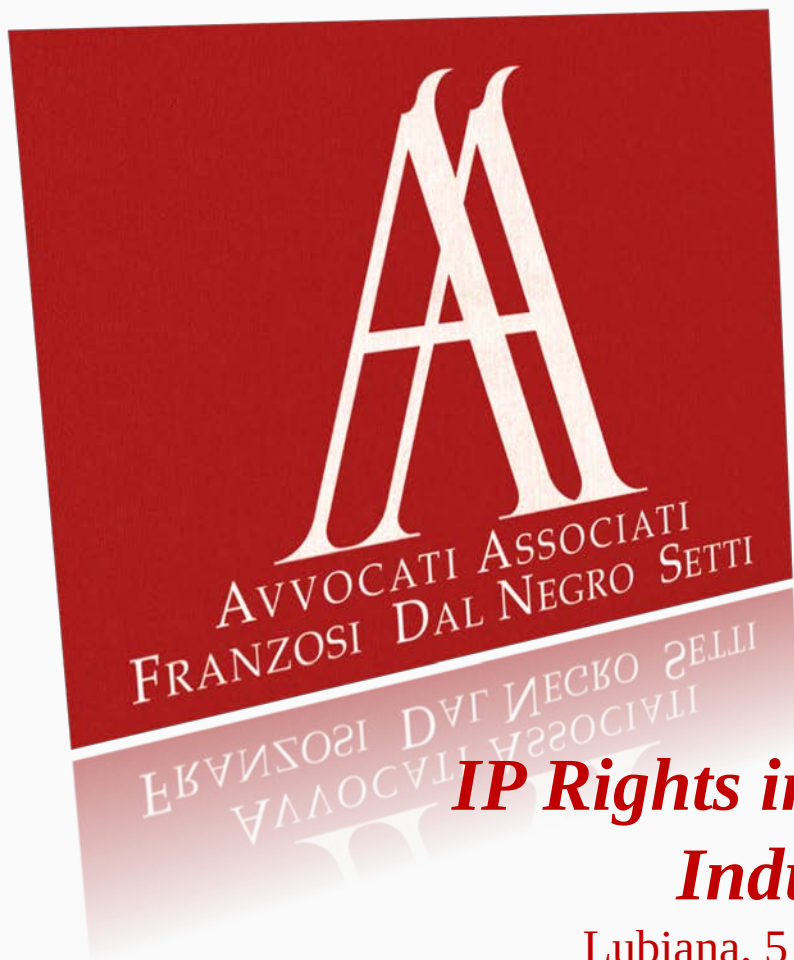




IP Rights in the Creative Industries

Lubiana, 5 February 2020

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FRANZOSI DAL NEGRO SETTI



Intellectual Property (Rights)

- Intellectual property is the result of '**ideas**'.
- 'Ideas' themselves cannot be protected.
- But if you can **embody** them (by recording, writing down, describing, etc.) they might become **protectable**.
- Ideas can be protected by a whole range of **IPRs**.
- The **type of IPRs** will be different depending on the idea.



