

Intellectual Property

Budding innovators can learn how to make the most of their ideas and protect themselves from counterfeiters

Expert knowledge means success



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Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

A web site that offers the UK's innovators a helping hand was launched in November 2002 by the Government. The web site address is: www.ipo.gov.uk

The site, which is hosted by the UK Intellectual Property Office (IPO)¹, provides a comprehensive resource for businesses and inventors, with information on copyrights, trade marks, patents and designs. Users will be able to find answers to frequently asked questions on Intellectual Property (IP), view the latest news and link to other IP-related sites.

The site will also help people with concerns about using the property of others, for example by signposting them to the correct place to obtain a licence. There is information for both people with only little knowledge of IP as well as those who are more experienced users.

Invention and creativity have a vital role to play in ensuring the continuing competitiveness of British industry. The Government says that it is keen to help innovation by providing the appropriate tools for businesses to understand and make the most of their intellectual property rights.

What is Intellectual Property?

IP is often the key asset of a technology-driven organisation. It's intangible property - that is property created intellectually by the mind. Like tangible real or personal property, the law recognises the right to own and to control IP. It allows people to own their creativity and innovation in the same way that they can own physical property. The owner of IP can control and be rewarded for its use, and this encourages further innovation and creativity to the benefit of us all.

In some cases, IP gives rise to protection for ideas but in other areas there will have to be more elaboration of an idea before protection can arise. It will often not be possible to protect IP and gain IP rights (or IPRs) unless they have been applied for and granted, but some IP protection such as copyright arises automatically, without any registration, as soon as there is a record in some form of what has been created.

Patents, Designs, Trade Marks and Copyright

Perhaps the most fundamental question people ask on this subject is: "what is the difference between patents, designs, trade marks and copyright". At the most basic level:

- Patents are concerned with the technical and functional aspects of products and processes. Patents are concerned with inventions - new and improved products and processes that are capable of industrial application;
- Designs relate to the visual appearance of products. They are concerned with brand identity - of goods and services - allowing distinctions to be made between different traders;
- Trade Marks identify the products or services of particular traders - these are designs for shape and appearance - either functional or aesthetically pleasing articles or surface decoration, pattern or ornament;
- Copyright arises from the creation of certain categories of original work - literary and artistic material, music, films, sound recordings and broadcasts, including software and multimedia.

Intellectual property

You may have heard the term 'intellectual property' used generally to cover all these subjects and indeed you will find this term, or the abbreviation 'IP', used quite often. This is because all these subjects relate to assets that can be traded (bought and sold, hired or rented), but these assets are intangible as opposed to the physical assets such as buildings, machinery or stock.



New online patents publication service

A new patents publication service is available from 18 June 2007 on the UK Intellectual Property Office (UK-IPO) website to allow users to view and download patents on their day of publication. This new service also provides users with the facility to download all patents published from 1 January 2007.

Further information is available at: www.ipo.gov.uk.

They may be intangible, but they can be very valuable since they potentially provide a system of protection for the original material (and in the case of trade marks the promotional activity) created by an individual or an organisation.

The term 'intellectual property' is also used to cover secret information, such as know how, trade secrets or confidential information, for which no formal system of protection exists.

The UK Intellectual Property Office

The United Kingdom Intellectual Property Office (an operating name of the Patent Office) is the official body for the granting of patents and for the registration of designs and trade marks in the UK (through its Designs Registry and Trade Marks Registry) and is involved with domestic and international policy on all forms of intellectual property, including copyright, design right and other unregistered rights (through its Policy Directorates).

The IPO Central Enquiry Unit is able to give advice about taking out a patent and protecting other forms of intellectual property. It can be contacted on 08459 500505. There is also an extensive range of free literature available to individuals and small firms.

Institute of Patentees and Inventors

Advice and help for the lone inventor is also available from the Institute of Patentees and Inventors – this is an association that charges £70 for individual membership and from £110 for company membership per annum plus a joining fee of £15 with a limited service available to non-members. They can be contacted on 0871 226 2091. Their website is at: www.invent.org.uk

Protection

To understand exactly what can be protected by IP visit: www.ipa.gov.uk/protect.htm. Often, more than one type of IP may apply to the same creation.

