



WHO ?

Kirkpatrick is a team of about forty people consisting of multilingual **Trademark and Patent Attorneys**, corporate lawyers specialized in Intellectual Property Law, and staff, authorized to act before the OPRI, INPI, OBPI, OEB, OHIM and WIPO. Its clients are individuals, PME and multinationals companies as well as public authorities.

WHAT ?

Kirkpatrick builds Intellectual Property strategies, protects, defends and valorises your Patents, Trademarks, Designs, Domain Names and copyrights. Kirkpatrick also drafts and negotiates Intellectual Property agreements such as licensing agreements and assists you in Audit and Due diligence operations.

WHERE ?

Kirkpatrick is located in Brussels, in the heart of Europe, and protects your IP assets on the Belgian, French, Netherlands, Luxemburg and European territories, as well as **worldwide**, either directly or through its international network of partners carefully selected and controlled. We welcome you in our premises located in La Hulpe (Brussels South).

HOW ?

Kirkpatrick's strength is to be close to its clients and to provide them with clear, committed and tailor-made advices at reasonable and transparent fairs.

WHEN ?

Kirkpatrick is the first IP firm founded in Belgium (in 1852). It was also the first firm to be certificated ISO 9001:2000 (in 2004).



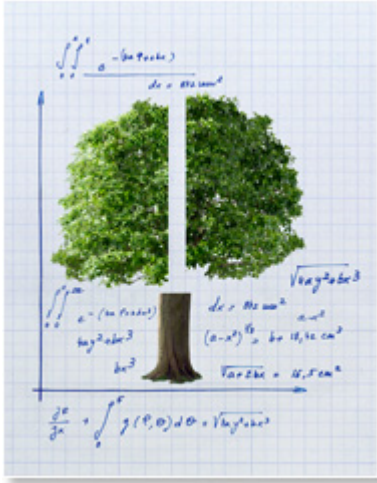
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PATENTS



WHAT ?

An invention, consisting in a product or process, which is new, involves an inventive step, and is susceptible of industrial application regardless of the field: chemical, pharmaceutical, electronic, IT, mechanical, biotechnological, physical etc.

WHY SHOULD YOU OBTAIN A PATENT ?

- In order to have the right to prohibit third parties from manufacturing, using, selling, offering for sale or holding your invention for the aforementioned purposes in the territory concerned
- In order to generate revenues through the granting of licences to third parties
- To stimulate creativity within your company, to increase the value of the results of the researches and developments, to get confidence from investors and clients.

HOW TO PROTECT YOUR INVENTION BY A PATENT ?

- Possible preliminary step (regardless of whether a decision has been made to apply for a patent or not): Examining freedom of exploitation
Is the invention in question free of exploitation or is it covered by a third party's right which is still in force and applicable to the territory in question ?
- First step: Examining patentability
If the invention is free, is it patentable ?
- Second step: Deciding on a strategy
If the invention is patentable, is it preferable to apply for a patent or to opt for "secrecy" ?
If the patent route is chosen, must one apply for a Belgian or European patent or use the "PCT" (Patent Cooperation Treaty) system ? Which territories should be protected? How should further improvements be protected ?
- Third step: Implementing the strategy
Depending on what has been decided, to prosecute the applications with the official authorities in order to obtain the required rights.

“ Going beyond the State of the Art ”

WHAT CAN KIRKPATRICK DO ?

- Advise on patentability and/or freedom of exploitation
- Work out a protection strategy together
- Draw up your patent applications with you
- Represent you through all the procedures from filing patent applications through to the grant of the patents and their maintenance
- Have translations made of your patents
- Monitor your patents or any which have been filed by your competitors, and oppose them if necessary
- Act on your behalf in cases of infringement (proceedings or negotiations)
- Draw up and negotiate agreements on confidentiality and/or evaluation, transfer, licensing, acquisition, R&D, distribution, etc. and carry out the registration procedures
- Financially evaluate your patents

TRADEMARKS



WHAT ?

A name, a logo, a combination of letters and/or numbers, a colour or a combination of colours, a smell, a slogan, a sound, the shape of a product or its packaging, a label or any other symbol used to identify company's products or services, thus distinguishing them from those of the competitors

WHY SHOULD YOU OBTAIN YOUR TRADEMARK ?

