



Protecting your business abroad:

Understanding the Intellectual Property Landscape of Latin America

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Latin America IPR SME Helpdesks

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Before we start...

Questions:

- *Experts are available at the end of the sesión*
- *Please identify yourself*
- *Templates at your disposal (answer in 3 working days)*
- *Always in our Helpline*

Case Studies and Testimonials:

- *Templates at your disposal*
- *Can be done anonymously*

Feedback questionnaires

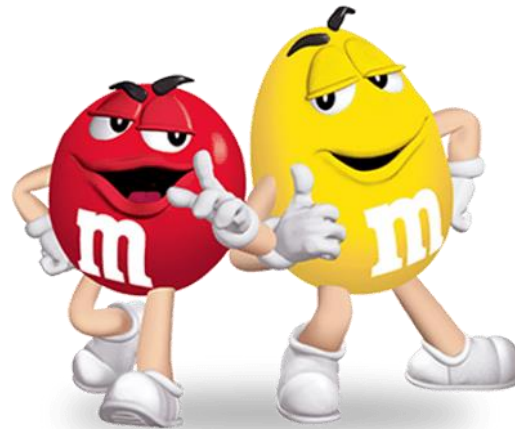
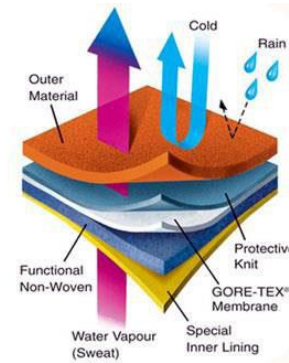
- *Easy and quick to complete*
- *Can be done anonymously*

International IPR SME Helpdesks

- *Initiatives of the European Union to raise awareness of the use of Intellectual Property as a business tool for SMES*
- *First line, free, confidential and business-oriented assistance on Intellectual Property for European SMES operating in Latin America, China or South-East Asia.*
- **Main Services**
 - Helpline: in 3 business days
 - Training: On-line and online workshops, guides, videos, etc.
 - Information: News, events, Web portal, social networks

www.ipr-hub.eu

¿What is intellectual property?



What is Intellectual Property?

Legal jargon	Translation
<u>Rights</u> over the innovative aspects of products and services	Mere ideas: nop. The corresponding regulation must be known and applied (e.g. registration requirements)
Legal/business tool	Exclusive and exploitable
Registration nature (First to file)	You must register and be fast
Territorial	You must register where you aim to operate. No global protection
Limited in time	Then anyone can use it
Limited scope of protection	Each IP Right protects one aspect. One product can be simultaneously protected by many IPRs



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Internationalisation and IP

- *Identification of intellectual property assets (patents, trademarks, designs, trade secrets, software, etc.).*
- *Do a mapping through an IP audit*
- *Identification of key Markets (Brazil, Argentina, Mexico, Colombia, China, Vietnam, Thailand and Singapore) How to enter such markets? On your own or with other local or foreign companies?*



IP Strategies

- **Offensive Strategy:** *The main objective is to protect your own IP and acquire other IP (if necessary).*
- **Defensive Strategy:** *The main objective is to eliminate or reduce the risks.*

Patents

- *It protects the technical function of a product (e.g: diffuser of a car that increases the aerodynamic load), not its aesthetic.*
- *General Registration Requirements:*
 - **New: Never seen anything like it before**
 - **Inventive Step: It was an obvious solution**
 - **Industrial Applicability: Not an aesthetic or intellectual use**
 - **20-year period from the application date**
- *Requesting registration in several countries simultaneously is possible, but very expensive (fees, translations, etc.)*
- *National Registration vs PCT (time, procedures, costs, languages)*

Patents

- *Prior rights searches → FTO:*
 - a) To **operate safely** (avoid infringements)
Local databases of registered patents
 - b) To **register safely** (prevent from being infringed by others)
Any information available to the public (**State of the art**)
- *Thorough analysis of feasibility → Strong right*
- *Obligation of use*

