rights in the Information Society (1996)

International treaties provide for a balanced approach between copyright owners and users, by allowing countries to implement reasonable exceptions to copyright. The Berne Convention, WIPO Treaties and WTO TRIPs Agreement allow copyright exceptions in '**special cases**' that **do not interfere with the normal 'exploitation'** or market for the work, or unreasonably **prejudice the rights owners'** interests.

#### What can I do with copyrighted software?

Commercial software is typically **licensed** rather than sold, so software providers typically spell out users' rights to use the software in licence agreements signed individually or shipped in the package.

These licences may allow the person or company that legitimately acquires the software to install and run it on one or more devices, transfer the entire package and all copies, and the like.

In addition, the 1991 EU Software Directive harmonised all software

copyright exceptions across Europe, so it is lawful even without a licence for the lawful acquirer to (1) **use** the software in accordance with its intended purpose (including error correction), (2) make a **back-up copy** for that purpose, (3) **observe, study or test** the functioning of a program that the acquirer lawfully runs, and (4) in certain cases, **decompile** the program to achieve interoperability of an independently created program with other programs.

There are no other exceptions in Europe that allow unauthorised 'private copying, educational, library, trial, limited-time, or evaluation use of software. Only the exceptions in the 1991 Software Directive apply.

#### Why is copyright important?

ICT products and services, and the other diverse sectors that develop and disseminate creative content, are extremely important to Europe's **technological and cultural development**.

Many of the goods and services in

these markets only exist because of the underlying protection that individual countries, the EU and the international trading system provide through copyright.

These sectors are major contributors **to economic growth, jobs and competitiveness**.

The European Commission estimates that the market for copyright-based goods and services ranges Community-wide between **5 and 7% of GNP**.

The UK government estimates that the copyright-based sector generates more than **1 million jobs, 8% of the UK GVA** (Gross Value Added) (£56.5 bn), and **4.1% of UK exports** (£11.6 bn).

Throughout the EU, copyright is one of the building blocks that underlie a vibrant 'knowledge economy', and that enable it to continue to grow and compete internationally.

#### Are copyright 'levies' appropriate?

No. Levies are a **non-market**

**remuneration** to rights owners for private copying of works that, in the age of **digital rights management (DRM)**—encryption and other content-management technology—can and should be better addressed through technical solutions and commercial licensing.

Private copy levies also do not and cannot cover or compensate for illegal copying and distribution. Besides allowing a wider range of usage and pricing options for legitimate use of copyrighted content, DRM solutions provide rights owners effective ways of preventing illegal copying and distribution.

For example, digital music services now routinely apply DRM to tracks offered on-line, so that music can be copied with permission to the user's computer and other permitted devices, but not to millions of other unauthorised internet users without payment.

Many European countries traditionally imposed levies (sometimes termed '**equitable remuneration**') on various devices and media as token remuneration for permitted private copying of music, films, text and other works on those devices and media.

These levies, managed by copyright collecting societies, have been

spreading to digital products and media in recent years, and the amounts of such levies have been rising.

The EU Copyright Directive, however, introduced the concept of 'fair compensation' based on harm, and anticipates a **phasing out of levies** as DRM replaces uncontrolled private copying with DRM-based copy management—a move that the ICT industry very much encourages.

## FAQs

### Q. Is it necessary to register a copyright?

A. No, and most countries do not have a copyright registration system. Copyright protection becomes effective automatically upon the creation of a protected work.

### Q. Is it necessary to choose between copyright and patent or other IP protection?

A. No, given that each type of intellectual property protects different things. A software developer thus can protect its technical inventions by patent, its 'expression' (e.g. code) by copyright,

its brand by trademark, and its confidential information (e.g. specifications) by trade secrets.

### Q. What bits of a computer program can be protected by copyright?

A. The 1991 EU Software Directive says that the 'expression in any form of a computer program' is protected. This obviously includes source code and object code; the Directive also specifically mentions 'preparatory design material'. It is the 'ideas and principles which underlie any element of a computer program, including those which underlie its interfaces,' that are not protected by copyright.

