

SAFEGUARDING YOUR COMPETITIVE EDGE

What intellectual property is,
and how it can help your
business to grow





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Introduction

This guide has been produced to help you answer one very important question: what does intellectual property—‘IP’ for short—mean for my business?

In contrast to the industrial age, today’s globalised, high-tech, knowledge-based, innovation-driven economy is chiefly driven by intangible assets—non-physical things. Intellectual property is the collective name given to special types of intangibles that concern your inventions, brands, designs and creative works against imitators.

It is essential to establish, protect and enforce the legal rights that come with IP—whatever your industry or line of business, and regardless of whether you are a local shop, an Internet venture or a manufacturing company. The IP rights you own, and their relationship to any relevant IP rights that are controlled by other people, are likely to be key to your success: they govern what you can and can’t do with your business ideas.

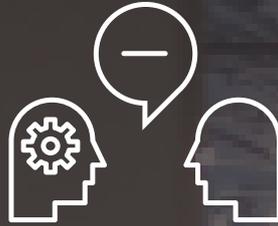
IP is often thought of as being a complex legal matter that’s all about patents. That’s not a very accurate, or helpful, way of viewing it! It’s true that parts of the IP system do involve some cost and complexity, but the essential underlying principles are relatively straightforward and easy to grasp, as this guide will show you. It isn’t difficult to get basic protection in place, and use it to achieve your business objectives: but the key point is that IP is simply too important to ignore.

The following six sections provide information on:

- **Why IP is important in building value, managing risks and achieving your business objectives**
- **Which types of IP are available**
- **How to identify the types that are most relevant**
- **When these IP rights are available to you**
- **What these rights enable you to do**
- **Where to obtain further assistance**

Other guides in this series provide you with helpful insights on a range of related subjects, including how to identify all the assets you already have, how to write an IP strategy, what to do to extend your IP protection internationally, and where to find important information on what your competitors are doing with their IP.

Produced by IPOS International, these intellectual property management (IPM) business guides aim to deliver a suite of IP solutions for enterprises based on industry best practices. As the expertise and enterprise engagement arm of the Intellectual Property Office of Singapore (IPOS), IPOS International helps enterprises and industries use IP and intangible assets for business growth. Some of these engagements may be eligible for Enterprise Singapore (ESG) funding, such as the intangible asset audit and strategy development aligned with business goals. IPOS International’s business portal www.iposinternational.com also contains case studies and videos of enterprises leveraging IP to gain a competitive edge in their innovations. Should you have questions on IPM matters or wish to speak with our Intellectual Property Strategists, do email us at enquiry@iposinternational.com or call +65 63308660.



What intellectual property offers



01

1. What intellectual property offers



How do ideas and IP relate to each other?

Businesses that have the capacity to grow are generally based on an idea: a vision that there is a better way of doing something. 'Better' can mean many things—faster, cheaper, stronger, longer-lasting. The basis for intellectual property,

or IP, lies in how one person's idea of 'better' is different from the existing alternatives.

Once your idea has taken on a definite form—as a description, a design, an image, a brand or any kind of composition—the possibility exists to protect this expression of your idea against imitators. This guide will explain which types of IP rights are best suited for use with the particular sort of idea you have (often, more than one type will be relevant).

Since other people have IP rights too, it follows that your idea has to be original in some way in order to attract this kind of protection. You cannot simply copy other people's ideas; equally, you cannot prevent someone else from following the same thought process as you and reaching a similar conclusion. What the IP regime does is enable inventors, designers and creators to stop other people making, selling, importing, distributing or otherwise dealing in the IP rights they have protected, in all the territories where that protection applies.

There are various rules that must be complied with in order to secure these IP rights. The steps that need to be taken to obtain protection vary by the type of IP involved - the basics of each process are explained in this guide.

“Once your ideas have taken on a definite form, you should consider whether you can protect them as IP”

Where IP needs to be officially registered in order to make it enforceable, it generally makes sense to ensure that these rights have not already been awarded to someone else before you apply for them. Conducting searches can help you make sure you are not reinventing the wheel (in which case, you either won't be able to obtain any rights, or they won't prove to be effective).



