

Industrial & Intellectual Property





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1. Intellectual Property and Intellectual Property Rights

Basic introduction to the different means of protecting Intellectual Property (IP) and examples of what can be protected within the food industry.

INTELLECTUAL PROPERTY (IP)

Intellectual Property refers to all those creations that results from creative efforts from the human mind.

These creations are often of an **intangible nature**, but they can be protected in several ways.



WHAT KIND OF IP CAN BE GENERATED IN THE FOOD SECTOR?

Everything that gives a **unique value** to your product or process or that can be **inextricably linked to your product** and brand has the potential to be protected. Some of them are obvious, some others not always.

For example:



INGREDIENTS & RECIPES



EQUIPMENT



PROCESS



DESIGNS

INTELLECTUAL PROPERTY RIGHTS (IPR)



IP can be protected through several means, although the form of protection will vary depending on the nature and the level of innovation of the specific item. In general, IPR grant the owner the exclusivity to use such IP, preventing others from using the IP generated or owned by him/her. Nobody is entitled to use the protected item without prior authorisation and agreement with the IPR owner.

The rights and advantages provided by the IPR will depend on the means of protection.

INDUSTRIAL PROPERTY

COPYRIGHT

'SOFT' IP

Trademarks
Patents
Utility Models
Industrial Designs

Literary & artistic works

Databases

Trade Secrets

Note: one single product might generate several IP rights.

BASIC CONCEPTS TO UNDERSTAND IP RIGHTS

1- IPR ARE TERRITORIAL RIGHTS.

In principle, when registering your product or process for IPR protection, the exclusive rights that you will gain will be applicable only in a certain country or region.

2- PROTECTION IS TEMPORARY.

The period over which the IPR owner will have exclusive rights varies with type of right conferred, but it does not last forever.

3- IT MUST BE NOVEL.

For some IPR to be granted, the items under protection must differ significantly from what is already done and has been published, which is called the *state of the art*.

4- IT MUST HAVE AN INDUSTRIAL APPLICABILITY.

To qualify for some sort of IPR, namely patents, the invention must have an industrial application, providing a technical solution for a technical challenge.

TRADE MARKS: PRODUCT VISUAL IDENTITY (I)

A <u>sign</u> (letters, words, numbers, images, shapes, colours, sounds) or combination of signs that **differentiates your** product or service from any other in a given market.

To get Trade Mark protection, your sign needs to be:

- Distinctive, meaning it is easy to recognize because it is different from other things.
- Not deceptive, meaning the trade mark cannot lead the reader to believe something that is not true.
- Not descriptive, meaning it is not merely describing a product or its characteristics.
- In conformity with public order and not forbidden by law.

Length of protection: 10 years + indefinitely renewal (with fees)

TRADE MARKS: PRODUCT VISUAL IDENTITY (II)







TIPS:

- 1. Check carefully what is out there to avoid infringement of 3rd parties see next sections of the module.
 - 2. Any names or descriptors that are unique can be trade marked.
- 3. Protect with care what you've created to prevent others from taking advantage of your reputation by using similar product imagery.

INDUSTRIAL DESIGNS: APPEARANCE AND PERCEPTION (I)

It protects the **appearance or design of a product or part of it** (shape, pattern, configuration, etc.). This is all the ornamental and non-functional features of a product resulting from design activities.

To get protection in the form of Industrial Design in a **given market**, your design must be:

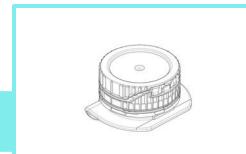
- Novel.
- Show individual character, meaning it is easily distinguishable from anything else already made public and does not cause a similar impression than other designs.

Length of protection: up to 25 years, no renewal allowed.

The initial granting period differs by country.