### Q. If I have paid for a download, don't private-copy levies mean I am paying twice?

A. Yes. Private copying is an exception to the rights owner's protection, for which EU law recognises that 'fair compensation' may be due to the rights owner. However, if DRM is applied and commercial terms govern the use of a film or music track, in principle there is no requirement for additional private copying or a levy. That means a consumer is often paying twice.

# Trademarks: Maintaining Quality and Fair Competition



## Trademarks are a powerful tool to prevent others from offering inferior, different or even dangerous items that falsely appear to originate from the brand owner.

### What are trademarks?

Trademarks are **distinctive signs** that identify **goods** or **services** as originating from a particular person or entity.

Trademarks can take any number of forms: **words, letters, numbers, symbols, and graphics** are the most common. Distinctive packaging, 3-dimensional shapes, and even distinctive colours, smells and sounds potentially can be trademarks.

Trademarks must be **registered** for a particular country to benefit from registered trademark rights in that country, although other protections (such as 'passing off' or 'unfair competition' protection) may be available for unregistered marks.

Virtually every country has a trademark office that registers trademarks for use in that country. The EU's **Community Trade Mark** office registers trademarks effective in all EU member states. The

World Intellectual Property Organisation (WIPO) in Geneva maintains the Madrid Protocol system, a one-stop shop whereby a national trademark can be registered in up to 65 other countries.

Trademark owners have the exclusive right to use the trademark to **identify goods and services**. The trademark is enforceable only in those '**classes**' of goods and services (e.g. electrical and scientific apparatus, telecommunications services) in which it is registered.

Trademarks are issued for a period of **at least 7 years** (10 is typical), but can be renewed indefinitely. Trademarks can be sold or licensed to another person or enterprise.

### Why are trademarks important?

Trademarks have benefits both for their **owners** and for **consumers**. For trademark owners, trademarks provide a way

of identifying and distinguishing their company, product and service **brands** from those of other enterprises.

This provides:

- **Support for a company's individual reputation.** Successful companies are recognised and associated with their trademarks. A positive reputation is rewarded by consumer purchases of these companies' trademark-branded goods and services, and by 'goodwill' in the companies' valuation.
- **Protection against unfair competition,** such as from counterfeits. Trademarks are a powerful tool to prevent others from offering inferior, different or even dangerous items that falsely appear to originate from the brand owner.
- **Promote trade.** Allowing innovative companies to produce and offer goods and services on fair conditions facilitates healthy domestic and

international trade in those goods and services.

For **consumers**, trademarks provide a helpful indication of the **origin** of a product or service. This protects consumers against **confusion**.

Recognised brands also can serve as an indicator of **quality and reliability** when the consumer is seeking new products and services.

## FAQs

### **Q. What does it mean that a trademark must be 'distinctive'?**

A. In general terms, this means that the mark is not the same as (or confusingly similar to) another trademark, that it is not misleading or deceptive, that it is not a generic mark, and that it is not merely descriptive or laudatory of the goods or services (e.g. 'Quality' widgets). National trademark offices also may refuse to register trademarks offensive to public policy or morality.

### **Q. How are the symbols <sup>TM</sup> and <sup>®</sup> used?**

A. Usage varies, but typically the TM or SM symbol means that the mark is

being used or claimed as a trademark (applied to goods) or service mark (applied to services), and <sup>®</sup> gives notice that it has been registered. It is helpful but not mandatory to use any of these symbols. Use of the <sup>®</sup> symbol with unregistered trademarks is illegal in many countries.

### **Q. What use of someone else's trademarks is allowed?**

A. Generally, consent is necessary to use someone else's trademark. However, a trademark can be used in good faith to describe the goods and services to which it actually applies (e.g. 'Nokia mobile phones'), so long as it is not used without consent to promote someone else's goods and services, to imply the association or endorsement of the trademark owner, or to benefit from the trademark owner's goodwill in the trademark.

