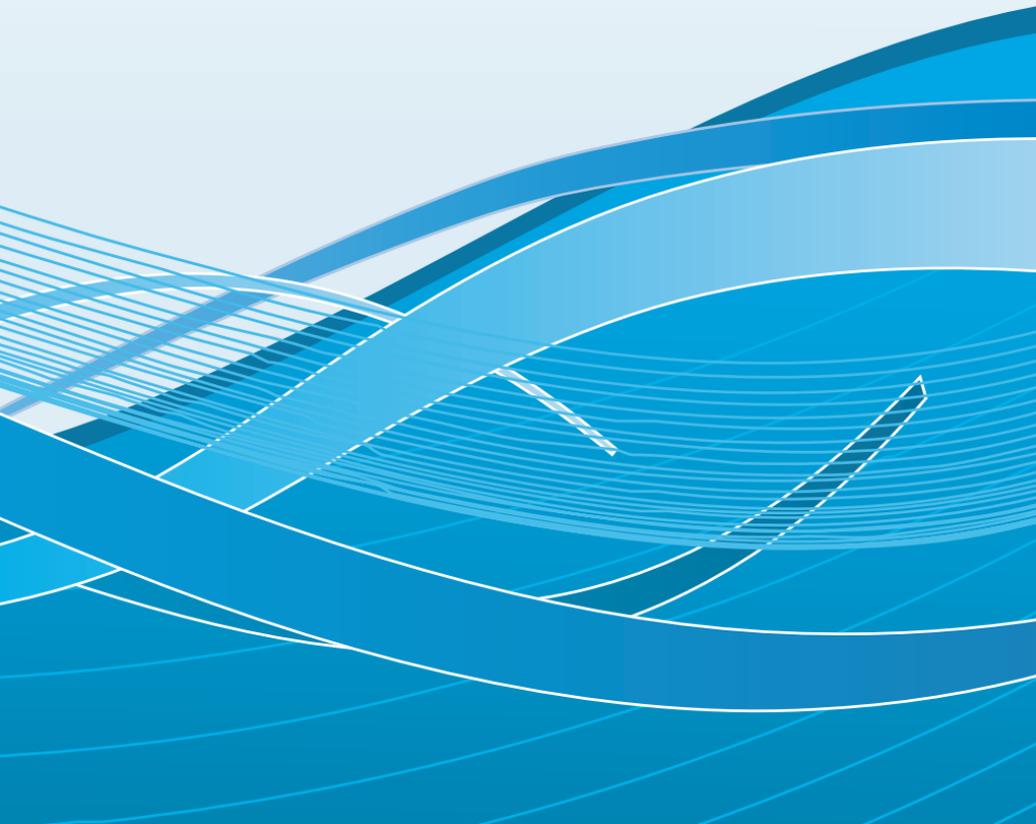


# INTELLECTUAL PROPERTY IN LATIN AMERICA AND THE CARIBBEAN





# INTELLECTUAL PROPERTY GUIDE FOR LATIN AMERICA AND THE CARIBBEAN



**PREPARED BY MERITAS LAWYERS  
IN LATIN AMERICA AND THE CARIBBEAN**

Contributing to this book are the law firm members of the Meritas alliance in Latin America and the Caribbean. There are over 520 lawyers in 23 firms across Latin America and the Caribbean providing clients a local legal partner with deep international resources. They can be found on [www.meritas.org](http://www.meritas.org) which enables direct access to member firms through a searchable database of lawyer skills and experience, plus links to contacts at each Meritas firm.

The firms were presented with these 12 most commonly asked questions and asked to provide specifics about their jurisdiction along with timely insights and advice. In a very concise manner, the book hopes to provide readers with a solid overview of the similarities and differences from a legal perspective of the intellectual property rights of the countries in this region.

The following currency notations are used in this book:

BSD Bahamian Dollar

USD United States Dollar

HNL Honduran Lempira

UYU Uruguayan Peso

*Please be aware the information contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. In addition, fee information was current at the time of publication but is subject to change. It is included to provide estimating guidelines only. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.*

## Intellectual Property Guide for Latin America and the Caribbean

This publication has been prepared to provide an overview of regulation pertaining to the primary areas of obtaining, exploiting and enforcing intellectual property rights in the Latin American and Caribbean region. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors.

Meritas firms offer clients the ability to access high-quality legal services throughout Latin America, the Caribbean and worldwide. With nearly 6,500 business lawyers in over 200 cities, Meritas gives your company access to local counsel around the world.

In today's world, where information is shared digitally across the world at the click of a button, it is imperative that individuals and businesses are able to obtain, protect and exploit their intellectual property rights.

The member firms of Meritas provide integrated services to clients on a range of contentious and non-contentious intellectual property matters. The Meritas Intellectual Property Group works with clients to develop overall intellectual property protection and preservation plans. Member firms offer a broad array of services including:

### AGREEMENTS AND LICENSES

- Draft and negotiate agreements and licenses including confidentiality, secrecy or nondisclosure agreements
- Joint development agreements
- Intellectual property transfer agreements
- Acquisition agreements and intellectual property due diligence in connection with mergers and acquisitions and financing transactions
- Draft and negotiate license agreements on behalf of both licensors and licensees, including royalty-bearing license agreements
- Publishing and manufacturing license agreements
- Franchise arrangements

### PATENTS

- File and prosecute patent applications, domestically and internationally
- Adversarial proceedings before intellectual property agencies

## TRADEMARKS

- Evaluating trademark search reports and mark selection
- Registering and maintaining marks with trademark offices worldwide
- Enforcing client's trademarks and trade dress rights

## COPYRIGHTS

- Counsel clients regarding the protectability of copyright assets and the development of material protected by copyright
- Register clients' copyrights (if required)
- Conduct due diligence into copyright assets in advance of acquisition agreements
- Provide advice on policing and enforcing clients' copyright assets
- Negotiate and draft agreements with employees and independent contractors

## RIGHTS OF PUBLICITY

- Merchandising and licensing
- Infringement litigation for living and deceased persons
- Right of publicity clearance for digital use

## NEW MEDIA AND E-COMMERCE

- Licensing and distribution of software and multi-media products
- Multi-media software development contracts
- Joint venture agreements with software publishers, database license agreements
- Independent contractor agreements with programmers, source code escrow agreements, hardware purchasing
- Providing counseling on computer related inventions, e-Commerce and the Internet
- Domain name registration and dispute resolution

## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in The Bahamas?

#### PATENT

A registerable patent is an invention which is capable of industrial application, which is new and which involves an inventive step. An invention shall be considered capable of industrial application if it can be made or used in any kind of industry, including agriculture.

#### TRADEMARK

Any word or combination of words, design and any other distinct illustration or the like used to identify a good or service in one of 50 classes of goods that can be registered in The Bahamas.

#### COPYRIGHT

Copyright protection can be requested for:

- Literary works
- Musical works inclusive of any accompanying words
- Dramatic works inclusive of any accompanying music
- Artistic works
- Motion pictures and other audiovisual works
- Choreographic works
- Sound recordings

### What is the expected timeline from initial filing to granting or denial of IP rights with The Bahamas' patent office?

IP Registration	Expected Timeline
Patent	12–18 months
Trademark	2–3 years
Copyright	12–18 months

**For each IP type, what is the expected range of expenses including government fees and taxes?**

<b>IP Registration</b>	<b>Government Fees</b>	<b>Professional Fees</b>
Patent	BSD130 / USD132	BSD550 / USD560
Trademark	BSD90 / USD91.15*	BSD550 / USD560
Copyright	BSD14 / USD14.20	BSD550 / USD560

\* This fee is applicable to marks where the wood block or electrotype does not exceed two inches in breadth or depth. If the mark exceeds two inches in breadth or depth, an additional government fee of BSD5 / USD5.10 is payable for each inch or part of an inch over two inches in breadth or depth.

**Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?**

The rights must be registered to be enforceable.

**If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?**

There are no IP rights conferred prior to filing an application. However, the applicant may have the benefit of priority.

**EXPLOITING IP RIGHTS**

**What is the duration of protection for each IP type?**

<b>IP Right</b>	<b>Protection Duration</b>
Patent	16 years from granting date
Trademark	14 years
Copyright	70 years from end of calendar year in which author dies

If desired, patents can be renewed at the expiration of the fourth year from the granting date or of any succeeding year during the term of the patent to keep the patent in force. The renewal fee shall be paid by filing the prescribed form before the expiration of that year.

## **What additional IP laws or regulations might need to be considered before launching a product or service in The Bahamas?**

- Consumer Protection
- Business License
- National Economic Council
- Relevant Incentive Legislation for doing business in the jurisdiction
- Stamp Duty
- Exchange Control Regulations
- Customs Import Regulations

## **Is it necessary to mark a protected product and if so, how?**

It is not mandatory to mark a protected product. However, where a product is marked protected, when in fact it is not protected, the proprietor may be subject to a penalty fine.

## **ENFORCING IP RIGHTS**

### **What mechanisms are in place to ensure effective enforcement of IP rights?**

There is no designated task force for the enforcement of IP rights in The Bahamas.

### **What are the basic requirements for initiating a claim of infringement in The Bahamas? What remedies and defenses are available?**

The basic requirement for initiating a claim of infringement is to have an existing registration. Remedies include injunctions to stop use and expunging a registration. The defenses available include priority and distinct nature.