INDUSTRIAL DESIGNS: APPEARANCE AND PERCEPTION (II)





TIPS:

- Check carefully what is out there to avoid infringement of 3rd parties
 see next sections of the module.
- 2. Carefully select your external providers and collaborators.
- 3. When collaborating with 3rd parties, specially designers, you might want to add a specific clause on the contracts about IP ownership.

PATENTS: NEW FUNCTIONALITY AND TECHNICALITIES (I)

Patents may be granted for functional and technical aspects of **products and processes**, providing new ways of doing something or offering a new technical solution to an **existing problem**. It provides the inventor and/or the applicant with the **exclusive rights** over the patented invention, **limiting the possession**, **the use**, **the sales**, **the manufacturing and even the importing by 3rd parties** in a given territory without consent.

For an invention to qualify as patentable it must be:

- A patentable subject matter.
- Novel.
- Include an inventive step, meaning it must include non-obvious steps attainable by anyone else.
- It must possess an industrial applicability.

Length of protection: up to 20 years.

PATENTS: NEW FUNCTIONALITY AND TECHNICALITIES (II)

Often, food technology is considered to be impossible of patenting. However, this is not the reality.

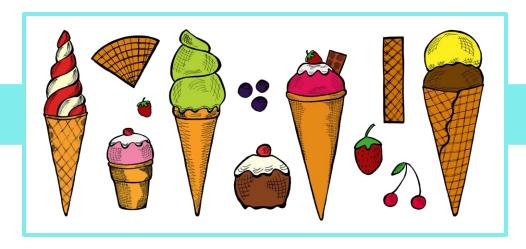
If you can demonstrate the novelty behind the technology and the applicability, it could be worth trying.

Potentially patentable food technology includes, but is not limited to:

- New and non-obvious ingredients and additives
- Processes for producing ingredients
- Ingredient combinations
- Cooking devices and methods
- New group of varieties obtained through genetic breeding

The following slides include a variety of examples that are applicable to the food industry.

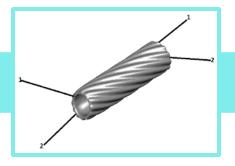
PATENTS: NEW FUNCTIONALITY AND TECHNICALITIES (III)



11,976 patents registered in Espacenet for "ice-cream"!! – link

This number includes expired patents (some are from 1894!) but it is a clear example that foodstuff can (and sometimes must) be patented, either the composition, the production process, the result or everything as a whole.

PATENTS: NEW FUNCTIONALITY AND TECHNICALITIES (IV)



Pasta with a novel form

EP3243392 (A1)



Cocktail containing aniseed flavoured brandy (Ouzo)

EP1099752



Method of producing chocolate with a low calorific value

EP3305088 (A1)

PATENTS: NEW FUNCTIONALITY AND TECHNICALITIES (V)



Do you know what are other companies doing?