New fast-track procedure for approving international patent applications

On 28 May 2010, a new fast-track procedure for approving international patent applications that will cut waiting times by more than a year was launched. The Intellectual Property Office (IPO) introduced the scheme to help tackle the worldwide backlog of patent applications, which costs the global economy an estimated £7.6 billion a year. The UK is among the first to introduce such a fast-track scheme.

The new procedure will apply to applications filed under the international Patent Cooperation Treaty (PCT). The UK is one of 142 countries which have signed up to the Treaty. Under the PCT:

- applications undergo a preliminary assessment of their patentability before being passed to individual nations to consider the details. The Treaty aims to stop work being duplicated when an applicant wants patent protection for the same invention in several countries;
- now businesses and individuals can apply for their application to be dealt with under the PCT (UK) Fast-Track when it has been approved in the international phase;
- applicants requesting the fast-track service will receive an examination report within two months. Under current timescales this could take more than 18 months;
- the examination report will either approve the application or detail any changes needed before a UK patent can be granted. Any substantial issues will have been addressed in the international phase.

The UK is among the first to introduce a fast-track procedure. It is hoped other countries will establish similar schemes to encourage applicants to make full use of the international phase. This will help deal with the global backlog of patent applications.

The new scheme will work in the same way as the IPO's existing fast-track procedures, which include the 'Green Channel' for inventions with environmental benefits. Source: BIS press release 28/5/2010 and www.ipa.gov.uk/about/press/press-release/press-release-2010/press-release-20100528.htm

Updated Patents Legislation

The Patents Act 2004 was granted Royal Assent on 22 July 2004. It aims to:

- bring the UK patents system into line with the revised European Patent Convention (EPC); and
- introduce some measures designed to assist in the enforcement of patent rights and in the resolution of patent disputes between patent proprietors and third parties. (The Act adds new protection for alleged infringers to encourage out-of-court settlement of disputes whilst still deterring patent owners from making unreasonable allegations of infringement.)

Many of the provisions of the Act are procedural and are of particular interest to unlikely to be of interest to patent agents.

The legislation and amendments can be viewed at:

- Patents Act 2004 <http://www.legislation.gov.uk/ukpga/2004/16/contents>
- The Patents Act 2004 (Commencement No. 2 and Consequential, etc. and Transitional Provisions) Order 2004 <http://www.legislation.gov.uk/uksi/2004/3205/contents/made>
- The Patents Act 1977 (Amendment) Regulations 2011: <http://www.legislation.gov.uk/uksi/2011/2059/contents/made>

Patents explained

A patent gives an inventor the right for a limited period to stop others from making, using or selling an invention without the permission of the inventor. Patents are generally concerned with functional and technical aspects of products and processes, and must fulfil specific conditions to be granted. Most patents are for incremental improvements in known technology - evolution rather than revolution. The technology does not have to be complex.

Patent rights are territorial; a UK patent does not give rights outside of the UK. Patent rights last for up to 20 years in the UK. However, if you have a granted patent, you must renew it every year after the 5th year to qualify for up to 20 years protection.

It is not always clear who owns an invention, and there are potential pitfalls with patents. Despite these, a patent can be of use to an inventor, and can also benefit other people. You can arrange, through means of a licence or sale to use another inventor's patent. Additionally, large amounts of information can be learnt from other people's patents.

Depending on where you wish your patent to be in effect, you must apply to the appropriate body. In the UK this is The UK Intellectual Property Office². Alternatively, a Patent Agent can apply on your behalf.

The Chartered Institute of Patent Agents³ can supply contact information about chartered patent agents in your area or who have specific specialisation.

The cost for registration of a patent is covered on the IPO website at:
<http://www.ipo.gov.uk/types/patent/p-applying/p-cost.htm>

A typical patent application takes 2 to 3 years to grant; there is a maximum time limit of 4½ years from the application's earliest date.

