

White paper

# The ABCs of Intellectual Property

## Introduction

Innovation in business has always moved at a tremendous speed. Right now, we consider it is moving faster than it did 30 years ago, and 30 years in the future, we will most likely say the same thing. In all fairness, the rush and sheer depth of the innovation currently taking place in industries ranging from information technology to life sciences is remarkable by any standard. For the most part, the speed of innovation is a good and exciting thing, but to those who want to safeguard their ideas, methods or inventions, it may be a little overwhelming.

It is more important than ever for inventors to understand the essential tenets of owning their IP rights, whether they are working independently or as part of a larger organization. Taking proper advantage of all applicable IP protection standards and developing a solid strategy for IP portfolio management requires not only knowing about the protective options available but also understanding the complexities of global IP law and the many variables associated with both of those factors.

## The IP landscape, in a nutshell

There are more ways today for creators to assert their IP rights than there were just a few decades ago. Whether you aim to cement intellectual ownership over a physical snap-lock mechanism for handbag clasps, the design for an interactive heads-up display or the methodology behind a radical system for channeling clean energy, legal protections are now available to you.

Examining the issue of IP ownership in the broadest scale only reinforces one conclusion: most of the world's nations have IP laws of some kind being enforced. Additionally, more than 150 countries are parties to the Patent Cooperation Treaty (PCT) overseen by the World Intellectual Property Organization (WIPO), and nearly as many nations uphold WIPO's similar agreements for trademarks and designs (122 and 90 for the Madrid and Hague Systems, respectively, and counting).

Furthermore, beyond the traditional IP triumvirate of patents, trademarks and copyrights, there are plenty of subcategories in the regulatory codes of various governments to cover individual pieces of IP more specifically. Examples of this include, but are not limited to:

- Separation of utility and design patents in U.S. law
- Provisional IP rights for inventors to hold temporary provenance over an idea while they complete research & development of fabrication
- Protections for original databases, trade secrets, domain names and other types of IP that are increasingly important to such a tech-driven world.

It is hard to view the broadening range of IP protection possibilities described above as anything other than positive. The added opportunities arguably contributed to specific upticks in IP filings across the globe to an undeniably intriguing degree. According to WIPO's report on "IP Facts and Figures 2019," worldwide application submissions for trademarks, patents and industrial designs reached record highs of 14.3 million, 3.3 million and 1.3 million, respectively. Chinese innovators are responsible for 46.4% of those patent filings and the U.S. holds second place with exactly 18% and Japan, South Korea and the European Union round out the top five (9.4%, 6.3% and 5.2%).

## Evolution of IP law must be commensurate with innovation

Few legal frameworks, if any, are perfect, and IP law all over the world is not without its challenges. No one who practices this line of litigation or otherwise works directly in the field expects perfection. One could even reasonably argue that inventors are not “demanding” flawlessness and many of those who have encountered roadblocks in their attempts to protect IP, anticipate seeing improvements to the issues that have caused significant complications.

Several prominent areas of controversy in the IP universe center on advanced technologies and particularly complex industries, not to mention cases in which those two categories overlap:

- Artificial intelligence (AI) remains an issue for inventors, IP law experts and courts. The fact that so few countries have indeed tackled the issue of IP for AI in their patent laws exemplifies this on a macro scale. For a more specific example, consider the 2019 European Patent Office's (EPO) decision not to grant patent rights to the product-ideating AI called DABUS.
- Advanced methods of medical diagnosis are also creating complicated debates. *Athena Diagnostics v. Mayo Collaborative Services* saw the plaintiff lose its case against a firm it believed had stolen its autoimmune disease diagnostic technique, with the U.S. District Court saying Athena's claim pertained to "laws of nature" and was thus unpatentable.
- Blockchain - the only emerging technology to get almost as much attention as AI - has both staunch proponents and fierce critics of its potential as an IP registry tool.
- The ability of programmers to patent software remains limited, generally, to the copyright of the exact source code. Perhaps more than any other, this shortcoming of tech-related IP regulations could reach a choke point of a chaotic legal dispute in the not-too-distant future.

These cutting-edge technologies and complex methods will only become more commonplace in the next few years. More than 170,000 AI-related patent applications have been submitted worldwide since 2013 and that figure represents half of the AI-centric patent filings for all time! We could soon be counting AI patents by the millions.

What all of these issues illustrate is that Intellectual Property strategy and law must be adjusted to match the speed of innovation and technological development. Right now, tech has a significant lead on the contemporaneousness of IP law. If it persists, inventors and businesses may find themselves without protective recourse and at substantial commercial risk.

## The way forward to better IP protection

It seems natural to propose that regulators, lawyers, IP experts and innovators will need to work together going forward – or, at the very least, honestly listen to one another – to ensure that there are truly comprehensive systems for IP regulation. Only in this manner will we ultimately encourage competition and ever-greater innovation of the kind that can benefit the world at large.

But while governing bodies and lawmakers create IP law and legal professionals practice it, only creators can take the most pivotal steps to protect their IP by applying for and obtaining patents, trademarks, copyrights and all other appropriate protections.

Applicants cannot merely follow the filing procedure steps and think their application is guaranteed to be approved. There is a fine line between detailing the novelty and function of a given invention or design in a manner that is comprehensive but also does not overreach. Robust supporting documentation and prior-art imagery is also a requirement, as is the establishment and maintenance of close communication between inventor and patent examiner. For all innovators and organizations seeking to put a definitive stamp on their particular industry, this work should be considered nothing short of mandatory.

All of the burden associated with ensuring proper protection for your valuable IP is a great deal to take on alone – so let Dennemeyer handle it by your side! From our 1962 debut as a Luxembourg law firm to our industry-leading, globe-spanning presence today (55 offices across more than 20 countries around the world), Dennemeyer has always been a first-choice partner in IP alongside countless creators and organizations. Our range of services includes:

- Exhaustive IP management services ranging from IP Auditing to Competition Benchmarking
- Cutting-edge platforms for global patent search (Dennemeyer Octimine) and IP management software (DIAMS iQ)
- Covering a broad spectrum of IP litigation needs through our law firm, Dennemeyer & Associates
- Strategic consulting to aid clients in the development of holistic IP Strategy

Those only represent a sample of what Dennemeyer can bring to the table as your IP Services provider. In an unpredictably evolving society and economy, the assurance of protection for your inventive labor is a precious commodity – one that our teams are uniquely qualified to secure on your behalf. Let us talk soon about how we can work together.