One product - many IP rights

Trade marks

- NOKIA
- Product "208"
- Start-up tone



Patents and utility models

- Data-processing methods
- Operating system
- Operation of user interface

Copyright

- Software
- User manuals
- Ringtones
- Start-up tone
- Images

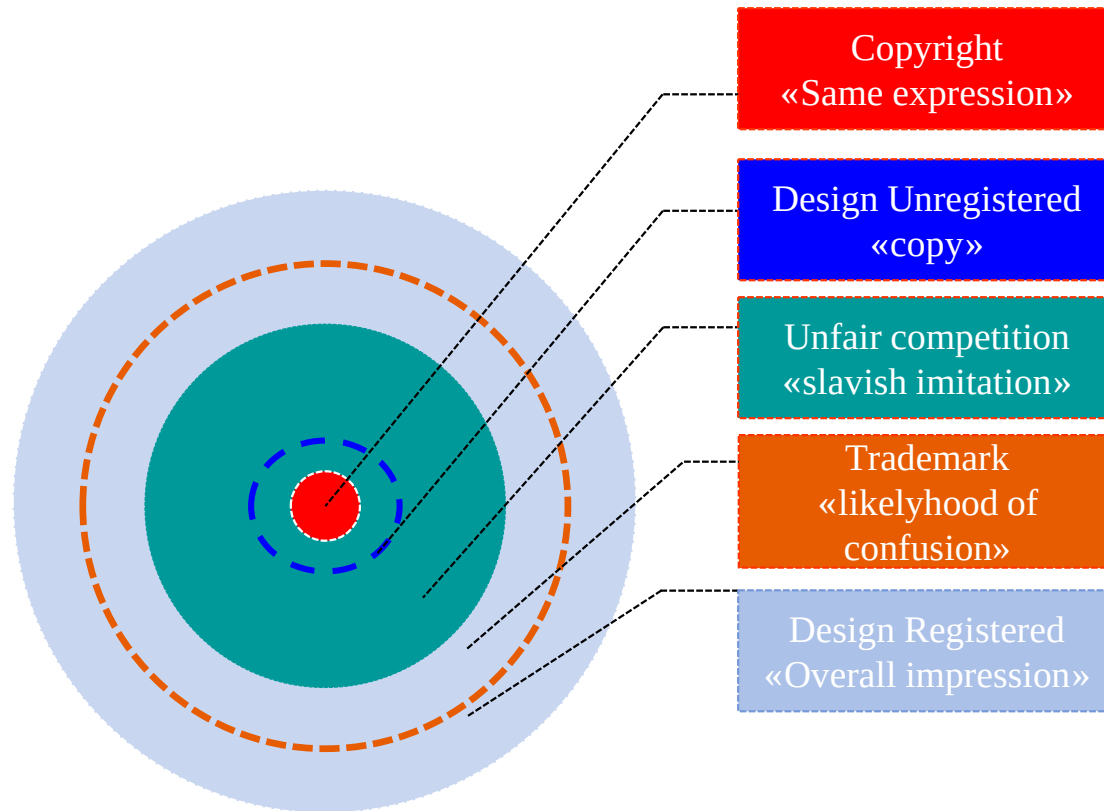
Designs

- Form of overall phone
- Arrangement and shape of buttons
- Position and shape of screen

Trade secrets

- Some technical know-how kept "in-house" and not published

Design protection



Different types of IP rights



Legal right

What for?

How?

Patents

New inventions

Application and
examination

Utility
models

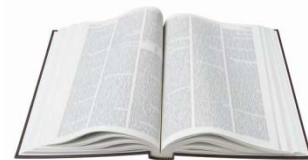
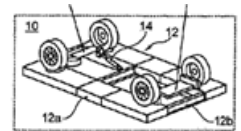
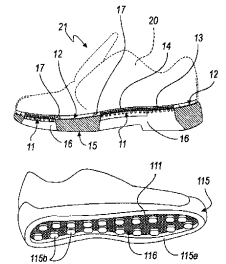
Incremental inventions

Application and
registration

Copyright

Original creative or
artistic forms

Exists
automatically





Legal right

What for?

How?

Trademarks

Distinctive identification
of product and services

Use and/or
registration

Registered
Designs
(Unregistered
Design)

External appearance

Registration
(3 years from public
disclosure)

Trade Secrets

Valuable information
not known to the public

Reasonable efforts
to keep secret

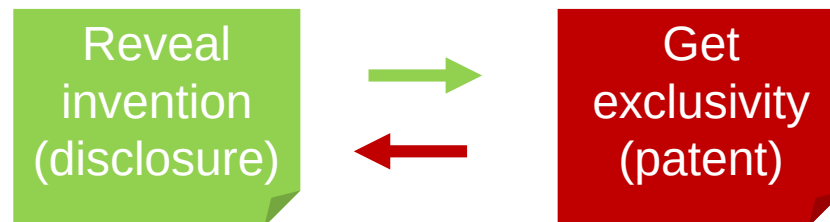




PATENTS

(national – EPO – Unified Patent)

- A legal title which grants the holder
 - the exclusive right to prevent others from making, using or offering for sale, selling or importing a product that infringes his patent without his authorisation
 - in countries for which the patent was granted
 - for a limited time (up to 20 years).
- In return for this protection, the holder has to disclose the invention to the public.



