

3. Protecting the Idea

Once the idea has been analysed and it is likely to be a business opportunity, it has to be protected, it has to become intellectual property.

According to Russell Parr & Patrick Sullivan (1997), **Intellectual Property** includes creations of human knowledge externalised by any means, making it possible to safeguard the sole right of economically valuing the knowledge, in a specific territorial area, for a set period of time.

Intellectual property can generate profits by protecting the idea, technology, design and trademark.

Intellectual property has the characteristics of any other kind of property:

- It has economic value
- It can be sold or licensed/ leased
- It can be stolen
- It can be protected
- Intellectual property is subject to most of civil law on private property, and to specific law

In markets where dominance relies on developing standards and user networks, the strategy for sharing/protecting intellectual property can be crucial to the success of a new technology.

When the characteristics of a technology make it difficult to exclusively use it, the creator can choose to temporarily protect its use or to share it, in order to generate profits through licensing: the protection implies the public authorities to provide an ownership right over the technology.

Intellectual property involves:

- Copyright – which protects how ideas are expressed.
- Industrial Property – which protects inventions, creations and distinctive trademarks.

- **Copyright**

Copyright is a right over a **piece of work**, of any kind, expressed in any form.



A piece of work is the exteriorisation of an intellectual creation and may be literary, artistic or scientific. In order to be protected, the piece of work has to be the outcome of an intellectual effort made in the literature, arts or sciences area and has to be the expression (written, spoken or in any other form) of the personality of its author.

Adapted from the Código do Direito de Autor e dos Direitos Conexos (Copyright and Related Rights Code), Articles 1 and 2

Copyright presumes:

- **Personal and Moral Rights** – the author is entitled to claim ownership of the piece of work during his/her lifetime and guarantee its authenticity and integrity.
- **Economic Rights** – the author is entitled to draw economic advantage from the exploiting of the work.

Therefore, copyright is a right of ownership which primarily grants protection to: literary works (scientific publications, conferences, books), computer programmes, audiovisuals, multimedia, databases.

Duration - according to the law, copyright lapses 50 years after the death of the creator of the piece of work, even if the work has been disclosed or published. After this period of time, the work comes into public domain.

- **Industrial Property**

Industrial property ensures fair competition by granting private rights over a range of technical production processes and wealth creation. (Article 1 Código da Propriedade Industrial (Industrial Property Code) – Decree-Law no. 36/2003, March 5th)

There are 3 different types of industrial property:

- **Protection of Inventions:** Patents Utility Models;
- **Protection of Design:** Designs or Models;

- **Protection of Trademarks:** Brand names, Logos, Establishment Name and Symbols, Geographical Names, Guarantees of Origin, Honours.

Below is a diagram of the agreement, according to the website of the Portuguese National Institute for Industrial Property (INPI).

What is it?

A new solution for an existing technical problem.

Requirements for Patenting

- Novelty
- Inventive Activity
- Industrial Application

Ownership of the Invention

General Rule: the patent rights belong to the inventor and his/her heirs.

Exception: if the invention arises during the course of an employment contract which presumes the activity, the patent rights belong to the company.

Patentable

Inventions related to products or processes, in all technology fields technology, provided they respect the requirements of patentability.

Not Patentable

Discoveries, Scientific Theories, Mathematical Methods, Naturally existing materials and substances, Aesthetic creations, Nuclear materials, Schemes, rules and methods of intellectual activities, computer games or business activities; Computer programmes without any input, Presentations of information.

Utility Model

- Duration = 6 years, possible extension for 2 year periods (6+2+2)
- Examination not compulsory
- Weaker right
- Less expensive
- Quicker protection

Patent

- Duration = 20 years
- Compulsory examination
- Strong right and legal security
- More expensive
- Slower protection

Step by Step...