- In order to have the exclusive right to use your trademark to identify your products or services in the territory concerned (Benelux, European Union, other countries)
- In order to prohibit third parties from using your trademark or similar sign, for example as a domain name or company name or to identify their products or services even if they are not similar (in some cases)
- In order to generate income through the granting of licences to third parties
 - In order to create an image, an identity around your product or service

HOW SHOULD YOU PROTECT YOUR TRADEMARK ?

- First step: Examining availability
Is the brand or logo in question available or is it already owned by a third party or similar to a third party's sign or logo valid in the territory concerned, for identical or similar products or services ?
- Second step: Deciding on a strategy
If the sign is available, must a brand be registered in the Benelux countries or the European Union and/or is an international registration necessary? Which products or services are to be covered? Should the mark be registered in colour or not? Who will be the holder?
- Third step: Implementing the strategy
Depending on what has been decided, filing the application with the official authorities.

“ Create solutions to suit you ”

WHAT CAN KIRKPATRICK DO ?

- Guide you in your choice of a distinctive, available trademark
- Carry out availability and use searches and analyse them
- Work out a protection strategy together
- Represent you through all the procedures from application to registration of your trademarks and keeping them in force
- Monitor your trademarks and those of your competitors
- Act on your behalf in the event of infringement (proceedings or negotiations)
- Draw up and negotiate agreements for licensing, distribution, franchising and acquisition and carry out the registration procedures
- Optimize your trademark portfolio
- Translate any documents which generally relate to your trademarks

INDUSTRIAL DESIGNS OR DRAWINGS



WHAT ?

The new appearance or aspect of a product or part of a product, mass-produced or hand-crafted, which is conferred in particular by the characteristics of the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. The aspect may be two-dimensional (a design on soft furnishings, a logo) or three-dimensional (the shape of a car, a mobile phone, a couch, a carafe).

WHY SHOULD YOU PROTECT YOUR DESIGN OR DRAWING ?

- In order to have the exclusive right to use the design in the territory concerned (Benelux, European Union, other countries)
- In order to create lines of exclusive products which carry the designer's stamp
- In order to generate income through the granting of licences to third parties
- In order to create an image, an identity around your product or service

HOW SHOULD YOU PROTECT YOUR DESIGN OR DRAWING ?

- First step: Examining availability
Has the drawing or design already been registered or disclosed by a third party and is it already known in specialist circles of the European Economic Area? Does it differ from the known versions in more than just details? Does it give an impression of "deja vu"? Is it a copy, even a partial copy, of an earlier design?
- Second step: Deciding on a strategy
If the drawing or design seems to be available, must a drawing or design be registered in the Benelux countries or the European Union or should one opt for copyright or an unregistered design in the European Union? Which territories should be covered? Which products should be covered? Who is the holder? Should publication be deferred ?
- Third step: Implementing the strategy
Depending on what has been decided, filing the application with the official authorities.

“ Dare thinking out of the box ”

WHAT CAN KIRKPATRICK DO ?

- Carry out availability and use searches and analyse them
- Work out a protection strategy together
- Represent you through all the procedures from application to registration of your drawings or designs and keep them in force
- Draw up a file together to help you prove your creation (definite date), discourage copiers, help to prove cases of pirating
- Act on your behalf in the event of infringement (proceedings or negotiations)
- Draw up and negotiate licensing, distribution agreements etc. and carry out the registration procedures
- Translate any documents which generally relate to your drawings or designs

DOMAIN NAMES AND THE INTERNET



WHY REGISTER YOUR DOMAIN NAME ?

Commercial practices in today's business world are centred on the multi-media enterprise. Given the ever-growing interest in the Internet and e-commerce medium, the protection of your domain name forms an important step into the development and evolution of your business.

The fact is that a domain name figures as a quasi indispensable business card. It is the most direct expression and advertisement of a distinguishing business reference mark (a trade mark, a trade name or some other business identifier) on the Internet.

In order to safeguard your rights and avoid disputes, it is recommended that you register your trade mark, trade name, corporate name or any other business identifier as your domain name. Conversely, it is also possible to arrange for your domain name to be protected as a trade mark.

WHAT IMPACT DOES THE INTERNET EXERT ON YOUR INTELLECTUAL PROPERTY RIGHT ?

