



Intellectual Property

*Literary and
Artistic
Property*

*Industrial
Property*



By **Gilles Pfend**, Ph.D.,
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KATZAROV

CERN - 27 March 2018

**Automatic protection
via creation
(no registration)**

Exclusive right to have a **name** associated to the work, to **disclose** and **modify** the work and to obtain **remuneration** on it



***Always keep proof of
the date of creation!***

Literary and Artistic Property

***Droits d'auteur
(copyright*)***

70 years
post-mortem

***Related
rights***

50 years
post-mortem

Droits d'auteur (copyright*)

= rights conferred to the **original creator** after disclosure

- Book
- Script of a movie
- Music score
- Song
- Speech
- Choreography
- Interface of a website
- Painting
- Drawing
- Sculpture
- Photography
- Software
- Even a simple menu
- Etc.

70 years
post-mortem

ORIGINALITY

CONCRETE REALIZATION
(not just an idea)

Even this
presentation is
protected by "droits
d'auteur"



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Related rights

= rights conferred to **the interprets** of the work

50 years
post-mortem

- Dancers
- Actors
- Singers
- Models
- Musicians
- Etc.

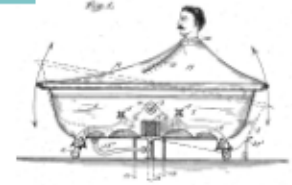


Protection only via
registration -
First-to-file systems*

Industrial Property

PATENTS

Maximum
20 years



DESIGNS

Maximum
25 years



TRADEMARKS

10 years
indefinitely
renewable



PATENTS

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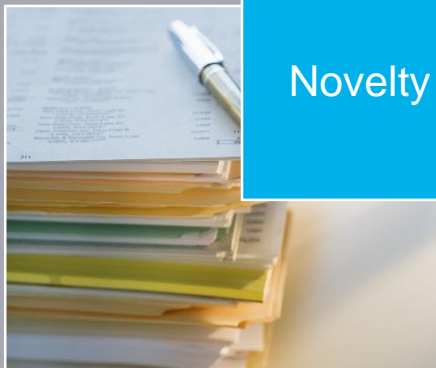
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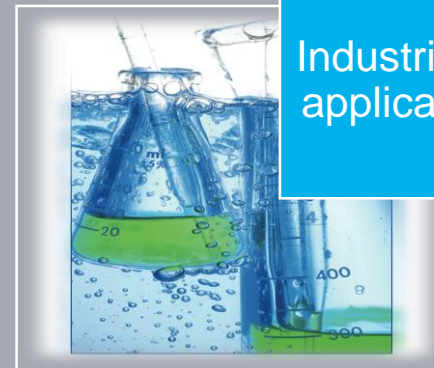
Patentability criteria:



Novelty



Inventive
Step



Industrially
applicable



Industrially
applicable

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4 problematics to bear in mind:

FTO

Priority

Timing

Filing Strategy

PATENTS

Maximum
20 years

FTO

- do you have the freedom to operate ?
- does your product infringe IP rights of third parties
- territorial scope of third parties IP rights
- validity of third parties IP rights :

- If IP rights covering your intended activities exist, ask your patent attorney to investigate their validity
- Three options: a) Secure a license under the rights, b) Design around the rights or c) Challenge the rights.
- Optionally, ignore the rights if you are convinced they are not valid (risky!)

PATENTS

Maximum
20 years

Timing

- filing should neither occur too early nor too late
- before any publication or public disclosure
- shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (EP)
- meet the written description or enablement requirements (US)

PATENTS

Maximum
20 years

Priority

- filing a priority application avoids filing in several countries
- first to file system
- importance of the quality of the priority application
- 12-month (provisional) protection

PATENTS

Maximum
20 years

Filing Strategy

- priority vs direct filing(s)
- territorial scope of the protection
- regional vs national filing(s)
- costs
- Patent term management

DESIGNS

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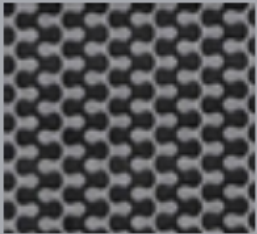
It can be **bidimensional**
like the pattern of a fabric
or a product packaging

or **tridimensional**, like a
watch, a lamp or a shoe

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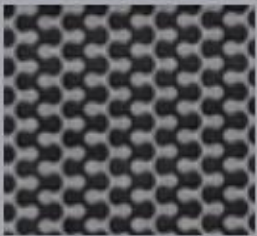
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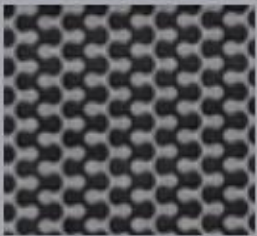