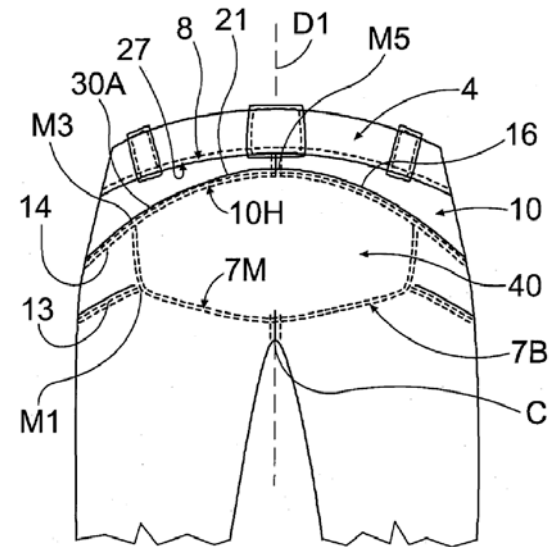
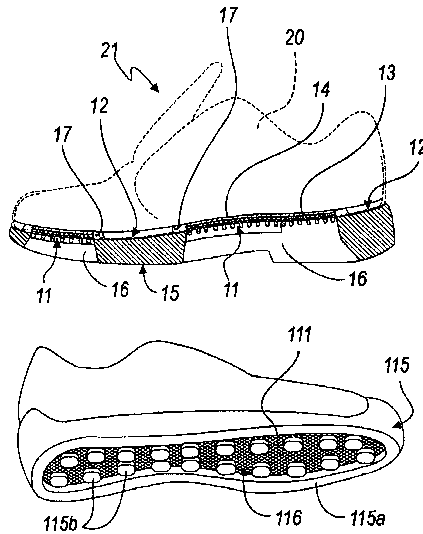
What exactly can be patented?



- Patents protect inventions which solve technical problems.
- Invention: can be a process or a product.

For an invention to be patented, it must usually be:

- ✓ **new** to the world (i.e. not available to the public anywhere in the world)
- ✓ **inventive** (i.e. not an "obvious" solution), and
- ✓ susceptible of industrial application



Further examples in fashion:

YKK zipper - Vibram shoe sole - Lycra – Nylon Alcantara

TRADEMARKS

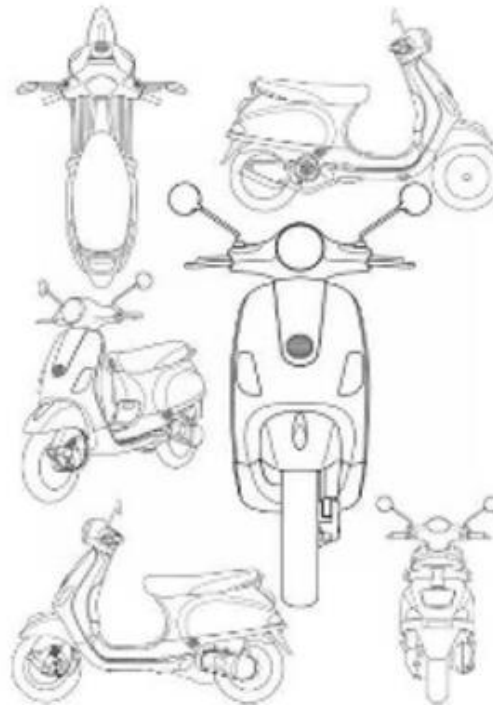


- A trade mark is any sign, capable of being represented graphically, which distinguishes the goods and services of one undertaking (company or organisation) from those of another
- Many different types: word, figurative, colour, shape
- Absolute grounds for refusal
 - **Distinctiveness**
- Relative grounds for refusal
 - When peaceful co-existence of marks is impossible

The scope of protection



- Trade mark owners have an **exclusive right** to prevent others from using their mark in the course of trade.
- Trade marks are registered for **specific goods and services** only. The exclusive right offered by the trade mark is linked to these specific goods and services.
- Trade mark protection is limited to the **territory** where the mark is registered.
- Unlike other IP rights, trade marks can be **renewed indefinitely**. Each renewal adds ten years of protection.
- Risk of loss of protection if:
 - not used after five years
 - found to be invalid





DESIGN

(national – community registered / not registered)

- A design is the outward appearance of the whole or parts of a product resulting from its features, such as:
lines, colours, shapes, textures, contours, materials, ornamentation
- A product is any industrial or handicraft item, such as: packaging, normal single products, parts of products, graphic symbols (and logos), get-ups (interiors of rooms or shops)
- Requirements for protection
 - **Novelty**
 - **Individual character**

Scope of protection



Design rights are exclusive rights.

Their scope of protection is broad and includes designs which do not produce a different overall impression on the informed user.

Design protection is limited to the **territory** in which the design is registered.

Design protection has two forms: registered and unregistered

- **Unregistered rights** protect the design against copying only, and for a limited time period of three years.
- **Registered design** rights are stronger. There is no need to prove copying by the infringer. Registered designs offer protection for an initial period of five years, and can be renewed up to four times.



TRADE SECRETS

Technical and commercial know-how

- Information that:
 - is not generally known or easily discovered;
 - has a business, commercial or economic value (actual or potential) because the information is not generally known;
 - is subject to reasonable efforts to maintain secrecy.
- Trade secrets are valid for as long as they remain secret, in other words for as long as they do not fall into the public domain.