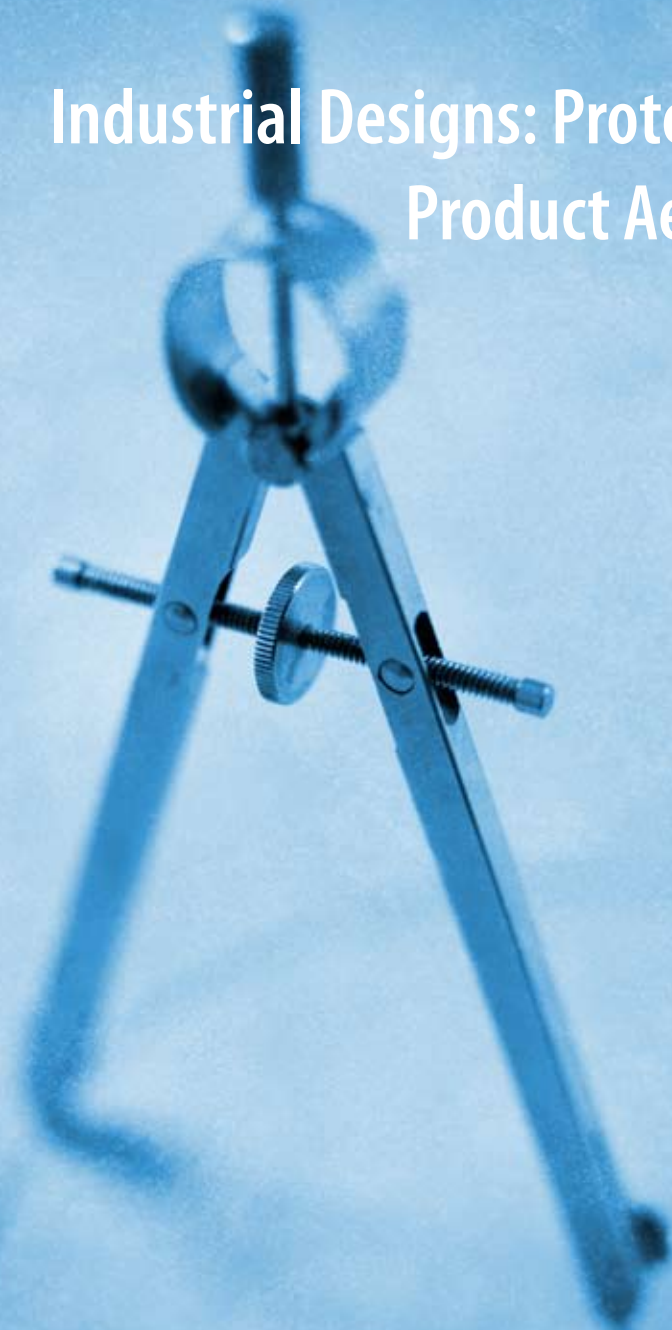


The Bass Red Triangle trademark was registered in Britain in 1876



Meissen porcelain is the first European made porcelain. Its signature logo, the crossed swords, was introduced in 1720. The swords were painted on the porcelain body after the first firing but before the application of glaze, using a special colour of cobalt blue.

# Industrial Designs: Protection of Product Aesthetics



## What are industrial designs?

Industrial designs are the **aesthetic and ornamental** elements of a product, rather than its technical design or function.

Industrial-design protection can cover 2- or 3-dimensional aspects of a product. EU design law, for example, protects the ‘**appearance** of the whole or a part of a product’ resulting from its ornamentation or features, in particular, its **‘lines, contours, colours, shape, texture and/or materials’**.

Design protection covers a wide range of products and features in the IT, communications and consumer electronics sectors. The particular shape of computers and consumer products, handset layouts, typefaces, icons and other computer graphics elements, and packaging designs are regularly protected.