Designs explained

A design refers to the features of shape, configuration, pattern or ornament which can be judged by the eye in a finished manufactured article or set of articles. In the UK, designs are protected by 3 legal rights:

- Registered designs;
- Unregistered design right;
- Artistic copyright.

Design right is an intellectual property right which applies to original, non-commonplace designs of the shape or configuration of products. Design right is not a monopoly right but a right to prevent copying.

Design registration gives the owner, a monopoly on his or her product, i.e. the right for a limited period to stop others from making, using or selling the product without their permission and is additional to any design right or copyright protection that may exist automatically in the design.

The standard fee to register a design is dependent on when the designer requires their design or designs published and registered.

The cost for registration of a design is covered on the IPO website at:
<http://www.ipo.gov.uk/d-cost.htm>

A typical design registration takes up to 3 months if the IPO does not object to or question the application.

Trade Marks explained

A trade mark is any sign which can distinguish the goods and services of one trader from those of another. It identifies a product and distinguishes it from other products so as to identify the source of the product. One way to think of a trade mark is as a property right that protects consumers by ensuring they aren't confused as to the maker or provider of a product or service.

A sign includes words, logos, colours, slogans, three-dimensional shapes and sometimes sounds and gestures.

A trade mark is therefore a "badge" of trade origin. It is used as a marketing tool so that customers can recognise the product of a particular trader. To be registrable in the UK it must also be capable of being represented graphically, that is, in words and/or pictures.

When you apply to register a trade mark you must include a list of all goods and services on which you will use the mark. Goods and services are classified into 45 classes as specified by The World Intellectual Property Organisation (or WIPO), the international organisation which decides trade mark classification.

Intellectual Property Office approves software patent for UK

In May 2005, the IPO ruled that software that allows programmers to program a mobile phone system remotely from a computer can be patented because it is more than just a software program.

The standard fee to apply to register a trademark is £200 for one class of goods or services and an additional £50 for every other class applied for.

The cost for registration of a trade mark is covered on the IPO website at:
<http://www.ipo.gov.uk/types/tm/t-applying/t-apply.htm>

A typical trade mark registration takes up to 6 months if the IPO does not object to or question the application.

Copyright explained

A copyright protects the original expression of an idea fixed in a tangible medium of expression. Examples of copyrightable works include books, songs, sculptures, software codes, instruction manuals, paintings, and dramatic works. The owner of a copyright can prevent others from reproducing, adapting, publicly distributing, publicly displaying, or even performing the copyrighted work – an example of this is a school who wanted to put on a play about Harry Potter, only to be denied doing so by the author J. K. Rowling.

Copyrights protect only against copying. They do not protect against someone else independently authoring the same or similar work. Copyright does not protect ideas, or such things as names or titles.

Copyright gives the creators of a wide range of material, such as literature, art, music, sound recordings, films and broadcasts, economic rights enabling them to control use of their material in a number of ways, such as by making copies, issuing copies to the public, performing in public, broadcasting and use on-line. It also gives moral rights to be identified as the creator of certain kinds of material, and to object to distortion or mutilation of it. (Material protected by copyright is termed a "work").

The purpose of copyright is to allow creators to gain economic rewards for their efforts and so encourage future creativity and the development of new material that benefits us all. Copyright material is usually the result of creative skill and/or significant labour and/or investment, and without protection, it would often be very easy for others to exploit material without paying the creator.

Most uses of copyright material require permission from the copyright owner. However, there are exceptions to copyright, so that some minor uses may not infringe copyright. Copyright protection is automatic as soon as there is a record in any form of the material that has been created, and there is no official registration or form or fee. But creators can take certain steps to help prove that material is theirs.

There is no official registration system for copyright in the UK and most other parts of the world. There are no forms to fill in and no fees to pay to get copyright protection.

So long as you have created a work that qualifies for copyright protection, that is it falls into one of the categories of material protected by copyright, you will have copyright protection without having to do anything to establish this. It is a requirement of various international conventions on copyright that copyright should be automatic with no need to register.

To help protect your copyright work, it is advisable to mark it with the © symbol, the name of the copyright owner and the year of publication. Although this is not essential, it will let others know when the term of protection started and hence whether it is still covered by copyright and indicate who to approach should they need to ask permission to use the work.

