

## FACTSHEET

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## What can Intellectual Property do for my business?



### 1. Practical aspects of the Intellectual Property system

Although usually unnoticed, Intellectual Property Rights (IPRs) are all around us. From the handy design of a bottle of water or a lollipop, to the drying technology of sports clothing or the databases we use at work.

Many of these products and services come from SMEs, whose daily work often results in creative works, inventions and distinctive symbols capable of generating profits for their creators or inventors. For this reason, SMEs should regard IPRs as a key tool to compete.

The Intellectual Property (IP) system arises as an opportunity to turn those innovative ideas, creative designs and other intangible assets into valuable business assets, which can be transferred, licensed or used as collateral to obtain financing, as we will see through this guide.

Regardless of the sector, there are many IP tools that can be used in your business daily activities:

- Patents and Utility Models, which protect inventions offering new technical solutions to a problem, are particularly relevant in research related sectors, such as biotechnology, nano-technology, chemical and pharmaceutical industries.
- Industrial Designs protect the aesthetic aspect of an article or its packaging, which can be a crucial factor in the purchase decision of furnishing, fashion, digital communication or food products.
- Trademarks can be used in any industry to protect business identity. Trademarks cover trade names, logos, symbols, slogans or even the shape and packaging of products.
- Copyright protects artistic, literary and scientific works. Software and other visual works, such as videos or photographs are also protected by Copyright.
- A Trade Secret is any valuable business information that provides a competitive advantage - e.g. clients' list, processes, formulas.

### THE COMBINED USE OF DIFFERENT IPRs

IPRs can also be combined to provide a stronger protection over all the aspects of your creation. For example, an SME which improves a pair of trainers can protect their specific characteristics in the following way:

- Developed technologies (e.g. improved manufacturing processes or new waterproof materials): these inventions can be protected by Patents, Utility Models or Trade Secrets.
- Trainers' new look: the new external appearance of the trainers can be protected thanks to Industrial Design.
- Company's logos: any distinctive sign capable of identifying the business' origin of the product can be registered as a Trademark.
- Special packaging: colourful drawings included over the shoebox can be protected by Trademarks or Designs.

If you want to know more about how to protect your products and services in Latin America, read our "Country Factsheets" on [Argentina](#), [Bolivia](#), [Brazil](#), [Colombia](#), [Costa Rica](#), [Dominican Republic](#), [Ecuador](#), [Mexico](#), [Paraguay](#), [Uruguay](#), [Peru](#), and [Venezuela](#) or contact our [Helpline](#). It is free, fast and confidential and it is available in English, Spanish, German, French and Portuguese.

Despite SMEs having a high capacity to innovate and generate new products and services, EUIPO IP SME Scoreboard Report 2016 reveals that an average of 35 % of them do not protect their creations since they cannot perceive the potential benefits of doing so. In addition to this, the other two main reasons for SMEs not protecting innovations are insufficient knowledge over the IP system (13%) and the cost of procedures (10%).

This guide aims to show the potential benefits that your company may obtain from properly protecting, managing and exploiting IPRs, while giving you some basics about the IP system.

### IPRs IN LATIN AMERICA

If your company aims to do business in Latin American countries, it is highly recommended to seek professional IP advice prior to any commercialization of your valuable intangible assets. Be aware that you might deal with issues and situations in this region that may represent a critical factor for your business' success.

When it comes to protection and enforcement (See Glossary) of IPRs in Latin America, EU SMEs may take into consideration the following aspects:

- Low level of regional harmonization.
- Membership of those countries to the Madrid System, PCT or Hague agreement.
- Longer registration procedures.
- Cost of filings.

Knowing in advance these and other barriers can help your company to develop a effective protection strategy and prevent you from incurring in unnecessary costs.



# copyright

## 2. Legal certainty: from ideas to appropriable intangible assets

Whether you have in mind a new business model, an improvement of an already existing tool, a catchy brand or a powerful design, it is important to bear in mind that mere ideas cannot be protected. Moreover, its commercialization does not, generally speaking, grant any type of right over them.

While developing new products or services often requires high financial and human efforts, copying or imitating them is easier, faster and less expensive. IPRs grant you an exclusive right for recouping the costs incurred to create your intangibles and benefiting from their exploitation.

Lack of registration or protection entails the risk of misappropriation or even loss of the right. According to the “first to file principle” the right is, in general, granted to the first person that files the IPR application, regardless of its date of creation or invention.

Once your application has been passed through the registration proceedings, you will be granted an IPR for a limited period of time –renewable in the case of e.g. Trademarks- that you will be able to enforce before Courts, customs and other authorities. Should you need more information concerning the scope or duration of IPRs, do not hesitate to contact our free-of-charge Helpline.

### PROCTER & GAMBLE CASE

A real example of the importance of registering is the P&G's Head & Shoulders case. The company designed a new bottle characterized by a long neck with blue and burgundy colouring. After investing and carrying out advertising activities for its promotion, the product became really popular among consumers. Unfortunately, P&G did not protect the bottle neither as a Design nor as a Trademark.