MEANS OF PROTECTION



Practical

- Limited access to information
- "Need to know"
- Encryption of data
- Monitored entry to installations

Contractual

- Non-disclosure agreements
- Restrictive covenants in employment contracts



COPYRIGHT



- Copyright protects any production of the human mind, such as literary and artistic works.
 - This production must be an expression and not a mere idea.
 - The expression must be original.
- Copyright creates a special legal relationship between authors and their work.
- It confers legal protection for a limited period of time: in the EU the term is 70 years.



Economic rights

- relate to the economic exploitation of the work (the rights of reproduction, communication to the public, translation, adaptation, distribution and resale).
- are freely transferable or licensable

Moral rights

- relate to a moral interest of the author (the moral rights include the rights of authorship, integrity and divulgation)
- are always retained by the author



How to approach and define IPRs at the beginning of your project:

- "Ideas" need to be embodied and protected in order to realise their full value.
- Intellectual property covers a wide number of areas.
- The first step is to determine which intellectual property right is likely to be applicable to a particular object.
- Each of these rights corresponds to a different set of rules (duration of protection, administrative formalities, etc.)

Practical steps



- Identify the various IP elements in the project;
- Which elements can be protected?
- Understand ways in which they can be protected;
- You need to check that you haven't re-invented technology that already exists and that you are not using a brand name that has already been registered as a trade mark.
- You can check this by doing a search.
- You can perform an initial online search yourself, for example in Espacenet or TMview, both of which are free to use.
- Seek professional advice



Why you should do it at the very beginning of your project?

- Protect against copying;
- Possibility of licence;
- Get funds as start-up.

Without IP, many innovative projects would not be profitable because anyone who wanted to could simply copy the results!

WORTH PARTNERSHIP PROJECT



WORTH Partnership Project creates and supports transnational collaborations between fashion designers, creative people, manufacturing enterprises (SMEs) and technology firms looking to develop design-driven and innovative products.

The Project is funded by COSME - Programme of the European Union for the competitiveness of Enterprises and Small and Medium-Sized Enterprises (SMEs).



What is WORTH about?

1. **Supporting** designers and dialogue between makers/crafters/tech firms.
2. **Promoting** stories resulting from collaborative dialogue/links to make creative ideas happen that matters to society.
3. **Helping** creatives to use innovative techniques/technologies/methods to tell the story. E.g. Commitment to the society, create new values for the industry, community thinking.
4. **Fostering** multidisciplinary approach and different skills put together.

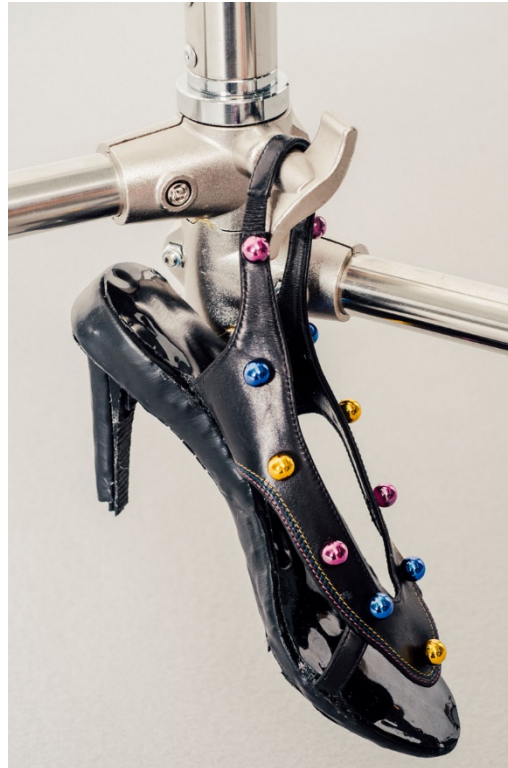


WORTH PROJECTS

Sectors: textile, furniture, accessories, leather/fur, footwear, jewellery.

- **First** round of **25 winning partnerships** is successfully **concluded**.
- **Second** round of **64 partnerships** well **underway**.
- **Third call** being widely **promoted** throughout Europe during seven months (with deadline 15 November) with the aim to reach the successful result of selecting a grand total of **150 partnerships**.

WORTH PROJECT: CASES



From high heels to flat shoes in seconds.

Footwear with a high component of design able to be used in different situations during the day: high heels for an elegant outfit and flat for a more casual one.

