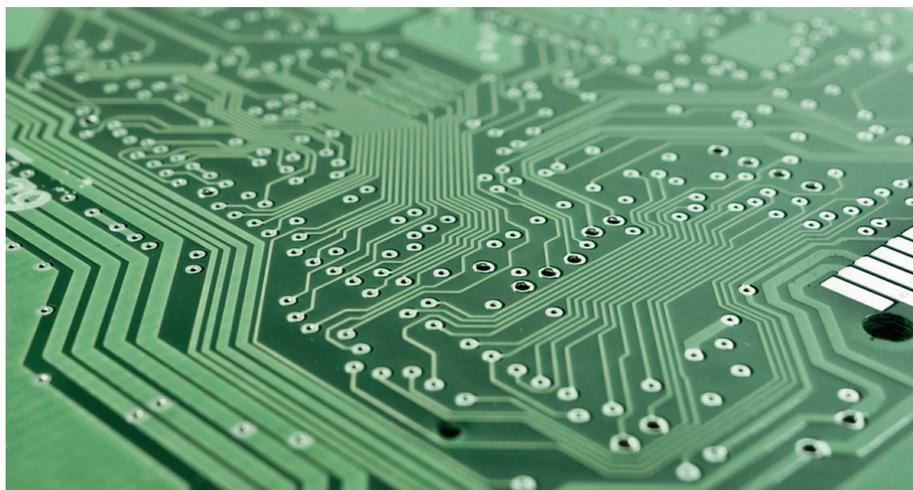


FACTSHEET

IP Systems comparative: Chile vs Europe



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1. IPRs IN CHILE FOR SMEs

1.1 Intellectual Property Rights for SMEs: Why is this relevant to you?

The EU is Chile's third trade partner and an import supplier, comprising 13% of Chile's total trade in 2018. Chile has become a key market catalysing the interest of many European companies and business development organizations. European SMEs should, however, be cautious at the time of entering the Chilean market to ensure that their intellectual property rights are adequately protected there: bear in mind that given the territoriality principle of intellectual property rights, any IP registered in Europe will have no legal weight in Chile.

Any failure in shaping a proper IPR strategy before moving abroad can have serious consequences such as having your product copied by local competitors without you being able to stop such activity for lack of a registered trade mark or a patent. It is therefore not only relevant, but actually crucial for any SME to give a good thought to the IP strategy it wants to implement before starting to export or move to the Chilean market. This document aims to help them in doing so by outlining the main differences between the EU IP legal environment which SMEs are familiar with, and Chile's legal framework.

1.2 Intellectual Property Rights for SMEs: Why is this relevant to you?

The type of IP rights covered and the scope of their protection in Chile is very similar to that in Europe. Furthermore, like the EU, Chile is a member of the World Intellectual Property Organisation (WIPO) and party to most of the international treaties on intellectual property administered by WIPO. A clear advantage of this for EU SMEs is for example that they can rely on the international patent system to patent an invention in Chile and in EU Member States by filing one single patent application in one language and paying one set of fees.



However, some differences do exist as regards the duration, geographical extent, and basic protection requirements. In this sense, there are some differences which are useful to understand in order to efficiently manage your intellectual property assets in Chile.

The following tables below give a broad comparison between the main intellectual property rights in Chile and the European Union, and highlights some of the main differences and similarities. For more detailed information on the Chilean IPR system, do not hesitate to read our Chile country factsheet, available [here](#). For the sake of clarity, a glossary has been introduced at the end of the document defining the technical terms included in the table.

2. IP RIGHTS IN CHILE: COMPARING BASICS

A. COPYRIGHT AND RELATED RIGHTS

Copyright protects original intellectual works whatever their genre, form of expression or merit. The exclusive rights are enjoyed by the author of the work and by the successors. These so-called economic rights give the power to exploit the work for economic gain, including the reproduction, distribution, adaptation, translation, communication to the public and any other use. It also includes moral rights which are personal to the author, unwaivable and non-transferrable. Related rights, on the other hand refer to the rights enjoyed by producers, performers and broadcaster for their investment and participation in and around the creation of the work.

