

Intellectual Property, The Full Article



Many clients struggle with the question of what they need to do to protect intellectual property (IP). To provide some useful insights we have created this article, including tips, links, and example documents.

Disclaimer:

Intellectual Property legislation is complex. There are differences between jurisdictions and changes are common. If you thinking to protect your idea, we advise contacting the local government body and an experienced, qualified IP attorney.

Our intellectual property advice in short:

- Do not publish your work to the public and use a Non-Disclosure Agreement (NDA) before you share information.
- Document the development and external communications.
- In contracts, make sure you will become the owner of the created IP.
- Register your trademark and design internationally.
- Postpone filing for a utility patent to the latest possible moment.
- For China, use an NNN agreement and refile your trademark and design in China.

What are intellectual property rights?

Intellectual property (IP) is the result of creativity: creations of the mind, such as inventions; literary and artistic works; designs; symbols, names, and images used in commerce. This IP is protected by law through, for example, patents, copyright, and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. You can buy, sell, and license IP. IP Rights can enable their owner to act under civil law to stop others from replicating, using, importing, or selling their creation. For more info see the IP organizations around the globe [US](#), [EU](#), [China](#), [World](#).

If you do nothing, you already have some rights

In Europe and America, there are automatic rights as soon as a qualifying work is created. As such, there is no formal registration and no fees to pay. The downside is that these rights can be more difficult to enforce. In the other areas of the world IP rights are not always treated in the same way. The two rights you automatically have are:

Copyright

[Copyright](#) gives its owner the right to exclusively control and exploit their creative works. It protects works of literature, art, music, dramatic works, sound recordings, photographs, software, databases, films and radio, and television broadcasts as well as original and creative product design. Copyright protects the expression of, not the idea behind a work. For example, the text and illustrations in a manual can be protected, but not the ideas expressed in it. Copyright grants the owner exclusive rights to authorize or prohibit certain uses of their works. This includes; copying the work, distributing copies to the public, adapting the work, communicating the work to the public (for example, by broadcasting it or putting it on the internet), renting/lending copies to the public, and performing the work in public.

Unregistered design rights

You get automatic design rights in Europe ([Unregistered Community Designs](#)). However, you must prove intentional misuse and damage and they offer limited protection and can be difficult to enforce. They also have a much shorter duration.

4. Simple ways to protect your IP



1. Do not publish/show it to the public

Patent rights can only be claimed if they are not known to the general public so consider filing for a design or Utility patent before you put it on your website or show it on a fair. You also should protect your rights by using contracts. First, you can document and use an NDA (non-disclosure agreement) in your contracts with external potential partners. The other way is making sure no-one has all the information to reproduce your product.

2. Non Disclosure Agreement (NDA)

Before you share information, ask your potential partner to sign a Non-Disclosure Agreement. This prohibits them from sharing your intellectual property or using it to manufacture it for themselves. The information shared under NDA is not considered "public". Note: Most big companies do not allow their employees to sign NDA's. They are too risky for them because other departments might be working on the same topic. Please find NDA examples [here](#).

3. Document the development and external communication

When it comes to a dispute, the evidence is key, so it makes sense to document the development. Make sure to date and archive the 3D files, documents, and prototypes. After an important meeting send an email with the minutes of the meeting.

4. Add Intellectual Property allocation in all contracts

With all the contracts you sign with your personnel, contractors, design agencies, and production partners, make sure to include confidentiality clauses. And arrange clearly who will own the intellectual property rights from the work you paid them to do. When you deal with production partners, make sure that you know if they will use their own or somebody else's IP. This often happens when production partners also help develop your product. If this is the case you may be forced to manufacture the product with them, and you cannot produce it anywhere else. This kind of lock-in could allow them to increase the prices.

In software development, code is often reused from previous projects and the use of open-source code is common. The software partner might be willing to give you a free and unlimited license of the code they created for you, but they may also ask for a fee if they cannot use this code and knowledge again.

