

Intellectual Property Rights in the logistics sector

Intellectual Property Rights (IPR) - such as patents, trademarks, and designs - are one of the key drivers for innovation and creativity, which in turn generates jobs and improves competitiveness. IPRs enable inventors and creators to benefit from their inventions and creations when others are using them.

Companies that own IPRs are more performant, have more employees, are able to pay higher salaries and their productivity is higher than companies that do not own IPRs. Consequently, they get access to a bigger outlet market, have more export destinations and create more opportunities for technological and industrial development.

According to a report published in 2018 by the [European Union Intellectual Property Office \(EUIPO\)](#), the agency responsible for managing the EU trademark and the registered Community design, there were 342 IPR-intensive industries, including logistics and semiconductors. Also, 60 million jobs were directly generated by these industries during the 2011-2013 period: this means 28% of all EU jobs! An additional 10% were generated by industries that supply goods and services to the IPR-intensive industries. Therefore, 82 million jobs (a total of 38% of all EU jobs) were generated directly and indirectly by these industries.

The report also shows that 42.3% of total economic activity (GDP) in the European Union was generated by IPR-intensive industries during the period 2011-2013 (over €5.7 trillion per year). Notably, countries such as UK, Ireland, Germany, Switzerland, Italy, Romania, and Bulgaria are above the EU average.

When it comes to remuneration, IPR-intensive industries pay their employees significantly more than other industries, with a wage premium of over 46%.

The contribution of IPR-intensive industries to trade is significant: 86% of EU imports and 93% of exports consist of products from IPR-intensive industries.

IPRs to watch

For the members of EPTDA, the most important IPRs are:

- * **Patents:** An exclusive right granted for a new technical invention. A patent holder can grant a license to somebody wishing to produce copies of the invention against payment of a fee (or royalty), thus obtaining a return on the investment. A standard essential patent (SEPs) is a patent essential to implement a specific industry standard or technical solution.
- * **Trademarks** (or 'brands'): A word, logo or symbol that competitor companies may not use once it has been protected.
- * **Designs:** The outward appearance of a product.
- * **Trade secret:** A valuable piece of know-how and business information that is treated as confidential because it gives the company a competitive advantage (for example, a recipe, the results of a marketing study, the launch date of a new product, or the price offered in a bidding procedure)

Legal instruments exist in the EU to ensure that intellectual property rights are efficiently and effectively enforced and to avoid commercial-scale infringements that result in economic harm.

Benefits

Protecting your intellectual property has several benefits, as they are underlined by the European Commission:

- If you protect your invention, such as a new product, you become the only person with the right to use or reproduce it. Others cannot copy or reproduce what you have done without your permission.
- When you protect your invention, the quality of the product is guaranteed, and its origin is clear. This can be an advantage for your business, because customers may prefer to buy a product that has passed more restrictive checks (a controlled good).
- You can earn money not only through the direct use of IP but also indirectly through licensing contracts. This is when you grant a license to another company to use your IP protected subject matter for a certain period of time.
- In some cases, such as for unregistered design, protecting your IP is automatic and doesn't require any formalities.
- Owning a patent or a trademark can increase your market value and make it easier for your business to find investors or other funding opportunities.

How is the European Union protecting the IPRs?

Patents

Registering a patent gives you exclusive rights over your invention for a limited period, normally 20 years. Other people cannot make, use, offer for sale, sell or import a product or a process based on your patented invention. You can give someone else temporary permission to use the invention through a patent license agreement or sell the patent to someone else. You cannot renew a patent after it expires.

A patent protects your technical inventions: new products or services which involve an inventive step and have industrial application.

[The Unitary Patent is a legal title](#) that allows inventors to submit a single application to protect their invention in 25 Member States. Its aim is to boost intellectual property protection and cut related costs.

Trademark

Registering a trademark gives you exclusive rights over distinctive signs – such as names, logos, colors, images, patterns, shapes, packaging of goods or sounds – which identify your products and distinguish your goods or services from others.

In most countries, trademark protection lasts 10 years, starting from the date of your trademark application. You can then renew your trademark protection for 10 years each time, for as long as you like. When you own a trademark, you can sell it to someone else or give them permission to use it through a trademark licensing agreement.

Trade secret

If you possess valuable information on technology or on any other aspect of your business, you can protect it as a trade secret if the following conditions are met:

- the information is not known either by the public at large or by the experts of the sector in question
- the information has commercial value
- you have taken steps to keep the information secret: for example, you keep it in safe storage, and you have signed non-disclosure agreements with anyone that has access to it or with whom you have shared the information

Design protection

Design protection guarantees you the exclusive right to use a design, which includes making, offering, putting on the market, importing, exporting or using the product in which your design is incorporated or to which it is applied. If you give your authorization, third parties can use your design in their products.

You can request design protection for the appearance of the whole or a part of your product. Your design results from the features of the lines, contours, colors, shape, texture and/or materials of your product.

If you create a new design which meets the requirements of novelty and individual character, then you may need to register it.

If you only need to protect your design in one EU country, you should register the design at the relevant national IP Office.

