

Welcome to our online training session:

Introduction to Intellectual Property and Intellectual Property Rights

European IPR Helpdesk,
September 3, 2014



Get your ticket to innovation.

Today's speaker

Roberto d'Erme

- Business-oriented lawyer specialised in intellectual property rights
- Counsel on intangible assets and innovation management for SMEs and research centres
- Training expert on IP management and technology transfer





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Road Map

- *Intellectual Property & Intellectual Property Rights*
- *The value of IP*
- *IP protection tools & costs of IP rights*
- *Unlocking the IP asset value*
- *IP monitoring & searches*
- *Infringement, counterfeiting & IP enforcement*
- *Where to get more information*





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*Intellectual Property &
Intellectual Property Rights*

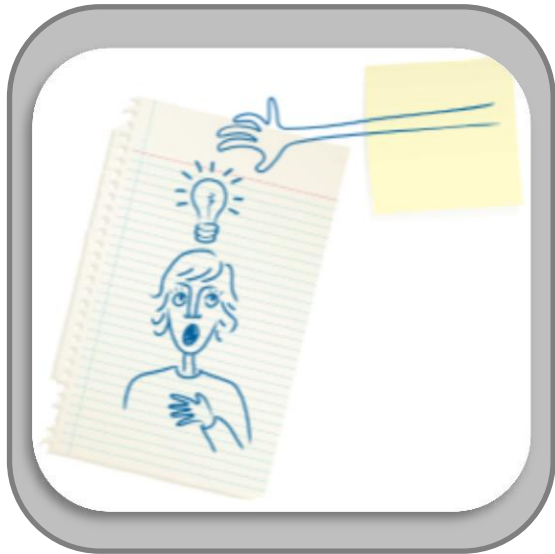


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What is meant by "intellectual property" and "intellectual property rights"?