How does IP relate to invention and innovation

Inventions can take many forms. They don't have to be hi-tech or complicated to be protectable. As an example, you might invent a new method that improves an existing process; a new material that has superior properties; a machine that does something new or offers better performance; or a brand new 'thing' altogether. Depending on what they are, all of these can be protectable with patents (the particular type of IP that protects inventions).



Invention

Innovation involves something extra. It describes the process, and the outcome, of bringing an invention successfully to the market. Innovation, not just invention, is what makes businesses grow. If no one else is using your brilliant idea, you may be a great inventor, but you're not an innovator.



It's important to bear in mind that IP rights are essentially negative in nature. That means they give you the ability to stop other people from copying you, but they don't guarantee that you can use your invention or that it will be successful. For example, you could patent an engine that could propel a car at 500 km/h, but it wouldn't necessarily be lawful to use it.

“IP is the essential ingredient behind many leading innovations, because it protects what makes them different”

However, you have a much better chance of innovating, and thereby getting a good return on your investment, if you have strong, well-chosen IP rights that can support your commercial strategy. That is because you'll be able to discourage other people from copying your work or imitating your invention, and if they decide to do so anyway, you'll have the right to stop them, especially with registered rights.

Is IP just about inventing things?

Most people think that intellectual property is all about patents and that IP and its associated IP rights are only applicable to large and/or high tech companies. These are myths!

Patents are just one of several forms of intellectual property. IP, in turn, is just one special type of non-physical business asset. Also, small businesses create, use and need IP rights too!

“Patents are just one form of IP protection that can help businesses to innovate”

As you'll see from the following chapter in this guide, IP rights come in a number of types. The IP most often found in business isn't, in fact, a patent—it's copyright. This is usually associated with creative works (things like photographs, pictures, books, plays and films) but it can also protect the words on your website and the lines of code in any software you write; it even covers the layout of your brochures and any notes that you take.

As well as particular legal rights that fall within the strict definition of intellectual property, there are many other types of intangible assets most businesses rely on. These include trade secrets and confidential information, databases and contractual rights like licences and franchising agreements. It is important for any business to have a clear plan of how these assets will be protected, and used to support the company's growth.

1. What intellectual property offers

There's also a further category of resource that nearly all businesses use but don't 'own' in the same formal way. It includes the people that you employ (who are often referred to as your greatest asset!) and other companies' IP rights that you use under licence, like the standard software on your computer. Collectively, you'll sometimes hear all this kind of thing referred to as your 'intellectual capital'.

What do I have to do to get IP rights?

Each type of IP has particular rules that apply to it. There are three general (but not universal) points to bear in mind at the outset.

“Most, but not all, types of IP require you to take some action in order to obtain them”

1. Firstly, some, but not all, IP needs to be registered.
2. Secondly, most types of IP are territorial, and only apply where they are registered.
3. Thirdly, most IP is time-limited and doesn't last forever.

The types of IP associated with physical inventions, the external appearance of objects (two- and three-dimensional) and brands are, respectively, *patents*, *designs* and *trade marks*. These should be registered with IPOS and/or its international equivalents. An application involves time, money, and varying degrees of external involvement, such as checking of formalities and examination procedures. However, copyright used to protect creative works of various kinds is automatic and does not need to be registered in order to exist. The following chapters in this guide provide more information on the individual requirements and levels of protection associated with each right.



Territorial

When IP rights are described as *'territorial'*, it simply means that where registration is needed, it has to be done in all the countries (or sometimes regions) where protection is required. Very few companies, even the largest multinational firms, register all their IP in every country, so it is important to consider what needs to be protected and where. Copyright, however, operates to very similar rules in nearly all countries thanks to the Berne Convention (explained in the next chapter).



Time limit

Most IP comes with a time limit because it's a fundamental principle of granting monopoly rights over inventions, words or shapes that they cannot last forever. Once registered or granted, your rights will need to be renewed every 1, 5 or 10 years throughout their lifetime (with *trade marks*, you can do this indefinitely as long as you continue to use them).

The main exception is copyright, which still has a limited lifespan, but does not require renewal; some countries (including a number of others in ASEAN) do run voluntary national *registers*, but recording your copyright with them is a one-off exercise.