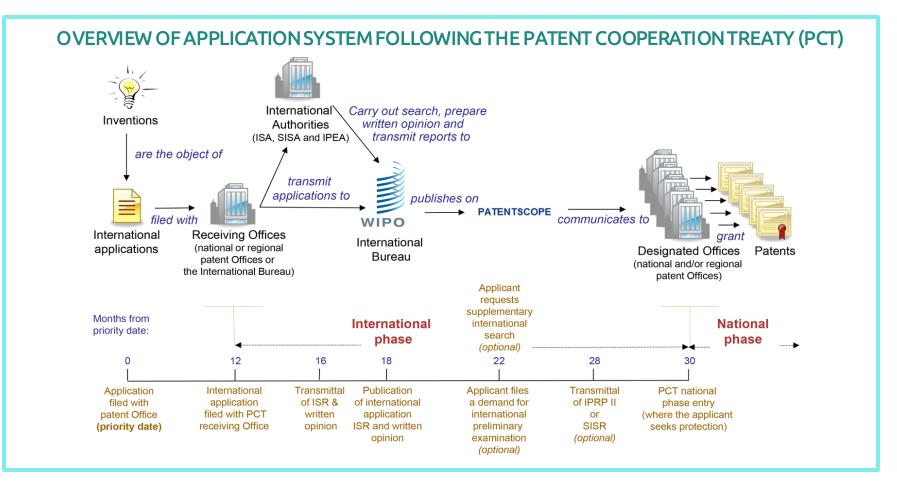


20 patents on products & methods! - <u>link</u>

- FR2900639A1 Ready to use product, e.g. salad, conditioning methods, involves placing products in package, introducing conditioning gas in package, and sealing package with (...) film.
- FR2940749A1 Rolled culinary product e.g. fresh and dietetic product, preparation method, involves rolling vegetable sheets around garnish by applying glued (...) packing.

471 patents registered by KELLOG CO - link

- There are 4 patents protecting granola products, for example
 <u>WO2015196061A1</u> Rotary molded shaped crunchy granola food
 products and methods of making same.
- Other patents are related to food packaging and food processing methods, but also to products such as protein smoothie powder composition (<u>WO2020077101A1</u>) or protein bars (<u>WO2020077040A1</u>) for example



PATENTS: NEW FUNCTIONALITY AND TECHNICALITIES (VI)

TIPS:

- 1. Even if sometimes difficult, many food related inventions can (and must) be patented.
- 2. Check carefully what is out there to avoid infringement of 3rd parties, involving a patent attorney when necessary.
 - 3. IP laws are tricky and difficult to navigate through, especially when talking about patents.
- 4. During product development, specially at research phase, you should be careful with your product development partners.
- 5. You must specify from the very beginning the terms and conditions with regards IP ownership: who owns what, commercial agreements over IP use, etc.
- 6. When collaborating with 3rd parties, specially Universities and other Research institutions, you must be very careful with what is published. One of the pre-conditions for a patent to be granted is that it must be novel, meaning there is no evidence of it in the public domain, including scientific publications.

UTILITY MODELS: FUNCTIONAL & TECHNICAL IMPROVEMENTS (I)

Utility Models are rights granted for **new technical inventions**, **usually of an incremental character**, providing small improvements to, and adaptations of, existing products or that have a short commercial life. Similar to patents, utility models grant the inventors and/or applicant the exclusive right to prevent others from commercially exploiting invention. Utility models are sometime referred to as "short-term patents", "utility innovations" or "innovation patents".

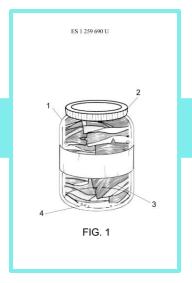
For an invention to qualify for utility model it must be:

- Novel.
- The inventive step required for patents can be in this case lower or even absent.
- It must possess an industrial applicability.

Length of protection: up to 15 years.

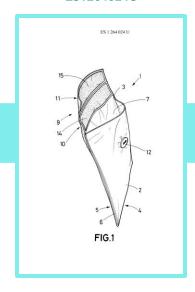
UTILITY MODELS: FUNCTIONAL & TECHNICAL IMPROVEMENTS (II)

ES1259690Y



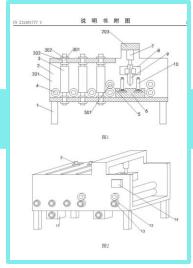
Packaged food product

ES1264024U



Reinforced food packaging

CN21401777U



Food packaging bag tearing & shearing device

COPYRIGHT: LITERARY AND ARTISTIC WORKS (I)

Copyright protect novels, poems, music, paintings, phonograms, broadcasts, etc.

This method protects **not** the ideas themselves but the **form of expression** of such ideas. It represents the legal interest of persons and legal entities that make their works available to the public.

Even if it might not be directly linked to the food sector, in an ever evolving world in which the **creation of content** is constant and can help companies to position themselves, it is an important protection method to consider.

There is no registration process for copyright; it arises automatically when new and original work is created.

Length of protection: 70 years after the death of the creator.