CHILE	EUROPE
<p>Copyright does not need registration.</p> <p>Works are protected from the date of creation.</p> <p>It may, however, be registered with the Intellectual Rights Department (DDI) in order to create a proof of authorship/ownership which may be useful to enforce your rights.</p> <p>More information on this here.</p>	<p>Copyright does not need registration.</p> <p>Works are protected from the date of creation.</p> <p>Only a few EU Member States offer copyright registration services to provide proof of authorship. If this is not a possibility, you should still keep a record of authorship and any cession of rights in order to simply the enforcement of your rights in case of a dispute. For instance, you can do this by keeping lab log books or via private registration (with a notary, for example).</p>
<p>Copyright lasts for life of the author + 70 years, except for anonymous works and software code created by employees.</p>	<p>Copyright lasts for life of author + 70 years in all cases where the author is known.</p>
<p>In those two exceptions, copyright protects the work for 70 years following its publication.</p> <p>The software will belong to a company when created by an employee of the company in the course of their employment, unless the employment contract says otherwise.</p>	<p>Copyright protection expires after the period lasting for the author's life and 70 years after that.</p> <p>The duration of protection does not vary depending on the legal status (physical or legal person) of the original owner of the work.</p>
<p>In common with other countries and Europe, software "as such" can only be protected by Copyright. However, patents for computer implemented inventions which involve software can also be obtained.</p>	<p>The computer code underlying a software is also protected as a literary work in the European Union. Computer implemented inventions can also be obtained in Europe.</p>
<p>Databases are protected through copyright only.</p> <p>Databases are protected under general copyright. There is no sui generis database protection.</p>	<p>Databases are protected by copyright and a sui generis database right.</p> <p>Databases in EU Member States can be protected under general copyright and additionally under a special database right.</p>

In Chile and in Europe, and whether the work is registered or not, it is advisable to include a copyright notice such as "all rights reserved" along with the copyright sign "©" followed by the name of the author and the year of first publication.

B. PATENT AND UTILITY MODELS

A patent is an exclusive right granted for an invention, either a product or a process, that provides a new way of doing something or offers a new technical solution to a problem. The patent holder enjoys the exclusive right to prevent others from exploiting the invention for a limited period of time. In return, the patent holder must disclose the invention to the public in the patent application.

In Chile, the patent system includes invention patents and utility models. When discussing patents in the EU it is important to bear in mind that even if there exists a European registration system – the European Patent Convention (EPC) – for the filing of patents in countries across Europe, there is no community patent in the EU and that only some Member States provide for utility model protection.