Other types of Intellectual Property

Although copyright, designs, patents and trade marks provide a range of IP protection there are a number of other forms of IP and subjects related to IP:

- Company Names – Companies House will not allow a company name to be registered if it is "too like" an existing name on the Companies Register;
- Trade Secrets and Confidential Information – under Common Law certain protection is provided against the unauthorised disclosure of confidential information provided it can be established that the information was truly confidential and that the person who received it knew it should not be disclosed but nevertheless chose to do so;

- Rights in performances for performers and those making recordings of performances;
- Protection for trade secrets under confidentiality agreements;
- Database right for some types of database (other types may be protected by copyright);
- Protection for semi-conductor topographies;
- Plant breeders' rights in plant varieties;
- Protection for geographical indications of origin;
- Protection of conditional access technology for broadcast and other transmission;
- Protection against unfair competition under "passing off" law;
- Publication right for first publication of material in which copyright has expired;
- Protection against circumvention of copy protection devices.

If you want to protect your IP abroad you will need to apply for protection in the countries which you want your IP to have effect. Your UK IP rights do not give you automatic protection abroad except in limited circumstances.

In some countries, the rights of the producers of sound recordings and broadcasters are known as neighbouring or related rights. In the UK producers and broadcasters get copyright protection in their material.

Protection for British designers

The Registered Designs Regulation 2001 came into force in December 2001 to help British designers to safeguard their creations, and prevent them being copied unlawfully. This should encourage innovation and investment in the production and distribution of new products over a wide market.

The regulations mean that a design can be registered, so that the appearance of the product is protected, enabling the owner of the design to take action against anyone using a design without permission. The design need not be attractive to qualify for protection as was necessary under the previous law.

The main changes to the law are:

- The design itself is protected, regardless of where it is applied. For example, if a plate pattern is registered the protection extends to all products upon which the pattern may appear.
- Protection is now applied to a broader range of items, such as handcraft items, graphic symbols, computer icons and even type faces.
- Component parts of products, which are normally visible, are now protected - for example, the handle of a mug, or a fountain pen lid.
- The criteria for testing novelty, a requirement for design registration, has changed.

There is now a test for 'Individual Character' to determine if a design is too similar to another already on the market and a 12-month 'grace period' for disclosures made by the designer.

More information is available at:
www.opsi.gov.uk/si/si2001/20013949.htm

Overview

The Table⁴ below sets out different types of IP, and the characteristics of each.

Type of Intellectual Property	What it covers	What it Protects Against	Duration of Right	Is Registration Required?
Copyright of Original Works	Original literary, musical, artistic and dramatic works - your logo, adverts, mission statements etc.	Copying	Generally, the life of the "author" plus 70 years	No
Copyright of Derivative Works	Original films, sound recordings, broadcasts	Copying	Varies between 25 years and the life of the "author" plus 70 years	No
Patent	New, non-obvious invention of a product or process capable of being used industrially	Use or exploitation of the invention	Maximum of 20 years	Yes, also for assignment
Registered Design Right	A design with "eye appeal"	The manufacture or commercial dealing of an article bearing the design	Renewable 5 year periods to a maximum of 25 years	Yes, also for assignment
Unregistered Design Right	A design of a shape or article used industrially	Copying	Maximum of 15 years	No
Registered Trade Mark	A sign used to distinguish goods or services	Others using a similar design	No maximum duration	Yes, also for assignment
Passing Off	Reputation and goodwill	Creation of the impression that the person is connected to you	As long as the reputation lasts	No
Database Right	The structure of (rather than the information in) compilations stored/accessed by electronic means	Copying	15 Years	No

Intellectual Property abroad

Intellectual property rights are territorial, which means they only give protection in the countries where they are granted or registered.

To protect your IP abroad, you usually need to apply in each country you want protection in, although this is not always necessary. Some countries may extend your UK protection, accepting it as protected in the country concerned, after completing certain local requirements.

