

# Intellectual Property Law

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# Programme

## General part

Introduction. The concept of Intellectual Property and its cultural, economic, political and legal context and meaning. Definition of IP. Classification of IP. IP in legal system. Main sources of IP law and IP information resources. Development of IP law.

IP protection regimes and choice between them. Strategy of IP protection, use and enforcement.

Principles of IP law. Territoriality and legality. Fixation. Seniority or originality. Priority. Good faith. Commercial nature. Exhaustion of rights.

Obtaining IP protection, use and enforcement of the rights. Institutions dealing with the IP protection. Procedure of obtaining IP protection. De facto protection and registration. Opposition. Applicant's rights. Term of protection.

Use of IP rights. IP as property and subject-matter of contracts. License. Assignment.

# Programme

Infringement of IP rights. Enforcement of IP rights. Civil measures, methods of obtaining evidence and injunctions. Claims in civil court. Administrative measures. Border measures. Penal measures. Strategy of IP enforcement. Rights of third parties.

## Special part

Comparison of different species of IP rights and their criteria.

Copyright and neighbouring rights. Databases. Computer programmes.

Inventions (patent, utility model), design and layout-design.

Undisclosed information, trade secret. Discoveries.

Trade designations, trade and service marks, business and trade names.

Geographical indications.

Unfair competition.

# Resources

WIPO Intellectual Property Handbook: Policy, Law and Use, [www.wipo.int/about-ip/en/iprm/](http://www.wipo.int/about-ip/en/iprm/)

# Intellectual property

Convention Establishing the World Intellectual Property Organization, 1967,  
art 2(vii)

“intellectual property” shall include the rights relating to:

- literary, artistic and scientific works,
  - performances of performing artists, phonograms, and broadcasts,
  - inventions in all fields of human endeavor,
  - scientific discoveries,
  - industrial designs,
  - trademarks, service marks, and commercial names and designations,
  - protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

[www.wipo.int/treaties/en/convention/trtdocs\\_wo029.html](http://www.wipo.int/treaties/en/convention/trtdocs_wo029.html)

# Intellectual property

Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPs], 1994, part II

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

[www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm)

# Intellectual property

IPL= Intellectual - human, innovative  
Property - exclusive

Law - something to do with rights and duties

Intellectual property as information,  
incorporated in material objects.

(example of a notebook)

Intellectual property in wider sense includes IP in  
stricter sense (copyright etc) and industrial  
property.

# Main areas of IP Law

## Obtaining and validity of IP rights

without formalities (e.g. copyright etc, notorious trademarks)  
by registration (most of industrial property)  
by deposition, publication etc.

Invalidity and loss of IP rights

## Use of IP rights

contractual rights (e.g. license) and rights in rem (IP as property)  
protection against abuse - exclusive right

## Enforcement of IP rights in the case of abuse

civil remedies

preliminary remedies

border measures and other administrative remedies

penal remedies



# IP in legal system

IP as part of private (precisely: commercial) law.

Connections with other branches:  
civil procedure (enforcement, invalidation)  
administrative law (registration; border measures)  
penal law (penal responsibility)  
international law (recognition, harmonisation,  
international and regional systems of protection)

# Principles of IPL

## Territorial nature and legality

- Limited protection

- Conditions and terms set in territorial law

- Internationalisation

## Seniority or originality

- First to file (or, first to invent)

- Protection against later activity

## Fixation (formalisation)

- Formless (de facto) protection for copyright

Berne Convention for the Protection of Literary and Artistic Works, 1886,

[www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html)

- Registration for most industrial property rights

- Public registrations

# Principles of IPL

## Good faith

Right to file an application and authorship

Knowing disrespect for earlier/stronger entitlements

## Public interest

Innovation, cultural importance, guarantee function

Fees

## Private right (commercial nature)

Exclusive right; personal right (authorship)

## Priority

Paris Convention for the Protection of Industrial Property, 1883,  
[www.wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.html](http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html)

## Exhaustion of rights

Regional exhaustion in European Economic Area

# Legal sources

## National (municipal) IP law

Codified or not

IP-specific or general law concerning contracts, rights in rem, procedure and enforcement