In the event it should become apparent that your trade mark has already been registered as a domain name by a third party, you can in that instance (under certain circumstances) contest this and demand the transfer and assignment of the domain name to you. This procedure can be instituted before the qualified arbitration agencies but also before the competent courts, based on rights already previously assigned to you.

In addition, you have to be alert to the use of your intellectual property rights on the Internet. The great success and the ready use of the Internet and the e-commerce channels do, indeed, mean that other parties can gain easier access to your creations (trade marks, drawings, models, etc). Whenever you note that others are making illegitimate use of these, you are unquestionably entitled to act upon this.

“ *Protect your space on the web* ”

WHAT SERVICES CAN KIRKPATRICK PROVIDE FOR YOU ?

- Kirkpatrick will investigate the use of the descriptive trade mark and conduct a thorough analysis of its current use and availability so that you will be in a position to make a well-informed decision about the registration of your domain name.
- Kirkpatrick will offer you legal and commercial advice and collaborate with you in order to work out the most fitting strategy to have your domain name protected.
- Kirkpatrick will keep watch on your domain name or the domain name of a third party in order that you may receive an unambiguous picture of your competitors' rights.
- Kirkpatrick will provide guidance during your negotiations with other parties within the context of the transfer of a domain name and offer advice in your search for solutions.
- Kirkpatrick will represent you during arbitration procedures in the context of dispute settlements regarding domain names.
- In the event there is question of illegitimate use of your intellectual property rights, Kirkpatrick will at your request attempt to reach an amicable settlement on your behalf.

COPYRIGHTS AND RELATED RIGHTS



WHICH TYPE OF WORKS MAY BE PROTECTED BY COPYRIGHT ?

Any literary, scientific and artistic works, in whichever way or form they are expressed, such as books, brochures and other written works, conferences, musical compositions with or without words, choreographic, dramatic, audiovisual, or multimedia works, drawings, paintings, sculptures, architect's plans, photos, works of applied art, databases, computer programs,... expressed in an original form.

BY A RIGHT RELATED TO COPYRIGHT ?

Performances by performing artists (actors, singers, musicians, dancers and other people who put on, sing, recite, declaim, play or perform literary or artistic works), the first sound or film recordings (on a master tape), radio broadcasts.

BY THE « SUI GENERIS » RIGHT OF THE DATABASE PRODUCER ?

Collections of works, data or other independent elements, set out systematically or methodically and individually accessible by electronic means or in another way (for example, a CD Rom containing all business telephone numbers in Belgium, an internet site, etc.)

WHAT ARE THE RIGHTS OF THE COPYRIGHT HOLDER AND THE HOLDER OF A RELATED RIGHT ?

Holders of a copyright or related right may prohibit any copying, altering, adapting or translating of their work as well as any distribution of the work or copies thereof and any communication to the public of the work (including posting on the internet) without their authorisation.

WHAT ARE THE RIGHTS OF THE DATABASE PRODUCER ?

The database producer is entitled to prohibit any extraction and/or reuse of the whole or of a substantial part in quantity or quality of the contents of the database or of non-substantial parts of the database content being extracted and/or reused if data are extracted repeatedly and systematically in a way which is contrary to normal use of the database or detrimental to the producer.

HOW IS PROTECTION OBTAINED ?

Protection arises without procedures or applications, from the sole creation. Evidence thereof must nevertheless be given in case of conflicts.

“ Create the original ”

WHAT CAN KIRKPATRICK DO ?

- Work out together the best strategy for protecting your work
- Draw up with you a reliable file to help you prove your creation or acquisition of creators' rights
- Take the necessary steps to provide undisputable proof of the date of creation
- Take measures to discourage copiers and, if possible, help to prove that copies have been made, or other forms of pirating have taken place
- Draw up and negotiate licensing, distribution, publishing, escrow agreements etc.
- Translate any document relating to your works

LICENCES AND OTHER AGREEMENTS



WHAT IS THE IMPORTANCE OF LICENCES AND OTHER KINDS OF AGREEMENTS WITH REFERENCE TO INTELLECTUAL PROPERTY RIGHTS ?