## **How long does litigation normally take in The Bahamas and what are the likely costs?**

IP litigation can potentially take several years with the associated costs relative to the length of the litigation process.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering The Bahamas?**

The Customs Department seizes shipments of counterfeit items entering The Bahamas as well as items that have already entered the country.

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## CHANCELLORS CHAMBERS

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**Nassau, The Bahamas**

Chancellors Chambers is a full service law firm, providing advisory services covering all aspects of law relating to business activity and specializing in real estate and resort developments in The Bahamas, one of the premiere tourist destinations and international financial centers in the world.

The high quality of service offered by Chancellors Chambers is a result of the experience and professional qualifications of our attorneys and support staff. Attorneys are required to have a high level of professional competence and ethical standards. Many firm attorneys have been involved in some of the important business undertakings and transactions that have taken place in The Bahamas over the last decade. Chancellors Chambers serves businesses operating in, among other areas: financial services and banking; construction services and real estate development; hospitality; the pharmaceutical industry; consumer goods; and electronic commerce.

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## FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Bolivia?

#### PATENT

Inventions of products or procedures in all the fields of technology whenever they are new, have inventive level and are capable of industrial application.

#### UTILITY MODEL

All new form, configuration or disposition of elements of some device, tool, instrument, mechanism or another object or of some part of the same, that allows a better or different operation, use or manufacture of the object that incorporates or provides some utility, advantage or technical effect that it did not have previously. (It is protected by means of patent.)

#### MARK

Any sign that is apt to distinguish products or services in the market, susceptible signs of graphical representation. Among others, the following signs:

- Words or combinations of words
- Images, figures, symbols, graphs, logos, monograms, pictures, labels, emblems and shields
- Sounds and scents
- Letters and numbers
- A color delimited by a form, or a combination of colors
- The form of a product, its packages or envelopes
- Any combination of the signs or means indicated above

### What is the expected timeline from initial filing to granting or denial of IP rights with Bolivia's patent office?

The registry of marks takes approximately eight months if no opposition is filed.

## For each IP type, what is the expected range of expenses including government fees and taxes?

Document/Procedure	Expenses	Fees
	USD	USD
Registry of Marks or Distinguishing Signs	190	300
Renovation of Marks	150	300
Registry of Trade names of Patents	230	400
Registry of Utility Models	230	400
Registry of Industrial Designs	230	400
Registry of Author Rights	190	300
Transferences	190	250
Certifications of Intellectual Property	20	50
Certifications of Author Rights	20	50
Use License	120	200
Oppositions–Marks	190	350
Oppositions–Patents	230	400
Oppositions–Utility Models	230	400
Oppositions–Industrial Design	230	400
Search	20	50
Actions Against Piracy	Variable	Conventional

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

### BEFORE THE REQUEST

- Rights are recognized abroad where the mark is well-known and registered in another country.
- Straight of priority is granted where the right of industrial property is already registered in a member state of the CAN or a signatory country of the Agreement of Paris.

### DURING THE REQUEST

- The right of preference is granted for initial sign registrations.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

If the registry has been obtained, it gives the right to request the denial of a petition of a third party. On the other hand, it confers the right to set an action in order to prevent that third party's use, exploitation, make and/or realize acts (without consent) that affect a holder.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years requires small annual annuity payment
Trademark	10 years renewable every 10 years
Utility Model	10 years

### What additional IP laws might need to be considered before launching a product or service in Bolivia?

- Marks Law (01.15.1918)
- Industrial Privilege Law (12.12.1916)
- The Decision 486 of the *Régimen Común Andino de Propiedad Industrial*
- The Paris Convention for the protection of Industrial Property with its corresponding amendments
- The WIPO Convention
- The Classification of Nice
- The Bolivian Commerce Code

### Is it necessary to mark a protected product and if so, how?

It is not a necessary requirement, but it can be marked with the registered sign.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Mechanisms currently in place include:

- Administrative opposition
- Action of Replevin (Vindictive action)
- Precautionary measures
- Legal action for damages, action by infraction, border legal measures and action against disloyal competition
- Criminal action against brand falsification

### What are the basic requirements for initiating a claim of infringement in Bolivia? What remedies and defenses are available?

Holders of a protected right will be able to establish action before the competent national authority against any person who infringes their right and against whoever executes acts that indicate the imminence of an infraction.

Holders of a patent have the right to exert legal action by damages for the unauthorized use of an invention or of a utility model between the date on which they acquire publicity and should be able to be consulted at the public office responsible for concession of the patent.

The plaintiff will ask the competent authority to order one or more of the following measures:

- Cessation of the acts that constitute the infraction
- Indemnification of damages
- Retirement of the commercial circuits of resulting products of the infraction, including packages, packing, labels, printed materials, advertising, as well as the materials and resources that would serve to commit the infraction
- Awarding in property of products, materials or means referred above, in which case the value of the goods will be imputed to the amount of the indemnification of damages
- Prohibition of the import or the export of products, materials or resources just referred

- Adoption of the necessary measures to avoid the continuation or repetition of the infraction, including the destruction of products, materials or resources previously referred, or the temporary or definitive closing of the denounced/claimed company
- Publication of the condemnatory sentence and its notification to the interested people, at the cost of the violator

The term of the prescription for this action is two years since the holder knew about the infraction or five years since the infraction occurred the last time.

### How long does litigation normally take in Bolivia and what are the likely costs?

Litigation Procedure	Expected Timeline
Administrative	1 year
Criminal	3 years
Civil Actions	
<i>Summary</i>	1–2 years
<i>Ordinary</i>	1–7 years

### What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Bolivia?

The holder of a registered trademark is able to ask the competent authority to provide some border measures in order to stop the import/export of the merchandise and to require the confiscation and destruction of the products.

## MOSTAJO SOCIEDAD CIVIL–FIRMA LEGAL

La Paz • Santa Cruz • Sucre • Tarija, Bolivia

The firm was established in 1957 by Dr. Luis Fernando Mostajo who later formed the professional society under the name of Mostajo Sociedad Civil-Firma Legal.

Its head office is located in one of the main avenues and in the most accessible and commercial area in the city of La Paz, seat of the Bolivian government. It has branch offices in the cities of Santa Cruz, Sucre and Tarija.

Firm members have been directors of the Bar Association in La Paz and Cochabamba (another important city in Bolivia).

Since 1994, the firm has been the Bolivian member of Meritas, an international association embracing independent law firms worldwide.

Mostajo Sociedad Civil-Firma Legal also has highly qualified correspondent lawyers in the rest of Bolivia's main cities and has a high level support staff to give the best service to all its clients.

The firm has always provided high quality legal services to national and foreign companies for more than 50 years.

Mostajo Sociedad Civil has wide experience in litigation, constitutional resources, administrative resources and arbitration, areas in which it is highly regarded for its seriousness, responsibility and reliability. The firm's expertise in intellectual property is highly recognized.

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## INTRODUCTION

With the unspoken support of their Authorities, Brazilians had, for far too long, been able to feel comfortable in misappropriating internationally famous trademarks that were not protected in Brazil, and usurp patented technologies by “daubing them with the national colors.”

In fact, only following recognition by key players that Brazil’s movement into the global economy would be competitive only if based on internationally accepted rules, where respect for intellectual property is a grounding principle, did the country’s cultural environment change dramatically.

Indeed, this change was propitiated not only by the promulgation of the newest and most modern internal laws concerning protection of intellectual property, but the country also signed international treaties and adhered to international conventions related to such protection.

Universities and other entities started offering classes specialized in intellectual property and more and more law students were attracted to this “new” field of activity. Brazil can now count upon an extensive and well educated body of professionals able to comfortably handle the most complex issues in the area of intellectual property.

The Brazilian administrative authorities, mainly those from the Brazilian Patent and Trademark Office, namely, the *Instituto Nacional da Propriedade Industrial* (INPI), understand the need to shorten the timeline from initial filing to granting or denial of IP rights, and spend a great deal of time and effort in educating and expanding their body of experts in order to reduce the backlog of processes pending decision, therefore reducing the waiting time to meet internationally accepted standards.

Although moving at a slower speed, even the Brazilian judiciary is becoming more familiarized with the relevant issues and here and there it is possible to find excellent and learned judicial decisions.

As such, the protection, respect and enforceability of intellectual property rights is a growing reality in Brazil and anyone interested in doing business in this emerging market would be strongly advised to pay proper attention to setting one’s intellectual property rights in order.

## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Brazil?

#### PATENT

According to Brazilian law, there are two types of patents: patents of invention granted for inventions, and patents of utility models granted for improvements on physical objects of practical utility. Patents of inventions and utility models must accomplish the requirements of novelty, industrial use or application and inventive activity.

Any individual or legal entity may apply for a patent. Patent protection is obtained by registering the patent with the INPI.

#### TRADEMARK

According to Brazilian laws, a distinctive visually perceptible sign can be registered as a trademark. The trademark registration can be for a word, logo, composite (word and logo) or a three-dimensional sign.

A trademark may be registered to distinguish a product (Product Trademark), or a service (Service Trademark), or to attest the conformity of a product or a service with certain technical norms or specifications in relation to its nature, material used or production method (Certification Trademark), or even to identify products or services supplied by members of a given entity (Collective Trademark).

Trademark applicants must perform commercial or industrial activities or render services in the field corresponding to the class for which the registration of the trademark is applied; otherwise the petition for such will be denied or voided. For product or service trademarks, it is necessary for a relationship to exist between the activity performed and the trademark class requested; said relationship can be proved by the company charter or bylaws.

