

How to benefit from IP in relation to your software apps

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your
ideas



Developing software apps requires investments in creativity, time and money. To make a return on these investments, it is necessary to deter copying and unauthorised distribution of your software. There are various ways by which your software may be protected, patenting being the most powerful. This sheet describes these various forms of intellectual property and how they can protect your investments.

An investment that pays for itself

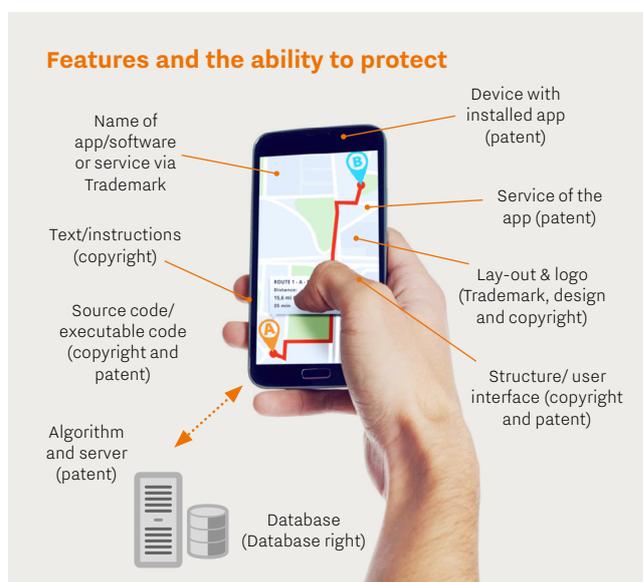
Intellectual Property (IP) is V.O.'s specialty. IP not only reinforces your competitive position, it also makes you more attractive to partners and provides licensing opportunities, cross licensing (when someone else also has exclusive rights) or buy out. It also discourages others from trying to unfairly use your technology or business model as a springboard for their own competing activities. In this way, for a start-up, IP can optimize your chances of survival during that critical early phase.

Ways to protect your software apps

There are various forms of IP rights available to protect your software apps. Some rights are automatically obtained upon creation, other rights are obtained by simple registration or are filed and subjected to examination before a right is obtained. The most relevant types of protection and the important points of interest are:

Patent

Patents provide you the broadest protection because they protect a principle of operation or concept, for a maximum period of 20 years. A patent gives you the exclusive rights to exclude others from copying, using, importing, and selling a patented innovation. It is a powerful right that can only be obtained when an innovation can be regarded as contributing to technical progress. See 'Obtaining a patent on software'.



Copyright

Copyright arises from creation rather than registration and protects the work for a period of 70 years from the year in which the author dies. It provides a limited scope of protection, because only an identical or close copy will infringe. If the software app has an original logo, icon or layout, these too may enjoy (a separate) copyright.

‘Patents provide you the most powerful and valuable protection’

Database law

Like copyright, a database right is an automatic right which exists as soon as the database exists in a recorded form. Database rights last for 15 years from the year in which the database was first made available.

Trademark

Trademark law protects the name of the app as well as the logo and layout by a registered trademark. A registered trademark may last indefinitely as long as it is extended every ten years. Sometimes the brand logo used for the application is a simple version of an existing company logo. In that case it may be worth exploring whether additional protection is required.

Design right

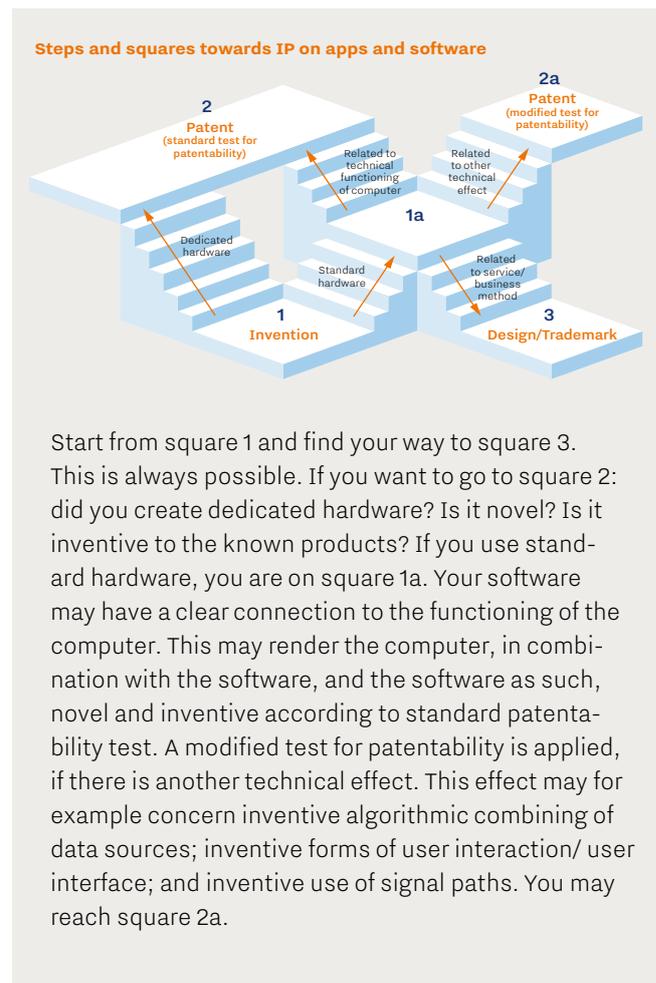
Design rights protect the appearance of a product for up to 25 years. If the app's logo, icon or layout is distinct from existing apps, a design registration will contribute to IP protection.

Open source software

The use of open source software may offer significant advantages, but license conditions require special attention. Some licenses require the source code of the final software product to be published and made freely available to other parties. In some cases, license conditions even prohibit patent protection.

Obtaining a patent on software

Software inventions are a special type of inventions in the field of patent protection. This distinct category of inventions may not be regarded as a ‘technical’ invention. However, there may be aspects of the software applications that are critical for your inventive concept and can be identified as truly technical and can therefore be patented. VO's patent attorney can explore together with your technical staff, whether such aspects can be identified. The figure below illustrates decision steps if your software can be patented.



Start from square 1 and find your way to square 3. This is always possible. If you want to go to square 2: did you create dedicated hardware? Is it novel? Is it inventive to the known products? If you use standard hardware, you are on square 1a. Your software may have a clear connection to the functioning of the computer. This may render the computer, in combination with the software, and the software as such, novel and inventive according to standard patentability test. A modified test for patentability is applied, if there is another technical effect. This effect may for example concern inventive algorithmic combining of data sources; inventive forms of user interaction/ user interface; and inventive use of signal paths. You may reach square 2a.

Do you have any questions or would you like IP advice?

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