CHILE	EUROPE
<p>Registration takes over 2 years for patents and a bit less for utility models.</p> <p>There is a patent prosecution highway (PPH) or accelerated examination procedure for patent applications that are based on a favourable result from a foreign office in cooperation. At this moment Chile has such agreements with Canada, the US, Japan, China, Colombia, Mexico and Peru.</p>	<p>Registration time depends on EU country.</p> <p>Each patent is granted by national authorities, even when applied through the European registration system. However, an EPC application typically takes between 3 and 5 years. Note that, as of 2019, the EU Unitary Patent is expected to be available in the coming years.</p>
<p>Patents are granted for a 20-year term as of the date of application.</p> <p>This period may only be extended for drug patents when there has been an unjustified delay in the patenting procedure due to the INAPI. Protection will then be prolonged for the period equating to the unjustified delay.</p>	<p>Patents in EU member states are also granted for a 20-year term as of the date of application.</p> <p>This period may be extended for products or processes which need to undergo an administrative authorisation before being commercialised (e.g. drugs), independently from the length of the patenting procedure. This extension will be for a maximum of 5 years.</p>
<p>Utility models are protected and are granted for a 10-year term as of the date of application.</p> <p>Utility models are granted when the requirements of novelty and industrial applicability are met. They do not need to satisfy any inventiveness requirement and can only protect objects, not methods.</p> <p>The term of protection lasts 10 years from the application date.</p>	<p>Most countries do not protect utility models.</p> <p>Utility models exist in some EU member states, but not in all. It is best to check with the corresponding national IP office.</p> <p>Utility models are typically protected for 10 years. The only EU Member States offering utility model protection for less than 10 years are Greece (7 years maximum) and Portugal (6 years).</p>
<p>Chile grants a 12-month grace period prior to filing the application during which disclosure of the invention does not affect the novelty requirement for patentability, under certain conditions.</p> <p>The novelty of an invention is “sheltered” only when it was disclosed (1) by the applicant or with the consent of the applicant, or (2) by a third party in breach of confidence owed to the patent applicant.</p>	<p>Some European countries also grant a 6-month grace period, but in more limited cases.</p> <p>Generally, the novelty of an invention is “sheltered” only when disclosed (1) by the applicant at an official international exhibition, or (2) by a third party in breach confidence owed to the patent applicant.</p> <p>For detailed information regarding EU Member States grace period (and other countries worldwide), you can consult the WIPO’s report here.</p>
<p>“Swiss-type” claims (see Glossary) are allowed, though limited.</p> <p>Patents may be obtained for the use of Product X for the manufacture of compound Y for the cure of disease Z.</p>	<p>“Swiss-type” claims are not allowed.</p>

Watch Out: Plant varieties are not patentable, yet there is the option to protect them under a sui generis right as in Europe, under the [Plant Breeder’s Rights Law](#) consisting of registration of the protected plant in the National Register of Protected Varieties, administered by the Seeds Department of the Ministry of Agriculture.

C. Trade marks

A trade mark is an exclusive right over the use of a sign in relation to the goods and services for which it is registered. Trade marks consist of signs capable of distinguishing the products (either goods or services) of a trader from those of others.

CHILE	EUROPE
Multiclass applications (see Glossary) are admitted.	Multiclass applications are admitted for all goods and services.
Sounds are the only non-traditional trade marks which can be registered. Other non-traditional signs are not registrable under Chilean law. Three dimensional, holograms and smell signs cannot be protected.	Sounds, as well as other non-traditional trade marks can be registered. Visual, sound and three-dimensional marks are accepted in the European Union.
Chile grants limited rights to owners of unregistered trade marks. Unregistered trade marks are only protected to the extent they can be invoked as earlier rights in oppositions and cancellation procedures, subject to certain conditions. If the owner of a well-known unregistered trade mark is successful in any of these procedures, he must apply to register the trade mark within a short time frame afterwards, or may lose the right to oppose future applications by third parties.	Unregistered trademarks (see Glossary) are unevenly protected throughout the EU. The EU community trade mark system is based on registration, though here too unregistered trade marks can be a basis for an opposition. However, the laws of the EU Member States may protect unregistered signs to a certain extent. Contrary to Chile, there exists no obligation on the owner of a well-known unregistered trade mark to register it after filing an opposition based on it.
There is no obligation to use a registered trade mark. Thus, there is no opportunity to claim revocation of a registered trade mark based upon the lack of use.	Obligation to use the trade mark within five years from registration. In the EU, if a trade mark is not used for five consecutive years, a revocation action can be brought before the corresponding IPO based on its lack of use.
INAPI allows coexistence agreements which must be registered. Chilean IPO allows and will respect coexistence agreements, as long as they do not infringe on third parties' rights previous to the agreement and that do not mislead the consumer.	Coexistence agreements are allowed but not binding on the EUIPO. In the EU, coexistence agreements are allowed by the EUIPO and national Members States IPO, but they are not binding for the offices. A trade mark may therefore be refused registration even if a coexistence agreement was signed with the owner of the similar trade mark.
Trade mark assignments and licences need to be registered with the INAPI to be enforceable against third parties. This is also applicable for patents and design rights. Those which are not annotated in the official trade mark registry will not be enforceable against third parties. These annotations are subject to a fee.	Trade mark assignments and licences must also be recorded to be enforced against third parties. This is also applicable for patents and design rights. Also, at the EUIPO and many EU Member States IPOs, assignment and licenses can be entered in the register upon request, subject to a fee.
Chile uses the 11th edition of the Nice Classifications for Goods and Services to class the goods and services for which the trade mark is registered.	The EUIPO also uses the 11th edition of the Nice Classification.
Any registered trade mark in Chile must clearly be indicated (by signs such as "TM", ®, etc...) Failure to do so means there is no possibility to take criminal action against infringers (civil suits are still possible though!).	There is no need for notification: registered trade mark rights arise from registration alone.
Chile is not a contracting state to the Madrid System from international trade mark registration (see Glossary). In order to obtain trade mark registration in Chile, an application must be filed directly with the INAPI.	The EU and all its member states are contracting parties to the Madrid System. Trade marks can be obtained through an application filed with the IP office of another contracting state.