COPYRIGHT: LITERARY AND ARTISTIC WORKS (II)

PHOTOS



CREATIVITIES



PUBLICATIONS



TIPS:

- 1. Copyright © every literary and artistic work you produce.
- 2. Make sure you can refer to or use material produced by any other party.
- 3. When relevant, add references to where the information or the images you use are coming from.
- 4. When collaborating with 3rd parties (designers, photographers) you may want to add a clause on copyright ownership.

TRADE SECRET (I)

Trade secret refers to any **confidential business information**.

Protection under trade secret is frequently used to protect the intellectual assets which are not included in the category of industrial property or in literary and artistic works.

Sometimes, trade secret is used by the companies to protect their IP assets without having to disclose information to the public.

Trade secret **cannot be registered** so there is no law that can grant exclusive rights to the owner of the IP. However, a well-kept secret can grant technical and commercial advantages to the owner.









TRADE SECRET (II)



For that to be possible, **internal management procedures** are of the utmost importance.

Some of the actions to consider are:

- Keep information fragmented among the companies.
- Sign strong non-disclosure agreements with partners, employees, suppliers and clients.

TRADE SECRET (III)

Some of the best kept secrets in the food industry relate to recipes.

Frequently, the innovations introduced by a new recipe are considered too "low-tech" to be considered suitable for patenting. Moreover, making the information publicly available could lead to competitors easily replicating your recipe.



Do you know what is inside Coca-Cola or the spice mix of the Kentucky Fried Chicken?



There are, of course, exceptions.

If your recipe includes a specific combination of ingredients results in unexpected effects that could result in a nonobvious substitute for a standard ingredient or alters (also non-obviously) the properties of the end product, it could be considered entitled to be patented.

GEOGRAPHICAL INDICATORS: GEOGRAPHICAL ORIGIN

Geographical Indicators are signs that are used on products to indicate its **geographical origin and are indicative of certain qualities or reputation** essentially linked to that origin.

These indicators are typically used for agricultural products, food and beverage and even for some industrial products.

The means and approaches to protection under geographical indicators varies widely between countries and even regions. Some examples are outlined below:







DECISION TREE: WHICH TYPE OF IPR COULD YOU APPLY FOR? Is the value in the basic idea or concept? Could be reversed **PATENT** In technical or engineered? Is it significantly different from the state of the art? In the **product** functional aspects and / or Is value in the idea or concept? Even if innovative, could it be seen UTILITY MODEL processes. as an incremental improvement of existing solutions? Where is the Is the value in the cumulative knowvalue? TRADE SECRET how? Can be kept as a secret? Is it difficult to reverse engineering? INDUSTRIAL DESIGN In the appearance TRADE MARK In the **brand**

ONE PRODUCT COULD INCLUDE SEVERAL IP RIGHTS



THE IPR BEHIND AN IMPOSSIBLE BURGER:

IMPOSSIBLE™

Patent number: 10273492

Expression constructs and methods of genetically engineering methylotrophic yeast

Patent number: 10172380

Ground meat replicas

Patent number: 10273492

Expression constructs and methods of genetically engineering methylotrophic yeast

Patent number: 9826772

Methods and compositions for affecting the flavor and aroma profile of consumables Patent number: 10287568

Methods for extracting and purifying nondenatured proteins

Patent number: 10172381

Methods and compositions for consumables

Patent number: 10093913

Methods for extracting and purifying nondenatured proteins

Patent number: 9943096

Methods and compositions for affecting the flavor and aroma profile of consumables

& much more...

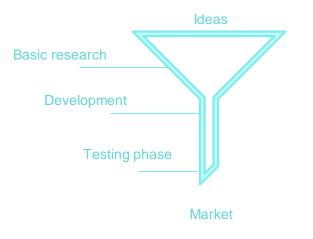
2. The Importance of and the Opportunities Arising from IP Protection in the Current Innovation Ecosystem

In the context of Open Innovation ecosystems, IP protection has even a greater importance that it had in the past. Any company (aiming at) having an Innovation portfolio should seek to align their IP strategy with the overall business strategy.

