

# Make the most of your intangible assets

By Richard Little,  
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It is good business advice to 'get your assets to work for you'. It is a fact however that many companies do not make the most of their intangible assets, often because they do not see them for what they are - Intellectual Property Rights (IPR).

In the UK we are better served with unregistered design right than other countries. Under UK law this automatic right can be used to protect a shape or configuration and usually lasts for 10 years (3 years only in EU) - the first five exclusively and the second five non-exclusively provided that a fair royalty is paid. Interestingly, for distributors with limited protection under EU agency rules, the design right for a product is generally held by the organisation that first introduces the design or configuration into the EU - not, bizarrely, the manufacturer/principal if outside the EU.



Photo courtesy of Fanuc  
Consider registering your house colour

## Copyright

Copyright is an automatic right protecting original 'expression' rather than 'idea' for typically 50 years. It is usually literary and would include such things as manuals, photographs, computer code, drawings and can form the basis of a claim for damages and other legal reliefs such as injunctions and customs seizures. It explicitly does not cover 3-D articles made to drawings (that is the domain of Design Rights).

## Database Rights

Database right, primarily a European right, is based around the presumption that any list is a database, i.e. a client list, supplier network, personal network and list of parts / parameters for a process or machine. It belongs to the organisation within which it was compiled and lasts 15 years. It can be a handy basis for a claim of damages or an injunction from an employee leaving with technical or customer information without specifically having a contract preventing him from doing so. In addition, confidentiality agreements can be used to impose restrictions on specific parties that agree to be restricted in return for information. This restriction of another party may also legally prevent competition and increase the potential for profit and thus these agreements, particularly when binding on a potential competitor can have asset value also.

## Patent Rights

The main registered IP right is, of course, a patent right. Unlike other IPR, a patent is about function as well as structure. An inventor can apply for a patent based on an analysis of the current art and a full description of the invention characterising its 'inventive step' (a conceptual step that would not be obvious to someone skilled in the art) and also demonstrating that it is novel (never seen anywhere before) and that it is 'capable of industrial application', or in other words, that can actually be made. If the invention has been disclosed in any way (other than under confidentiality) prior to application, then in most countries, including the UK and EU a patent is not possible.

IPR is based around the concept that 'people (and by extension, organisations) can own their creativity and innovation in the same way that they can own physical property'. Intellectual property law provides a framework that allows owners to protect their IP and thus maintain monopoly rights. IPR offers security, adds value to a technology, can be capitalised, and may form the basis of contracts that bring rewards to the IPR owner.

IPR can be split into unregistered and registered rights. **Unregistered rights** are automatic and cover:-

- Unregistered Design Rights
- Database Rights
- Know-how
- Confidential Information and Copyright

**Registered rights** have to be applied for and include:-

- Patent Rights
- Trade Marks
- Registered Designs

All these rights, if applicable (and granted if necessary) can be used to restrict competition and thus allow greater sales, higher pricing and better margins. Because of this they have an asset value and can add value to a company or be traded or sold.

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**Cont'd...**

From filing, it can take several years for a patent to be granted during which time the patent offices in whichever countries have been nominated by the applicant will examine the patent claims and compare with their extensive records of prior art to check for novelty and inventive step. In the meantime it is acceptable to mark goods with 'patent applied for' or 'patent pending' and patent applications can be licensed or traded and thus may have a value from the date of application. Monopoly rights on granted patents can last for up to 20 years and properly maintained can be a very effective way to see off competition from cheap labour economies - witness the large number of exhibits that had to be withdrawn at the last Interpack.

**Tip**

**Some countries take years and years to examine even unlikely applications and all this time it is acceptable to mark inventions with 'patent pending'!**



**In 1876 the Bass Red Triangle was the first trademark to be registered under the UK Trade Mark Registration Act 1875.**

Applications can run in parallel. Registered designs arise particularly from the features of lines, contours, colours, shape, texture and materials of a product or its ornamentation. These designs could be anything from patterns on textiles or plates to the shape of a machine or the design of part of a pack. A registered design covers two-dimensional as well as three-dimensional articles and ornamentation. However, the parts of a component which 'must fit' e.g. interlocking mechanical parts, or 'must match' e.g. car body panels may be excluded from protection because of official policy to allow a market in non-OEM spare parts. This protection is in addition to your design right, which is automatic but registering a design with the UK Intellectual Property Office (UK-IPO) gives extra legal protection. You're entitled to sue infringers for damages whether the infringement is intentional or not and because it is based in patent rather than copyright law, actual copying does not have to be proved i.e. an accidentally infringing independent design will still be covered. To register your design it must be new and have individual character - that is, give an appearance of originality.

All the above IP rights can give you the exclusive right to make, use or stock items incorporating your IPR - and take action against those who infringe these rights. IP rights are genuine assets and the fact that they can be sold, licenced or used to maintain market position gives them use and value. The best bit is that you may have several of these assets sitting under your nose, waiting to be exploited for your benefit.

**Trademark**

Trademarks can actually be unregistered or registered but when registered are far easier to sell or protect. A trademark is a badge of origin and gives the holder protection from a copycat trying to 'pass off' their product, often inferior, as the original item. Various things can be treated as trademarks, for example a word such as 'APPLE', or letters 'BMW' or slogans 'anytime, anyplace, anywhere', or logos such as the Mercedes 3 pointed star. Shapes such as Coca-Cola bottles can be registered, as can colours (Cadburys, Kodak) and even music, such as the Hamlet Cigars tune. A trademark can be applied for at any time and members may be able to protect a number of aspects of their company or equipment features in this way.

**Registered Design**

Product aesthetics can be protected via registered design giving national and EU protection and this is often a simple and cheap alternative to a patent where the inventive step, for example, is in question.

**i Patent Agent**

*For further information, refer to your patent agent - or if you don't have one, may I recommend Scott & York Intellectual Property:-*

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## Are you complacent about IP crime?

**New research commissioned by the Intellectual Property Office's IP Crime Group shows that many businesses are not doing anything to ensure they protect their intellectual property. This is despite an overwhelming majority of businesses understanding the need to protect intellectual property.**

Intellectual property is at the heart of so many businesses. It needs to be understood, protected, and respected - both that which belongs to the company and the IP of others. It is therefore worrying that the research showed that:-

- 40% of businesses surveyed took no practical action such as trade mark registration or employee training to ensure their and others IP is protected.
- A third of businesses surveyed were not aware whether goods sold on their premises by external traders were legitimate or not.
- Out of those who knew that employees were selling DVDs at work, nearly a fifth knew that these were counterfeit and still allowed such illegal activity to take place.
- Over a quarter of respondents do not make staff aware that they must not download illegal content at work.

**i Intellectual property**

[www.ipso.gov.uk](http://www.ipso.gov.uk)