PATENT



EP 3 307 105 B1

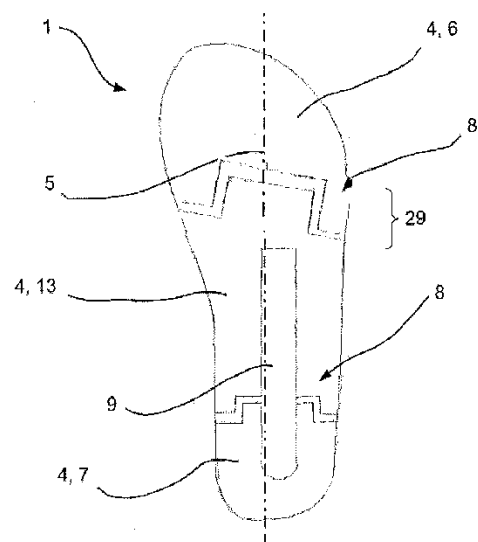


Fig. 1

EP 3 307 105 B1

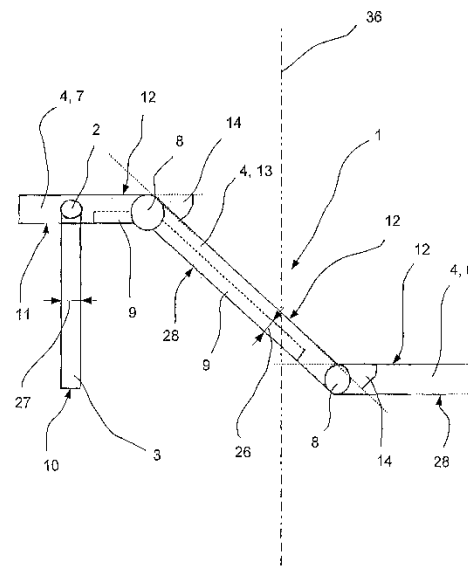


Fig. 2

WORTH PROJECT: CASES pt. 2



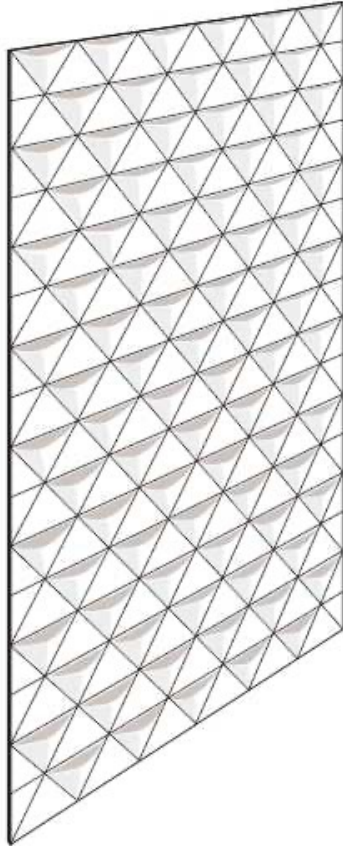
GARDIN: BRING NATURE INSIDE



Gardin is a plug and play indoor plant wall module. That provides a natural living space with optimal air quality and perfect natural scent.

It is an interior decoration element offering a green and technological solution to decoration.

REGISTERED DESIGN



AVOID PRIOR DISCLOSURE: WHY?



Patents

Risk to lose novelty

Design

Grace period

Trademark

Protect against copying and registration

Trade Secrets

You lose protection

RULES OF CONFIDENTIALITY



When you have come up with a new idea or invention, one of your biggest concerns is **keeping it safe and preventing others from stealing your idea.**

How to present your project to the public, internet, social networks

- use general information and do not show the part of the Prototype which contains trade secrets/confidential information;
- state clearly that the prototype/information/documents are confidential. All your documents should be marked “Confidential”;
- use disclaimer stating that the information included in the email and the attachments is confidential.



How to disclose information confidentially: NDA

- Only disclosed in complete, legally binding confidence, i.e. signing confidentiality agreements (NDA Non Disclosure Agreement);
- NDAs make it clear that any Confidential information/Trade Secret disclosed belongs to the disclosing party, and they include, among other things, an indication of the information being disclosed and a definition of exactly who is and is not allowed access to it;
- if you have already filed a Patent/Trademark/Design (you have already a completed registration) then you have to specify it.



Practical steps to maintain confidentiality

- label all confidential information as confidential;
- restrict access to sensitive information;
- use NDAs rigorously and consistently;
- keep the prototype physically secure;
- keep the prototype digitally secure;
- keep an inventor's log;
- “Make it difficult”.



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