Brazil follows the International Classification for service and product trademarks. The International Classification NCL 9 (Nice Classification 9) applies to all applications filed after 3 January 2000, as well as renewals of registrations.

Brazilian law considers well-known and highly-renowned trademarks not as a trademark classification but as a special form of protection of trademarks.

Highly-renowned trademarks must be registered in Brazil for protection purposes, and protection thereof will be extended to all classes of products and services. Well-known trademarks, on the other hand, do not need to be registered in Brazil, and protection is granted due to their notoriety in a defined field. Protection for a well-known trademark is given only in the field in which the trademark has become very well-known.

Although it is not required, a trademark search is highly recommended before applying for registration. A search will determine whether the trademark intended to be registered in a specific class already exists within the applicable industrial or commercial activity.

### **COPYRIGHT AND SOFTWARE PROTECTION**

General rules for copyright protection extends to original works of authorship in any tangible form of expression, such as books, letters, conferences, musical compositions, photographs, cinematography works, translations and any other kind of transformation of the original works, drawings, paintings, printings, sculptures or other tangible forms thereof.

Copyright registration is not required for obtaining protection. However, registration is always helpful as proof of ownership and to show the date the work was done in case of litigation.

Copyright law also establishes that computer software and databases are copyrightable material.

Especially concerning the protection of computer software in Brazil, some specific rules under the general frame of copyright laws apply.

Individuals have inherent moral and economic copyrights and only their economic rights may be assigned to third parties, be they individuals or legal entities.

The application for literary work is filed with the National Library Foundation; if it is a musical work, the application is made with the music school of *Universidade Federal do Rio de Janeiro*; and, if it is artwork, the application is filed with the National School of Fine Arts. In case of software registration, the application may be filed with the INPI.

## What is the expected timeline from initial filing to granting or denial of IP rights with the Brazilian patent office?

Currently, the expected timeline from initial filing to granting or denial of IP rights are as follows:

IP Registration	Expected Timeline
Patent & Utility Model based on Patent Cooperation Treaty	4–5 years
Invention Patent	5–6 years
Trademark	approx. 2 years
Copyright & Design Registration	1 month

The Brazilian Authorities and specifically the INPI officials have been applying their best efforts in order to reduce the time period for patents and utility models to three years, which is considered an internationally-accepted timeline. This is expected to be achieved by 2011.

The Brazilian Authorities and the INPI officials have been working to reduce the time period for trademarks to one year. This goal is expected to be achieved by the end of 2009.

## For each IP type, what is the expected range of expenses including government fees and taxes?

Considering the normal course of the applications (i.e., without interurrences such as official requirements or opposition by third parties), the expected range of expenses is:

### PATENT AND UTILITY MODEL

Approximately USD330 (depending on the exchange rate in force), including application fee, requesting anticipation of publication, petition for examination with up to 10 claims and issuance of Letters Patent, plus translation costs (which may vary according to the extension of the documents to be translated into the Portuguese language) and professional fees. The yearly maintenance fee for an invention patent petition is USD85 and USD56 for a utility model, within the

ordinary time frame, plus professional fees. For subsequent years, within the ordinary period, the maintenance fees for invention patents are: from three to six years, an annual fee of USD215; from 7 to 10 years, an annual fee of USD337; from 11 to 15 years, an annual fee of USD454 and from 16 to 20 years, an annual fee of USD554, plus professional fees in all cases. For utility model patents the maintenance fees are somewhat lower.

#### **TRADEMARK**

Approximately USD370 for application in one class, including filing fee, labels and issuance of Registration Certificate, within the ordinary deadline, plus translation costs and professional fees.

#### **COPYRIGHT**

Approximately USD15, plus translation costs and professional fees.

### **Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?**

#### **TRADEMARK**

The effective rights over a trademark in Brazil are obtained by the registration duly granted by the INPI. However, the owner of an application for trademark registration is vested in the right to protect the material integrity and reputation of the trademark within the Brazilian territory, and also the right to license its use and the right to assign the application for registration to third parties.

#### **PATENT**

The ownership of a patent in Brazil is assured to the person who first registered it with the INPI ("First to File" rule). The ownership of a patent is granted upon its registration, but the owner may obtain indemnity for its undue exploitation from the date of the publication application until the granting date.

#### **COPYRIGHT**

The protection of the copyright is obtained as from the moment the work was done. As mentioned before, copyright registration is not required for obtaining protection; however, registration is always helpful as proof of ownership and to show the date when the work was done, in case of litigation.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

Although the rights described above in relation to trademarks and patents are granted to the owner of an application for IP protection, the exclusive right to use the trademark in Brazil is only assured to the owner of a certain trademark upon its registration with the INPI. Moreover, the owner of the registered trademark may recover damages from the unauthorized use of its trademarks and file criminal actions against the infringing party.

In connection with patents, the right to effectively recover damages and file criminal suits arises with the granting of the letters patent.

Concerning copyright, as mentioned above, copyright registration may be helpful as proof of ownership and to state a date upon which the calculation of the protection period may start, in case of litigation.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from filing date
Utility Model	15 years from filing date
Industrial Design	10 years renewable for 3 additional 5-year periods
Trademark	10 years renewable for unlimited successive 10-year periods
Copyright	70 years starting 1 January of the year following the death of the author
Software	50 years starting 1 January of the year following its publication or, if this is unavailable, its creation

Once the term of protection has expired, the object of the patent falls into the public domain.

## What additional IP laws or regulations might need to be considered before launching a product or service in Brazil?

Before launching a product in Brazil, it is recommended that the interested company observes IP laws and regulations in force in our country and concerning which the following observations are pertinent:

The Brazilian Industrial Property Law (Law 9.279/96) protects industrial property by means of: the granting of invention patents and utility model patents; the registration of industrial designs; the registration of trademarks; the repression of false geographical indications; and the repression of unfair competition.

In the field of industrial property it should be recognized that Brazil is a member of the Paris Convention for the Protection of Industrial Property, promulgated in Brazil by Decree 75.572, of 8 April 1975 and the Bern Convention, promulgated by Decree 75.699, of 6 May 1975.

Brazil is also a signatory of TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) promulgated in Brazil by Decree no. 1.355, of 30 December 1994 and the Patent Cooperation Treaty, in effect since 1 January 1998.

Copyrights are ruled by Law 9.610/98 (Copyright Law) in effect since 19 February 1998, replacing Law 5.988/73.

Depending on the product to be launched, there is additional protection. Computer software is protected by Law 9.609/98 combined with Law 9.610/98 and plant varieties are protected by Law 9.456/97. Pharmaceutical products, cosmetics, foods and beverages have specific rules and are submitted to the approval of ANVISA, the Brazilian Sanitary Agency.

It is also advisable for a foreign company wishing to launch a product or service in Brazil to observe consumer rights. The Brazilian Consumer Code regulates the relationship between consumers and industry, commerce and services and has been extensively applied in Brazil.

In addition, it is advisable to observe the rules of the Civil Code regarding the protection of the company's name. Currently this protection is limited to the State in which the company is established; however it is possible to extend such protection to other Brazilian States.

### Is it necessary to mark a protected product and if so, how?

Brazilian practice follows article 5, D, of the Convention of Paris Union and does not require the use of the symbols ® or ™ on trademarks. On this subject there is no specific provision in Brazilian Industrial Property Law. However, if the owner of a trademark decides to use such symbols, it is our practice to use ® for registered trademarks and ™ for trademark applications, otherwise such use may be considered misleading.

There is, however, some provision with respect to patents and industrial designs. Effectively, in accordance with certain dispositions of Brazilian Industrial Property Law, the misuse of expressions such as “Patent Application” or “Patent Granted” may be considered a crime of unfair competition and therefore its user shall be subject to penalties of imprisonment from three months to one year, or a fine as provided for in the IP Law.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Protected IP rights can be enforced through court actions (that may be criminal, civil or both) and include the following remedies:

- Search and seizures
- Civil and criminal complaints
- Injunctions
- Recovery of damages
- Compensation for lost profits
- Destruction of counterfeited goods
- Arrest of infringers

The applicable laws regarding IP enforcement are the Industrial Property Law, the Copyright Law, the Software Law, the Civil Procedure Code and the Penal Code.

Civil and criminal litigation is presented to state or federal courts and can always be reviewed by a state or federal Court of Appeals. The Federal Court is qualified to act in demands or complaints in which the INPI is involved.

Certain unregistered rights may also be enforced based upon the concept of unfair competition.

Prior use of a trademark can be argued on infringement claims based on bad faith.

### **What are the basic requirements for initiating a claim of infringement in Brazil? What remedies and defenses are available?**

For initiating a claim of infringement in Brazil, it is important to clearly demonstrate the nature of the infringement. For example, registered trademark rights are enforceable against an identical or similar trademark used to distinguish identical or similar goods or services if the later trademark takes unfair advantage of, or if its use is detrimental to, the distinctive character or reputation of the earlier trademark.

In such cases it is possible to ask for temporary injunctions to suspend the infringement until a final decision is issued. Search and seizure moves are also possible on infringing products, including where such measures are intended to constitute proof for future civil and criminal suits.

The recognized owner of an IP right can recover losses and damages that are a direct consequence of the infringement.

While there is no specific rule to calculate the damages caused by infringement, the criteria commonly used to calculate losses are most favorable to the plaintiff, such being:

- The loss of profit suffered by the owner of the IP right as a result of infringement
- The benefits obtained by the infringer as a result of the infringement
- The price the infringer would have paid for a license for the infringed rights

In the field of Copyright Law there is an understanding that where the number of copies constituting the fraudulent edition is unknown, the offender shall pay the value of 3,000 copies in addition to the copies seized.