Additional ways to protect your IP

Design patent / registration

A [design patent](#) protects the appearance or 'look' of a product, provided that it is new and has a unique character. The design must have a special shape, configuration, pattern or ornamentation to be registered. Design patents protect the visual appearance of a product whereas a technical patent protects a technical product and how it functions. Registering your design prevents others from using it without your permission. Your application needs to contain an image of the product or the packaging you wish to protect. There are fees for registering a design, and the process takes around four weeks provided your design meets the above criteria. You can register them online [here](#) and you can find an explanation on how to do it [here](#). To register one [design in the European Union](#), the total cost will be +/- 350 Euro.

Trademark registration

A [trademark](#) can be a word, phrase, or logo and can be registered for a fee by the appropriate Intellectual Property Office. Registration is required to take legal action against anyone who uses your trademark without your permission. Registered trademarks can be optionally be identified by the ® symbol. Owning the domain name does not give you more rights but this will help to protect it. You can register them online here. The total cost of registering a trademark for one class of goods in the [European Union](#) will be +/- 850 Euro.

Utility patent

You can apply for a [patent](#) if you have created a technical innovation that is inventive, new, and industrially applicable. It will make it possible to take legal action against anyone who makes, uses, sells, imports, etc, your invention without your permission, in the countries where you have the patent. Costs for [European patents](#) are around 15.000 Euro to write and apply and between 500-1500 Euro a year to maintain.

Good things to know about patents:

- A patent has more commercial value if the patented solution is better, cheaper, sells in large quantities, and prevents the competition to make a similar product.
- You need to take action when another party infringes on your patent. This can be costly because you quickly need a specialized lawyer.
- Court cases are expensive and risky. The opposition will try to find proof of prior art = similar technology in the public domain before your patent date. Your claim might not be upheld and if you lose the court case, you have to pay for all the costs. Often this is the advantage of the larger companies.
- Timing is important. We advise you to wait as long as possible and use NDA's in the meantime. This is important because you will need as much time as possible to prove its value. Otherwise, you (or an investor) will not pay the costs and you will lose the patent.

Provisional patent

A [provisional patent](#) is possible in the US. The application is relatively cheap (\$199 US Dollar). In Europe, an application for a local county has a similar cost to file. But please note that both the US provisional patent application and the [European priority application](#) should be drafted with the utmost care. We advise contacting a patent attorney to avoid incomplete or sloppy applications that will be useless. They will charge between 3000 and 6000 Euro to write a simple patent application. If you are looking for low budget support in the US, you can use [these](#).

Dealing with China



The [Chinese IPR legal system](#) is different from the western world and you need to take this into account. An NDA has little value in China, and it is important to use the NNN (non-disclosure, non-use, non-circumvention) format that a Chinese court will recognize and it is written in Chinese, under Chinese jurisdiction. Find a paid example of an NNN [here](#).

[Chinese trademark](#): It is important to register your trademark (name and logo) in China because a copycat can do this as well (and the first applicant gets it). If your production partner does this as a security measure, they can create big problems.

There is also a [Chinese design patent](#) You file these through agents like [these](#).

Another common way is to ensure nobody has all the information, and produce the different components by different partners, so you are the only one that has all the information.

Our work

When we (SLIMDESIGN) create designs and innovations for our clients, we hand over the Intellectual Property after all invoices are paid. We support our clients on this topic and have lawyers and patent experts that we often work with. In our contract, we have the disclaimer that although we can guarantee that the work was created by us and we did not copy anybody, we cannot guarantee that we are the only one with this idea or solution. If needed we can involve a patent expert with the specific expertise needed to check the prior art, but even they can't access recent unpublished ideas. This being said, we have not had a problem with our work in the 25 years we have been designing products.

In conclusion

There are a lot of simple good practices to protect your IP. Using NDA's is an important one. Design and Trademark Registrations are relatively cheap. A provisional patent can help attract investors, but it may be best to wait until the last possible moment to apply. Upgrading it to a real utility patent is only useful if it blocks others from using the invention that makes real money.

International IP law is complex, and it is wise to involve a professional when you have specific questions. We have good relations with [Arnout Gieske](#), a Dutch IP attorney who also helped us to write this article.

Free downloads

Non-Disclosure Agreement examples

Need support?

If you are thinking about bringing your idea to life, don't hesitate [to contact us](#). We offer a [free online consultation](#) where we can support you in the way that best suits your needs.