In this chapter we explore the different options that a company should consider when developing their business and IP strategy.

IP GENERATION IN PRODUCT / SERVICE DEVELOPMENT (I)

Historically, Research and Development (R&D) projects within a company have been **conceived and developed internally** based on in-house research or scientific-based evidence.



SHORTCOMINGS OF A CLOSED APPROACH

- Costly and lengthy process
- Risk of inadvertently arriving at similar results to your competitors

IP GENERATION IN PRODUCT / SERVICE DEVELOPMENT (II)

However, the approach has rapidly evolved to an **Open Innovation ecosystem** in which **IP can be traded off just like any other comercial asset**, which can bring several advantages to any business when properly managed.

For instance:

- The risk of failure is reduced.
- The development of new products or services is faster and more efficient.
- The generated IP can be traded off, creating new revenue streams.



WHY SHOULD YOU PROTECT YOUR IP?

Intellectual Property is a very important asset for every company. It is what can bring a **unique value** to your business and **differenciate you from your competitors** in the market in one or several ways, for example:

- The production of better products, in terms of flavours, odours, textures, etc., as a result of improved or different processes or a unique combination of ingredients, amongst others.
- The reduction of production costs (lower unitary cost, increased yields) as a result of improved processes, which can turn into greater profit margins or give you the flexibility to adapt your pricing strategy.
- Creating a unique identity for your product or service, through a rigourous branding strategy.

Effective protection of IP can help innovative companies to secure financing, grow, collaborate and, overall, create value.

IP PORTFOLIO MANAGEMENT IN THE BUSINESS STRATEGY (I)

A good IP portfolio, if well managed, can help your business growth!

European SMEs owning IPRs have as much as 68% higher revenues per employee than SMEs that do not own any IRP at all.

Having said that, this percentage varies with the type of IPR. - EUIPO, 2021.

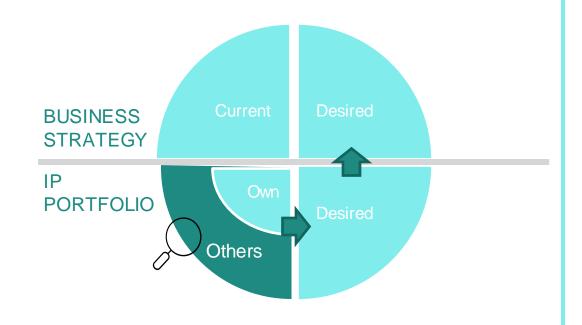
However, the generation of IP is costly in terms of **time**, **money**, **resources**, **energy and thoughts**.

That is why any company should invest time to define a solid IP strategy from the very beginning, preventing others from taking advantage of your developments and avoiding wasting precious resources.

IP PORTFOLIO MANAGEMENT IN THE BUSINESS STRATEGY (II)

Your IP portfolio must be aligned at all times with your business strategy, both present and future.

It is necesary to evaluate periodically where your company is, where it is going and where would you like it to be, without missing what your competitors are doing.



DO YOU HAVE THE FREEDOM TO OPERATE? (I)



Intellectual property is playing a key role in business and exploitation strategies these days.

In this context, it is important to understand that well-protected products and/or services do not prevent infringement of other third-party IP rights when launching on market.

Before you get too invested in an Innovation Project, and in order to prepare a successful market launch and limit the risk of future litigation, a **Freedom** to **Operate Search** will determine the IP rights of competitors, start-ups and other innovative companies.

This allows you to evaluate the competitive landscape both legally and technically .