## **How long does litigation normally take in Brazil and what are the likely costs?**

Lower court litigation in Brazil usually takes from two to five years. Appellate court litigation takes approximately an additional five years.

The costs are approximately one percent of the value of matter in dispute or controversy depending upon the characteristics of such action.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Brazil?**

Customs may play an important role in enforcing IP rights and preventing counterfeit items from entering Brazil if properly advised by the interested party.

As is known, piracy and counterfeited products have been an increasing problem in many countries including Brazil. In this respect it is important to highlight that the Brazilian Government has developed a legislative effort and an effective anti-piracy program including the creation of the Inter-ministerial Committee for the Combat of Piracy, the creation of a centralized Brazilian Customs system, the creation of more specialized police and education of the authorities as to the importance of the enforcement of intellectual property legislation.

Besides this, it is strongly advisable to have the consumer's collaboration in not buying counterfeited products.

**For further information about IP rights in Brazil see:**

**<http://www.felsberg.com.br>**

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## FELSBERG E ASSOCIADOS

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Brasilia • Rio de Janeiro • São Paulo, Brazil

Felsberg e Associados is composed of specialized and multidisciplinary professionals, providing a complete range of intellectual property services to meet its clients' needs.

*Trademarks and Trade Names:* Implementing efficient trademark and trade name protection with careful searches in proper databases and registration procedures, including investigation of third parties' trademark applications and preparation of a warning notice in the case of conflict with third parties.

*Patents and Designs:* Providing prior art searches related to inventions, utility models and design registration; formal procedures for the granting of the patent and registration of designs; maintenance of patents and registrations during their period of validity.

*Franchise and Technology Transfer Agreements:* Drafting and negotiation of agreements of franchise, technology transfer, cost-sharing and licensing of trademarks, patents, and designs, and formal procedures for registration thereof with the applicable Governmental Authority.

*Unfair Competition and Trade Secrets:* Advising about appropriate procedures to protect interests and rights concerning competition matters and unfair or fraudulent acts by third parties; review and drafting of agreements for the protection of trade secrets; advising on possible confusion between product packaging, forms of presentation and industrial design.

*Copyright and Software:* Formal procedures for protection of creations and software; advising on copyright, software and advertising matters; drafting of contracts for licensing of copyrights, software, advertising pieces, editions, artistic productions, etc; implementing legal measures for the enforcement of such rights.

*Domain Names:* Providing search, registration and maintenance of Domain Names; acting in disputes over domain names, including procedures related to international arbitration under WIPO rules.

*Litigation:* Preparation of strategies and filing of legal actions representing clients for the enforcement of rights or defense in IP litigation, including repression of piracy.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in the Cayman Islands?

A trademark or patent can be registered in the Cayman Islands by extending a United Kingdom or European trademark or patent to the Cayman Islands. Hence, in order to file a patent or trademark in the Cayman Islands it is necessary to first have a United Kingdom or European registration.

### What is the expected timeline from initial filing to granting or denial of IP rights with the Cayman Islands' patent office?

On receipt of a certified extract of the UK or European registration from the client, an application can be made for registration. The registration process usually takes four to six weeks. On completion, the patent or trademark registration is published in the *Cayman Islands Official Gazette* which is a government publication appearing fortnightly.

### For each IP type, what is the expected range of expenses including government fees and taxes?

In addition to registration fees, patents and trademarks incur annual fees.

IP Registration	Government Fees	Professional Fees*
Patents	USD 182.93	USD 400
Annual Renewal	USD 121.95	USD 200
Trademarks, one class	USD 182.93	USD 400
each additional class	USD 121.95	USD 50
Annual Renewal, one class	USD 121.95	USD 200
each additional class	USD 60.98	USD 50

\* Professional fees exclude disbursements.

### **Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?**

No rights are conferred in the Cayman Islands prior to filing an application.

### **If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?**

The trademark or patent is not protected in the Cayman Islands until registration has taken place. Upon registration, the owner of the trademark or patent has the same rights and remedies available as is afforded in the United Kingdom.

## **EXPLOITING IP RIGHTS**

### **What is the duration of protection for each IP type?**

A patent or trademark shall be protected in the Cayman Islands until the date of expiry of the registration in the United Kingdom or Europe. Upon expiry, the trademark or patent must first be renewed in the United Kingdom or Europe in order for renewal to take place in the Cayman Islands.

### **What additional IP laws or regulations might need to be considered before launching a product or service in the Cayman Islands?**

N/A

### **Is it necessary to mark a protected product and if so, how?**

N/A

## **ENFORCING IP RIGHTS**

### **What mechanisms are in place to ensure effective enforcement of IP rights?**

The Grand Court of the Cayman Islands has jurisdiction in all matters affecting the owner's rights and remedies under the Patents and Trade Marks Law (2007 Revision). The Merchandise Marks Law (1997 Revision) also provides for certain criminal offenses.

### **What are the basic requirements for initiating a claim of infringement in the Cayman Islands? What remedies and defenses are available?**

Depends on circumstances.

### **How long does litigation normally take in the Cayman Islands and what are the likely costs?**

Depends on circumstances.

### **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering the Cayman Islands?**

Depends on circumstances.

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## CAMPBELLS

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### Georgetown, Grand Cayman, Cayman Islands

Campbells was established in 1970 and continues to grow in size to serve the increasing demand for legal services in the Cayman Islands. Its focus is on quality of service and its attorneys advise a wide range of clients in relation to all major areas of offshore and local work.

#### International Experience

Campbells' clients include financial services groups, industrial companies and major law and accounting firms in most of the major financial centers and cities around the world. Much of the work handled by the firm whether it is structuring complex financial transactions, commercial litigation or restructuring involves working with clients and other professionals overseas.

#### International Clients

Clients range from household name international financial and industrial groups, foreign governments, promoters of investment funds and top tier accounting and legal firms to participants in offshore trust structures, bankruptcy trustees and receivers.

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## FIRM IP CONTACTS

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Chile?

In Chile, patents, utility models and trademarks are covered by Law No 19,039 of Industrial Property. Copyright, on the other hand, is treated in Law No 17,336 of Intellectual Property.

#### PATENT

According to Law No 19,039, a patent may be granted to protect inventions, which are defined as any solution to a technical problem that produces an industrial work. The invention may be a product or a procedure, and the requirements are that it must be a new product or procedure, it must have a reasonable inventive level and it must have an industrial application.

#### UTILITY MODEL

Utility models may be instruments, devices, tools, objects and parts of them, that produce a utility, this is, that add to the function that they are destined to a benefit, advantage or technical effect that was not present. A utility model must be new and must have an industrial application.

#### TRADEMARK

One or more words, with or without idiomatic meaning, combination of letters and/or numbers; labels and tags, including images, symbols and drawings; and any other distinctive symbol capable of differentiating a product or service, such as sounds, may be registered as trademarks.

According to Law No 17,336, copyright is protected at the work's creation, and includes all the works protected by the International Treaties covering this matter and have been signed by Chile, such as the Berne Convention and TRIPS Agreements. Accordingly, the works covered are, for example, books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science; software; video works; and databases.

## What is the expected timeline from initial filing to granting or denial of IP rights with Chile's patent office?

Chile's patent office (*Instituto Nacional de la Propiedad Intelectual*), hereinafter INAPI), is in charge of the registration of trademarks, patents and utility models.

Regarding trademarks, the process starts with the filing of the initial trademark application. The INAPI makes an initial formal examination of the application, reviewing if the application fulfills the formal requirements of the law, which usually takes between 30 to 60 days. In case the initial trademark application is approved, the request must be published in the Official Gazette, which takes around 15 more days. Once the trademark application is published, there is a 30-day term for third parties to file oppositions to the trademark registration, which are resolved by the Industrial Property Court. If no opposition is filed, the INAPI makes the final review of the application, checking if the material requirements of the law are fulfilled, which takes usually another 45 to 60 days. If the INAPI approves the registration, the process is finished; if, instead it considers that the application does not comply with the law, it is rejected. In the latter case, the applicant may appeal to the Industrial Property Court. The process, in case no opposition is filed and it is approved by the INAPI, takes between four to six months. In case a procedure is required at the Industrial Property Court, the process may take up to 30 months.

In case of patents, the procedure is almost the same, with the addition of an exam made by a specialist appointed by the INAPI previous to the final approval, and that the documentation regarding the invention must be filed at the beginning of the procedure. A straightforward process takes around three years, and in case a procedure is required at the Industrial Property Court, the process may take up to five years.

Copyright is not registered at the INAPI, as it is protected since the creation of the work, without any special formality; therefore, no registration is required. However, a deposit may be made in the Chilean Intellectual Property Office, mainly as evidence in case of future conflicts. The procedure is simple and takes a day.

## For each IP type, what is the expected range of expenses including government fees and taxes?

For trademarks, the total registration expenses including governmental fees, taxes and publication expenses amounts to approximately USD750.

Patent registration expenses, which include fees from specialists, governmental, taxes and publication, range from approximately USD1,000 to USD1,500. Utility model registration expenses include the same topics referred for patents and total between USD700 to USD1,200. The final amount will depend on the complexity of the specific invention.

Copyright deposit expenses are between USD5 to USD25, depending on the specific work to be deposited.