Copyright protection abroad

Usually your copyright work will be protected abroad automatically in the same way that as in the UK.

The UK is a member of many international agreements where the national law of each country automatically protects copyright work falling within the scope of these agreements.

You should mark your work with the international © symbol, followed by the name of the copyright owner and year of publication.

All western European countries, the United States of America (USA) and Russia belong to the Berne Convention. Under this agreement, you do not have to mark your work in any way for automatic protection to apply. However, it is sensible to mark your work in this respect.

In the USA there is an official register of copyright work, although registration is not a requirement for copyright protection in the USA.

Protection abroad can also arise from obligations in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. This forms part of the World Trade Organisation (WTO) agreement and may protect your work automatically.

Design protection in Europe

Registering your design in the UK does not protect it elsewhere in the European Community (EC).

To protect your design throughout the EC, you can apply for a Registered Community Design (RCD) at the Office for Harmonisation in the Internal Market (OHIM). To get protection in individual EC countries, you must make a separate application to each country.

You can use your UK design application to claim priority when applying in the EC within 6 months of your UK application date. This means that your later application is treated as if you applied on the same date as in the UK.

Your design may have some automatic protection in the EC through Community Unregistered Design right and national copyright laws.

Design protection worldwide

You can protect your design in other countries by applying in each country.

You can use your UK design application to claim priority abroad within 6 months of your UK application date. This means that your later application is treated as if you applied on the same date as in the UK.

Permission to apply for a patent abroad

You can apply for a patent abroad, but if you are a UK resident and your application contains information about military technology, or could harm national security or public safety, you must either:

- apply for the patent in the UK. You can apply abroad 6 weeks after your UK application date, as long as the IPO have not told you that you cannot publish or communicate your application; or

- get permission from the IPO before you apply.

Patent protection in Europe

To protect your patent in more than 30 countries in Europe, you can apply using the European Patent Convention (EPC). You can apply through the IPO or the European Patent Office (EPO) but the EPO will process all the applications. This is processed as a single application, but once granted it becomes separate patents in the countries you designate.

You can get protection in individual countries in Europe by applying to the national office of each country. This is advisable if you only want protection in a few countries. You should get advice from the national patent office of any country you want protection in.

You can claim priority from an existing patent application if you apply abroad within 12 months of your original application. Your later application will be treated as if you applied on the same date as the original application. The EPO is running a pilot project to speed up European applications claiming priority from applications that we have already searched.

You can also get protection in Europe using the Patents Co-operation Treaty (PCT) through the World Intellectual Property Organisation (WIPO).

You may have to file translations of your patent application in order to obtain patent protection in certain countries.

Patent protection worldwide

You can protect your invention in many international countries using the Patent Co-operation Treaty (PCT) through the World Intellectual Property Organisation. You can apply through the IPO, the EPO or WIPO.

A PCT application is initially processed as a single application. You will receive an international search report and an international preliminary report on patentability. Your application is published and eventually becomes a collection of national applications in the countries you designate. You then have to process these applications separately in each country. You can use your application to get a European patent as well as national patents.

New Patent links between USA and UK

The processing of patent applications in the UK and USA will be speeded up through the Patent Prosecution Highway – a 12 month pilot scheme which will allow applicants who have received an examination report in one country to request accelerated examination of a corresponding application filed in the other country. The pilot scheme aims to test applicant demand for the additional option and quantify the quality and efficiency gains.

Further Information on the Patent Prosecution Highway, including an earlier pilot scheme with Japan are available at www.ipo.gov.uk/patent/p-applying/p-after/p-after-pph/p-after-pph-uspto.htm

Using the PCT system has the following advantages:

- You get a single international search report, which can reduce the administrative burden and costs;
- In the early stages, you process a single international application instead of multiple applications in multiple patent offices;
- You do not have to designate which countries you want protection in until about 30 months from the date you applied.

You can get protection in individual countries by applying to the national office of each country. This is advisable if you only want protection in a few countries. You should get advice from the national patent office of any country you want protection in.

You can claim priority from an existing patent application if you apply abroad within 12 months of your original application. Your later application will be treated as if you applied on the same date as the original application.