DO YOU HAVE FREEDOM TO OPERATE? (II)

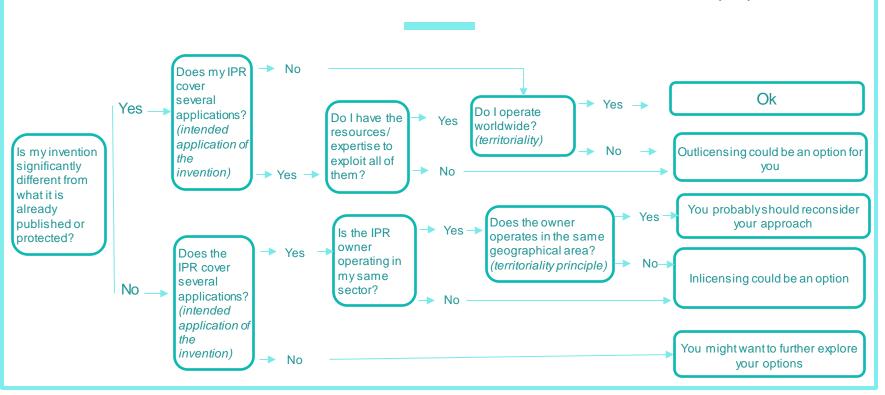
You must check the available data bases and answer a few questions:

- 1- Has any other entity already registered something similar to what you are doing?
- 2- Is what you are doing significantly different?
- 3- Which territories does their protection cover?

It is important to use a **precise and accurate patent search strategy**, using professional and commercial full-text patent databases - *databases and tips on how to use them for quick analysis of the FtO are included in section 3 of this module*. When doing so, do not forget to check **Asian patent literature!**

The next slide includes a decision tree, which may be useful for you to understand the opportunities derived from a particular situation. However, we always advise you to check facts and implications with a specialised IP attorney.

DO YOU HAVE THE FREEDOM TO OPERATE? (III)



INLICENSING: USING 3RD PARTIES IP (I)

Using the IP that has been generated by and is owned by third parties might bring some advantages:

• Save money & time! You can develop a new product or service using already proven technologies or processes, leveraging in what others have already done.

You have the option to buy the IPR or licence the IPR for a given application or geography.

Benefit from your partner's reputation! Being able to use some well-stablished products or techniques, such as
 Gore-Tex™ (your ally for keeping you dry!) or Tetra Pak™ (keep your products fresh for longer periods!), will save
 you some time in building up your reputation as a trustworthy provider.

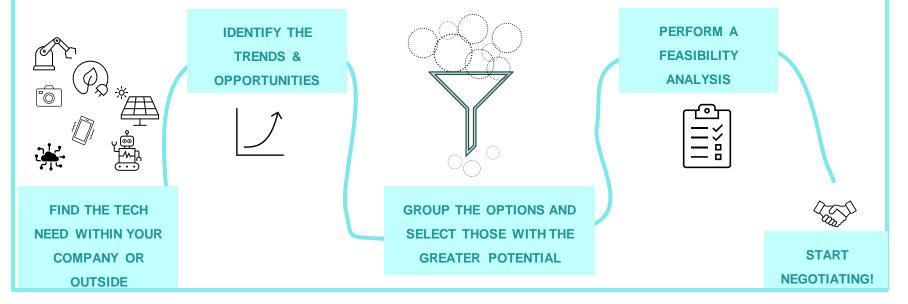
OUTLICENSING: COMMERCIALISING YOUR OWN IP (I)

Out-licensing your IPR can bring additional revenue streams to your company in several ways:

- Expand to new markets without investing new resources! IPR provides exclusive rights in the specific countries or regions you apply for protection.
- > You might want to give the **license for exploitation** to partner in new markets, so you can lower several barriers (cultural differences, time, resources, etc.).
- >That is why it is advisable to apply for protection not only in the regions you work but also in the ones with some potential.
- Use your IP for other applications! Your technology or process might be useful for other applications. If this is the case, you might consider out-licensing against **royalties**. This one of the reasons for, when applying for IPR, the claims should be of a rather **broad nature**, not only to avoid disclosing too much information but also to giving some room to protect several applications.

