

## WING TIPS

### *Protecting your intellectual property*

Intellectual property includes technology, designs, trade marks, copyrights, and confidential information. If you do not take steps to protect your intellectual property assets right from the start, then they may be taken by competitors without payment. Investors will generally look for solid intellectual property rights before risking their capital.

#### **What can be protected**

Brand names, trading styles and logos can be protected indefinitely by registration as trade marks.

New products and processes can be protected for up to 20 years by patents, provided that they are inventive. Computer systems and software for controlling technical equipment can often be protected via patents.

New designs can be protected for up to 25 years by registration. This applies to the appearance of any product, not just aesthetic designs.

All written materials, drawings and computer software are protected automatically by copyright for the duration of the author's life + 70 years.

Confidential information, such as know-how and customer details, may be protected from improper disclosure or use under the laws relating to breach of confidence.

#### **What cannot be protected**

New business methods generally cannot be protected outside the USA. This applies for example to new marketing schemes, pricing methods, financial products and many kinds of e-commerce.

Many computer algorithms in their broadest sense cannot be protected outside the USA. However, the computer code itself will be protected by copyright and practical applications using computer software can often be protected by patents.

#### **Procedures and Costs**

A patent application for an invention must be filed before any non-confidential disclosure of the invention. The application must include a detailed description of the invention and claims defining its scope. The application undergoes a search and examination in the Patent Office to determine if it is new and non-obvious. You will need the services of a Registered Patent Attorney (patent agent) to guide you through the process. The total cost of obtaining a UK patent is likely to be about £5,000.

The registration of designs is also done at the Patent Office. The procedure is a good deal more straightforward than for patents, but it is still advisable to use a patent agent to obtain the best protection.

The design application should ideally be filed before you make any non-confidential disclosure of the design, although there are certain situations where rights are still obtainable After disclosure (and even after sale) of an article. The total cost of getting a UK design registration is likely to be about £400 if you use a patent agent.

Trade marks are also registered at the Patent Office. There is no requirement to register trade marks before they are used, but there are benefits in being the first person to file for a mark. The registration system is fairly straightforward, but it is advisable to use a patent agent or trade mark agent. The total cost of registering a UK trade mark is about £500-£800 if you use an agent.

Copyright and Unregistered Design Right (UDR) do not need to be registered, since they arise automatically as soon as a new work is created. However, in order to assert the right it is essential that the date of the work and the author are clearly identified, and that the employment/consultancy contract with the author is clear as to ownership of the copyright or UDR.

### **Protection outside the UK**

UK patents, design registrations and trade mark registrations only cover the UK. Separate registrations in each jurisdiction are needed to obtain protection overseas. The overseas applications do not need to be filed immediately. It is possible to obtain Trade Mark registrations and design registrations covering the whole of the EU, and there is also a European patent system. Obtaining protection overseas is complex and expensive, and you will definitely need professional assistance.

### **Enforcement**

Enforcement of IP rights is entirely up to the rights owner. It is vital to monitor the market for infringements and assert your rights against infringers. Litigation is expensive, but a settlement can often be reached without full litigation if you are serious about enforcing your rights. Insurance against litigation costs is also available from commercial providers.

### **Do's and Don't's**

Identify the IP assets of your business. Register any commercially useful patents, designs and trade marks. Mark copyright material and keep a record of the date of creation and authorship.

Do not publicly disclose any inventions or designs before obtaining professional advice, if you intend to file a patent application or registered design application to cover them.

Ensure that contracts with employees and consultants are clear as to ownership of IP created in the course of their work. Clearly identify confidential information when it is disclosed to employees or consultants.

Check that you are not infringing anyone else's IP rights before investing heavily in a new product or brand. Assert your rights against infringers.

*For further information on intellectual property please contact Richard Jackson, Anthony James or Gary Small at Carpmaels & Ransford on 0207 242 8692, or visit [www.carpmaels.com](http://www.carpmaels.com).*

