



GO-DIP - MANAGING DIGITAL INTELLECTUAL PROPERTY IN
MANUFACTURING SMES DIGITALIZATION PROCESSES

ONLINE WORKSHOP OF NOVEMBER 26, 2021

Legal aspects of digital IP and data management

Maud Fragnière

No protection
in the absence of an intellectual property right

thus absolute freedom to imitate

What does «IP» cover? (1)

- Trademarks (e.g. QoQa)
- Design (e.g. graphical interface)
- Patents (e.g. «method and device for identifying a data packet in a data stream»)
- Copyright (e.g. code)
- Trade secrets (e.g. clients' data)

What does «IP» cover? (2)

- Trademarks
 - Design
 - Patents
 - Copyright
 - Trade secrets
- Registrable
- Non-registrable
-
- The diagram consists of a list of five IP types on the left. A right-facing curly bracket groups the first three items (Trademarks, Design, Patents) and points to a rectangular box containing the word 'Registrable'. A second right-facing curly bracket groups the last two items (Copyright, Trade secrets) and points to a rectangular box containing the words 'Non-registrable'.

Trademarks (1)



Monopole on a defined territory (e.g. Swiss, EU, USA etc.)

Trademarks (2)

Use as registered

QoQa ≠ 

Trademarks (3)

Approximate costs in Switzerland:

CHF 1'500.- (10 years protection; extension: CHF 700.-)



Trademarks (4)

Civil and criminal enforcement (art. 55 et seq. Trade Mark Protection Act)


Design (1)

Monopole on a defined territory

Novelty and originality



Design (2)

 prior disclosure

Design (3)

Approximate costs in Switzerland:

CHF 2'000.- (5 years protection; extension: CHF 200-700.-)



Design (4)

Civil and criminal enforcement (art. 33 et seq. Designs Act)

Patents (1)

Patents are delivered for new inventions applicable in industry (article 1 Federal Patents Act).



Patents (2)

Computational models or mathematical algorithms are not patentable (because they are of abstract nature).

But if they are used to solve a technical problem in the technology field, they can lead to a patent.

Example: use of a neural network in a heart-monitoring apparatus for the purpose of identifying irregular heartbeats.

Patents (3)

Monopole on a defined territory (generally for 20 years)

Of particular interest in the framework of financing rounds
(notably for start-ups)

Patents (4)

Novelty and inventive step



Patents (5)

Approximate costs in Switzerland:
CHF 5'000.- (20 years protection)



Patents (6)

Civil and criminal enforcement (art. 72 et seq. Patents Act)

Copyright (2)

Evidence (e.g. WIPO PROOF)

WIPO PROOF – Trusted Digital Evidence

WIPO PROOF provides a date- and time-stamped digital fingerprint of any file, proving its existence at specific point in time.

Authenticity (e.g. NFTs)



Copyright (3)

Civil and criminal enforcement (art. 61 et seq. Copyright Act)


Trade secrets (1)

Much of your IP isn't protected by registrations, e.g. data, algorithms.

 capital to actively protect your trade secrets, which includes know-how.

Trade secrets (2)

«**Best practices**», *inter alia*:

- identification of confidential information
- limitation of access to confidential information
- technical measures to ensure confidentiality
- non-disclosure agreements with penalties
- non-compete clauses ( wording)

Trade secrets (3)

Civil ...

Art. 321 a para. 4 Civil Code

Art. 398 para. 1 Civil Code

Art. 9 Unfair Competition Act (in relation with art. 4 lit. c and 6)

... but also criminal enforcement

Art. 23 Unfair Competition Act (in relation with art. 4 lit. c and 6)

Art. 162 Criminal Code

Transfer of IP rights

Importance to chose the right wording in contracts

Of particular interest in the following environments:

- IT contract
- data transfers (who owns the data, what is the extent of the license etc.)

Data management (1)

What is *personal data*?

Any information that can be used to identify a living person – directly and indirectly – or that relates to them, e.g:



Data management (2)

GDPR (EU)



General legal basis for processing data

- consent
- legitimate interests (much stricter for *sensitive data*)

Data management (3)

Consent

- Explicit (opt-in)
- Opt-out/unsubscribe



Be careful:

- Right to be forgotten (deletion of data)
- Access to file

Data management (5)

Key elements:

- **Privacy policy** (discloses the way the data is used and managed)
- **Cookies policy** (discloses what cookies are active)
- **Localization of servers** («safe harbor»)

Data management (6)

- DPO (Data Protection Officer)
 - needs to be appointed if your core activities involve processing of sensitive data on a large scale or involve large scale, regular and systematic monitoring of individuals.
- Processes (definition of concerned data; detection of breaches and management thereof)

ANY QUESTIONS ?

Thank you for your attention !



Maud Fragnière
Kasser Schlosser avocats SA
Avenue de la Gare 5
CP 251 – 1001 Lausanne
fragniere@ksavocats.ch