TECHNOLOGY AND LICENSEES SCOUTING

Either if you are scouting for potential third parties interested in a specific technology or know-how, or you are searching potential licensors, acquirers, or investors you should take some time to study and analyse what is out there.



RISKS ARISING FROM PROTECTING YOUR IP (I)

Attaining IPR, specially patenting and utility models, is sometimes a lengthly process. It can take up to 18 months to get a patent granted.

However, even while still **pending**, a patent application may provide you some benefits such as:

- It may prevent competitors from launching a similar product. Until it is granted there will be uncertainty in the final scope since, if your patent is granted, they might have some FtO issues.
- It can build up your product's reputation and marketability, as it can be marked as "patent pending".
- If your competitors are filling patent applications, you not doing so might leave you behind.
- If you have your own patent applications you may be in a stronger position in the event of negotiations.

RISKS ARISING FROM PROTECTING YOUR IP (II)

Applying for IPR implies that some relevant **information will be publically disclosed**. Such information can be used by your competitors to understand what your secret is and take advantages to their own benefit.

To reduce this risk, you may want to consider filling in your claims as generically as possible to avoid revealing all your secrets and limit the potential copycats.

By doing this, on some occasions you will be able to protect several applications with the same patent (when carefully studied) and it will open you the door for out-licensing your innovations.

But in any case, the release of information goes both ways: you can also use what your competitors are publishing in their patent applications to understand what they are doing and better understand the market trends!

3. Organisations, Databases and Sources for IP Information

IP protection is complex.

In this chapter you will find the relevant entities dealing with IP at a national and international level. You will also find the most relevant databases to look for information and some tips on how to do it.

Finally, this section also includes references to additional resources where you will be able to dive deeper into IP protection.

RELEVANT ORGANISATIONS FOR IP PROTECTION

- INPI INTITUTO NACIONAL DA PROPIEDADE INDUSTRIAL -https://inpi.justica.gov.pt/
- INPI INTITUT NATIONAL DE LA PROPIÉTÉ INDUSTRIELLE -https://www.inpi.fr/fr
- IPO INTELLECTUAL PROPERTY OFFICE https://www.gov.uk/government/organisations/intellectual-property-office
- IPOI INTELLECTUAL PROPERTY OFFICE OF IRELAND https://www.ipoi.gov.ie/en/
- OEPM OFICINA ESPAÑOLA DE PATENTES Y MARCAS https://www.oepm.es/es/index.html
- EPO EUROPEAN PATENT OFFICE https://www.epo.org/
- EUIPO EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE https://euipo.europa.eu/ohimportal/en/home
- WIPO- WORLD INTELLECTUAL PROPERTY ORGANIZATION https://www.wipo.int/portal/en/

You might also be interested in searching IP registered in other organisations such as USPTO (US), JPO (Japon) or SIPO (China). Links to other agencies can be found here: https://libguides.gatech.edu/c.php?g=53972&p=351310

IP DATABASES (I)

One of the first steps in the product development cycle should be to check whether an invention similar or identical to yours already exists, or what is the same, checking if you have **the Freedom to Operate in a certain market**.

The same applies when you want to register a design or a trademark.

In the following slides you will find the most relevant databases to source such information. These databases can be used to better understand what is happening in your markets and what your competitors are doing.

PATENTSCOPE (WIPO)

- Available information: Patents
- Link: https://www.wipo.int/patentscope/en/

ESPACENET (EPO)

- · Available information: Patents
- Link: https://worldwide.espacenet.com/patent/

IP DATABASES (II)

GLOBAL BRAND DATABASE (WIPO)

- Available information: Trademarks, appellations of origin and official emblems.
- Link: https://www3.wipo.int/branddb/en/

GLOBAL DESIGN DATABASE (WIPO)

- Available information: Industrial designs.
- Link: https://www3.wipo.int/designdb/en/index.jsp/

MADRID MONITOR (WIPO)