What do IP rights contribute at each growth stage?

It's never too early to start considering your IP, and there is a limited timeframe within which certain rights can be obtained. However, it does not always pay to rush into obtaining protection — the IP rights you obtain should be chosen to support your business strategy.

IP is often very important for early-stage companies. For businesses that deal in cutting-edge technologies in fields like pharmaceuticals, medical devices, fintech and consumer electronics, getting an IP strategy in place is likely to be essential—not least because investors will be asking questions on how competitive advantage is to be created and sustained. Helpfully, the IP system has elements that enable protection to be applied for even when an invention is not fully refined, establishing what's known as a 'priority date'. It also enables some of the larger costs to be deferred until the commercial opportunity is clearer. However, there are still some strict deadlines that must be observed.



While designs and patents should be applied for prior to use (as advance disclosure may invalidate your ability to obtain protection), brand-related measures can be actioned at any time.

“With IP, timing is important. Your strategy will dictate what to apply for and when. There are deadlines to meet”

However, when choosing a name (both for your business and your products or services), it's important to ensure that formal protection is likely to be available when needed and advisable that you secure rights early, where possible. This extends not only to trade marks but also to domain names and company names.

Once your business is more established, there is a growing number of ways in which you can capitalise on your IP rights. As one example, if you are generating predictable cash flows, you may be able to generate interest from investors or investment funds such as Makara Innovation Fund.

IP rights are also very important at exit. For many businesses, their IP (and the other 'intangible assets' that support them) turns out to be the most valuable assets of all. The competitive advantage that IP rights safeguard can often be worth millions of dollars, not least because they offer a buyer a means of sustaining those important cash flows into the future.

1. What intellectual property offers

What can I do with these rights once I have them?

IP rights are a form of property. This means that as well as being used in your business, they can be traded in much the same way as any other type of asset. They also provide you with freedom and control, but they do need to be managed with care; neglecting your IP can prove to be very expensive.

“IP rights allow you to trade with greater confidence. They underpin many profitable business models”

For many companies, the top priority is to ensure that the core business model is protected against imitation. While they cannot cover every aspect, IP rights usually provide the best way of safeguarding your investment. You obtain rights because you intend to use them, and if necessary, defend them by enforcing them. Your customers will expect you to ‘stand behind’ your creation or invention if it is challenged.

For some companies, the business model requires rights to be shared. If you want to set up a franchise operation, for example, it is very important that you are able to offer rights to your franchisees using licences. These will typically give you a means of generating income via a share of turnover, using royalties that are based on the use of your IP (and sometimes other assets too).

Rights can also be shared with other companies—with or without money changing hands—or sold (usually called ‘assignment’). You may find that you need to obtain permission to use other people’s IP rights in order to trade (especially if you operate in markets where lots of rival companies are developing new technologies in your field).

Beyond immediate commercial considerations, IP rights can provide you with the freedom and confidence to run your business as you see fit, without interference. They give you a greater degree of control over the future, and protect the integrity of your products and services, and thereby your customer relationships.

However, you do need to look after your IP rights. They may, as explained above, need periodic renewal; they may need to be refreshed periodically in order to stay relevant in their marketplace; they may be copied by other people, or they may be attacked by other companies.

What happens if someone copies me?

If you have IP rights in place, you can take legal action to enforce them if you discover other people are copying or ‘infringing’ you. Of course, you also have a responsibility to ensure that what you do not infringe anyone else’s IP either.



Sometimes infringement is ‘clear-cut’—it is obvious that another business is intentionally copying your innovation—

“Rights are easier to enforce if they are registered – the burden falls on the ‘offender’ to prove they aren’t infringing”

and on other occasions, it is more subtle. It is important when seeking IP protection to make sure the rights you obtain cover the aspects, and the territories, that are most important for you commercially, so that you can take action against both kinds of activity, both in your own interests and those of your customers.

The remedies that are available to you to tackle infringement vary by IP type, and to an extent by territory also. However, in general, the law is on the side of the IP holder, and as well as being able to sue people who copy you for lost income and damages, you may also be able to have their goods impounded, destroyed or even prevent them from being able to trade.