Tips: Besides the Chile IPO database, since 2018 it is possible to run a free-of-charge search with no additional cost including Chile in the TMview tool. For detailed information see our factsheet "How to conduct a trade mark search in Chile."

D. Industrial Designs

An industrial design is an exclusive right over the appearance of the whole or part of a product resulting from the features of the product itself or its decoration.

CHILE	EUROPE
<p>Industrial Designs must be registered to be protected.</p> <p>Unregistered designs are not protected in Chile.</p>	<p>The EU community design regime provides for protection of unregistered designs.</p> <p>This protection however only prevents unauthorised and intentional copying of the design throughout the European Union.</p>
<p>Registered design rights are valid for 10 years from the application date.</p> <p>Design rights cannot be renewed in Chile.</p>	<p>The EU Community registered design lasts for 5 years from the application date and can be renewed for 5-year periods up to 25 years.</p>
<p>Chile is not party to the Locarno Agreement.</p> <p>This agreement establishes an international classification for industrial designs. Applicants must therefore use the one provided by INAPI.</p>	<p>The EU and its Member States are party to the Locarno Agreement.</p>
<p>Any industrial design in Chile must clearly indicate “diseño industrial” (industrial design) together with its registration number.</p> <p>Failure to do so means there is no possibility to take criminal action against infringers (civil suits are still possible though!).</p>	<p>There is no need to indicate the existence of a registered design right on a product or packaging.</p>

E. Trade Secrets

Trade secrets, called “enterprise secrets” in Chilean law, are a way of protecting a factual situation by avoiding the unfair enrichment of third parties. Its main disadvantage for SMEs is that a trade secret does not provide an exclusive right over the secret information. Hence, any person that discovers it through legally accepted means, such as reverse engineering or other similar procedures, will be entitled to use it.

CHILE	EUROPE
<p>Trade secrets are protected by the courts if it can be shown that the holder of the information has taken sufficient steps to protect it.</p> <p>Chilean law, which is the same as EU law on this point, states that the information must be secret, must have commercial value because it is secret and must have been subject to reasonable steps by the holder to keep it secret.</p> <p>For more detailed information on this type of protection, check our factsheet Trade Secrets in Chile.</p>	<p>Trade secrets are protected throughout the EU if it can be shown that the holder of the information has taken sufficient steps to protect it.</p> <p>Trade secret protection has been harmonized under the 2016 Trade Secret Directive which sets the same requirements as Chilean law. The information must be secret, must have commercial value because it is secret and must have been subject to reasonable steps by the holder to keep it secret.</p> <p>For further information on trade secret protection in the EU check this factsheet.</p>

Tips: In Chile and in Europe, it is therefore strongly advised to protect trade secrets via contracts (NDAs, confidentiality clauses, etc.) when dealing with employees, clients or providers, and by using physical and technological measures to restrict access to confidential information.