- Available information: Trademarks.
- Link: https://www3.wipo.int/madrid/monitor/en/

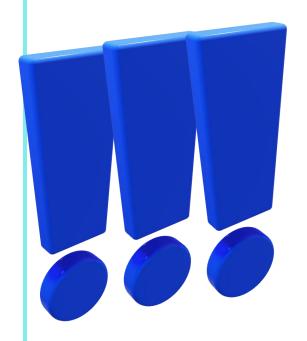
ESEARCH PLUS (EUIPO)

- Available information: Trademarks, designs, owners, representatives.
- Link: https://euipo.europa.eu/eSearch/

TM | VIEW (EUIPO)

- Available information: Trademarks.
- Link: https://www.tmdn.org/tmview/#/tmview/

TIPS ON HOW TO USE THE DATABASES (I)



Using these databases is a first step for understanding where your products are with regards the state of the art, whether you have the freedom to operate or not, and what are your competitors are doing.

In this section we will extract examples using the ESPACENET database for patents & utility models.

However, to make sure you get the right level of protection for your IP and that you are not infringing the IPR of any other party, we advice you to consult with professionals fully dedicated on the matter and patent attorneys.

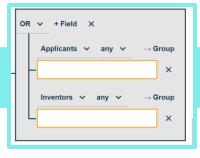
TIPS ON HOW TO USE THE DATABASES (II)

When using a search engines, the **advanced search** option will open the opportunity to adjust the research to one or several parameters, depending on what kind of information you have available or what you want to achieve.



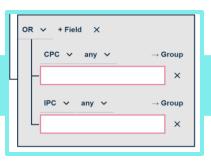
KEYWORDS

You can check what kind of inventions are filled in for a given application, using a specific technology, etc.



APPLICANT / INVENTOR

You can carry out some research about what are your competitors doing.



CODES

Searching by codes can give you some valuable information of what is going on in the market.



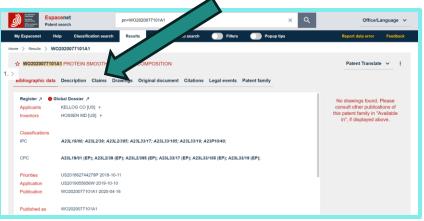
PATENT NUMBER

Searching a specific patent will provide you the information about a given invention

TIPS ON HOW TO USE THE DATABASES (III)

Reading a patent application carefully can give you highly valuable information, both from the technical point of view (how your competitors are doing things) and commercial point of view (what your competitors are using the technology for).

Most of that information can be found in the **claims section**, available in the database.



TRAININGS AND SUPPORT SERVICES (I)

THE EUROPEAN IP HELPDESK - https://www.iprhelpdesk.eu/services

A service managed by the European Commission's Executive Agency for Small and Medium-sized Enterprises (EASME) providing several services (all of them free of charge).



HELPLINE
Tailored support to your IP
issues



TRAININGS & EVENTS
Webinars on specific IP
issues, training events and
conferences



ONLINE LIBRARY
Fact sheets, case studies,
guides and informative
materials

TRAININGS AND SUPPORT SERVICES (I)

EUIPO- IP SCAN - <u>https://euipo.europa.eu/ohimportal/en/home</u>

A service managed by the EUIPO that provides (fee payable):

- 1- Analysis of your IP environment
- 2- Relation of IP to your business strategy
- 3- Tips on which aspects you should focus your effors, considering your IP and your business.

TRAININGS AND SUPPORT SERVICES (II)

FUTURELEARN- https://www.futurelearn.com/courses/intellectual-property-management-food

Future Learn is an online training platform, which has a dedicated course about IP management in the food sector: Intellectual Property Management in the Food Sector: Safeguarding Your Tradenarks in the Global Marketplace.

This course has been created by EIT Food and the University of Warsaw.

The course reviews the basics of IP management in the food sector, including relevant case studies from companies such as Monsanto, Nestlé, PepsiCo and Maspex.







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