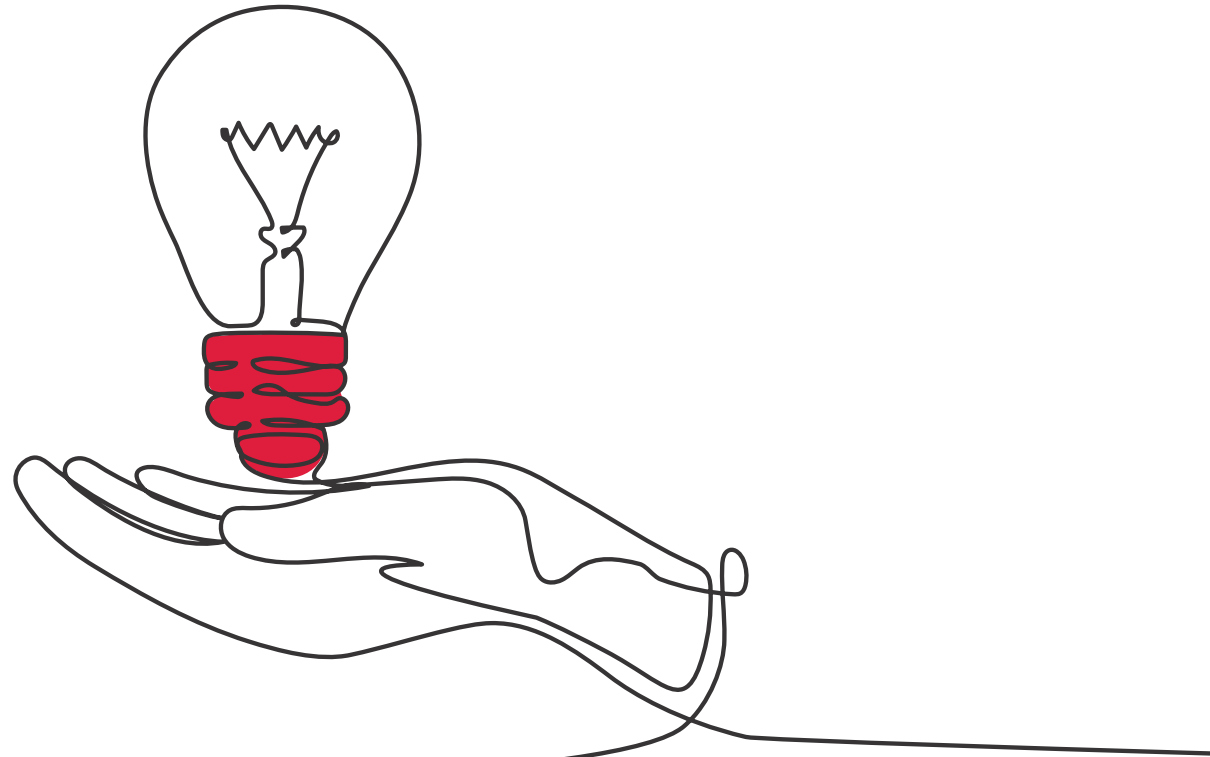


IP Strategy



As soon as you start branding, designing or inventing anything for your business you need to identify any intellectual property (IP) and develop a strategy to protect these rights and shield your business from competitors.



Identify and assess your IP

As an existing business, you may wish to conduct an audit to assess which IP exists within the business.

In the early stages, the key is to keep your idea as guarded as possible. If you release your idea before it is sufficiently protected, you may find that you have lost the right to exclusivity or legal protection.

IP is a valuable asset for many companies and is important to the success of a company. IP rights can be bought, sold or licensed in a similar way to any tangible asset, you should therefore protect these rights in the same way that you would any other proprietary right.

Developing an IP strategy can help you safeguard your product against competitors, protect your creative input and provide income from the sale or licensing of a right.

Key forms of IP protection

In the UK, there are six key types of protection available for your IP:

- Patents
- Design Rights
- Database Rights
- Copyright
- Trade Marks
- Trade Secrets / Confidentiality

Some IP rights can be registered, whilst others arise automatically or through contracts. Each form of protection will work in different ways to protect different aspects of your IP and you may need more than one type of right to fully protect a product or idea.

Register your IP

Patents, trademarks and design rights can all be registered and it is often advisable to register these rights at the earliest opportunity.

By registering your IP you gain proprietary rights which can be exploited and will put you in a stronger position against any infringer. If these rights are not registered early, you risk a competitor registering them and thus preventing you from using the rights without purchasing a licence from the competitor.

There are limited unregistered rights available for trademarks and designs, however it is generally more difficult to prove ownership of the IP if the right has not been registered. By registering trade mark and design rights with the intellectual property office (or the European equivalent, OHIM) you will be granted an exclusive right to that IP and you will have proof of ownership should this be disputed later. Where the right is unregistered, you as owner will have to prove both your ownership and an intended infringement in order to bring an infringement claim against another party.

In order to register a patent, an invention must be new and not part of the “state of the art” (i.e. the sum total of human knowledge which has at any time been made available to the public anywhere in the world in any way). A patent therefore needs to be registered before the invention is released to the public. The earlier the application is made, the more likely that it will meet the novelty criteria for registration.

Keep it secret

Whilst in development, you should take all necessary steps to keep your idea secret and to demonstrate ownership.

In the early stages of branding or invention, the number of people involved should be limited and where possible only those who require knowledge for planning and development should be permitted access to the details of the branding/invention.

Confidentiality agreements (sometimes called non-disclosure agreements) can be implemented for added security. A confidentiality agreement contractually binds the other party to keep your ideas confidential, thus limiting the

possibility of the invention being released to the market before the patent or trade mark application has been submitted.

Some companies decide not to register their inventions and to rely on confidentiality agreements on an ongoing basis, thus maintaining the trade secret (i.e. the coca cola recipe). Whether this is suitable will depend on the nature of the product and the viability of relevant registered protection. (Please refer to our quick guide on Patents vs. Trade Secrets for further information on this.)

Confidentiality clauses should also be included in any contracts with third parties, such as employees or potential business partners.

Show that it is yours

Some IP rights cannot be formally registered, such as copyright, database rights and certain products and processes under the patent system (e.g. business methods).

Where IP cannot be registered it can be protected by demonstrating prior ownership; records of the research process and product development activities can be helpful in this regard.

Copyright can be protected by producing evidence of the production steps. There are various online copyright ‘registration’ services available where a copy of the copyrighted material is submitted and date stamped by the website, providing an independent source of verification of the date of ownership. Advice should always be sought if you have significant IP value vested in copyrighted materials, as this is an area being disputed with growing regularity.

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

Make sure you are not infringing

When you start creating new IP, you should make sure that you are not infringing on anyone else's rights, whether based in the UK or in other countries.

At Oury Clark we can carry out searches on your behalf to consider whether an idea is eligible to be registered and to check that nobody else has registered the same or a similar IP.

You should also monitor the market (and your competitors) to ensure that others have not infringed upon your IP rights. If such infringement arises, then you will need to assess whether to enforce your rights by taking action against the infringing party.

Oury Clark can provide a watching service to assist in monitoring registration in the UK, Europe or globally.