Enforcement is the term normally used to describe the process of tackling infringement. Sometimes, it is necessary to issue a warning letter to the offending company, if only to alert them to the fact that rights exist. It is worthwhile taking professional advice before you threaten legal proceedings, to ensure any claim of infringement is not later deemed unjustified, leaving you open to future claims by an aggrieved party.

In other cases, you may need to take them to court in order to bring about either a settlement or a decision in your favour. This can be a costly and protracted process, though it’s possible to take out IP insurance to cover such circumstances.

You may also be able to pursue other routes to resolve disputes, such as by using arbitration or mediation; and sometimes, you may be able to turn an infringer into a customer or a distribution channel.



SUMMARY

The following list summarises some of the key points in this chapter, to help you determine what IP means for your business.

The easiest way to protect an idea is to keep it secret — but that may stop you from using it!

IP rights often provide the best way to protect competitive advantage

However, IP gives you rights to stop other people — it’s not a guarantee of success

An idea has to be recorded in some way before it can be protected using IP law

Inventions, creativity, styling and branding can all be safeguarded using IP law

Most types of IP rights are territorial, time-limited, and require you to do something

You may have lots of other non-physical assets that aren’t strictly IP but are also important

You can exploit IP on its own rights, as well as using it to underpin your business model

RTY



COPY

NSE

What do the different types of IP involve?



02

REGISTER

PATEN

Patents : for inventions

A patent protects an invention. It is potentially available for anything that solves a problem in a new and improved way, provided that it has a ‘technical effect’.

Patents can last for 20 years (sometimes longer in a few strictly defined cases). They need to be applied for in each territory or region where protection is needed; this choice will tend to be governed by the places you want to sell your invention, and where you think other people might be most likely to copy it.



To be granted, your application needs to meet certain rules: it must be novel, it must be inventive (‘not obvious’), it must be ‘technical’ in nature, and it must be capable of industrial application. There are also some exclusions, explained below.

The key point to bear in mind is that in exchange for the right to exclude others from doing certain things with your invention, you must explain, and place in the public domain, details of how your invention works. Once your application is published, as part of the grant process, the genie is out of the bottle!

While official fees up to the point of grant are not large, most territories charge annual renewals, and you will need professional advice to obtain protection that is commercially useful. For these reasons, patents are expensive. However, the costs at first filing need not be very large, and give you the opportunity to describe your invention as ‘patent pending’.

Also, international agreements (such as the Patent Cooperation Treaty, or PCT, system) provide pathways to extend protection to other markets based on a single ‘priority date’. These defer the largest cost burdens for around two and a half years from first filing—giving you a chance to make some money from your invention first. The international guide in this series (‘Going Global’) contains more information on obtaining and enforcing patents in other countries.

The existence of a granted patent may be enough to deter imitators, but if it doesn’t, the patent gives you the right to stop them and claim damages (even if they are unaware that your patent exists). Patents can also be assigned, licensed, transferred or offered up as collateral, much like any other asset.

“ Patents are generally regarded as offering the strongest protection of all IP rights, but require invention disclosure ”

Trade marks : for brands

A trade mark protects words, images (such as logos) and certain styles that are distinctive of your goods or services. It is a great way to differentiate your brand and offerings from others in the marketplace. Marks can last indefinitely if renewed when due.

Unlike some other IP rights, you can apply for a trade mark at any time, whether or not you are already using it (though you can lose your rights to it if you don’t make use of it for an extended period). Once registered, you get the exclusive right to use your protected brand for the uses and in the territories that you specify. You can also use a special symbol—an

2. What do the different types of IP involve?

®—to warn other people that the mark is protected (but only if your mark genuinely is registered).

The range of marks you can obtain is broad. Whilst the strongest protection is generally reckoned to come from registering plain text wording, trade marks can also be logos, combinations of letters (Roman script or Chinese characters), shapes, sounds, slogans and even colours. However, they only protect you for the goods or services that are approved when you successfully register your mark.



“Trade marks can be applied for at any time and can last indefinitely if you renew them when due”

Once registered, a trade mark provides a ‘hook’ on which you can hang other related assets that you develop as your business grows—like goodwill. If someone tries to imitate your brand, it’s the trade mark that provides the easiest route to take people to court and claim damages, which could include loss of business and loss of reputation.