Trade mark protection in Europe

To protect your trade mark throughout the EC, you can apply for a community trade mark via the Office for Harmonisation in the Internal Market. To get protection in individual EC countries, you must make a separate application to each country.

You can use your UK trade mark application to claim priority when applying in the EC within 6 months of your UK application date. This means that your later application is treated as if you applied on the same date as in the UK.

Trade mark protection worldwide

You can protect your trade mark in other countries by using the Madrid Protocol via the WIPO. To get protection in individual countries, you must make a separate application to each country.

You can use your UK trade mark application to claim priority when applying internationally within 6 months of your UK application date. This means that your later application is treated as if you applied on the same date as in the UK.

Intellectual Property and Taxation

The economy is increasingly knowledge driven. Knowledge is important to all industries, "low tech" and "high tech", because it is crucial to innovation and the ability to create and exploit new products and markets.

Intangible assets are an important resource in the knowledge based economy, so it is important that the tax system treats them in an up to date way. Modernisation in this area helps to meet the Government's aims of ensuring that the UK is an attractive place in which to do business, and that UK businesses can compete successfully.

Prior to the Finance Act 2002, the tax treatment of intangible assets, including intellectual property was dependent upon the nature of the asset. For example, trademarks and goodwill attracted capital treatment, patents and know-how were eligible for capital allowances which gave rise to an income deduction and copyrights gave rise to an income deduction.

The Finance Act 2002 unified the tax treatment of intangible fixed assets bringing the tax treatment of these assets into line with their accounting treatment for the purposes of corporation tax only and changing their basic tax treatment from capital to revenue such that a company's gains in respect of intangible fixed assets are chargeable to corporation tax as income and its losses obtain tax relief.

Now, companies (within the scope of corporation tax) acquiring intellectual property, goodwill and other intangible assets (such as copyrights, trademarks, know-how, domain names and customer lists) on or after 1 April 2002 are able to claim an immediate tax deduction, broadly in accordance with the accounting treatment of those assets. Other expenditure by a company on intangible assets, such as research on developing intellectual property, is also deductible for tax purposes.



Small Businesses must 'Mind Their IP'

Small businesses, which develop a new product or idea, risk missing out on potential valuable income because they are unsure of their intellectual property rights, according to a new survey published by the UK Intellectual Property Office, available at: http://www.ipo.gov.uk/ip_survey.pdf

The UK Intellectual Property Office has also published two new information leaflets and an e-newsletter specifically for smaller firms and individuals.

'My idea - is it a business?' gives basic ideas on how to protect an idea. It is available at http://www.ipo.gov.uk/id_eaabusiness.pdf

'IP Insight', a monthly e-publication is available at <http://www.ipo.gov.uk/newsletters.htm>

Please note, however, that some expenditure may still be capital, and so non-deductible, even though it is written off to revenue in the accounts. Sales of intangibles will be taken into account in calculating taxable income (but gains may be deferred under an income style rollover relief where the proceeds are reinvested and meet certain conditions).

General description

The current regime provides for companies to obtain tax relief for the cost of intangible assets, in most cases based on the amortisation reflected in their accounts. There is also provision for tax allowances at a fixed rate of 6% per annum (increasing to 10% from 2008/9) to provide for relief in the case of indefinite or longer-life assets.

The current rules apply to expenditure on the creation, acquisition and enhancement of intangible assets (including abortive expenditure), as well as expenditure on their preservation and maintenance. Relief is available for the cost of internal development, as well as acquisition, of intangible assets.

Payments for the use of intangibles are also within the scope of the current regime. The charge on income rules no longer applies to royalty payments and relief is given in line with the accounting treatment. The taxation of royalty receipts follows the accounts.

Disposals of intangible assets are now taxed on an income basis. A roll-over relief applies where disposal proceeds are reinvested in new intangible assets.

Intangible assets that companies held on 1 April 2002 will generally be taxed under the previous law, subject to the changes in roll-over relief described below. Capital allowances continue to be available on patents and know-how.