Intellectual Property

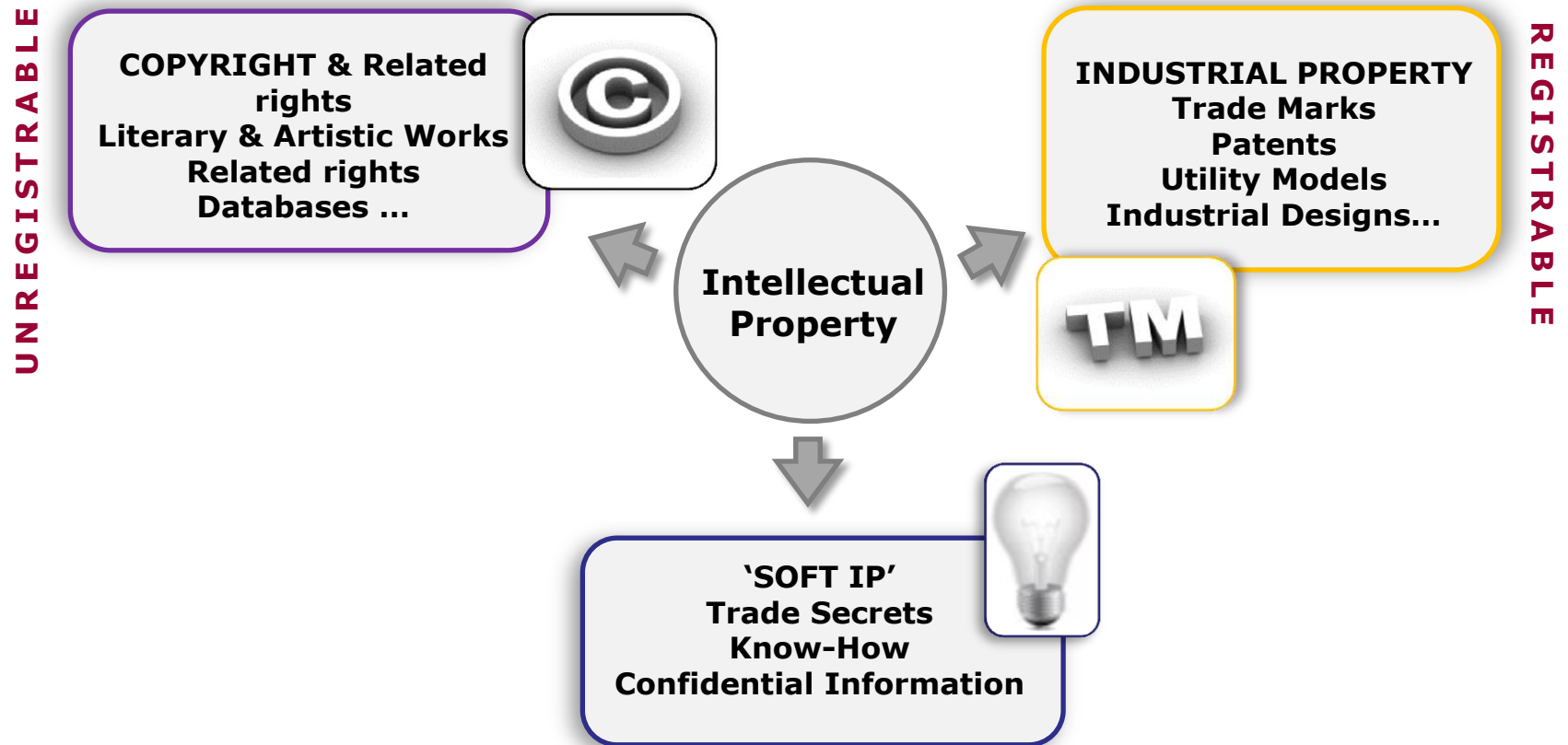


Such creations
have an intangible
nature

Results of creative
efforts from the
human intellect

**Intellectual
Property**

Intellectual Property





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*The importance of Intellectual
Property*



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Why is Intellectual Property relevant to and how does it affect your business/activity?

Why is Intellectual Property relevant?

Regardless of what product your organisation makes or what service it provides: **YOU CREATE IP!**

Website? List of customers?
Innovative methods and
processes? Inventions?
Brands?

Intellectual Property is present in almost every product and/or service that we use in our daily life.

For example:

... *CD/DVD player*



... *smart phone*



... *VoIP services*



... *e-commerce*



Intellectual Property needs action!

Intellectual Property Rights, as **exclusive rights**, allow your organisation to impede competitors to use your intangible assets!

BUT, Intellectual Property Rights require **action**:
ownership \neq protection



Therefore it is vital that your **Intellectual Property asset** be:

- ✓ *Protected*
- ✓ *Managed*
- ✓ *Enforced*



Thus, reaping the full commercial benefit from its ownership.



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*How can Intellectual Property
enhance the value of your
organisation?*

Intellectual Property value

SMEs

- **Affect pricing of services/products:** IP gives an advantage in the market in the form of exclusivity
- **Raising funds:** Good IP portfolio enhances the value of your organisation in the eyes of investors and financing institutions
- **Market access:** Provides new ways to enter markets: through licensing, distribution agreements

Research Organisations

- **Make research results more attractive to business:** better convert knowledge into socioeconomic benefits
- Generate additional revenues for PROs
- Increase access to and sharing of research results
- Engender possibilities for collaboration in research

The impact of Intellectual Property

Intellectual Property Rights give advantage in the market, which is responsible for job creation with higher wages and trade:

IPR-intensive industries have generated in the EU during the period 2008-2010:

- *26% of all jobs;*
- *39% of total economic activity (GDP);*
- *wage premium of more than 40%.*

Table 3: Contribution of IPR-intensive industries to GDP

IPR-intensive industries	Value Added (GDP) (€ million)	Share of total EU GDP
Trade mark-intensive	4.163.527	33,9%
Design-intensive	1.569.565	12,8%
Patent-intensive	1.704.485	13,9%
Copyright-intensive	509.859	4,2%
GI-intensive	16.134	0,1%
All IPR-intensive	4.735.262	38,6%
Total EU GDP	12.278.744	

In "**Intellectual Property Rights intensive industries: Contribution to economic performance and employment in Europe**", a joint project between the European Patent Office and the Office for Harmonization in the Internal Market.