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

Regarding copyright, the author's rights and the protection of the law starts with the creation of the work. The deposit in the Chilean Intellectual Property Office is made mainly for evidentiary purposes in case of future conflicts.

In case of patents and utility models, on the other hand, the inventor's rights and the protection of the law start with the registration. However, after a successful registration, infractions of third parties to the patent during the registration process may be subject to civil and criminal actions brought against them by the right holder.

Finally, in the case of trademarks, if an unregistered trademark is being used in the country in a real and effective manner, third parties' registration applications for such trademark may be denied by the INAPI or may be subject to an opposition by the user. However, if the third party application is denied, the user must request the registration to the INAPI within 90 days or the registration may be granted to any other person.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

As explained in the previous answer, in the case of copyright, the author's rights and the protection of the law starts with the creation of the work and the deposit at the Chilean Intellectual Property Office is made mainly for evidentiary purposes in case of future conflicts.

Patents and utility models protection starts with the registration; and, in the case of trademarks, the previous effective use of an unregistered trademark only grants a preference in the registration process.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from application date non renewable
Utility Model	10 years from application date non renewable
Trademark	10 years, renewable indefinitely for subsequent 10-year terms
Copyright	life of author plus 70 years after author's death

### What additional IP laws or regulations might need to be considered before launching a product or service in Chile?

It is important to bear in mind that the nature of the product or service may result in the application of other regulations. For example, in case of pharmaceutical products, sanitary laws and regulations will also be applicable. Also, Consumers Defense Law may be applicable where the products or services are directed toward the public, wherein publicity and labeling regulations must also be considered.

## Is it necessary to mark a protected product and if so, how?

Yes, it is necessary for patents, trademarks and utility models. For copyright, currently there is no special provision in the law. In case of trademarks, the products must include the words “*Marca Registrada*” (Registered Trademarks), or the initials “M.R.”, or the letter “R” inside a circle (®). For patents, the products must include (unless it is impossible according to the nature of the patented invention) the patent number, plus the words “*Patente de Invención*” (Invention Patent) or the initials “P.I.” If the products are commercialized during the registration procedure, such circumstance should be included in the product. In case none of these alternatives is included in the product, the trademark registration and validity is not affected, but the owners of the trademark may not bring forth the criminal actions that the law provides.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Both Law No 19,039 of Industrial Property and Law No 17,336 of Intellectual Property contemplate civil and criminal procedures to prosecute infractions to Intellectual and Industrial Property. In both cases the afflicted party may bring forth a civil claim to request payment of indemnity for the damages caused and a criminal claim, which may result in the application of fines and even imprisonment. Additionally, during the course of the trials a court injunction may be granted. In particular, in the case of industrial property matters, the court may order:

- An immediate cease of whatever acts constitute the alleged infringement
- A ban on commercializing any products subject to the infraction as well as seizure of the materials used to commit such infraction
- The withholding of any sums received as a result of the commercialization
- The appointment of one or more inspectors
- The ban on publicizing in any way the products subject to the alleged infraction

In connection with intellectual property, the court may order the delivery, sale or destruction of the property under infringement, of the materials used to create it, and order during the course of the trial the cease of the sale, circulation, and exhibition of the product.

### **What are the basic requirements for initiating a claim of infringement in Chile? What remedies and defenses are available?**

There are no special requirements which must be fulfilled in order to initiate a claim of this nature, other than to provide sufficient information which evidences the infringement. In particular, regarding remedies and defenses, please refer to the previous question's answer.

### **How long does litigation normally take in Chile and what are the likely costs?**

Normally, an expedited civil procedure could take from two to five years considering two years for the trial, 18 months in case of an appeal and another 18 months if the case is brought forth in the Supreme Court. Criminal actions could take one to two years, depending on the complexity of the case.

### **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Chile?**

Law No 19,912 provides that the bearer of registered industrial property rights and of authors' rights may request before the civil courts the suspension of the delivery of merchandise from Customs whenever there is an infraction, or if there is sufficient reason to believe that such infraction took place, in their rights protected by Law Nos 19,039 and 17,336. Such measures may also be requested during the course of an initiated court procedure. Such a petition shall be enforced by customs officials and the merchandise will be held by whoever the courts appoint for such purposes. In order for the measure to carry on, the afflicted party must file a lawsuit before a 10-day period is over, from the time notice is given of the suspension, otherwise such measure will not carry on. In any case, if at the end the merchandise is deemed by the courts to be an infraction of intellectual or industrial property rights, then it may not be re-exported or sent to a different Customs destination.

In addition, Law No 19,912 allows Customs officials to order, without prior petition of the afflicted party, the suspension of the delivery of the merchandise for up to five days, whenever from its plain inspection of such goods it is evident that the registered brand was altered or it is an obvious fake or it infringes the author's right. If this were to occur, the Customs official must inform the afflicted party so that they may request the suspension and inspect the merchandise in order to determine the authenticity thereof. If such request is not made, then at the end of the five-day period the delivery of the merchandise will become effective.

### For further information about IP rights in Chile see:

[www.inapi.cl](http://www.inapi.cl)

[www.dibam.cl/derechos\\_intelectuales/index.asp](http://www.dibam.cl/derechos_intelectuales/index.asp)

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## PHILIPPI, YRARRÁZAVAL, PULIDO & BRUNNER

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Santiago, Chile

Philippi, Yrarrázaval, Pulido & Brunner, founded in 1904, is recognized as one of the most prestigious law firms in Chile. With 60 lawyers, including 17 partners, the firm is able to provide comprehensive legal advice to business clients operating in any industry. Members of the firm have made important contributions to the Chilean society regarding drafting of laws on different legal matters and have acted as counsel to the government in negotiations of FTAs with the USA, European Union and Canada. A substantial number of its lawyers have pursued postgraduate studies in the U.S. and European law schools and have joined international law firms as foreign associates. Many members of the firm lecture prestigious Chilean universities in matters related to the areas of practice.

Philippi provides IP assistance to clients through its Telecommunications, Media & Technology Group (TMT). The firm's TMT practice includes all IP matters with the exception of trademarks registration, which are referred to a partnered specialized Trademarks Firm. The TMT group specialization in this area allows the firm to provide highly qualified services. The firm has successfully counseled its clients through complex proceedings of reorganization and restructuring, as well as participated in many of the important acquisitions, divisions and mergers of telecom, media and technology companies in Chile.

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Colombia?

As set forth by applicable law (Decision 486/2000, Law 23/1982, Law 44 /1993, Decision 351/1993):

- All asset or process inventions in all areas of technology, deemed to be new or to involve an inventive step which additionally may have an industrial application are eligible for registration as patent
- Any sign that has the capability of distinguishing goods and services on the market may be a trademark. Signs that are subject to graphic representation are also eligible for registration as trademarks. The following are also eligible for registration as trademarks:
  - Words or a combination of words
  - Images, figures, symbols, graphic elements, logotypes, monograms, portraits, labels, and emblems
  - Sounds and smells
  - Letters and numbers
  - A color demarcated in a specific shape, or a combination of colors
  - The shape of a product, its packaging or wrappings
  - Any combination of the above
- Any new shape, configuration, or arrangement of components of any device, tool, implement, mechanism or other object, or any part thereof, for an improved or different operation, use, or manufacture of the object incorporating it, or that endows it with any useful, advantage, or technical effect that it did not have previously shall be considered a utility model. Among those, the following:
  - All literary, artistic and scientific works that may be reproduced or disclosed by any known or future means, including the following in particular:
    - Works expressed in writing, that is, books, pamphlets and any other kind of work expressed in letters, signs or conventional marks
    - Lectures, addresses, sermons and other works of the same nature
    - Musical compositions with or without words

- ▶ Dramatic and dramatico-musical works
- ▶ Choreographic and mimed works
- ▶ Cinematographic works and other audiovisual works expressed by any process
- ▶ Works of fine art, including drawings, paintings, sculptures, engravings and lithographs
- ▶ Works of architecture
- ▶ Photographic works and works expressed by processes analogous to photography
- ▶ Works of applied art
- ▶ Illustrations, maps, sketches, plans, diagrams and three-dimensional works relating to geography, topography, architecture or science
- ▶ Computer programs
- ▶ Anthologies or compilations of assorted works and also databases, which, by the selection and arrangement of their contents, constitute personal creations

### What is the expected timeline from initial filing to granting or denial of IP rights with Colombia's patent office?

IP Registration	Expected Timeline
Patent	2-4 years
Utility Model	1-2 years
Trademark	approx. 1 year
Copyright	approx. 1 month

**For each IP type, what is the expected range of expenses including government fees and taxes?**

<b>IP Registration</b>	<b>Official Fees</b>	<b>Professional Fees</b>
Patent	approx. USD260 for the application approx. USD180 for the examination of patentability	USD785–USD1,000
Utility Model	approx. USD126 for the application approx. USD120 for the examination of patentability	USD430–USD600
Trademark	approx. USD275	USD250–USD450
Copyright	N/A	USD200–USD400

**Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?**

For patents, utility models and trademarks, no rights are conferred prior to the application process.

During the application process and prior to the granting of the registration, applicants do not have any consolidated right but a mere expectation to obtain the right (“*expectativa de derecho*”). In the case of patents, as from the publication and until the granting or rejection, applicants are entitled to claim damages from infringers.