## International law ([www.wipo.int/treaties/en/summary.jsp](http://www.wipo.int/treaties/en/summary.jsp))

### International IP protection regimes - GLOBAL

-Patent Cooperation Treaty (PCT), Washington 1970,  
[www.wipo.int/pct/en/texts/articles/atoc.htm](http://www.wipo.int/pct/en/texts/articles/atoc.htm)

-Madrid Agreement Concerning the International Registration of Marks, 1891,  
[www.wipo.int/madrid/en/legal\\_texts/trtdocs\\_wo015.html](http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo015.html) (and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989,  
[www.wipo.int/madrid/en/legal\\_texts/trtdocs\\_wo016.html](http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo016.html))

-Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, 1934/1999, [www.wipo.int/hague/en/legal\\_texts/wo\\_haa\\_t.htm](http://www.wipo.int/hague/en/legal_texts/wo_haa_t.htm)

# Legal sources

-Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, [www.wipo.int/lisbon/en/legal\\_texts/lisbon\\_agreement.html](http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.html)

## International IP protection regimes - REGIONAL

-African Regional Intellectual Property Organisation (ARIPO), [www.aripo.org/](http://www.aripo.org/)

-Eurasian Patent Organisation (EAPO), [www.eapo.org/en/](http://www.eapo.org/en/)

-African Intellectual Property Organisation (OAPI), [www.oapi.int/](http://www.oapi.int/)

-European Patent Organisation (EPO), [www.oapi.int/](http://www.oapi.int/)

European Patent Convention (EPC), Munich 1973, [www.epo.org/law-practice/legal-texts/epc.html](http://www.epo.org/law-practice/legal-texts/epc.html)

-EU Intellectual Property Office (EUIPO; formerly Office of Harmonization for the Internal Market, OHIM), [eipo.europa.eu/ohimportal/en](http://eipo.europa.eu/ohimportal/en)

Regulation (EU) 2017/1001 of the European Parliament and of the Council, 2017, on the European Union trade mark, [data.europa.eu/eli/reg/2017/1001/oj](http://data.europa.eu/eli/reg/2017/1001/oj)

Council Regulation 6/2002, 2001, on Community Designs, [data.europa.eu/eli/reg/2002/6/2013-07-01](http://data.europa.eu/eli/reg/2002/6/2013-07-01)

-Benelux Office for Intellectual Property (BOIP), [www.boip.int](http://www.boip.int)

-Unitary Patent\*, [ec.europa.eu/internal\\_market/indprop/patent/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/patent/index_en.htm),  
[en.wikipedia.org/wiki/European\\_Union\\_patent](http://en.wikipedia.org/wiki/European_Union_patent)

- Regulation (EU) No 1151/2012 of the European Parliament and of the Council, 2012, on quality schemes for agricultural products and foodstuffs, [data.europa.eu/eli/reg/2012/1151/2019-12-14](http://data.europa.eu/eli/reg/2012/1151/2019-12-14)

# Legal sources

## Fundamental/harmonisation - GLOBAL

-Agreement on Trade-Related Aspects of Intellectual Property Rights

### \*Copyright and related rights

-Berne Convention for the Protection of Literary and Artistic Works

-(Pan-American) Convention on Literary and Artistic Copyright, Buenos Aires 1910(-2000)

-Universal Copyright Convention (UCC), UNESCO, Geneva 1952(-ca 2000)

-WIPO Copyright Treaty (WCT), Geneva 1996,

[www.wipo.int/treaties/en/ip/wct/trtdocs\\_wo033.html](http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html)

-International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Rome 1961,

[www.wipo.int/treaties/en/ip/rome/trtdocs\\_wo024.html](http://www.wipo.int/treaties/en/ip/rome/trtdocs_wo024.html)

-Beijing Treaty on Audiovisual Performances\*, Beijing 2012,

[www.wipo.int/treaties/en/ip/beijing/beijing\\_treaty.html](http://www.wipo.int/treaties/en/ip/beijing/beijing_treaty.html)

-Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva 1971,

[www.wipo.int/treaties/en/ip/phonograms/trtdocs\\_wo023.html](http://www.wipo.int/treaties/en/ip/phonograms/trtdocs_wo023.html)

-WIPO Performances and Phonograms Treaty (WPPT), Geneva 1996,

[http://www.wipo.int/treaties/en/ip/wppt/trtdocs\\_wo034.html](http://www.wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html)

# Legal sources

-Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, Brussels 1974,  
[www.wipo.int/treaties/en/ip/brussels/trtdocs\\_wo025.html](http://www.wipo.int/treaties/en/ip/brussels/trtdocs_wo025.html)

## \*Industrial property

-Paris Convention for the Protection of Industrial Property

-Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891, [www.wipo.int/treaties/en/ip/madrid/trtdocs\\_wo032.html](http://www.wipo.int/treaties/en/ip/madrid/trtdocs_wo032.html)

-Trademark Law Treaty, Geneva 1994,

[www.wipo.int/treaties/en/ip/tlt/trtdocs\\_wo027.html](http://www.wipo.int/treaties/en/ip/tlt/trtdocs_wo027.html), and

Singapore Treaty on the Law of Trademarks, Singapore 2006,

[www.wipo.int/treaties/en/ip/singapore/singapore\\_treaty.html](http://www.wipo.int/treaties/en/ip/singapore/singapore_treaty.html)

-Patent Law Treaty, Geneva 2000,

[www.wipo.int/treaties/en/ip/plt/trtdocs\\_wo038.html](http://www.wipo.int/treaties/en/ip/plt/trtdocs_wo038.html)

-Treaty on Intellectual Property in Respect of Integrated Circuits\*, Washington 1989, [www.wipo.int/treaties/en/ip/washington/trtdocs\\_wo011.html](http://www.wipo.int/treaties/en/ip/washington/trtdocs_wo011.html)

-International Convention for the Protection of New Varieties of Plants, Paris 1961,

# Legal sources

## Ancillary and special treaties

- Nairobi Treaty on the Protection of the Olympic Symbol, 1981, [www.wipo.int/treaties/en/ip/nairobi/trtdocs\\_wo018.html](http://www.wipo.int/treaties/en/ip/nairobi/trtdocs_wo018.html)
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977, [www.wipo.int/treaties/en/registration/budapest/trtdocs\\_wo002.html](http://www.wipo.int/treaties/en/registration/budapest/trtdocs_wo002.html)
- Strasbourg Agreement Concerning the International Patent Classification (IPC), 1971, [www.wipo.int/treaties/en/classification/strasbourg/trtdocs\\_wo026.html](http://www.wipo.int/treaties/en/classification/strasbourg/trtdocs_wo026.html)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957, [www.wipo.int/treaties/en/classification/nice/trtdocs\\_wo019.html](http://www.wipo.int/treaties/en/classification/nice/trtdocs_wo019.html)
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973, [www.wipo.int/treaties/en/classification/vienna/trtdocs\\_wo031.html](http://www.wipo.int/treaties/en/classification/vienna/trtdocs_wo031.html)
- Locarno Agreement Establishing an International Classification for Industrial Designs, 1968, [www.wipo.int/treaties/en/classification/locarno/trtdocs\\_wo014.html](http://www.wipo.int/treaties/en/classification/locarno/trtdocs_wo014.html)



# Legal sources

## Fundamental/harmonisation - REGIONAL

### \*Copyright and related rights

Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, [data.europa.eu/eli/dir/2001/29/2019-06-06](http://data.europa.eu/eli/dir/2001/29/2019-06-06)

Directive 2006/116/EC on the term of protection of copyright and certain related rights, [data.europa.eu/eli/dir/2006/116/2011-10-31](http://data.europa.eu/eli/dir/2006/116/2011-10-31)

Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art, [data.europa.eu/eli/dir/2001/84/oj](http://data.europa.eu/eli/dir/2001/84/oj)

Directive 96/9/EC on the legal protection of databases, [data.europa.eu/eli/dir/1996/9/2019-06-06](http://data.europa.eu/eli/dir/1996/9/2019-06-06)

Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, [data.europa.eu/eli/dir/2006/115/oj](http://data.europa.eu/eli/dir/2006/115/oj)

Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access, [data.europa.eu/eli/dir/1998/84/oj](http://data.europa.eu/eli/dir/1998/84/oj)

Directive 2009/24/EC on the legal protection of computer programs, [data.europa.eu/eli/dir/2009/24/oj](http://data.europa.eu/eli/dir/2009/24/oj)

Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, [data.europa.eu/eli/dir/1993/83/2019-06-06](http://data.europa.eu/eli/dir/1993/83/2019-06-06)

Directive 2012/28/EU on certain permitted uses of orphan works, [data.europa.eu/eli/dir/2012/28/oj](http://data.europa.eu/eli/dir/2012/28/oj)

...

# Legal sources

## \*Industrial property

(Council of Europe) Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, Strasbourg 1963,  
[conventions.coe.int/treaty/EN/treaties/html/047.htm](http://conventions.coe.int/treaty/EN/treaties/html/047.htm)

Directive 87/54/EEC on the legal protection of topographies of semiconductor products, [data.europa.eu/eli/dir/1987/54/oj](http://data.europa.eu/eli/dir/1987/54/oj)

Directive 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks, [data.europa.eu/eli/dir/2015/2436/2015-12-23](http://data.europa.eu/eli/dir/2015/2436/2015-12-23)

Directive 98/71/EC on the legal protection of designs, [data.europa.eu/eli/dir/1998/71/oj](http://data.europa.eu/eli/dir/1998/71/oj)

Directive 98/44/EC on the legal protection of biotechnological inventions, [data.europa.eu/eli/dir/1998/44/oj](http://data.europa.eu/eli/dir/1998/44/oj)

Directive 2009/43/EC simplifying terms and conditions of transfers of defence-related products within the Community, [data.europa.eu/eli/dir/2009/43/2019-07-26](http://data.europa.eu/eli/dir/2009/43/2019-07-26)

# Legal sources

Regulation (EC) No 469/2009 of the European Parliament and of the Council, 2009, concerning the supplementary protection certificate for medicinal products, [data.europa.eu/eli/reg/2009/469/2019-07-01](http://data.europa.eu/eli/reg/2009/469/2019-07-01)

Regulation 1610/96 concerning the creation of a supplementary protection certificate for plant protection products, [data.europa.eu/eli/reg/1996/1610/2013-07-01](http://data.europa.eu/eli/reg/1996/1610/2013-07-01)

Regulation 1901/2006 on products for paediatric use, [data.europa.eu/eli/reg/2006/1901/2019-01-28](http://data.europa.eu/eli/reg/2006/1901/2019-01-28)

Regulation 2100/94 on Community plant variety rights, [data.europa.eu/eli/reg/1994/2100/2008-01-31](http://data.europa.eu/eli/reg/1994/2100/2008-01-31)

# Legal sources

## \*Enforcement

- Directive 2004/48/EC on the enforcement of intellectual property rights, [data.europa.eu/eli/dir/2004/48/corrigendum/2004-06-02/oj](http://data.europa.eu/eli/dir/2004/48/corrigendum/2004-06-02/oj)
- Regulation (EU) No 608/2013 of the European Parliament and of the Council, 2013, concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, [data.europa.eu/eli/reg/2013/608/oj](http://data.europa.eu/eli/reg/2013/608/oj)

# Institutional framework

## National -

[www.wipo.int/directory/en/](http://www.wipo.int/directory/en/), [oami.europa.eu/ows/rw/pages/QPLUS/links.en.do](http://oami.europa.eu/ows/rw/pages/QPLUS/links.en.do)

### Industrial Property Service and a Central Office...

#### **Paris Convention, Article 12, Special National Industrial Property Services**

(1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.

(2) This service shall publish an official periodical journal. It shall publish regularly:

- (a) the names of the proprietors of patents granted, with a brief designation of the inventions patented;
- (b) the reproductions of registered trademarks.