F. Geographical Indications and Appellations of Origin

Geographical Indications and Appellations of Origin refer to the signs that denote the place of origin of the goods, including their specific quality, reputation or other features as mainly decided by the natural or cultural factors of those regions. A distinction is generally made between two different types of indications:

- Geographical Indications (GI), which are signs identifying a product originating from a specific territory, where a given quality or characteristic of said product is essentially attributable to this geographical origin.

- Appellations of Origin (AO), which are a special kind of geographical indication implying a stronger link with the place of origin by using the name of the location to designate the product originating therein, the quality or characteristics of which are due essentially to the geographical origin.

CHILE	EUROPE
Geographical Indications and Appellations of origin are both protected.	Geographical Indications and Appellations of origin are both protected.
Geographical Indications can protect all types of products.	At EU level, GIs and AOs only protect agricultural products, spirit drinks, aromatised wines or grapevine products. There may be different schemes of protection at national level though.

Tip: For further information on GIs registration in Latin America see our factsheet [IP in the Agri-Food Sector \(i\): Geographical Indications](#) and for specifics on Chile see [Geographical Indications and Appellations of Origin in Chile](#).

Tip: Note that since 2003 Chile and the EU have signed bilateral agreements for the mutual recognition of wines and spirits. European wines and spirits can therefore be protected in Chile, and vice versa.

3. Enforcing your IP

3.1 Litigation strategies

Chilean law has included in its legal system the possibility of filing civil actions in case of IPR infringement, as is possible across the EU.

CHILE	EUROPE
<p>Civil actions are possible against infringers.</p> <p>Right holders are entitled to file civil complaints requesting cease, compensation and the adoption of precautionary measures to avoid continuation of infringement.</p>	<p>Civil actions are possible against infringers.</p> <p>Across Europe, right holders can file civil action against infringers in front of the national courts of all European countries to request the cease, compensation and the adoption of precautionary measures to avoid continuation of infringement.</p>
<p>Precautionary measures.</p> <p>Chilean law allows any kind of precautionary measures the Courts considers fit to tackle the infringement in question.</p>	<p>Precautionary measures.</p> <p>The precautionary measures available will generally include interlocutory injunctions and provisional measures. They are decided and implemented by national courts.</p>
<p>Criminal action.</p> <p>Right holders can claim criminal action in cases of fraud or intention to defraud the public in addition to the infringement of IP rights.</p>	<p>Criminal action.</p> <p>Criminal actions against IP infringers are not harmonised across the EU and may therefore vary between Member States.</p>
<p>Alternative Dispute Resolution (ADR) mechanisms are available for IP disputes in Chile.</p> <p>It is possible to opt for ADR solutions to solve disputes relating to IP rights in Chile. Furthermore, Judicial mediation and arbitration can be proposed by Chilean civil court as well as criminal proceedings in some IPR matters.</p> <p>Chile recognises all extra-judicial mediation or arbitration decisions taken in Europe (which means that these decisions can be enforced in Chile too).</p>	<p>Alternative Dispute Resolution (ADR) are also available for IP disputes across Europe.</p> <p>Note however that legislation regarding ADR is not harmonised at EU level.</p> <p>All EU Member States recognise extra-judicial mediation or arbitration decisions taken in other EU countries.</p>

3.2 Custom Measures

Customs action in the EU and Chile are an effective way of blocking counterfeit products from entering a foreign market. No matter whether you are working with customs in Chile or the EU, you should aim to maintain close contact with these authorities and supply relevant product information in order to make infringement detection easier when inspecting goods.