For copyrights, the rights exist upon their intellectual creation; and application or registration shall not itself confer rights, they are just a formal recognition of the right. Failure to register copyrights shall not prevent the enjoyment or exercise of the rights recognized under applicable legislation.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

Registration for copyrights is just for declaratory purposes, and shall constitute a presumption that the facts and acts recorded in it are true, in the absence of proof to the contrary.

Before the granting, patent applicants can only claim damages from infringers but are not entitled to initiate all the actions that arise by virtue of the granting decision (e.g., civil or criminal infringement actions, unfair competition action, etc.).

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Term
Patent	20 years from the date of application
Utility Model	10 years from the date of application
Trademark	10 years from the date of granting
Copyright	Economic rights: life of the author and 80 years after author's death Moral Rights: perpetually

### What additional IP laws or regulations might need to be considered before launching a product or service in Colombia?

- Decision 486/2000
- Decision 351/1993
- Law 170/1994
- Law 178/1994
- Law 463/1998

- Decree 2591/2000
- Law 23/1982
- Law 44 /1993
- Decree 1360/1989
- Commercial Code articles 539 to 618.
- Criminal Code articles 306 and 307
- Law 256/1996

### Is it necessary to mark a protected product and if so, how?

It is not necessary to mark a protected product.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

The following are the available actions for IP rights holders:

#### CRIMINAL INFRINGEMENT ACTION

For all The Colombian Criminal Code establishes in its article 306 that the one that illegally uses the trade names, emblems, trademarks, patents, models of utility or lay-out designs, is subject to four to eight years of prison and the payment of a penalty calculated at 26.66 to 1,000 monthly minimum wages.

In addition to penalties set forth in article 306 of the Colombian criminal code, the illegitimate use of patents is punished with one to four years of prison and the payment of 20 to 1,000 monthly minimum wages (article 307 of the Colombian criminal code).

#### CIVIL INFRINGEMENT ACTION

Any IP right legitimately granted under the applicable law can be the basis for a civil infringement action in order to stop third parties from illegitimately using the IP right. The civil infringement action consists of a judicial procedure raised before civil municipal judges.

The applicant of a patent has the right to claim for damages resulting from unauthorized use of the invention or utility model between the period when it

became public knowledge and the respective application was opened to consultation and the patent grant date. Compensation shall be lawful only in respect of the subject matter covered by the patent grant, and shall be computed in accordance with the patent's effective exploitation by the defendant over the period in question.

### UNFAIR COMPETITION ACTION

In the sense that the use of a sign, word, trade dress, etc., can be used to perpetrate unfair competition acts and affect an IP right, there is the alternative for IP rights owners to challenge acts that confuse, mislead, imitate or take illegitimate advantage of another's reputation (articles 10, 11, 14 and 15 of Law 256 of 1996). An unfair competition action can be brought before the civil judges or before the Superintendence of Industry and Commerce, both being judicial procedures.

### CROSS-BORDER MEASURES

IP rights can be registered before Customs Authorities (DIAN) and, based on such information, Customs can hold the importation of a shipment whether *ex-officio* or as a result of a petition. The shipment will be stopped until the infringement is proved or it's determined there is no IP right.

## What are the basic requirements for initiating a claim of infringement in Colombia? What remedies and defenses are available?

### TRADEMARK

Article 155 (paragraph d) of Decision 486 states that in order to validly file a trademark infringement action, it would be necessary to demonstrate the existence of one of the following two circumstances:

- Risk of confusion between the registered marks and the infringing mark

or

- Mistaken association regarding the origin of the product

### COPYRIGHT

The action is based on the consideration that the protected work was used, reproduced, communicated, modified or manipulated in some way without the authorization of the copyright owner.

**PATENT**

The patent owner must demonstrate that the infringer illegally used the protected product or procedure.

Remedies available:

- Immediate stop of infringing act
- Seizure of infringing product
- Suspension of import or export of the infringing product
- Constitution of a guarantee by the infringer
- Temporal closure of commercial establishments
- Damages

In addition, precautionary measures before, during or after the infringement action can be requested. The measures intend to obtain the immediate cessation of use of the infringing act, and the seizure of infringing product. For the conduction of said measures, the judge would require the plaintiff the payment of a bond that would guarantee the compensation of any damage that the conduction of the precautionary measures could cause to infringer.

The measures would be ordered by the judge, for which he would need to have at least a preliminary conviction of the infringement, and of the necessity of the measures. As soon as the precautionary measures are ordered, it would be possible to prevent their conduction by offering the judge the payment of a bond that will guarantee the compensation of any damage the lack of the conduction of the measures could cause to infringer.

**How long does litigation normally take in Colombia and what are the likely costs?**

<b>Action</b>	<b>Duration Term</b>	<b>Estimated Cost</b>
Civil infringement action	4 years	USD 15,000
Criminal infringement action	1 year	USD 10,000
Unfair Competition Action before Judges	4 years	USD 15,000
Unfair Competition Action before Superintendence of Industry and Commerce	1 year	USD 10,000

## What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Colombia?

IP rights can be registered before Customs Authorities (DIAN) and based on such information Customs can hold the importation of a shipment whether *ex-officio* or as a result of a petition. The shipment will be stopped until the infringement is proved or it's determined there is no IP right.

### For further information about IP rights in Colombia see:

[www.sic.gov.co/](http://www.sic.gov.co/)

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## POSSE HERRERA & RUIZ S.A.

Bogota, Colombia

Posse, Herrera & Ruiz is a full-service law firm using a systematic, multidisciplinary approach to finding creative, prudent and value-generating business solutions, which optimize the client's return on investment while minimizing risks. Its partners have extensive and very successful experience in energy and natural resources, mergers and acquisitions, tax planning, financing, capital markets, local and international litigation, competition law, infrastructure and PPPs. Posse Herrera & Ruiz S.A. is not IP focused. Nevertheless any IP needs are outsourced to a sister firm by the name of Villamil IP Legal Services.

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Costa Rica?

#### PATENT

The Costa Rican patent law states that inventions meeting certain conditions may be patented.

An invention is all humans' intellect creations, that may be applied in the industry and fulfill the patentability requirements stated in the Law. An invention can be a product, a machine, a tool, or a manufacturing procedure.

An invention must be new, inventive, and useful or industrially applicable in order to be patentable.

- An invention is new when it does not previously exist in the state of the art. The state of the art includes everything that has been disclosed or made accessible for the public in any country in the world and by any media, before the date of filing, or before the date of priority, if applicable.
- An invention is inventive if for a person of medium level, the invention is not obvious or it does not derive evidently from the corresponding state of the art.
- An invention is industrially applicable when it has a specific, substantial and credible use.

The Costa Rican Patent Law does not consider the following to be inventions and subsequently may not be patented:

- Discoveries
- Scientific theories
- Mathematic methods
- Software considered in isolation
- Purely esthetic creations, literary and artistic works
- Economic publicity or business plan principles or methods, and the ones referred to purely mental, intellectual or game material activities
- The juxtapositions of known inventions

- The mixture of known products, their use, form variation, dimensions, materials, except in the case that the combination or fusion are such that they may not function separately or the qualities or characteristic functions are modified in order to obtain an industrial result not obvious for a technician in the subject.

Additionally, the following are inventions excluded from patentability:

- Inventions whose commercial exploitation must be impeded objectively and necessarily in order to protect public order, morality, health or the life of human beings and animals, to preserve vegetables or avoid serious damage to the environment
- The diagnosis, therapeutic or surgical methods for the treatment of human beings and animals
- The plants and animals except the microorganisms when they are not microorganisms as found in nature
- The essential biological procedures for the production of plants or animals that are not the non-biological or microbiological proceedings

### UTILITY MODEL

The Costa Rican Patent Law states that all new dispositions or forms obtained or introduced in tools, working instruments or utensils, permitting a better function or a function special for its use, may be protected as utility models.

### TRADEMARK

The Costa Rican Trademark Law states that any sign or combination of signs distinguishing goods and services from one company to another, due to the fact that they are sufficiently distinctive and capable of identifying the goods and services of one company from those of other companies, may be registered as a trademark.

### COPYRIGHT

The Costa Rican Copyright Law protects original works of authorship that are fixed in any tangible medium of expression and may be literary, dramatic, musical, and artistic works, such as books, pamphlets, letters, and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainment;

musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works, to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

## What is the expected timeline from initial filing to granting or denial of IP rights with Costa Rica's patent office?

IP Registration	Expected Timeline
Patent	approx. 3 years
Utility Model	approx. 3 years
Trademark	6–8 months if there are no oppositions or objections on behalf of the Trademark Office
Copyright	approx. 3 months

## For each IP type, what is the expected range of expenses including government fees and taxes?

IP Type	Action	Fees
Patent	Filing application	USD500
	Registration of the patent and issuance of registration certificate	USD500
	Publication Notice	USD150
	Expert's Report	approx. USD525
	Annuities	USD500
	Annuities paid in the grace period	USD650

IP Type	Action	Fees
Utility Model	Filing of application	USD75
	Expert's Report	USD500
	Publication Notice	USD150
Trademark	Filing of application	USD50
	Publication Notice	USD90
Copyright	Filing of application	USD10
	Publication Notice	USD50

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

### PATENT

The Costa Rican Patent Law protects the applicant before the granting of a patent. The applicant of a patent application may claim indemnity for damages against any third party that exploits the invention claimed in the patent application, within the period between the date of publication of the legal notice and the patent granting date. The aforementioned indemnity is subject to the granting of the patent and will solely proceed in relation to the claims included in the granting of the patent.