Within the framework of the development, the protection, and the valorisation of your newly created work, your invention, your trade marks or any other distinguishing signs, you will at various intervals be required to maintain contact with different parties: this will occur in the context of negotiations with a potential partner, in matters of arranging for financing, licences, assignments and transfers, and dealing with conflict management, etc. In most of these instances, contracts are being drawn up

and concluded. As this is an important stage in the progression of your business endeavours, such documents need to be composed with meticulous care.

In order that future conflicts may be avoided, and specifically to safeguard your rights, it is greatly recommended within the context of a partnership to establish the role to be played by each individual party, as well as the management and the property title of the rights and any new developments.

In the event that it should subsequently turn out that one of the parties has failed to remain in compliance with the terms of the agreement in question, or if it should become necessary to resort to further measures, the agreement between the parties forms a fundamental link in the assessment and judgment of the circumstances.

Furthermore, an agreement is also an instrument to help you manage conflicts. Within the context of, for instance, opposition procedures, a large number of these disputes will lend themselves to amicable settlement. This saves the parties not only costs but also avoids the loss of valuable time.

“ *Forseeing to better manage value* ”

WHAT SERVICES CAN KIRKPATRICK PROVIDE FOR YOU ?

- Kirkpatrick will, together with you, work out a protection and valorisation strategy and guide you throughout the various phases within the context of the development, protection, and valorisation of your newly created work, your invention, your trade marks or any other distinguishing signs
- Kirkpatrick will analyse the situation together with you, and work out an agreement, taking into account your needs and the specific circumstances and conditions in casu. We will assist you from the outset (a simple letter of intent) up to the time of the development of commercial partnerships (confirmed agreements).
- Kirkpatrick has extensive experience in the composition of agreements such as confidentiality agreements ; letter of intent ; memorandum of understanding ; licence agreements and franchise agreements ; transfers and assignments ; co-existence agreements ; distribution agreements ; pledge agreements etc
- Kirkpatrick will provide you with guidance in the negotiations with other parties and give advice during your search for solutions.
- Kirkpatrick will ensure the registration of the agreements in question with the competent administration
- In the event of a dispute, and if the other party should renege on its commitments, Kirkpatrick will, at your request, negotiate with the latter on your behalf in order to work out an amicable settlement

IP AUDIT & DUE DILIGENCE



WHAT ?

The intellectual property rights are important assets in a firm and have their own intrinsic value. Every company possesses its own intellectual property rights and every right is subject to specific rules, frequently with implications on various levels (national, Benelux, European, international). The correspondence between the rights that a company believes it possesses and the rights which it holds in reality is often assessed incorrectly, certainly in cases where the company has passed through changes, mergers, and the like.

An audit and/or due diligence process can assist your company to identify and evaluate the intellectual property rights to which she holds title or which she aspires taking over from third parties, as well as establish an Intellectual Property (IP) strategy that has been adapted to the company's general strategy, to work out this strategy further, and eliminate unnecessary costs.

WHY ?

An administrative audit offers the possibility:

- To identify and evaluate the core and the internal cohesion of an intellectual property rights portfolio;
- To recommend and implement measures to restore the cohesion (eliminating double protection, remedying "oversights", changing names and addresses of right holders, registering licences, and so forth);

The strategic audit offers the possibility:

- To evaluate differences between the existing portfolio and the desired portfolio with respect to support of the company's general strategy, to establish a strategy on intellectual property rights which is in line with the general strategy and which relates to both the geographical protection of the rights and the « routes of protection » and to the targeted markets in function of the national-specific features or the management and ownership of the rights;
- To fill in the lacunas in a portfolio of intellectual property rights to have it meet the requirements of the above-mentioned strategy;

The due diligence offers the possibility:

- To check the status and the real content of the intellectual property rights that have been developed within a company;
- To determine the risks of claims by third parties upon these intellectual property rights;
- To evaluate the worth and the potential of the IP portfolio;
- To lay down a basis for negotiations about the price in function of the results realized thanks to the above-mentioned activities

“ Know yourself! ”

LES SERVICES DE KIRKPATRICK

Administrative audit: to conduct searches in the official registers and private databases in order to check upon the current status of the rights; to verify the use of these rights; to review publicity materials, Internet sites as well as documents, licensing contracts, assignment agreements or other agreements; to gather and analyse the data; to draw up a report with recommendations that comb through all aspects of the overview of the company's intellectual property rights, to identify the inconsistencies and propose actions.