(Computer programs as such are typically excluded from design protection, as are certain internal parts of complex products, as well as designs dictated by function.)

Protection is available in the EU for **‘new’ designs** having an **‘individual**

**character’** whether the design is **registered** with the relevant agency or **unregistered**.

In the **EU**, unregistered designs are automatically protected against deliberate copying and use in other products for **3 years**. Registration with the EU agency OHIM gives the rights owner longer protection—5 years, renewable for up to **25 years** total—in all 27 EU Member States.

Registration also gives broader rights—it not only protects against copied products but also against similar designs that may have been independently developed.

Outside the EU, many countries protect designs, in a variety of ways. The **US** provides design protection by patent. **Australia** and **Japan** protect designs for 10 and 15 years, respectively. Japan imposes an additional test that a design ‘should not be able to be easily created.’

International treaties (the **‘Hague System’**) also provide a streamlined mechanism for a design to be registered in up to 42 countries by filing a single application with the World Intellectual Property Organisation (WIPO) in Geneva.

## Why are design rights important?

By protecting the aesthetic elements and appearance of products, design rights enable and encourage those that develop commercial products to:

- **Enhance and diversify the designs** of their products.
- Obtain a fair return on investment in developing and selling their products.
- Protect their products against unfair competition from those who have not made similar efforts and investment in product design.
- Differentiate their products from those of others, and bolster their brands.

## FAQs

### Q. What is the difference between industrial designs, and patents, trademarks and copyright?

A. Patents protect an invention with ‘technical effect’; design rights do not. Design rights protect the appearance rather than the technical aspects or functioning of a product. Trademarks and copyrights can overlap to some

**Community Design  
No. 000473194-0001  
For Cellular Phones  
Registered 1 February 2005  
NOKIA Corporation**



degree with design protection, but these are not the same. Trademarks associate a particular symbol with the identification of the source of a product or service (e.g. the 'Apple' iPod). Design rights only protect designs themselves (e.g. the iPod shape and aesthetic features)—whether or not these are used or would qualify as trademarks. Copyright is concerned with the expression of an idea (i.e. words,

drawings, works of art or music, computer programmes, and the like). So, for example, copyright would protect the drawing of a lamp, the lamp itself may or may not be protectable as a copyrighted work of art, but the lamp would qualify as an industrial design if it was new and had an individual character.

**Q. Can design rights be bought and sold?**

A. Yes. They can also be licensed. This can be valuable for developers that cannot manufacture and market their designs themselves, particularly small and medium enterprises.

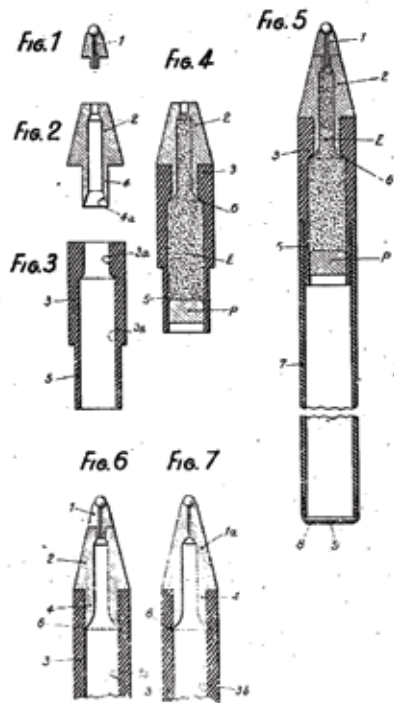


The distinctive green Perrier bottle was invented by Sir John Harmsworth, he got the idea from the shape of a pair of old Indian exercise clubs he used while recovering from a road accident. The Perrier bottle, now registered by Nestle Waters, is a 3D and colour mark.

N° 1.047.340

M. Birch

Pl. unique



Pen design was registered as a trademark by M Birch under the well-know BIC name.