- 1 – Prepare the patent application using the appropriate resources – designs, description of the “state of the art”, novelty and its applications;
- 2- Register the patent application, get confirmation of its number, date and time;
- 3- INPI's reply on the formal examination (1 month), additional documents may be requested;
- 4- Publication of the patent application in the *Boletim de Propriedade Industrial* (deadline: 18 months for patents, 6 months for utility models), officially granting the same protection as the patent (since the application's date), and allowing its dissemination and possible challenge;
- 5 – Decision on grant, partial grant (additional information) or non-grant (deadline: 3 months after publication of the application), patent number assigned;
- 6 – Request property rights for other countries, using the documentation provided by the INPI to national and/or international bodies.

PROTECTION OF A DESIGN

What is it?

Conception of new forms of utility objects, adapted to their respective purposes.

Design or Model

Embraces the totality or a part of the appearance of the **product** resulting from characteristics of lines, curves, colours, shape, texture or materials of the product itself or its decoration.

Step by Step...

- 1 – Prepare a description of the design or model;
- 2 – Draw or photograph the design or model;
- 3 – Complete the forms provided by the National Institute for Intellectual Property;
- 4 – Pay the application fees;
- 5 – Wait for the reply.

Not Protected

Computer programmes are excluded from this protection.

Requirements for Protection

- It must be new. It cannot be the identical to any other product in the public domain, nationally or abroad, before the date of the first registered application
- It must be unique. When the user compares its appearance with another product in the public domain, this user must see something different.