Strategic audit: to propose a strategy for the intellectual property rights that is in line with the company's 5-year global strategy; to analyse the existing portfolio of intellectual property rights and identify discrepancies between the actual and the desired situation; to draw up a report with recommendation for actions (additional filings, withdrawals, changing of owner, central management, licensing systems, user guidelines for licensees, renewals, geographic expansions, and so forth).

Due Diligence: to examine the documents and data that are accessible in the « Data Room »; to check out contracts, applications and official certificates; conduct searches in the official registers and private databases to verify the current status of the rights; conduct user verification searches; draw up a report with recommendations concerning the potential and the risks attendant upon the company's portfolio (proprietaryship and the extent of the rights, risks of contestations, validity of the rights, licences, pledging, non-competition requirements, and so forth).

THE PROTECTION OF PHARMACEUTICAL PRODUCTS



WHAT ?

Pharmaceutical products constitute particular entities, as they relate to public health while still representing important and divergent economic interests. Those are subject to a very specific legislation which articulates around three axes:

- The patent system, which gives efficient protection to pharmaceutical products, as long as these are novel and inventive
- The supplementary protection certificate (SPC), which extends the duration of the protection conferred by a patent
- The recognition that a pharmaceutical product is useful for the treatment of orphan diseases or for pediatric usage, which gives certain benefits to the proprietor

WHY ?

- A patent gives the proprietor the right to prohibit third parties from selling, offering for sale, or manufacturing, using or holding your pharmaceutical product for commercial use, in the territory protected by the patent
- A supplementary protection certificate may extend, for a period up to five years, the duration of the protection conferred by a patent for a particular product,
- Pharmaceutical products recognized as useful for pediatric usage may obtain an extension of six months of the corresponding supplementary protection certificate
- Pharmaceutical products intended for the treatment of orphan diseases may obtain a commercial exclusivity reaching up to ten years and more
- These different mechanisms are also useful to generate revenues through the grant of licences to third parties, to stimulate creativity within your company, and to valorise the results of your Research and Development

HOW ?

- Recommended preliminary step: Examining freedom to practice
Is the pharmaceutical product free of exploitation or is it covered by a third party's right which is still in force and applicable to the territory in question ?
- First step: Examining patentability
If the pharmaceutical product is free, is it patentable, i.e. new, inventive and susceptible of industrial application?
- Second step: Deciding on a strategy
If the product is patentable, and depending upon the territories in which a protection is pursued, must one initially apply for a Belgian or European patent or use the international filing system "PCT" (Patent Cooperation Treaty) ? When exactly during the innovation process, is it judicious to file a patent application? Which complementary protections/benefits are available ?
- Third step: Implementing the strategy
Depending on what has been decided, prosecuting the applications before the official authorities in order to obtain and secure the required rights.
- Fourth step: Enforcing your rights
Making sure your rights are known and respected by third parties, and introducing court actions, if necessary

“ Meeting the challenge ”

WHAT CAN KIRKPATRICK DO ?

- Advise on patentability and freedom to practice
- Define a protection strategy together, in the light of the available protection rights
- Draft your patent applications with you
- Represent you through all procedures from filing patent applications to the grant of the patents and their maintenance
- Have translations made of your patents
- Monitor your patents or any which have been filed by your competitors, and oppose them if necessary
- Act on your behalf in cases of infringement (proceedings or negotiations)
- Defend your interests in case of litigation or threat of adverse actions from your competitors
- Draft and negotiate agreements (licensing, assignment, confidentiality, etc.) and take care of the registration procedures
- Financially evaluate your patents and those of your competitors or potential commercial partners
- Advise and give opinion on any questions relating to protection of pharmaceutical products

THE PROTECTION OF PLANT VARIETIES



WHAT ?

Flowers, plants, vegetables, fruits, fruit trees, seeds, bulbs, seedlings, cuttings, or any other plant variety regardless of whether they have been obtained by controlled selection or genetic engineering.

WHY ?