Once the product became profitable, a competitor launched a similar product copying the colours and design of the Head & Shoulders bottle. Although P&G achieved to change the colour of the competitor's bottle, it was not that lucky regarding its shape.

To deter your competitors from copying your original creations, do not forget to protect them before their commercialization.



### 3. Right to exclude: the path to uniqueness

International globalised markets, fast technological change in combination with more demanding consumers, result in the increase of market competition. For this reason, businesses need to look for further ways to differentiate their products and services from their competitors' by improving their quality and technical characteristics, reducing production, distribution and management costs and offering greater value to consumers.

By using IPRs, you will be able to protect your added value and to build a sustained competitive advantage based on it, thanks to your right to exclude third parties from using or commercialising the protected products. IPRs are the most accurate and safe path to uniqueness.

#### TERRITORIALITY

IPRs are territorial rights. Hence, they only can be enforced in the country where they are granted. For this reason, at the time of protecting your inventions, you should take into account in which countries you aim to operate in the short, medium and long term and define your registration strategy accordingly.



#### EXCLUDING THIRD PARTIES

	Registration	Scope	Actions against third parties' rights	Actions against infringers
<b>Patents</b>	Mandatory	Inventions: technical solutions (Products, processes or uses)	Oppose/cancel third parties applications or registrations based on lack of novelty or inventiveness	Civil/ criminal actions against use or commercialisation of the invention
<b>Trademarks</b>	Mandatory*	Brands, signs used to distinguish commercial origin	Oppose/ cancel third parties applications or registrations based on likelihood of confusion – similarities between signs and goods/services	Civil/ criminal actions against exploitation of identical or confusingly similar signs
<b>Industrial Designs</b>	Mandatory**	External appearance of a product	Oppose/cancel third parties applications or registrations based on lack of novelty	Civil/ criminal actions against use or commercialisation
<b>Copyright</b>	Not mandatory, advisable	Scientific, artistic and literary works	Originality of the work can be challenged in the framework of infringement proceedings	Civil/ criminal actions against unauthorised reproduction, distribution, communication to the public

\* Well-known trademarks or trademarks which have already been used in the country may benefit from a certain degree of protection depending on the national legislation.

\*\* Contrary to the EU, Latin American countries do not provide for protection of non-registered designs, except for Panama, Nicaragua and Guatemala

#### 4. Building your reputation and strengthening your market position

Sustained product innovation, products' quality standards or original commercial approaches are some of the strategies that contribute to a company's reputation in the marketplace.

Usually, when speaking about IPRs and reputation, companies tend to think in distinctive signs. Indeed, Trademarks, Domain Names and Geographical Indications allow customers to link the quality and the reputation of your products to your company. However, more and more companies build their reputation over their ability and willingness to innovate. In these cases, Patents, Utility Models and Industrial Designs also contribute to make a name in the market place and reinforce the innovative image of the company.

Therefore, all IPRs are relevant to build your reputation and strengthen your market position: the combination of a diversified IP portfolio together with an efficient marketing strategy serves as a good basis for acquiring customer's loyalty, brand name and reputation, which results in increasing the company's value and improves future profitability.

#### 5. Revenue streams: obtaining profit from its trade

Compared to tangible assets, intangible assets protected by IPRs offer a wider range of options when it comes to exploitation. Besides the manufacture and commercialization of the product or services, owners may choose other means to profit from their creations, as for instance selling the IPRs, license all or part of their rights, or decide on any other type of arrangement, such as cross-licensing technology.

#### EXPLOITATION STRATEGIES: TIPS

Prior to starting to exploit your IPRs in Latin America, please take into account the following key points and their coherence with your company's strategy:

- Control over how the product/service reaches the end consumer
- Investment required
- Profitability
- Risks assumed
- Business model

For example, assigning your IPR entails a lower risk and requires little investment. However, you will have lower profitability potential; on the other hand, creating subsidiaries will ensure control over the exploitation of your IPRs, but requires a high investment and will have little sense if you are not interested in establishing your company in the country in the short or medium term.

These are some of the options that SMEs may consider when exploiting their IPRs:

- **Distribution agreement with a local partner:** Its main advantage is that it allows you to put a foot in the country with a relatively low investment level. However, the margins are not as high as in other alternatives and it is difficult to control how the product reaches the final consumer, which implies a reputational risk.
- **License:** It consists in an agreement where the IPR owner (licensor) allows the licensee to use / distribute / manufacture products consisting of or including the IPR in exchange for a royalty. Licensing generates a higher level of involvement of the licensee compared to the distributor and requires building a trust-based relationship between the two parties.
- **Assignment or sale:** Those companies who want a quick recovery of their investments, may well choose to sell – i.e. assigning the ownership - the IPR in exchange for a fixed amount of money (lump sum payment).