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*Intellectual Property protection
tools & costs*



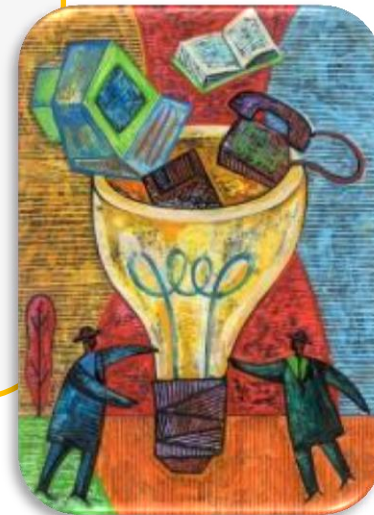
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*Which are the Intellectual
Property protection tools
available?*

Industrial Property

- **Patents** and **utility models**: inventions
- **Industrial designs**: innovative designs
- **Trade Marks**: brands
- And other rights (such as Geographical Indications), but not covered on this module



Patent

What is a patent?

It is a title providing the *inventor* and/or the *applicant* with the **exclusive right** to prevent others from possessing, using, selling, manufacturing and importing the patented **invention** or offering to do any of these things within a territory.

What can be patented?

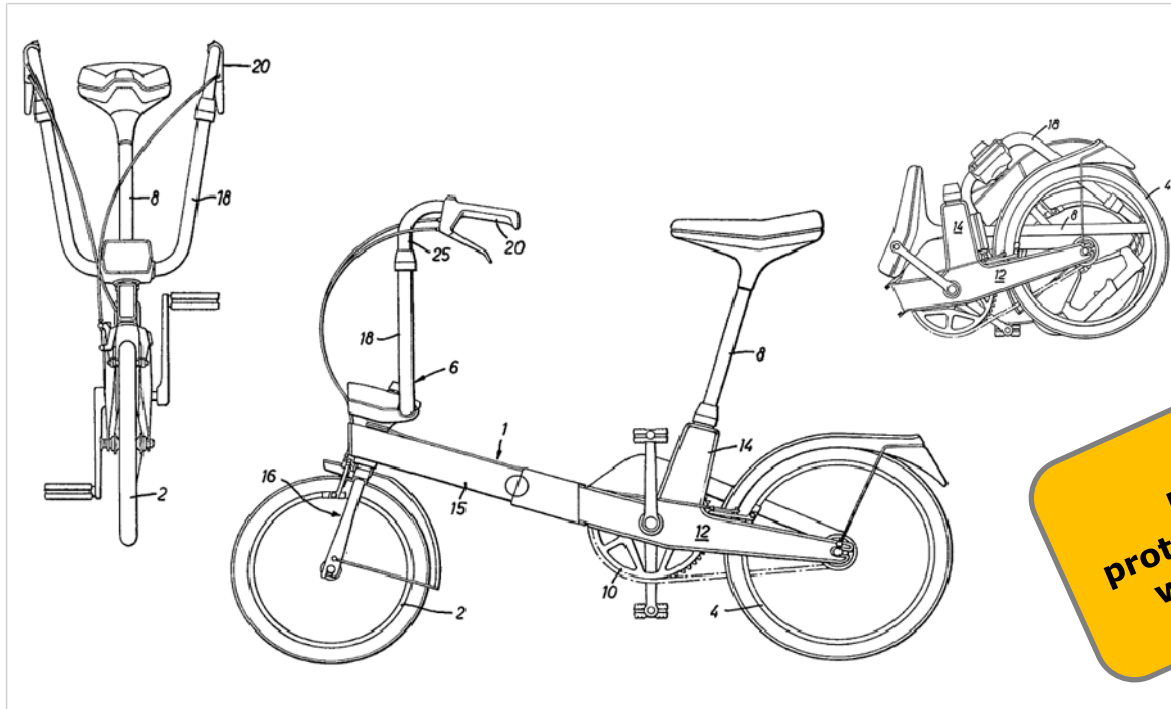
Patents maybe granted for any invention concerned with the *functional* and *technical* aspects of *products* and *processes*. To qualify for patent protection the invention must fulfil the so-called **conditions of patentability**:

- *Novelty*
- *Inventive step (non-obviousness)*
- *Industrial Applicability (utility)*
- *Patentable subject matter*



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Patent



Patent Registration

What are my options?