- To have the exclusive right to use the protected plant variety in the concerned territory
- To have the right to prohibit third parties from manufacturing, using, selling, offering for sale or holding your plant variety in the territory protected by the Plant Breeder's Right (PBR)
- To generate revenues through the granting of licences to third parties
- To stimulate creativity within your company, to increase the value of the results of your Research and Development, to get confidence from investors and clients.

HOW ?

- Recommended preliminary step: Examining freedom to practice
Is the plant variety available or is it already owned by a third party in the concerned territory ?
- First step: Examining the conditions necessary to get protection by the Breeder's Right
Does the plant variety fulfil the following conditions: novelty, distinctiveness, uniformity, stability and denomination ?
- Second step: Deciding on a strategy
If the plant variety is available, is it preferable to apply for a Belgian or for a Community Plant Breeder's Right? When exactly during the innovation process, is it judicious to file an application for a Plant Breeder's Right ?
- Third step: Implementing the strategy
Depending on what has been decided, filing the application before the corresponding official authorities and following-up until grant of the required right
- Fourth step: Enforcing your rights
Making sure the rights derived from the Plant Breeder's Right are known and respected by third parties, and introducing court actions, if necessary

“ Supporting your project ”

WHAT CAN KIRKPATRICK DO ?

- Carry out availability and use searches and analyse them
- Advise you through the study of the conditions necessary to get protection by the Plant Breeder's Right
- Define together a protection strategy for your plant variety
- Represent you through all procedures from filing an application to the grant of the Plant Breeder's Right and its maintenance
- Monitor your Plant Breeder's Rights or those which have been filed by or granted to your competitors
- Act on your behalf in cases of infringement (proceedings or negotiations)
- Defend your interests in case of litigation or threat of adverse actions from your competitors
- Draft and negotiate agreements (licensing, assignment, confidentiality, etc.) and take care of the registration procedures

ANTI-COUNTERFEITING



WHAT ?

The intellectual property rights are effective instruments to serve the company possessing title to them by reason of the exclusive rights they bestow upon the holder. It does not, however, suffice to merely be granted these rights; it also is necessary to defend them against third-party counterfeiting acts, the infringements upon them must be halted, and claim the payment of an indemnity for damages suffered as a result. There exists a number of different legal and extra-legal ways to do this, specifically preventive measures designed to defend your intellectual property rights.

WHY ?

- In order to protect the intrinsic value of the intellectual property rights and to avoid that they be “diluted”;
- In order to safeguard the exclusive character of these rights and of the proceeds and incomes deriving from them;
- In order to protect your network of distributors and licensees.

HOW ?

- By identifying the rights of your products in the correct manner (e.g., by the use of ®; ©, patent pending, TM)
- By safeguarding your patents, trade marks, and models within their most important markets
- By notifying counterfeiters and by placing them in default in order to prevent any possible infringement upon your rights
- By contesting applications for trade marks or patents that could cause prejudice to your company's interests
- By lodging a request for advance intervention with the customs department in order to counter illegal importation
- By drawing up a descriptive report on the suspected imitated goods and/or services
- By prosecuting counterfeiters (in interlocutory proceedings, the issuance of a cease-and-desist order, the issuing of a claim on the grounds of counterfeiting, the lodging of a claim for indemnification for loss and damage suffered, the institution of criminal proceedings)
- By initiating an arbitration procedure in order to reclaim a domain name which has been illegally registered by a third party

“Protecting genuine work is valorizing years of experience”

WHAT SERVICES CAN KIRKPATRICK PROVIDE FOR YOU ?

- Keep watch over your trade marks, trade names, patents, and models and draw up a well-reasoned report that lists the possible risks attached
- Draft default notices and negotiate during transactions
- Act as your representative, enter supporting arguments, and negotiate within the reference framework of opposition and revocation proceedings on the issues of trade marks and patents
- Act as an expert assessor appointed by the courts within the context of a descriptive report initiated by legal counsel
- Organize customs surveillance over your intellectual property rights at the borders of the European Union, assume the management of the attachments, ensure the destruction of counterfeiting goods, identify the counterfeiters
- Lodge complaints against parties guilty of infringement
- Refer you to the best law firms that are specialized in issues of intellectual property rights
- Represent you and enter arguments during the arbitration procedures concerning domain names
- Work out, jointly with you, the optimum strategy in the defence of your intellectual property rights