Registered designs : for styling

If the way your product looks is key to sales, you should consider registered design protection. This is aimed at the distinctive styling of any product that is going to be produced in volume. It can protect aspects that are two- or three-dimensional in nature.

Designs are about appearance, rather than functionality (to protect what something does or how it works, you’ll need a patent). As a result, you cannot use design registration for parts of a product that has to look a certain way as a result of what they do. However, imaginative use of design rights can protect the shape, configuration, pattern or ornament applied to an article by an industrial process.

The maximum term of protection for newly filed Singapore registrations is 15 years (renewable every five years at progressively increasing cost), although can be longer in some other countries.

It’s not necessary for a whole design to be entirely novel in order to obtain registration. For example, you don’t need to have invented the chair to register your particular chair concept!

On products that are somewhat generic in nature, you can generally apply to protect only specific, designated aspects of a design that you register. In many jurisdictions, you can illustrate ‘claimed’ parts of a design in solid lines and other ‘disclaimed’ parts of the design in broken lines. However, as the accompany guide—**Going Global** explains, examination in other countries can get complex when it comes to assessing the ‘overall’ appearance of a ‘whole’ product.

“ Design rights are there to protect the external appearance of your products ”

Like other forms of IP rights, if someone copies protected aspects of your design, you can sue them to seek injunctive relief (which means you can stop the infringing goods from being sold), damages and/or lost profits. You can also license your designs, or sell them to other people, and you can apply for international protection using broadly similar rules (in the United States of America (US), you would be applying for a ‘design patent’).

Designs can be powerful: some of the biggest disputes in the consumer electronics field (for example, between Apple and Samsung) have centred on design protection. The definition of a design is also quite flexible: recent changes mean that registered design protection may now be sought for static and dynamic graphical user interfaces (GUIs).

The main point to be aware of, however, is that depending on how your application is set out and illustrated, it can be comparatively easy for another firm to make changes to your concept and ‘design around’ your protection. Accordingly, it pays to formulate your registration with care. How you represent your design in your application is crucial, and professional advice is advised.

Copyrights : for words, pictures & other creative works

Copyright is automatic and long-lasting, starting from the point at which you record the material it covers—in writing, or in any other way. It gives creators rights to control how their works are used, and it’s the default right covering software code.

With a few exceptions (such as quotation for research purposes), copyright gives you economic rights over the way in which a work is copied, published, adapted or communicated. As an individual creator, you may also have certain ‘moral rights’ to determine how the work is identified and used. The © symbol can be used to put others on notice of your copyright ownership.

“ Copyright protects the way in which you express your ideas – though not the ideas themselves ”

If you work for a company, your employer or commissioner owns the copyright in the work you do as part of your job for them; and if another person commissions you to produce a photograph or illustration to special order, Singapore’s copyright law places the ownership of the work with the commissioner (this differs in other jurisdictions). In general, however, it’s the creator that has automatic ownership, unless otherwise agreed by contract. This is important to remember when dealing with suppliers (such as web designers) to produce anything that’s creative in nature.



Copyright
duration

Copyright lasts for between 25 and 70 or more years, depending on the nature of what has been produced. It’s also fairly consistent internationally; when copyright is created in any country that is a signatory to an agreement called the Berne Convention, copyright protection automatically arises in every other country that is also a party to it.

2. What do the different types of IP involve?

However, copyright only protects against actual copying—not against someone else coming up with the same creative expression independently. For this reason, it's important to retain copies of the workings leading up to the production of a copyrighted work and to help prove date of creation. If you are challenged, these materials (and whether you had access to the original work) will determine whether you have a case to answer.

Copyright is automatic (once recorded) and there is no formal registration system in Singapore. Some neighbouring countries and others further afield (such as India and the US) do offer voluntary copyright registers. These can be helpful in proving ownership and date of creation should you need to raise an action to enforce your rights later.

**Trade secrets :
for things
only you
know**

While patents and designs require you to 'go public' with your new invention or creation, you sometimes have the opportunity to keep it a secret instead. This may give you even longer-lasting protection for innovations that can't easily be 'reverse engineered'.