When you do business in more than one EU country, you can protect your design with a **Registered Community Design (RCD)**. You will pay EUR 350 for 5 years protection and you have to register your design with the **European Union Intellectual Property Rights Office (EUIPO)**.

If you only need protection for your design at EU level for a short period of time, such as 3 years, you can choose not to register your design and use an Unregistered Community Design (UCD) instead. You don't need to register or pay any fees. A UCD protects your design from the moment of public disclosure. After it expires you cannot renew it.

If you create an original design, your copyright protection starts immediately from the moment of the work's creation, without the need for any registration of your design.

Legal protection of topographies of semiconductor products

Semiconductors are electronic components that exploit the electronic properties of semiconductor material, principally silicon, germanium, and gallium arsenide, as well as organic semiconductors.

The topography is the design of the layout, which can either be the three-dimensional location of elements and interconnections of an integrated circuit or a series of images in which each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture.

Basically, the topography determines the exact location of each element with an electronic function within the integrated circuit. In comparison, the industrial design determines the external appearance of the device.

The topographies of semiconductor products are protected by an [European Directive](#).

It is important to note that the protected subject matter is the design of that product, not the product itself. Protection is granted for the topographical design, not its technical function or the technological arrangement of components. It follows that protection does not extend to any underlying concept, process, system, technique or encoded information.

The right to protection will apply in favor of persons who are the creators of the topographies of semiconductor products. According to the Directive, the exclusive rights will come to an end 10 years from the end of the calendar year in which the topography is first commercially exploited anywhere in the world or, where registration is a condition for the coming into existence or continuing application of the exclusive rights, 10 years from the earlier of the following dates:

- the end of the calendar year in which the topography is first commercially exploited anywhere in the world;
- the end of the calendar year in which the application for registration has been filed in due form.

Where a topography has not been commercially exploited anywhere in the world within a period of 15 years from its first fixation or encoding, any exclusive rights in existence will come to an end and no new exclusive rights will come into existence unless an application for registration in due form has been filed within that period in those Member States where registration is a condition for the coming into existence or continuing application of the exclusive rights.

In several countries (France, Portugal, Austria, Denmark, Finland, Germany, Spain, Greece, Italy and Luxembourg), the starting point for protection is the first of the following dates:

- "when the topography is first commercially exploited anywhere in the world";

- "when an application or registration has been filed in due form";

or - "when the topography is first fixed or encoded."

In the UK and Sweden, the starting point for protection is the first of the following dates:

- "when the topography is first commercially exploited anywhere in the world"; or

- "when the topography is first fixed or encoded."

In most European countries, semiconductor chip protection requires registration with the relevant national authority (usually the Patent Office) within two years of its first use

in commerce. The registration authority will only register the semiconductor chip. There is no investigation into its protectability. In practice, lack of originality may therefore be raised as a defense. In other countries, like the United Kingdom, registration is not necessary, as topographies are protected by unregistered rights.

The rights granted are exclusive rights. They include the right to authorize or prohibit reproduction of a protected topography and the right to authorize or prohibit commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured using the topography. The exclusive right to authorize or prohibit reproduction does not apply to the reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

Where registration of the topography constitutes a condition for the coming into existence of exclusive rights, those rights will take effect on the date on which the application for registration is filed or on the date on which the topography is first commercially exploited anywhere in the world, whichever comes first. If registration is not a condition for protection, the rights will come into existence when the topography is first commercially exploited anywhere in the world or when it is first fixed or encoded.

Sharing economy - a threat to the IPRs?

But the idea of IPR will come to an end in the rise of the sharing economy?

For example, [Elon Musk](#) decided that all the Tesla-related patents will be open for everyone to use them. Instead of attempting to stamp out its competitors, Musk encouraged other EV producers. [He tweeted](#): “Yesterday, there was a wall of Tesla patents in the lobby of our Palo Alto headquarters. That is no longer the case. They have been removed, in the spirit of the open source movement, for the advancement of electric vehicle technology.”

He thinks that if electric vehicles were to succeed in taking over from polluting cars, the technology to make them had to be accessible. That does not mean that Tesla would abandon its patents. Instead, Tesla is simply exercising its right to make them freely available: “Tesla will not initiate patent lawsuits against anyone who, in good faith, wants to use our technology,” Musk also said.

Also, [April Rinne](#), Founder & Adviser, April Worldwide and a contributor at World Economic Forum, thinks that the sharing economy is already shaping our future. Companies such as Uber and Airbnb are rewriting our notion about transportation, accommodation and the general idea of property. And there are many startups and many technologies that disrupt all industries. Consequently, we are witnessing an era where

the organizations are being decentralized, and they are obliged to communicate more with the external environment and collaborate with others.

Gradually, cities are learning that the sharing economy requires them to be proactive, in terms of both appropriate regulation and the harnessing of local economic development. But there are a lot of steps to be made in the right direction: the regulation is not unitary, and the impact is different from region to region.

IPRs are here to stay for good – and we advise our members to do an internal analysis of their intellectual brand properties and rights.

Sources and further reading:

- http://www.innovaccess.eu/sites/default/files/es_semiconductors_0000006461_0_0.xml.pdf
- https://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/About_semiconductor_products
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