### UTILITY MODEL

The Costa Rican Patent Law protects the applicant before the granting of a utility model. The applicant of a utility model application may claim indemnity for damages against any third party that exploits the invention claimed in a utility model application, within the period between the date of publication of the legal notice and the utility model granting date. The aforementioned indemnity is subject to the granting of the utility model.

### TRADEMARK

The Costa Rican Trademark Law states that, as of the trademark filing date before the Trademark Office, the applicant obtains a priority right with regard to other possible applicants.

Regardless of the aforementioned in order to claim rights over a trademark, the trademark must be registered and the titleholder must demonstrate the aforementioned registration.

## **COPYRIGHT**

The Costa Rican Copyright Law states a work is protected by copyright from the moment it has been created and exists. This means works do not require registration or other formalities in order to be protected.

## **If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?**

### **PATENT**

In the case of infringement of a patent application, the applicant may obtain the indemnity solely if the patent is granted.

A patent owner has the following benefits:

- The right to exclusively exploit the patented invention and to act against third parties exploiting the patent without authorization.
- The right to grant a patent license to third parties authorizing the exploitation of the patent, and to receive the payment of royalties.

### **UTILITY MODEL**

A utility model owner has the following benefits:

- The right to exclusively exploit the utility model and to act against third parties exploiting the utility model without authorization.
- The right to grant a utility model license to third parties authorizing the exploitation of the utility model, and to receive the payment of royalties.

### **TRADEMARK**

The registration of a trademark confers to its owner or its titleholders the right to exclusively use the trademark and to act against third parties executing, without due prior consent, one of the following acts:

- When a third party uses an identical or similar trademark, for products or services, when such use can cause confusion or the risk of associating it with the owner of the trademark
- When a third party, commercially uses an identical or similar trademark for products or services when such use can cause the owner or the titleholder of the trademark economic or unfair commercial damages, due to a decrease in the distinctiveness,

commercial value of the trademark, or the unfair use of the prestige of the trademark or the clientele created by the use of such trademark

### COPYRIGHT

A registered work benefits the author/titleholder in the following ways:

- Establishes a public record of the copyright claim
- The registration certificate establishes *prima facie* evidence in relation to the validity of the copyright

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from filing date non renewable
Trademark	10 years from registration date renewable for 10-year periods
Utility Model	10 years from registration date non renewable
Copyright	for author's life plus 70 years after author's death

### What additional IP laws or regulations might need to be considered before launching a product or service in Costa Rica?

- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)
- Paris Convention for the Protection of Industrial Property
- Berne Convention For The Protection of Literary and Artistic Works
- Patent Cooperation Treaty

- *Ley de Derechos de Autor y Derechos Conexos y su Reglamento* (Copyright Law)
- *Ley de Marcas y Otros Signos Distintivos y su Reglamento* (Trademark Law)
- *Ley de Información No Divulgada y su Reglamento* (Confidential Information Law)
- *Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual* (Enforcement Law)
- *Ley sobre Patentes de Invención, Dibujos y Modelos Industriales y Modelos de Utilidad y su Reglamento* (Patent and Utility Model Law)

### Is it necessary to mark a protected product and if so, how?

The Costa Rican Trademark Law states goods or services protected by registered trademarks should be labeled with the following phrase or sign: “Registered Trademark” or “R”. In case the goods or services cannot be labeled directly, the aforementioned phrase or sign must appear in the wrapper, boxes, packaging or container in which the goods or services are sold to the public. The omission of the aforementioned will not affect the validity of the trademarks.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

There are many mechanisms in order to enforce intellectual property rights. These mechanisms can be carried out one at a time or concurrently. The mechanism to be used will depend directly on the target and on the desired result.

- Issue a cease and desist letter, granting the infringer a term in order to cease the infringement.
- File civil or criminal actions, and have the Court determine the infringement and damages.
- File a civil action for unfair competition.
- Request strict precautionary measures, once these measures are granted the Intellectual Property right owner must file a legal action against the supposed infringer or negotiate with the infringer and sign a settlement.

## **What are the basic requirements for initiating a claim of infringement in Costa Rica? What remedies and defenses are available?**

The requirements in order to initiate a claim of infringement are the following:

- Demonstrate to be the titleholder of the Intellectual Property right. In the case of trademarks, patents and utility models this is usually done by submitting the registration certificate. In the case of copyrights, the Law presumes the author of the protected work is the person whose name is labeled on the work.
- Submit a sample of the original product and a sample of the infringed product.

The remedies will depend directly on the kind of action the Intellectual Property right titleholder chooses to file:

- Cessation of the infringing acts
- Confiscation and destruction of infringing products
- Indemnity of damages
- Prison

## **How long does litigation normally take in Costa Rica and what are the likely costs?**

A civil action may take approximately five years. A criminal action may take approximately two years. Litigation is usually charged on an hourly basis of USD125 to USD200.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Costa Rica?**

The Costa Rican Intellectual Property Enforcement Law provides a procedure enabling the Intellectual Property right owner/titleholder to file an application requesting the suspension by Customs authorities of the release into free circulation of the counterfeited or pirated goods.

The requirements to request this Precautionary Border Measure are the following, and must be directed to a judicial authority:

- Documentation demonstrating the ownership of the intellectual property right
- Post a reasonable bond, in order to protect the supposed infringer in the case the goods do not infringe an intellectual property right
- Precise description of the goods, to enable the goods to be easily recognized
- Submit enough evidence in order to demonstrate the existence of a presumed infringement of the intellectual property rights

Once the applicant has been notified the Precautionary Border Measure has been executed, there is a term of 10 working days in order to file legal actions against the supposed infringer or to inform Customs provisional measures have been adopted to prolong the suspension of the goods. If the applicant omits to carry out either of these actions, the Precautionary Border Measure will be lifted and the supposed illegal product will be dispatched.

Additionally, Custom authorities may carry out this procedure on their own initiative, without the formal request of the titleholder of the Intellectual Property right, as long as solid evidence is available. In this case, they can suspend the dispatch of the goods to be imported, exported or in transit. Subsequently, within the term of 10 working days counted from the date the goods were retained, a criminal action should be filed before the Prosecutors Office. In the case the legal action is not filed within the term, the goods will be returned and Customs will be responsible for damages. If the goods are confirmed to be illegal, the judge will order Customs to destroy them.

## **For further information about IP rights in Costa Rica see:**

[www.registracional.go.cr/propiedad\\_industrial/propiedad\\_industrial\\_informacion\\_general.htm](http://www.registracional.go.cr/propiedad_industrial/propiedad_industrial_informacion_general.htm)

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## BLP LAWYERS

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San José, Costa Rica

BLP Lawyers is a solid team of professionals specialized in the legal and practical aspects of intellectual property. Our team has expertise and vast experience in advising national and multinational companies in all aspects related to the protection and defense of their intellectual property rights such as (patents, trademarks, copyrights, industrial designs, utility models, and others). As well as broad experience in the registration of Intellectual Property Rights, preparation of contracts, legal opinions and reports related to the Intellectual Property area, in Costa Rica and the region (Central America and the Caribbean). Our team specializes in administrative procedures, civil and criminal prosecution and litigation in the Intellectual Property Area, such as trademark and copyright infringement, counterfeiting of products, unfair competition, and in general, defense of Intellectual Property Rights. As well as in the registration of products (foods, cosmetics, medicines, and chemicals in general) in Costa Rica and Central America in order to import and commercialize these products in the region.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Dominican Republic?

#### PATENT

A product or a procedure with industrial application, novelty and inventive level.

#### UTILITY MODEL

New form, configuration or disposition of elements of an artifact, tool, instrument mechanism of other object or part of it that allows a different use or functioning or that offers a new utility, advantage or technical effect.

#### TRADEMARK

Words, fantasy names, letters, slogans, numbers, labels, combinations of colors, 3D forms, sounds, odors.

#### COPYRIGHT

Literary, scientific and artistic works, the literary and artistic form of works whatever the form of expression, divulgation, reproduction or communication.

### What is the expected timeline from initial filing to granting or denial of IP rights with the Dominican Republic patent office?

IP Registration	Expected Timeline
Patent	3 years
Utility Model	3 years
Industrial Design	18 months
Trademark	3 months
Copyright	1 month
Denomination of Origin	15 days

## For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Expected Fees
Patent	USD900 plus annuity payments (about USD500 per year)
Utility Model	USD800
Industrial Design	USD775
Trademark	USD700
Copyright	USD400
Denomination of Origin	USD1,300

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

The right that bestows the capacity of “use” of the industrial property is acquired when registered. The filing is what grants the rights to the owner. The use prior to registration may grant priority to acquire the registry or to oppose the registration of a similar trademark. Notwithstanding, the use must be demonstrated, of good faith and uninterrupted.

In the copyright case, the rights are born at the moment of the work’s creation and its registry is only for publicity and evidence of priority.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

The right is granted at the moment of the filing.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years
Utility Model	15 years
Industrial Design	5 years renewable for 2 additional 5-year periods
Trademark	10 years
Copyright	life of author plus 70 years after author's death

### What additional IP laws or regulations might need to be considered before launching a product or service in the Dominican Republic?

- Health Laws and rulings in case of pharmaceutical, alimentary or cosmetic products
- Law No. 20-00 of Industrial Property
- Law No. 65-00 of Copyrights
- Civil and Penal Codes of the Dominican Republic

### Is it necessary to mark a protected product and if so, how?

No it is not. The use of a descriptive sign for the registered trademarks (such as the ® above the name) is not necessary, but it is necessary to register the protected products under the trademark.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

The law empowers an administrative institution which is the National Office of Industrial Property (ONAPI) and the Tribunals of the Dominican Republic to enforce the acquired IP rights.