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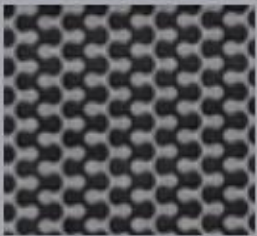
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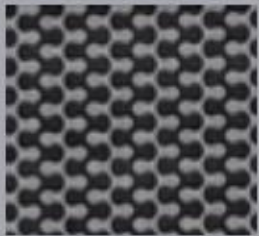


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Are **not protectable** by registration of a design:

- Non-visible parts integrated in a complexe product
- Designs which shape is imposed by the function of the product

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Are **not protectable** by registration of a design:

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4 criteria for protecting a design:

Being new
(not previously
disclosed or
registered)

Being original
(with
characteristics
differing from
existing object)

Being ornamental
(not responding
exclusively to
technical
considerations)

**Being
reproducible by
industrial
processes**
(not like art)

What is the point of registering a design?

Useful when the **shape** of your products is their **core value**

Preventing others from copying your project, and at the same time **a source of credibility** towards potential investors

The possibility to either sell it (cession), or rent it (licence): **a source of revenue** (an investment and not a simple cost)

What filing strategy for a startup?

What design?

Only the ones you have to disclose now: always register before disclosing (novelty), delay disclosure in order to delay registration costs

Where?

All the present and near future territories where you will be commercializing your product

When?

Before disclosure (novelty) and as soon as possible (first-to-file system)

What can prevent you from registering a design?

Easy registration system

Most of the Offices in the world don't check if your design fulfills the criteria (new, original, ornamental, industrial)

Other persons' previous rights

Still, you could be opposed by third parties who would claim that one of the criteria is not respected (notably novelty)

TRADEMARKS

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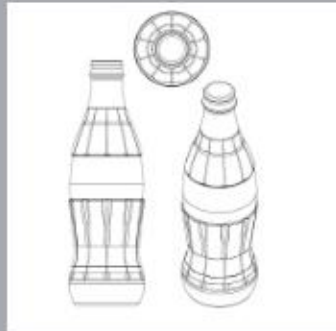


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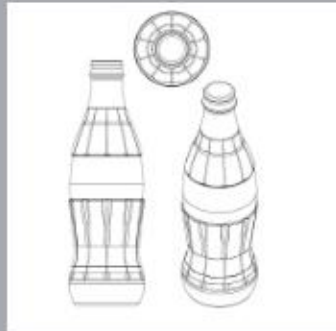


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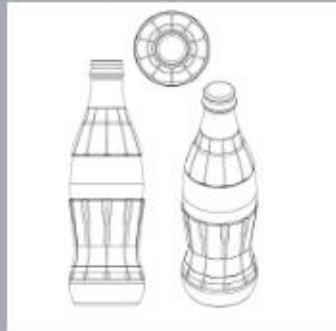


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TRADEMARKS

10 years -
renewable
without any
limitation

What is the point of registering a trademark?

A visual identity that only you can use: **your distinguishable sign**

Preventing others from copying your project, and at the same time **a source of credibility** towards potential investors

The possibility to either sell it (cession), or rent it (licence): **a source of revenue** (an investment and not a simple cost)

TRADEMARKS

One brand can hide multiple trademarks



NIKE AIR VAPORMAX

NIKE SPHERE

NIKEWOMEN



JUST DO IT.

N I K E  G O L F

NIKE

TRADEMARKS

#notasrichasNike

What filing strategy for a startup?

What sign ?

Your most recognizable word/logo, the one which can be attached to all of your goods/services

What activity?

All the present and future goods and services of your activity but not more: don't see too broad, source of conflicts

Where?

All the present and near future territories where you will commercialize your activities

When?

As soon as you can: first-to-file system

TRADEMARKS

What can prevent you from registering a trademark?

Offices (countries):

- Lack of distinctiveness
- Descriptiveness
- Against public order or public morality
- Misuse of a protected place name
- Lack of use ?
- Prior registration ?
- Etc.

Other persons' prior rights:

- Trademark rights
- Image rights
- Droits d'auteur
- Related rights
- Company's name?
- Famous person's name?
- Etc.

**Thank you for your
attention!**



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