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5. INTELLECTUAL AND INDUSTRIAL PROPERTY

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## Industrial and Intellectual Property

At international forums intellectual property has a broader meaning than in the Spanish legal system. It embraces Copyright Law but also what is known in Spain as Industrial Property.

Spanish industrial property legislation is in line with the rest of the countries of the European Union and the major international treaties on the matter and includes the regulation of trademarks, patents, utility models, industrial designs, plant varieties and topographies of semiconductor products.

**Patents** are governed by Patents and Utility Models Law 11/1986, of 20th March, 1986 and by Royal Decree 2.245/1986 of 10th October, 1986. The owner of a patent, registered at the Spanish Patent and Trademark Office (OEPM), is entitled to enjoy the industrial results of the invention for a limited period of twenty years. Third parties may however exploit the patent upon a license or assignment by the holder.

An invention has to meet three requirements in order to become a patent: (i) novelty, (ii) industrial application, (iii) and inventive step

From an international perspective, Spain is party to the European Patent Convention of 1973, which establishes a single procedure for the grant of patents at the European Patent Office for parties to the Treaty (most of them also members of the European Union).

Spain is also part of the Patent Cooperation Treaty (WIPO PCT) which establishes among the one hundred and forty one members a common procedure for submitting patent applications and searching for reports that determine the novelty and inventiveness of a patent.

**Utility models** are governed by Patents and Utility Models Law 11/1986 of 20th March, 1986 and by Royal Decree 2.245/1986, of 10th October, 1986. Utility models are inventions which give objects, instruments, apparatus, and devices or tools a new configuration or structure, resulting in an improvement in their use or manufacture. A lesser degree of invention and novelty is required and protection is therefore limited to ten years.

**Industrial Designs** are regulated by Law 20/2003 of 7th July, 2003 on the Legal Protection of Industrial Designs and by Royal Decree 1.037/2004 of 27th September, 2004. This form of industrial property protects the aesthetic appearance and visual design of a product, which is the direct result of new outlines, profiles, colours, shapes, textures or materials. Any design which meets these requirements may be registered on the Register of Designs of the OEPM for a limited term of five years, which may be extended for up to a maximum of twenty years.

For an industrial design to take effect across the European Union it needs to be registered under European Council Regulation (EC) No. 6/2002 of 12th December, on Community Designs. Finally, the Hague Agreement Concerning the International Deposit of Industrial Designs, a World Intellectual Property Organization (WIPO) administered treaty, incorporates a procedure for international registration.

**Trademarks** are regulated by Trademarks Law 17/2001 of 7th December, 2001 and by Royal Decree 687/2002 of 12th July, 2002. A trademark is a distinctive sign used by an individual or company to identify products or services in the market. Any sign that can be represented graphically can become a trademark. Typical examples are words, names, signatures, numbers, slogans, designs, colours and three-dimensional shapes.

There are three systems that allow a trademark to operate in the Spanish market: the Spanish, European and international systems.

Spanish trademarks are granted by the OEPM for an initial period of ten years which can be renewed for identical periods, indefinitely. Trademark rights must be maintained through actual lawful use. However, the trademark will be revoked if it is not actively used for a period of five years, if it is not renewed or if it becomes generic or misleading.

As to the **European Community Trademark (CTM)**, it is regulated by European Council Regulation 40/1994, of 20th December, on the Community Trademark and the guidelines published by the Office for Harmonization for the Internal Market (OHIM). Its main feature is that it gives unitary and exclusive protection which is valid throughout the European Union.

The treaties that deal with the registration of international trademarks are the Madrid Agreement Concerning the International Registration of Marks of 1891 and the Protocol Relating to the Madrid Agreement of 1989. They are both administered by WIPO and permit the protection of trademarks via one, single application filed directly at the national trademark office of the member country. This application is then forwarded to the International Bureau in Geneva which registers the mark on the International Register and publishes the grant of the mark in the International Trademarks Gazette.

**Copyrights** are regulated by Copyright Law 1/1996 of 12th April, 1996. This law has been significantly revised following recent EU directives in an ongoing process that will eventually lead to a common European copyright.

In Spain, copyright generally last for seventy years after the death of the author. An important difference between these rights and industrial property rights is the existence of a set of perpetual “moral rights” that belongs to the author. Apart from the author, Spanish law also affords rights to artistic performers, phonogram producers, producers of audiovisual recordings and broadcasting organizations.

Internationally speaking, copyright is protected by multilateral agreements of which we highlight the 1886 Berne Convention for the Protection of Literary and Artistic Works, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), of the World Trade Organization.