Capital gains on the disposal of intangible assets held on 1 April 2002 qualify, where appropriate, for roll-over relief under the new arrangements for intangible assets.

Disposals by companies of goodwill and agricultural and fishing quotas held on 1 April 2002 do not qualify for capital gains roll-over relief, except where reinvestment under the capital gains rules took place before 1 April 2002 and within the 12-month period prior to the disposal.

Purchases of goodwill and quotas after 1 April 2002 are no longer qualifying acquisitions for the purpose of capital gains roll-over relief.

"Patent Box"⁵

Legislation will be included in Finance Bill 2012 to introduce the patent box first mooted in the 2009 pre-Budget report. It will allow companies to elect to apply a 10% rate of corporation tax from 1 April 2013 to all profits attributable to qualifying intellectual property.

Qualifying intellectual property (IP) includes patents granted by the UK Intellectual Property Office and the European Patent Office, as well as supplementary protection certificates, regulatory data protection and plant variety rights.

The patent box will apply to existing IP as well as new, and to that acquired, provided the group has further developed it or the product that incorporates it.

The legislation sets out a structured approach to calculate the profits from qualifying IP. For companies selling patented products or licensing their patents, the calculation starts from the total profit from the sale of products incorporating the patented invention or the profit from licensing the invention.

The full rate of corporation tax will still be charged on a 10% routine return on certain costs and on any part of those profits that is attributable to marketing intangibles. Firms making smaller claims can choose a simpler calculation avoiding the need to value their brand. All remaining profit will be eligible for the patent box rate.

Companies that use the IP to perform processes or provide services will benefit from the patent box up to the level of an arm's length royalty for the use of the qualifying property.

IP awareness increases with firm size

A survey of IP awareness published by the IPO in 2006 indicates that IP awareness increases with firm size. Specifically it revealed that:

- only 11.2% of Micro-enterprises with 0-9 employees and 33% of firms with more than 250 employees know that publishing before filing will invalidate a UK patent application. Overall over 50% of UK industry didn't know and 36% incorrectly thought it would not, representing a considerable risk to the preservation of patentable innovation.
- When asked which sources they would check to clear use of a new business or product name, 53% of firms chose to search UK trademarks and 70% UK company names. Though few (<9%), even among the smallest firms, admitted to not searching any of the sources mentioned, still only around half of all SMEs and micro-enterprises said they would search UK trademarks.
- Overall only about 8% of UK firms specifically assign responsibility for managing IPRs. This rises to about 57% in the case of large companies. Even amongst large companies only 34% have an overall IP policy.
- The incidence of firms which have ever sought IP advice is over 70% for larger companies whilst even 20% of micro-enterprises with 0-9 employees have sought advice.

Source: IPO: UK Intellectual Property Awareness Survey 2006

Further Information

This guide is for general interest - it is always essential to take professional advice on specific issues.

We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

References and Acknowledgements

¹ The UK Intellectual Property Office is an operating name of the Patent Office.

² The UK Intellectual Property Office can be found at Concept House, Cardiff Road, Newport, South Wales, NP10 8QQ. Tel: +44 (0)845 9 500 505, E-mail: enquiries@ipo.gov.uk, Web Site: www.ipo.gov.uk

³ The Chartered Institute of Patent Agents can be found at 95 Chancery Lane, London WC2A 1DT. Tel: +44 (0) 20 7405 9450, E-mail: mail@cipa.org.uk, Web Site: www.cipa.org.uk

⁴ This Table is reproduced by kind permission of Rooks Rider, Solicitors. The firm has 12 partners and a total of more than 30 lawyers, and is situated in historic Clerkenwell, in the heart of London. The Firm is featured in the "Legal 500". They can be contacted at: Challoner House, 19 Clerkenwell Close, London EC1R 0RR. Tel: +44 (0) 20 7689 7000, Fax: +44 (0)20 7689 7001, E-mail: lawyers@rooksriver.co.uk Web: www.rooksriver.co.uk

⁵ This section is sourced from: <http://www.taxation.co.uk/taxation/Articles/2011/12/12/33351/opening-patent-box-moves-closer>

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