**Territorial
nature of IP!**

NATIONAL PATENT

In general, an application filed before your National Patent Office (NPO) must be accompanied by:

- a specification containing a detailed description of the invention,
- one or more claims,
- any drawings referred to in the description or claims and an abstract
- the required filing fee.

EUROPEAN PATENT

One single application, in one official language may be filed:

- at your NPO, or
- at European Patent Office (EPO).

EPO grants patents having the effect of a national patent in designated countries (max. 38). You may decide to maintain it in force in some or all of them.

INTERNATIONAL REGISTRATION

By filing an international application, patent protection can be obtained in each designated states between 133 worldwide. PCT applications may be submitted:

- to your NPO,
- to the EPO, or
- to the WIPO.

The Unitary patent

= European Patent with unitary effect

1. Granted by the **European Patent Office (EPO)**
2. Unitary effect is given for the **entire territory** of the EU member states who participate in the unitary patent scheme (not all EU countries!)
3. Not yet in force

The Unitary patent

Main advantage for applicants:

Reduction of costs

- **no translation costs after transactional period (12 years);**
- during transactional period it is foreseen a compensation scheme for applications from SMEs and public research organisations.

Utility Model: another option for protection of inventions

What is a utility model?

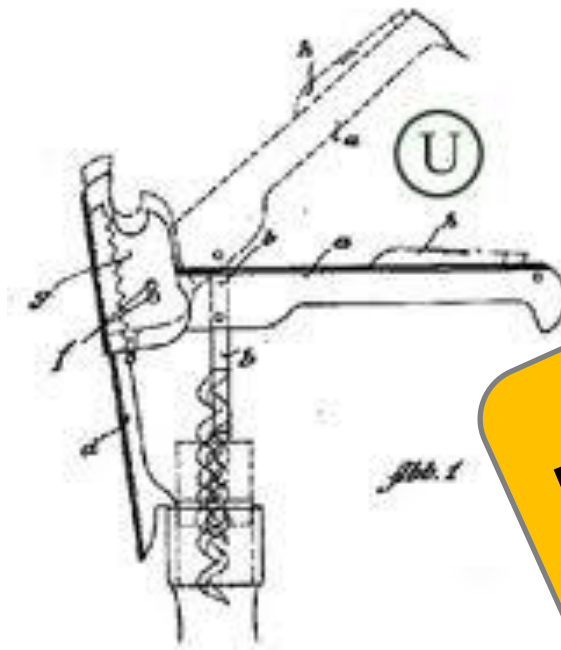
It is a title of protection for certain **inventions**, such as inventions in the mechanical field. Utility models are usually sought for technically less complex inventions or for inventions that have a short commercial life.

In the EU only **17 countries** provide registration process. The latter is significantly **simpler and faster**, taking - on average - six months. Finally, utility models are much **cheaper** to obtain and to maintain.



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Utility Model



**Duration of protection:
between 6 & 10 years,
without renewal**

Industrial Design

What is an industrial design?

It refers to the right granted to protect the **original, ornamental and non-functional** features of a product that result from design activity. The right concerns merely the appearance (the 'design') of a product, not the product itself.

What can be protected?

It maybe granted for visual features of a product (i.e. shape, ornamentation, pattern, configuration, etc.). Designs that are dictated solely by the article's function are excluded from protection.

To qualify for protection the design must show:

- *Novelty*
- *Individual character*

Industrial Design



**Duration of
protection: up to 25
years, without
renewal**

Design Registration

How to register a design?

NATIONAL DESIGN

In general it involves a straightforward process. An application must be filed before your National Intellectual Property Office (NIPO), accompanied by any representation of the design suitable for reproduction.

COMMUNITY DESIGN

One single application, in one official language may be filed at the Office for the Harmonisation of the Internal Market (OHIM) in Alicante – Spain.