# Glossary of Intellectual-Property Terms

## **Computer-Implemented Invention (CII)**

An invention which is implemented using software, i.e. includes a software component. In Europe a CII must make a technical contribution to be patentable, as well as being novel and inventive. Software 'as such' is not patentable in Europe.

## **Copyright**

Copyright protects the expression of a literary or artistic work. It does not protect the functionality. Computer programs are automatically protected by copyright provided they are original. Copyright gives international (virtually world-wide) protection. There is no registration process.

## **Counterfeit**

A product which uses an unauthorised trademark, intended to make the consumer think it is an authentic product from the original manufacturer, or copy of a copyrighted work. A replacement cover for a Nokia phone, which uses the Nokia name, would be a counterfeit, as would commercial music CDs or software discs manufactured without the copyright owner's consent.

## **Cross Licence**

A two-way licence between two parties that both own IPR. Each party grants the other a licence under the IPR they own. The licence may be royalty free or one party may make a balancing payment to the other.

## **Design Patent**

This protection is available in the US to protect the industrial design, i.e. the visual appearance, of a product. It does not protect the functionality. Outside the US, the equivalent form of protection is known as design rights or registered design.

## **Design Rights**

Design rights protect the industrial design, i.e. the visual appearance, of a product. They do not protect the functionality. In the US the equivalent form of protection is known as a design patent. Design rights registrations must be obtained on a country-by-country basis.

## **Digital Rights Management (DRM)**

Digital rights management is the technology used to manage access, copying or other use of digital content, data and services. For detailed information about DRM technologies

and policy considerations, see [www.europe4drm.com](http://www.europe4drm.com).

## **European Patent Office (EPO)**

[www.european-patent-office.org](http://www.european-patent-office.org)

The EPO, based in Munich, Germany, examines and grants European patents under the European Patent Convention (EPC). European patents are valid in as many of the 31 EPC member countries as the applicant designates in its application.

## **Infringement**

When a third party uses an intellectual property right without the consent of the rights owner or without a valid legal defence. The rights owner then has the right to sue the infringer.

## **Intellectual Property Rights (IPRs)**

Legal protection for intellectual assets, rather than physical assets or services as such. Commonly used to refer to patents, copyright, trademarks, and the like.

## **Novel, Novelty**

One of the criteria for an invention to be patentable. It means the invention has to be new, and not already known from the prior art.

## **OAMI / OHIM**

*oami.europa.eu*

Based in Alicante, Spain, the Office for Harmonisation in the Internal Market (OHIM, whose acronym is OAMI in Spanish) is the EU body that registers Community Trademarks and Community Designs.

## **Open Source Software (OSS)**

Open source software is the generic name for software where the source code is freely available and everyone is allowed to develop and distribute it. The open source model is based on licensing the copyright in the software. Although the licence is free (of cost), it imposes various obligations on the user.

## **Patent**

A patent protects an invention and covers the functionality or underlying principle of how the invention works. Patents have to be applied for on a country-by-country basis. There is no such thing as a world-wide patent.

## **Patent Application**

A patent application is an official request for patent. It must be accompanied by a patent specification describing and claiming the invention. The patent application has to be lodged

with the various patent offices in the countries where patent protection is sought. There is no guarantee that a patent will be granted. A patent application normally cannot be enforced through the courts until the patent is granted.

## **Patent Claim(s)**

The numbered paragraphs at the end of the patent specification defining the scope of the invention. The claims can be considered like the boundary around a piece of land. The claims can always be challenged, like a boundary dispute between neighbours.

## **Patent Examination**

A patent examination is the process whereby a patent office checks that an invention claimed in a patent application meets all of the statutory requirements for novelty, non-obviousness and industrial application.

## **Patent Grant (Issue)**

Patent grant or issuance is the formal government approval of a patent application. Only when the patent has been granted can it be enforced in the courts. It generally takes several years for a patent to be granted. Some countries take longer than others. The term 'issued

patent' is used more commonly in the US.