- **Franchise:** Franchising is halfway between licensing IPRs (mainly Trademarks) and creating subsidiaries; it provides more control on how the product reaches the final consumer than licensing, but it is a considerably less expensive strategy than creating subsidiaries in the foreign country.
- **Subsidiaries:** In certain cases, having your own company / manufacture / selling points in Latin America may be the most coherent option with your business strategy, since it allows you to have higher control over all the production and distribution channels. However, it requires strong investment and implies higher risks.

Do not hesitate to check our guides on [Licensing in Latin America](#), [R&D and technology transfer in Chile](#), [Technology Transfer in Argentina](#), [Franchising in Brazil](#) for further information or contact our [Helpline](#) if you want tailored, free and confidential advice on IPR issues.

SMEs may also find other ways to benefit from their IP portfolio, for instance:

- Using it as a negotiation tool
- Increasing their company valuation in the framework of merger and acquisition transactions
- Attracting investors
- Offering it as a collateral to obtain financing
- Tax-deducting purposes

LICENSING VS SELLING	
These have been the most traditional options for SMEs of exploiting IPRs. When considering whether selling or license a Patent (or any other IPR), SMEs should pay special attention to the following aspects:	
Licensing	Selling
Revocable	Irrevocable
May keep responsibilities	Discharged of responsibilities
Technology may become obsolete	Risk of underestimate the invention
Royalties: Long term	Lump-sum payment: recoup investment
Control over the patent: territory, non-exclusive licenses...	Loss of control

## 6. Boosting partnerships and cooperation opportunities

A limited perception of the IPR system, constrained to registration as a necessary step to keep away competitors, may lead to missing other benefits that stem from proper IP management, such as the possibility of using IPRs as a cooperation tool.

Strong and diversified IP portfolios are capable of not only increasing companies' products and services value they may also attract the interest of other companies wishing to cooperate with your company in the framework of cross-license agreements, R&D agreements, joint ventures or consortiums in the framework of international projects, among others.

Such collaborative relations may facilitate the possibility for owners to expand their business into new geographic areas, new technologies or contribute to the establishment of a strategic partnership in related markets. Conducting a Patent Search in the field concerned to assess who is currently working on related technologies is considered a good practice to find potential partners for developing a given technology. See our Factsheet on How to conduct a patent search: the basics for further information.

### COOPERATING THROUGH CROSS-LICENSING

Cross-licenses are agreements whereby the parties grant licenses in exchange for other licenses. These types of contracts are common in technological sectors with a high level of litigation, such as ICTs, to avoid litigation or even to settle an infringement dispute. Sometimes, they constitute a great basis for R&D partnerships and joint ventures.



## 7. Glossary

**IPR enforcement:** The use of legal actions, remedies, measures and procedures against the infringement of any IPR. This includes, among others, stopping unauthorized use, deterring future infringements or obtaining recovery for damages resulting from the infringing act.

## 8. Related links & additional information

Find out more about Intellectual Property Rights in Latin America, visit the Latin America IPR SME Helpdesk website: [www.latinamerica-ipr-helpdesk.eu](http://www.latinamerica-ipr-helpdesk.eu)

Latin America IPR SME Helpdesk Factsheets:

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Other materials:

[EUIPO IP SME Scoreboard Report 2016](#)



## What can Intellectual Property do for my business?

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The **Latin America IPR SME Helpdesk** offers **multilingual services** (English, French, German, Spanish and Portuguese<sup>1</sup>), with free information and first-line legal advice on IP related subjects, as well as training, webinars and publications, especially designed for EU SMEs.



**HELPLINE** First-line advisory service on IP protection and enforcement for EU SMEs working or planning to operate in Latin America.

**TRAINING** Targeted trainings and webinars on IPR protection and enforcement for EU SMEs (including sector- specific approaches).

**IP CONTENT** State-of-the-art publications (factsheets, learning modules, videos, IP glossary, info graphics, case studies and newsletters) on the protection and enforcement of IPR in Latin America – specifically addressing IP matters from the SME business needs point of view.

**AWARENESS RAISING EVENTS** Participation in events attended by EU SMEs to increase the awareness of IP and of the visibility of the services provided by the Helpdesk.

**IP ANALYSIS** Analysis of IP challenges faced by EU SMEs in the target markets.

**IP DIAGNOSTIC TOOLKIT** Toolkit for self-evaluation of the IP-status of the user in terms of IP knowledge and management.

**IP COST TOOL** Online tool that allows the user to pre evaluate the costs related to IP management in every Latin American country covered by the Helpdesk.

<sup>1</sup>The language offer will depend on the specific service and experts' availability.

If you have any queries on how to protect your Intellectual Property in Latin America contact our Helpdesk service:

helpline@latinamerica-ipr-helpdesk.eu  
+34 96 590 9684  
Working Hours: Monday - Friday 9:00 -16:30 (CEST)

If you want more information on additional free services offered by the Helpdesk contact the coordination team:

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EA-02-19-549-EN-C — ISBN 978-92-9202-564-9 — DOI 10.2826/829147  
EA-02-19-549-EN-N — ISBN 978-92-9202-565-6 — DOI 10.2826/876378