“A business can make use of both trade secrets and patents—but not for the same thing”

A trade secret is a discrete piece of information that is not widely known within your industry. It may be a way of working, a recipe, a formula, procedure, set of algorithms or a specification, but it is generally used to refer to something that is important and that contributes to a commercial advantage.

While trade secrets are often thought of as being part of a company's IP, they are in fact covered by the laws regarding confidential information. If someone intentionally discloses something they know to be a secret (such as an employee or a supplier), you would sue them under the rules governing breach of confidence. You may also be able to rely on Singapore's Computer Misuse Act, which defines it an offence if a person obtains unauthorised access to an employer's computers to retrieve or download information, such as confidential trade secrets stored in electronic form.



**Staff access
to trade
secret**

This means it is really important to ensure that only staff with a 'need to know' have access to the secret; that everyone within a company is under a duty not to disclose confidential information (this should be set out in their employment contract); and that any documentation of a secret is clearly marked as being confidential or trade secret. You may need to prove in court that you made it clear to all parties what was a trade secret and should be kept confidential.

“If you can closely control your end-to-end means of production, secrecy can work well”

It's standard business practice to put a non-disclosure agreement (an 'NDA') in place whenever any confidential information needs to be shared with external organisations, and to keep records of all NDAs that are in place (especially since these are often mutual, and bind you to keep reciprocal secrets safe too).

If it's obvious from a finished product how a trade secret works, then secrecy will not prove to be an effective business strategy. Reverse engineering is not illegal, and if someone else can work out how your product works, they can use it without liability to you. However, if you can closely control your end-to-end means of production, secrecy can work well.

Additional, special types of protection

There are a number of special types of IP protection that are not available in all countries, but may be worth considering—either to take advantage of them or to ensure you don't infringe them. Below, the main ones to bear in mind are set out.

1.

If you work with semiconductors, the designs of integrated circuits that are the result of individual 'intellectual effort' and not commonplace in the industry can be protected in Singapore (under the Layout-Designs of Integrated Circuits Act) and some other countries under a special form of IP right that provides protection against copying for 15 years. No registration is necessary.

2.

If you are a plant breeder and you discover and develop a new variety, you can apply for a Grant of Protection for it, called Plant Variety Protection (or Plant Breeder's Rights in some countries). Subject to conditions regarding novelty, distinctness, uniformity and stability, you can obtain an exclusive right to produce, sell and license your new variety, which can be maintained for up to 25 years subject to payment of an annual renewal fee.

In some neighbouring countries—including China and Malaysia—there is an opportunity to protect an invention with a utility model (occasionally also called a utility innovation, 'petty patent' or 'Gebrauchsmuster' in Germany and Austria). This provides a type of protection broadly similar to a patent, but is less rigorously examined; the main focus is on whether the invention is novel, rather than how inventive it is, and this kind of protection may not be applicable to processes (ways of doing things). Utility models are quick to obtain (often taking under a year); however they are also shorter-lived (10 years in the case of China), and their validity is easier to challenge.

2. What do the different types of IP involve?

As another example, in Australia, utility models (or petty patents) have now been replaced with an 'innovation patent', which lasts for 8 years and protects inventions that do not meet the inventive threshold required for standard patents. This may cover a new device, substance, method or process.

When exporting, it is always a good idea to gather some intelligence on the rights that may exist in other countries where you wish to trade.



SUMMARY

The following list summarises what assets can be protected using each of the rights described in this chapter, to help you identify the types that are likely to be most important for your business.

Patents can protect articles, machines, materials or processes that solve an "industrial" problem in a new & improved way

Trade marks protect the identity of goods and services and can cover names, logos, & other distinctive, non-descriptive aspects

Registered designs protect the external appearance of objects. They can also be used to protect two-dimensional things, from patterns to GUIs

The words, pictures, illustrations & music you produce will all be covered by copyrights, which also extends to software code

While not strictly IP law, trade secrets may be a viable option to protect your invention, provided you can keep them confidential

There are special types of protection for other innovations, like new plant varieties and semiconductor designs, and for geographical origin



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