CHILE	EUROPE
<p>The National Customs Service (NCS) inspect both imported and exported goods.</p> <p>Border measures can be taken by the National Customs Service, which may act ex officio to prevent the entrance and exit of infringing products.</p> <p>A special police unit has been constituted specifically for the seizure of IP infringing goods in markets, shops and warehouses in Chile.</p>	<p>Customs only inspect imported goods.</p> <p>Customs authorities of the European Union have the right to halt and detain goods entering the EU that are suspected of IPR infringement.</p> <p>Seizure of IP infringing products within national territory is up to national forces.</p>
<p>NCS agents can act both ex officio or on behalf of an IP holder.</p>	<p>NCS agents can act both ex officio or on behalf of an IP holder.</p>
<p>Registering IP with customs.</p> <p>There is the possibility to register your IP rights directly with Customs in order to help combatting the import or export of infringing products.</p> <p>There exist direct links between Government agencies, such as the NCS or the Agricultural and Cattle Service allowing direct access for enforcement customs officers, via a special intranet service, to the INAPI and Intellectual Property Department database.</p>	<p>There is possibility to register IP rights with EU customs, though it is not required.</p> <p>Right holders can specifically register their IP with EU Customs, thereby making the detection of infringing products by customs officials more likely.</p> <p>Customs officials across the EU have access to the Enforcement Database managed by the EUIPO which contains information on products which have IP protection in the EU. EU customs will seize goods suspected of infringing IP rights.</p>

In case you need specific information regarding litigation and enforcement of IP rights in Chile, do get in touch with the Latin America IP SME Helpdesk's [Helpline services](#). Our IP experts will provide you with specialist and tailor-made assistance on your particular case within three working days.

4. Related Links and Additional Information

Chile related factsheets at the Latin America IP SME Helpdesk:

- [Chile IP Country Factsheet](#)
- [How to conduct a trade mark search in Chile](#)
- [Guide to Trade mark registration in Chile](#)
- [R&D and technology transfer in Chile](#)
- [Trade secrets in Chile](#)
- [Geographical indications and appellations of origin in Chile](#)
- [IPR Enforcement in Chile](#)

Further information about IPR in Chile can be found on:

- The Latin American IPR SME Helpdesk website: www.latinamerica-ipr-helpdesk.eu
- The Chile Intellectual Property Office (INAPI): www.inapi.cl
- The Intellectual Property Rights Department for matters of copyright and related rights: www.propiedadintelectual.cl
- The Chilean Customs Authorities: www.aduana.cl/aduana/site/edic/base/port/inicio.html

5. Glossary

Swiss type claims: correspond to a specific way in which a patent claim is redacted for the patenting of the second medical use of a known substance. The substance is known, and can therefore not be patented for lack of novelty, but the new medical treatment can be in some countries by drafting the claim thus: "Use of substance X in the manufacture of a medicament for the treatment of condition Y".

Multiclass applications: trade marks are registered in relation to specific

products or services which must be defined in the trade mark application. To facilitate the examination products and services are categorised into different classes (e.g. shoes in one class, drinks in another). A multiclass application is a trade mark application which includes products in different classes. Not all countries allow this and demand that a separate trade mark application be filed for different classes of products.

Unregistered trade marks: trade mark rights are generally only protected when registered. However, in some countries marks which are used in commerce but have not been registered will still get some protection.

Patent Cooperation Treaty: is an international agreement which allows for international patent applications. This type of application consists in one single application filed in one patent office in one language and demanding the payment of one set of fees, acting as a bundle of patent applications in the contracting states designated by the applicant. For more information about the PCT please click [here](#).

Madrid System: is an international agreement which allows for international trade mark applications. This type of application consists in one single application filed with one national trade mark office designating the other contracting states in which protection is sought. For more information on the Madrid System please click [here](#).

Hague System: is an international agreement which allows for international design applications. This type of application consists in one single application filed in one IP office in one language and demanding the payment of one set of fees, designating the other contracting states in which protection is sought. For more information on the Hague System please click [here](#).



IP Systems comparative: Chile vs Europe

Download Guide



The **Latin America IPR SME Helpdesk** offers **multilingual services** (English, French, German, Spanish and Portuguese¹), 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.

¹The 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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