<http://www.patentinfo.ee/en/>

## International

WIPO - [www.wipo.int/portal/index.html.en](http://www.wipo.int/portal/index.html.en)

WTO-TRIPs - [www.wipo.int/portal/index.html.en](http://www.wipo.int/portal/index.html.en)

Trilateral Cooperation - [www.trilateral.net/index.html](http://www.trilateral.net/index.html)

## Regional

EU-EUIPO

EU-CPVO - [www.cpvo.europa.eu/](http://www.cpvo.europa.eu/)

EPO - [www.epo.org/](http://www.epo.org/)

# Institutional framework

Copyright and Related Rights - collective rights management

[en.wikipedia.org/wiki/List\\_of\\_copyright\\_collection\\_societies](http://en.wikipedia.org/wiki/List_of_copyright_collection_societies)

Industrial Property - professional representatives

The Institute of Professional Representatives before the EPO -

[www.patentepi.com/patentepi/en/index.php](http://www.patentepi.com/patentepi/en/index.php)

FICPI - [www.ficpi.org/](http://www.ficpi.org/)

International NGOs and information

AIPPI - [www.aippi.org/](http://www.aippi.org/)

INTA - [www.inta.org/Pages/Home.aspx](http://www.inta.org/Pages/Home.aspx)

Managing Intellectual Property - [www.managingip.com/](http://www.managingip.com/)

Information networks, databases

# Procedure for application

Preliminary proceedings division

Examiners' division

Oppositions division

Registry division

Appeals division

Filing an application, date of filing

Preliminary check

Search

Publication

Observations/objections by third parties

Examination

Refusal

Appeal by the applicant

Granting/registration

Opposition by third parties

Appeal

Cancellation/invalidation requests

# Protection regimes and strategies

## Invention

### National system

Undisclosed information

Utility model or petty patent

Patent

(+Supplementary Protection Certificate)

### Transborder protection

### International and regional regimes

PCT to national utility models or patents

EPC (or analogues) to national patents

Unitary patent\* in EU



# Protection regimes and strategies

## Trade mark

Notorious/unregistered trademark

National trademark

Transborder protection

Madrid system - international registration

EU Trade Mark (EUTM, formerly CTM)

## Design

Copyright

Unregistered Community Design (UCD)

National registered design

Transborder protection

The Hague system - international registration

Registered Community Design (RCD)

# Use of IP rights

Compare to other property rights:

Possession - Use - Disposition - Protection of ownership.

Use to get "fruits":

Natural fruits and their use (production, use, sale or rental of products)

Legal fruits:

Contractual: License or franchise revenue

Rights in rem: Pledge

Disposition:

Termination of protection, assignment, bequest, dispositions having in mind legal fruits

# Use of IP rights

License between licensor and licensee:  
contractual liberty

territory, timing, fee, other conditions

possibility of sub-licensing

simple, sole or exclusive license

cross-licensing

compulsory and open/registry licensing

copyright license strategies (proprietary/commercial, free, open license, open source etc.)

[www.dmoz.org/Computers/Open\\_Source/Open\\_Content/](http://www.dmoz.org/Computers/Open_Source/Open_Content/), [creativecommons.org/](http://creativecommons.org/) ...

# Enforcement of IP rights

## Civil remedies

Extra-court warnings and reminders, cease and desist letters, damage claims, negotiations

Mediation, arbitration

## Court

Preliminary measures

Injunctions, Anton Piller (evidence) and Mareva (accounting) orders

Court proceedings

Cease and desist, injunctions; damages, revenue

Information on supply and distribution chains

Seizure and destruction or putting outside market

# Enforcement of IP rights

Administrative measures

IP institutions

Opposition and revocation of conflicting rights

Police, consumer protection

Customs

Border measures

Autonomous

Seizure and destruction

As preparation for civil or penal measures

[www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/ep\\_intellectual\\_property\\_rights.aspx](http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/ep_intellectual_property_rights.aspx)

# Enforcement of IP rights

## Penal measures

### International TRIPs standard

Piracy and counterfeiting in commercial scale

Other offences not mandatory

### ACTA (TRIPs+) ?

Other offences (e.g. Cybercrime Convention)

European law: draft IPRED2

[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006PC0168:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006PC0168:EN:NOT)