INTERNATIONAL REGISTRATION

By filing an international application, to WIPO in Geneva you may be able to obtain the protection in several states that are members of The Hague system.

Trade Mark

What is a trade mark (TM)?

It is a **sign**, or a combination of signs, used in the trade to identify and distinguish the goods or services of one enterprise from those of another. A trade mark owner is granted exclusive rights to:

- *use the mark in relation to the good or services with respect to which it is registered*
- *prevent others from using a substantially identical or deceptively similar mark in relation to the goods or services registered by the mark.*

What can be protected as trade mark?

Words, letters, numerals, pictures, shapes and colours, as well as any combination of the above.

It is now allowed for the registration of less traditional forms of trade mark, such as three-dimensional signs (like the Coca-Cola bottle), audible signs (sounds, Nokia jingle), or olfactory signs (smells).

Trade Mark Requirements

Which are the requirements to seek registration?

In order for a sign to be eligible for a trade mark protection it must:

- *Be distinctive*
- *Not be deceptive*
- *Not be descriptive*
- *Not belong to the exclusions provided by the law*
- *Be in conformity with public order and morality.*

**Duration of protection:
10 years, renewable
indefinitely**

Trade Mark Registration

How to register a trade mark?

NATIONAL TM

Applications must be filed before your National TM Office accompanied by:

- a clear reproduction of the mark including any colours, forms, or three-dimensional features,
- list of goods or services to which the mark would apply.

Registrations can be cancelled if the holder is not using a mark.

COMMUNITY TM

One single application, in one official language may be filed at the Office for the Harmonisation of the Internal Market (OHIM) in Alicante – Spain.

INTERNATIONAL

By filing an international application, TM protection can be obtained in each states member of the Madrid system, designated by the applicant.

Applications may be submitted:

- to your National trademark Office
- to the OHIM
- to the WIPO.

Copyright

- **Does not protect the ideas themselves but only the concrete form of expression of ideas**
- **The creativity protected is the originality of the authored work!**



Copyright

What are copyright and related rights?

Copyright relates to **literary and artistic creations**, such as poems, novels, music and paintings, but also includes cinematographic works, architectural works and many others.

Related rights are related to the protection of works of authorship under copyright. Their purpose is to protect the legal interests of certain persons and legal entities who contribute to making works available to the public such as performing artists, producers of phonograms, broadcasters, and the like.

What are the rights granted?

Copyright owners can prohibit or authorise that their works be:

- *copied or reproduced (eg printed publications or sound recordings)*
- *distributed to the public*
- *performed in public*
- *translated into other languages*
- *adapted, such as novel into screenplay...*

Copyright

Do I need to apply for copyright protection?

- No formal registration process is required
- Copyright **protection arises automatically** on creation of the work, provided it is original.
- The term of copyright depends on the type of work that is protected, when it was made and whether it was published.

Generally,
protection lasts
for 70 years after
the death of the
creator





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What soft IP stand for?

Confidential business information

No specific definition

“Soft IP” are intellectual assets which are not included in industrial property or in literary and artistic works, but have an important value for organisations. Usually, refers to know-how, trade secret, confidential information

Protection of Soft IP

- Are not protected by registration
- Fall under the category of intangible rights – associated with other IPR
- Free of charge
- Do not involve long or complex registration-processes , BUT require internal management



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What are the costs of IP rights?

Costs of IPR

Approximately the costs of the different IPR are as follows:

- **Patent:**
 - *National:* estimated examination and delivery between 20 € (Estonia) and 900 € (Finland)
 - *European:* estimated examination and delivery 5.100 € (7 countries or more)
- **Trade mark:**
 - *National:* estimated examination and delivery between 11 € (Estonia) and 440 € (Italy)
 - *European:* estimated examination and delivery 900 €
- **Industrial design:**
 - *National:* estimated examination and delivery between 6.50 € (Estonia) and 430 € (Finland)
 - *European:* estimated examination and delivery 350 €