Patents: Latin America

	Registration proceeding	Costs	Abbreviated proceedings	PoA	Oposition	Duration
Argentina	3 / 9 years	2000 / 8000	Yes	Yes*	Yes (60 days)	20 years
Brasil	10 years	7000 / 10000	Yes	Yes	Yes (6 months after grant)	20 years
Colombia	2/3 years	2000 / 6000	No	Yes	Yes (60 days)	20 years
México	3 / 4 years	4000	Yes	Yes	No. Observations permitted	20 years
Perú	3.5 / 5 years	2500	Yes	Yes	Yes (60 days)	20 years

Trade secrets

- *Information that provides a commercial advantage for the fact of being secret (eg: non-patented manufacturing processes; client's databases; algorithms or prototypes)*
- *Unlimited duration*
- *No registration required*
- *Protection Requirements:*
 - Always Secret: Not accessible to the public
 - Valuable business Information for being secret
 - Reasonable protection Measures

Trade secrets: Latin America

- *They are not an IPR: they are protected by competition law*
- *Commercial value is not a requirement in Brazil for it to be protected by Trade Secret*



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Designs

- *Protects Aesthetic elements (shape, colors, patterns, lines, etc.)*
- *General Registration Requirements:*
 - Novelty: Never seen anything like it before
 - Originality: Different visual settings
 - Industrial Applicability: Not an aesthetic or intellectual use
- *National vs International Registration (Hague Agreement)*
- *Prior rights Search*

Designs: Latin America

- *Similar registration requirements*
- *No Latin American country is member to the **Hague Agreement***
- *Non-registered Design*

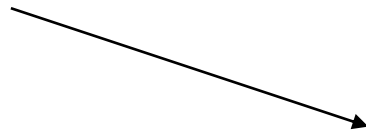
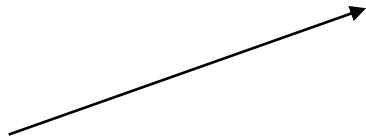
	Peru	Mexico	Chile	Argentina	Brazil	Colombia
Proceedings	5-7 months	10-18 months	18-24 months	1 week	8-12 months	15-20 months
Duration of protection	10 years	15 years	10 years	15 years	25 years	10 years
Grace period	12 months	12 months	12 months	6 months*	180 days	12 months

Trademarks

- *Protects identifying elements (name, letter, symbol, drawing, or combination) from the business origin of the product or service*
- *A sign for specific types of products/services*
- *General Registration Requirements:*
 - **Availability**
 - Distinctiveness
 - Not to counter the legal limits (eg.: public morals)
- *10 years duration (renewable)*
- *National Registry vs International (Madrid System)*

Madrid System

Argentina and Brazil are not members to the Madrid System son miembros del Sistema de Madrid. The other 5 countries are.



Trademarks: Latin America

- *Traditional and non-traditional trademarks (3D, sound,...)*
- *10 years from granting/application date*
- *Obligation of use*
- *Ex officio oppositions*
- *Single class and multi class systems*
- *Online filling*
- *Relative territoriality*

Copyrights

- *It protects intellectual, artistic or scientific works (photos, videos, texts, illustrations, mascots, fonts, songs, sculptures, databases and software).*
- *Protection is generated with the creation*
- *Valid: 50 or 70 years after the publication or death of the author*
- *International Protection (Berne Convention)*

Copyrights: Latin America

- *Duration: 70 years after author's death, except Colombia (80) and Mexico (100)*
- *Registration is not mandatory but recommended → How to know when is it protected? → © mark or copyleft (i.e. Creative Commons)*
- *Protection requirement: **originality***

Cost of registration

Mexico	Peru	Colombia	Argentina	Brazil	Chile
11€ to 172€	50€ to 100€	Free	42€ to 342€	135€ to 185	5€ to 17€

Ways to exploit IP

- *Distribution Contract with local partner*
- *Licensing*
- *Assignment or sale*
- *Franchise*
- *Subsidiaries*

Other uses:

- *Negotiating tool*
- *Company Valuation in mergers and acquisitions*
- *Attracting investors*
- *Financing Endorsement*
- *Tax deduction*



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