## **Patent Prosecution**

This simply means the process of obtaining a patent through a patent office. It should not be confused with accusing someone else of infringement.

## **Patent Specification**

This is the legal document which formally describes the invention and ends with a series of claims.

## **Piracy**

Unauthorised manufacture, import, or sale of a product, which copies the design (visual appearance) or the copyrighted content (e.g. music, video, software) of an original product.

## **Prior Art**

All technical knowledge published before the date of a patent application (or—in the US —before the date of invention). Sometimes this is also called the 'state of the art'. Prior art is relevant because, to be patentable, an invention must be novel and non-obvious over the prior art.

## **Royalty**

A payment from a licensee for using a patent or other IPR. Usually, a royalty is paid as a fixed amount or percentage

on every product sold. However, the term can also be used to mean a lump-sum payment.

### **Royalty-Free**

A licence on royalty free (RF) terms grants permission to use an invention without paying the patent owner any royalties. Some standardisation bodies have decided that contributors to the standard must offer licences on RF terms. In standardisation, RF terms may not apply if the other party will not grant a reciprocal licence.

### **Software Patent**

A patent for an invention implemented at least partly in software. In Europe the law prohibit patents on software 'as such', a stricter rule than in the US. However, an invention implemented using software and which makes a technical contribution is patentable in Europe. In Europe these are called computer-implemented inventions (CIs)—see above definition.

### **Trademark, Service Mark**

Trademarks are distinctive signs that identify goods or services as originating from a particular person or entity. Trademarks must be registered in a particular country to benefit from

trademark rights in that country.

Trademarks applied to 'services' are often termed 'service marks'.

### **Trade Secret**

Information which is kept secret or confidential, so also called 'confidential information'. There is no registration process. A non-disclosure agreement (NDA) (sometimes called a confidential-disclosure agreement (CDA)) is used to protect trade secrets (confidential information) when there is a need to disclose it to other parties, but if the confidentiality is broken the secrecy is lost.

### **TRIPs Agreement**

*[www.wto.int/english/tratop\\_e/trips\\_e/trips\\_e.htm](http://www.wto.int/english/tratop_e/trips_e/trips_e.htm)*

The World Trade Organisation (WTO) treaty entitled the 'Agreement on Trade-Related Aspects of Intellectual Property Rights'. TRIPs sets minimum standards for intellectual-property laws and enforcement requirements that the 149-plus member countries of the WTO must follow.

### **Utility Model**

Sometimes called a 'petty patent', utility model rights are granted quickly and without examination for inventions that

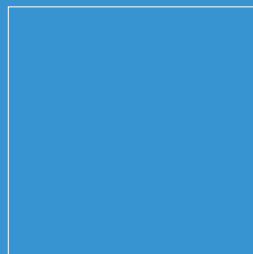
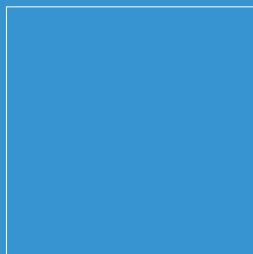
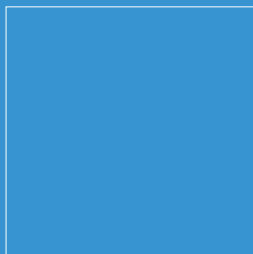
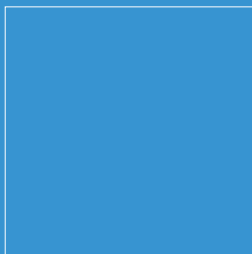
might otherwise meet the criteria for patenting, but that may have a lesser 'inventive step' than needed to secure a patent.

### **World Intellectual Property Organisation (WIPO)**

*[www.wipo.int](http://www.wipo.int)*

The specialised United Nations agency that deals with intellectual property. WIPO, based in Geneva, Switzerland, administers 23 international treaties in the IP area. More than 184 countries are members of WIPO.





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