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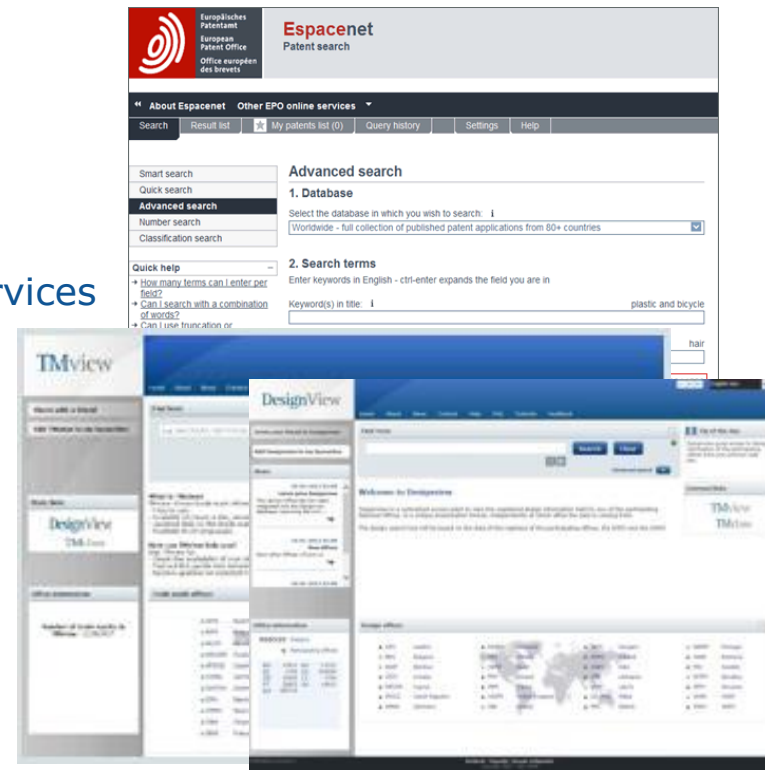
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IP monitoring & searches

IP Monitoring & Searches

Regularly searching IP databases and other resources is important in order to:

- check novelty
- check availability of trade mark and design
- check priority of competing products and services
- have a look on your competitors' products and services
- check expiration date of other IPRs
- carry on a market study
- make sure you do not infringe third party's rights
- detect third parties' alleged infringements





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*Infringement, counterfeiting &
IPR enforcement*

Infringement & Counterfeiting

The term *counterfeit* describes 'fake goods' and is associated to *trade marks* and *copyright*, where the term also refers to *piracy*. As for *patents*, we talk about *infringement*.

The *common feature* of all these cases is the *unlawful* and *unauthorised use* of intellectual creations (reproduction, commercial exploitation, licensing, copy, reprography etc.).

If you are using intellectual property that belongs to others, you should consider buying it or acquiring the rights to use it by taking a licence in order to avoid a dispute and consequent expensive litigation.

Enforcement

Letter of demand

Letter sent to a person , whom you believe is infringing your IP rights. The letter will advise such a person that court action may be taken if the infringing activities do not stop within a certain period of time.

ADR

Mediation and arbitration are two forms of ADR where a neutral independent third party is designated to solve the quarrel. Parties may agree in advance to resolve any disputes by ADR before commencing any court action (e.g. into a contract), or a court may order the parties to pursue a specific form of ADR.

Customs notice

Customs notice may be lodged with National Customs to protect pirated or unauthorised importation of goods. Customs has the power to seize infringing goods that are imported into the concerned country.

Civil actions

You can enforce the rights by filing a lawsuit for infringement in a civil court. Here you can obtain an "injunction" against the infringer which means they will have to stop. You may also get compensation – this could be in the form of damages according to any detriment that has been caused to your business or it may be possible to have the profits made by the infringer paid over to you.



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Further information

EU IPR Helpdesk Ambassador Scheme

Network of IP experts appointed as “**ambassadors**” of the EU IPR Helpdesk to advise users on IP matters at local level across Europe

Find the ambassador in your country at <http://www.iprhelphdesk.eu/node/1911>





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Other IPR Helpdesks



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Thank you.

We look forward to getting in touch with you!

For questions on this webinar, please contact:
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