[trade.ec.europa.eu/doclib/docs/2005/april/tradoc\\_122641.pdf](http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122641.pdf),  
[www.peteryu.com/geiger.pdf](http://www.peteryu.com/geiger.pdf),  
[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1592104](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1592104)

# Comparison of IP

Criteria/ conditions	Trademark (registered)	Invention	Copyright
Formal	Application, fee (Representation) Minimal content: Applicant, contact data Reproduction Goods and/or services Intent to get protection	Application, fee (Representation) Minimal content: Applicant, contact data Description of invention Intent to get protection	NO FORMALITIES
Absolute	Distinctiveness Non-descriptive Non-deceptive Legal & morally acceptable Good faith Graphical (Intent to) use	Invention in a field of technology (device, substance, method) Not excluded from protection Industrially applicable	Work in field of art, literature or science Not excluded from protection
Relative	Not in conflict with earlier rights	Filed by author or entitled person Novelty Inventive step (non-obvious)	Author or entitled person Original creation

# Trade designations

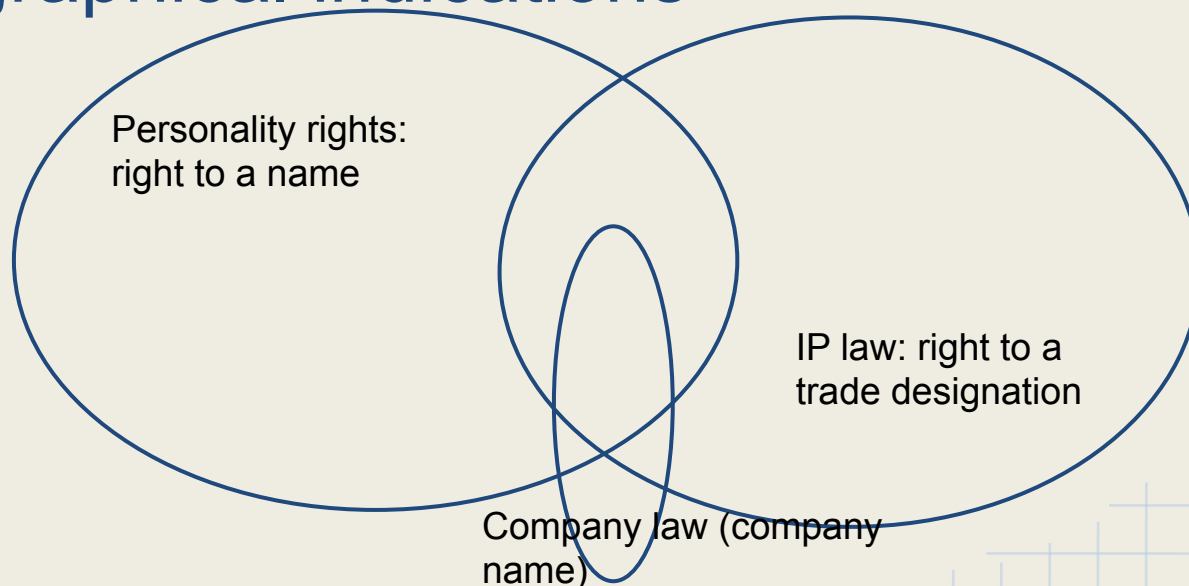
Personal name

Business name (company name, firm)

Trade name (cf pen name of an author, nickname)

Trade and service marks

Geographical indications



Common:  
Without author;  
Protection in  
commercial field



# Trade marks

Trade (and service) marks  
well-known (notorious)  
registered  
not registered

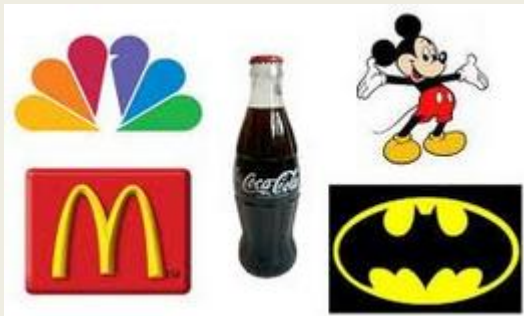
Distinguishing goods/services of one person from similar goods/services of another person:

alphanumeric (incl. words),  
designed (2-dimensional),  
combined,  
"new types" (3-dimensional, moving, sound, smell)