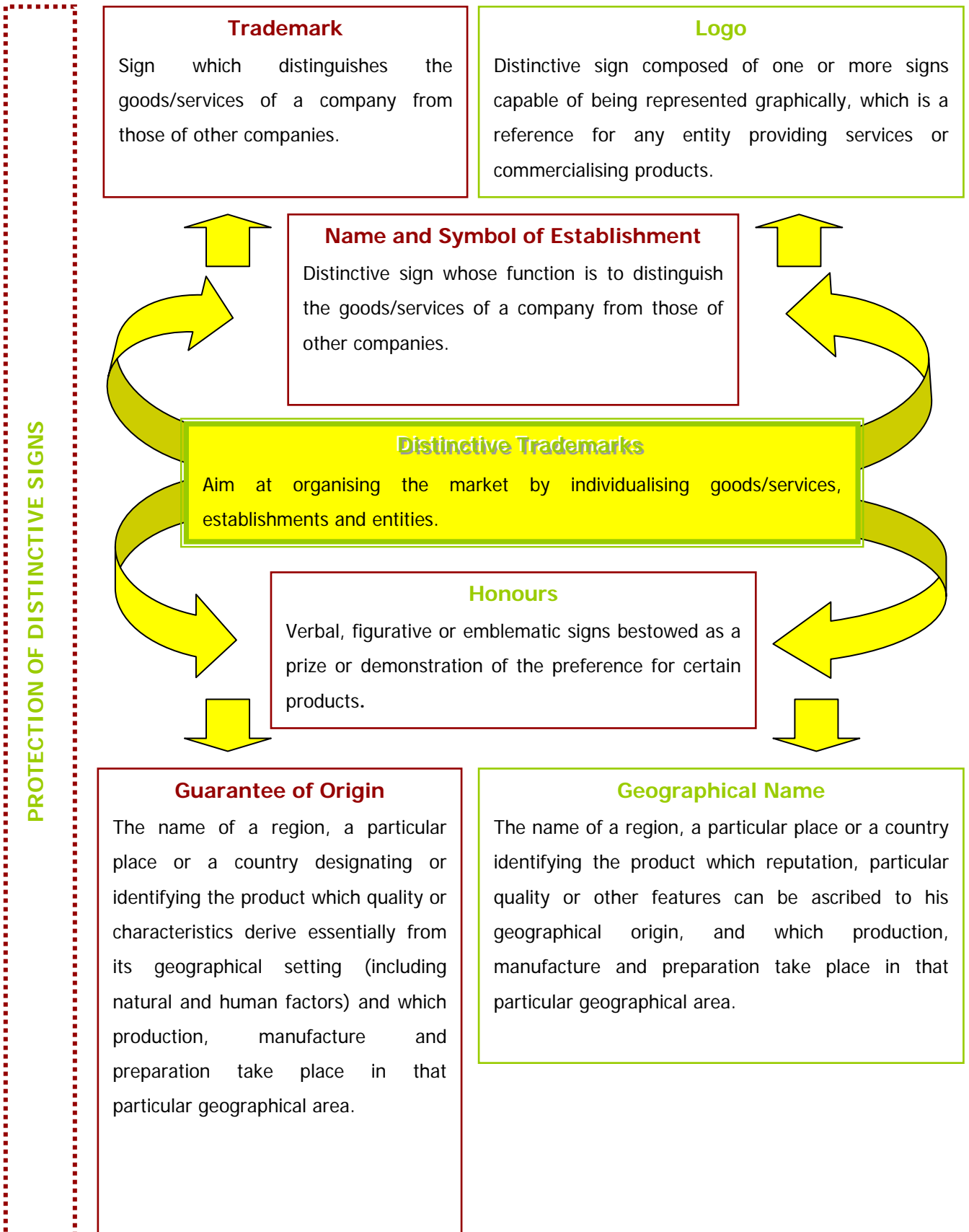
Product

Any industrial or craft-made article, including:

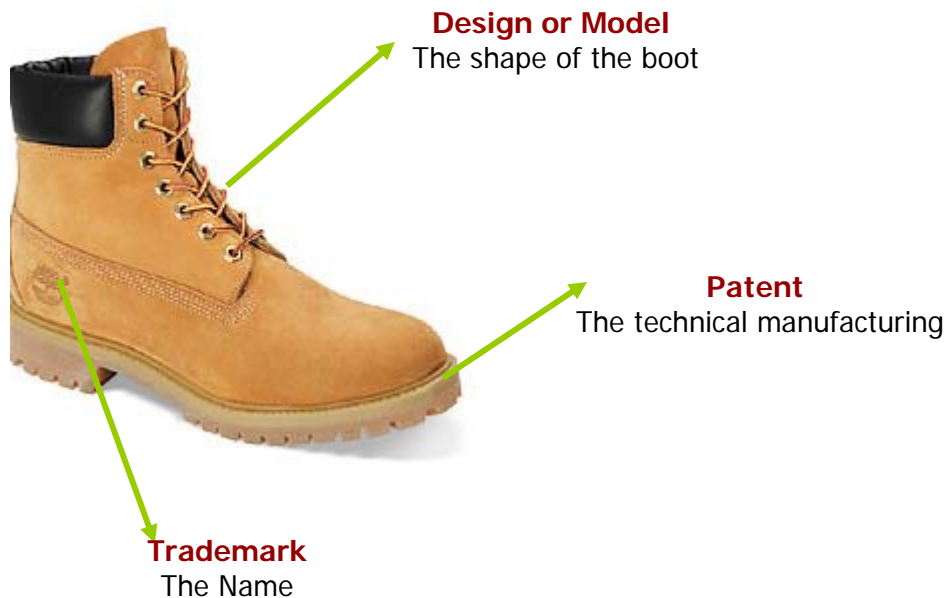
- Components of a complex product – product composed of removable parts, which can be dismantled, replaced and/or re-assembled, e.g. ATMs, advertising panels – mupis, cars, mobile phone handsets, printers, furniture, among others;
- Packaging;
- Presentation accessories – e.g. graphics of advertising panels, computer presentation layouts;
- Graphic symbols – e.g. computer icons, signage components, identification signs, additional symbols;
- Typsetting characters – e.g. letter fonts.

Duration of Protection

Registration is valid for 5 years from the date of application and may be renewed for the same period of time (5 years) up to a 25 years limit.



Even though each element of the industrial property should be distinguished and protected, the protection request does not need to be made separately. There can be a combined protection for a single product, connecting the different forms of protection.



Useful Websites:

- INPI – National Institute for Industrial Property; www.inpi.pt
- EPO – European Patent Office; www.european-patent-office.org
- OHIM – Office for Harmonisation in the Internal Market; <http://oami.europa.eu>
- WIPO – World Intellectual Property Organisation; www.wipo.org