## The UnRegistered



# Trade marks



# Trade marks

## Criteria of protection

Distinctive, non-descriptive nor usual or obvious

May acquire distinctiveness

May be included in trademark as not protected element

Non-deceptive, not in bad faith, lawful, morally acceptable

Not in conflict with earlier rights (or conflict settled)

Practice:

[www.uspto.gov/trademarks/resources/TMEP\\_archives.jsp](http://www.uspto.gov/trademarks/resources/TMEP_archives.jsp),  
[oami.europa.eu/ows/rw/pages/CTM/legalReferences/guidelines/  
OHIMManual.en.do](http://oami.europa.eu/ows/rw/pages/CTM/legalReferences/guidelines/OHIMManual.en.do)

## Collective, guarantee and certification marks

# Trade marks

## Distinctiveness

Weak →	→	→	→	→ Strong
Non-distinctive	May acquire distinctiveness	←	Inherently distinctive	→
<i>Generic</i>	<i>Descriptive</i>	<i>Suggestive</i>	<i>Arbitrary</i>	<i>Fanciful</i>
shoes	Hi-Tops	Dockers	Mary Janes	Keds
	Sneakers	Nike	Jellies	Adidas
soap	Clean&Smooth	Ivory	Irish Spring	Camay
coffee	Seattle's Best	Bright&Early	Appassionato	Sanka

## Visual perception / graphical representation

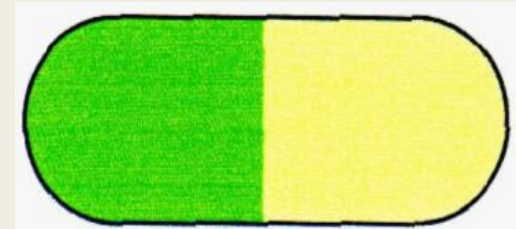
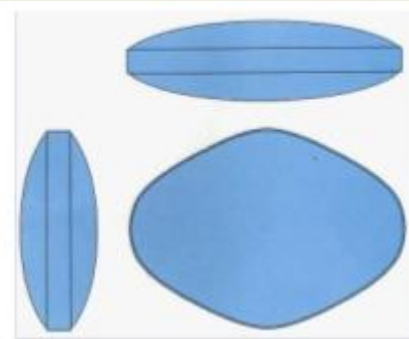
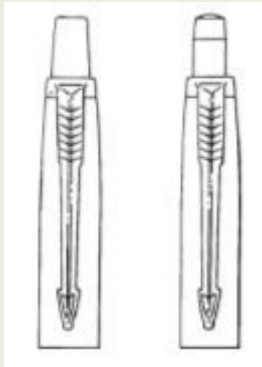


The Mark consists of three equally spaced stripes, each of the same colour and width, on the outside of the upper of the footwear, the stripes contrasting in colour with the part of the upper on which they appear and extending forwardly away from the sole, on the area between the sole and the laces or other fastening of the footwear as illustrated below.

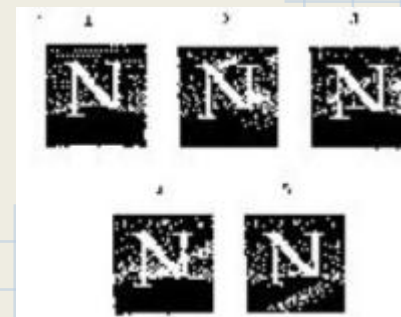
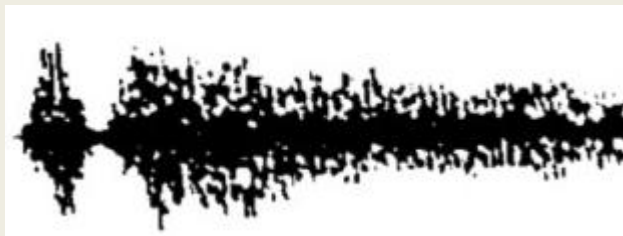


# Trade marks

New types:



Fresh cut grass



# Trade marks

## Conflict and comparison

Global and contextual

Reasonable consumer

Dominant parts

Visual, phonetic, conceptual

	identical or similar goods	different goods
identical or similar sign	conflict	risk of dilution (abuse of reputation)
different sign	allowed	allowed

Nice classification of goods and services: no prejudice to comparison, facilitates search and administration

Vienna classification of figurative elements: purely information purposes

Conflict settlement by permission by the owner of senior right, otherwise ground of non-registration or revocation

# Trade marks

## Exclusive rights

against use in commerce of identical and similar signs for identical or similar goods/services;

against use in commerce of identical and similar signs for other goods and services, if the abuse of or damage to the reputation of the sign (dilution) is possible.

Does not cover use of the sign (or its elements) in good faith trade, if used to describe goods/services, or in usual manner, or to indicate the name of another person. The use of not protected elements of the trade mark is not prohibited.

**Term of protection: 10 years, possible to renew,** unless revoked due to non-use or becoming generic (non-distinctive), or cancelled for not meeting criteria.

# Geographical indications

Non-proprietary IP right, without time limits

Similar concept: appellation/designation of origin, traditional speciality guaranteed etc.

Protected de facto or by registration/enlisting

[ec.europa.eu/agriculture/quality/schemes/](http://ec.europa.eu/agriculture/quality/schemes/),

[europa.eu/legislation\\_summaries/internal\\_market/businesses/intellectual\\_property/l66044\\_en.htm](http://europa.eu/legislation_summaries/internal_market/businesses/intellectual_property/l66044_en.htm), [www.gido-database.com/pages/maps](http://www.gido-database.com/pages/maps), [www.geographicindications.com/](http://www.geographicindications.com/), [www.intergi.org/](http://www.intergi.org/)

Criterion:

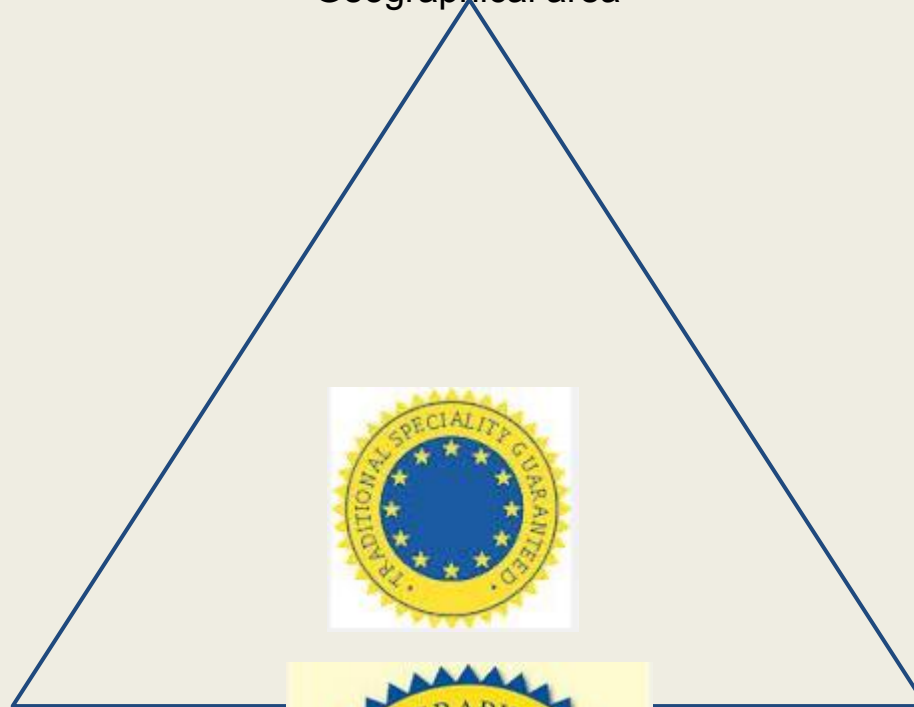
link between the sign, referring to a geographical area and between the product, designated by the sign, and the geographical area.



# Geographical indications



Geographical area



SIGN

PRODUCT