### What are the basic requirements for initiating a claim of infringement in Dominican Republic? What remedies and defenses are available?

The initiating party must have ownership of the right and be able to prove such ownership and the infringement. The same prerogatives exist whether the owner of the right is a national or foreigner.

### How long does litigation normally take in Dominican Republic and what are the likely costs?

Action	Duration Term	Estimated Cost
Administrative procedure	6 months	USD700 per instance
Judicial procedure	min 3 years if case is presented at all levels including Supreme Court of Justice	hourly rate for lawyers and involved professionals

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Dominican Republic?**

The General Department of Customs is in charge of the enforcement of border dispositions established in the ADPICS. The General Department of Customs has a special department for Intellectual Property matters where, by the request of the interested party or by its own means, it may forbid the entry to the Dominican territory of products on which it has denunciation or suspicion of irregularity.

## **For further information about IP rights in the Dominican Republic see:**

**[rvhb.com](http://rvhb.com)**

**[sespas.gov.do](http://sespas.gov.do)**

**[onapi.gov.do](http://onapi.gov.do)**

**[onda.gov.do](http://onda.gov.do)**

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## **RUSSIN, VECCHI & HEREDIA BONETTI**

**Santo Domingo, Dominican Republic**

Our Intellectual Property Department provides for its clients all services related to the protection of intellectual and industrial property rights. We offer the protection and registration of trademarks, trade names, labels, emblems, inventions, geographic indications, models of utility, designs and domain names. We also offer our clients the possibility of protecting these signs in the digital surroundings.

We offer as well services related to the registration and protection of works (literary, artistic or scientific), computer programs, and protection against all types of piracy by Internet and against violations of copyrights through the network. Our vast experience in this area of practice includes all the administrative and judicial procedures.

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### **FIRM IP CONTACT**

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Ecuador?

#### PATENT

A patent shall be granted for any invention, being of products or procedures, in all fields of technology, provided it would be new, possesses an inventive level and be capable of industrial application.

The following shall not be considered as inventions:

- Scientific discoveries, principles and theories and mathematical methods
- Materials already existing in nature
- Literary and artistic works or any other aesthetic creation
- The plans, rules and methods for the exercise of intellectual activities, for games or economical and commercial activities, as well as computer programs or logical supports meantime they are not a part of an invention susceptible to industrial application
- Forms of presenting information

Expressly excluded from patentability are:

- Inventions whose commercial exploitation must be necessarily impeded to protect public order or morality, including the protection of life or health of persons or animals or to preserve plant varieties or to avoid serious damage to the environment or ecosystem
- Methods for both therapeutic and surgical diagnosis, for the treatment of persons or animals
- Plants and animal races, as well as the procedures essentially biologic to obtain plants or animals

#### UTILITY MODEL

A utility model patent shall be granted to any new form, configuration or disposition of elements of some artifact, tool, instrument, mechanism or other object or some of its parts which allow a better or different operation, usage or manufacturing of the object which incorporates same or provide some utility, advantage or technical effect which it did not have before; as well as any other

new creation susceptible to industrial application which does not enjoy the sufficient inventive level to permit the concession of the patent.

### **INDUSTRIAL DESIGN**

Any combination of lines or colors shall be considered as an industrial design. An industrial model is considered any plastic form, associated or not to lines and colors, which serves as a type for the manufacturing of an industrial product or craftsmanship and which is different from similar products by its own configuration.

Industrial designs and models whose aspect would be entirely determined by technical or functional considerations, not incorporating any contribution of the designer to give them special appearance without changing its destination or purpose shall not be registered.

### **TRADEMARK**

A trademark shall be understood to be any sign which serves to distinguish products or services in the market.

### **COPYRIGHT**

The protection of the author's right befalls over all works of talent, in the literary or artistic environment, whatever its gender, manner of expression, merits or purpose. The rights recognized by this Title are independent of the property of the material object which incorporates the works and its enjoyment or exercise, are not under the requirement of registration or compliance with any other formality.

The works protected, among others, are as follows:

- Books, pamphlets, print outs, epistles, articles, novels, tales, poems, chronicles, critics, essays, letters, theater, movies, television scripts, conferences, speeches, lessons, sermons, legal allegations, memorials, and other works of similar nature, expressed in any form
- Collections of works, such as anthologies or compilations and data basis of all kinds, which by selection or disposition of subjects constitute intellectual creations, without prejudice to the author's rights subsisting over the materials or data
- Dramatic or musical dramatic works, choreographies, pantomimes, and, in general, theatrical works
- Musical compositions with or without wording

- Cinema works or any other audiovisual works
- Sculptures and painting works, drawings, engravings, lithographs and graphic stories, comics, as well as essays or outlines and other plastic works
- Projects, plans, models, and design of architectural or engineering works
- Illustrations, graphs, maps, and designs relating to geography, topography, and scientific in general
- Photography works and those expressed by analogous procedures to photography
- Applied art works, even though their artistic value may not be dissociated from industrial aims of the objects to which they are incorporated
- Computer programming
- Adaptations, translations, legal agreements, reviews, updates and notations; compendiums, summaries, and extracts, and other transformations of a works made with the expressed authority of the authors of original works, without prejudice to their rights

Without prejudice to industrial property rights, the titles of radio or television programs and newscasts, newspapers, magazines and other periodical publications, are protected during one year after the release of the last number or public communication of the last program, unless they deal with yearly publications or productions, in which case the term of protection shall be extended to three years.

Without prejudice to the rights which subsist over the original works and the corresponding authorization, derivative works are also subject to protection, provided they possess originality, as follows:

- Translations and adaptations
- Reviews, updates and notations
- Summaries and extracts
- Musical arrangements
- Other transformations of literary or artistic works

The creations or adaptations, that is, based on tradition, expressed in a group of individuals who reflect the expressions of the community, its identity, values transmitted verbally, by imitation or by other means, used either in the literary, music, games, mythology, rituals, habits, artisan works, architecture or other arts, shall respect the rights of the communities according to the Convention which governs exports, imports, transfers of cultural property and those instruments agreed upon under the auspices of the WTO for the protection of expressions against their illegal exploitation.

Copyrights also protect the form of expression through which the ideas of authors are described, explained, illustrated or incorporated in their works.

Not subject to protection are:

- The ideas contained in the works, the procedures, methods of operation or mathematical concepts themselves; the systems or ideological or technical content of scientific works, nor its industrial or commercial use
- The legal and regulatory dispositions, judicial decisions and acts, agreements, deliberations and judgments of public organizations, as well as their official translations

### What is the expected timeline from initial filing to granting or denial of IP rights with Ecuador's patent office?

IP Registration	Expected Timeline
Patent	2–3 years min 4 years for pharmaceutical
Utility Model & Industrial Design	12–18 months

### For each IP type, what is the expected range of expenses including government fees and taxes?

Below is a price list as charged by Romero Arteta Ponce (prices includes all professional fees, government fees, and delivery of title). Prices do not include translations or legalizations.

<b>IP Registration</b>	<b>Expected Fees</b>
Patent, without opposition	USD 1,250
Answer to Opposition	USD 500 *
Utility Model	USD 428
Trademark, without opposition	USD 365
Answer to Opposition	USD 440 *
Copyrights	USD 190
Answer to Opposition	USD 440 *
Industrial Drawing	USD 162

\* Customer supplied documents of proof

Any of the above patents, designs, copyrights, or trademarks may include additional fees if they require an exceptional amount of work outside of that usually required. This is to be quoted on a per case basis.

### **Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?**

An applicant from any country that is a current member of the Paris Convention, Bern Convention, or the Andean Pact (Decision 486) or other convention to which Ecuador may be party in accordance with that Agreement or Convention may in the case of a Distinctive Sign (Trademark) such as; Word Mark (the word only), Logo (design only) or Mixed Mark (Wordmark with Logo), patent, design and utility model, has the right to present an opposition based on the priority application.

For patents, a member country may present an opposition to any violating patent or activity during a priority period of 31 months based on said priority.

### **If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?**

In order to have the right to claim and exercise civil and administrative actions, without prejudice to applicable penal actions (if the deed would be typified as a crime) in the case of any violation granted over intellectual property set forth in Ecuadorian law, it is necessary obtain the registration.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

Under current law the duration of each is as follows:

IP Right	Protection Duration
Patent	20 years from application date
Utility Model	10 years from application date
Industrial Design	10 years from application date*
Trademark	10 years from concession date renewable for successive 10-year periods
Copyright	70 years from date of author's death

\* Certificate conferred by the National Industrial Property Bureau

Upon the author's death, the exercise of the following copyrights shall convey to heirs, without a time limitation:

- Claim the authorship of works
- Oppose any deformation, mutilation, alteration or modification of the works, which may damage the honor or reputation of the author

The heirs may also maintain the works unpublished, anonymously or demand the author's name or pseudonym be mentioned every time the works are used for a period of 70 years from the date of the author's death.

### What additional IP laws or regulations might need to be considered before launching a product or service in Ecuador?

In order to launch a cosmetic, pharmaceutical or food product in Ecuador, it is necessary to obtain the sanitary registry or health license.

### Is it necessary to mark a protected product and if so, how?

No, it is not necessary to mark protected products.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

- Administrative actions
  - Cancellation action
  - Recourse of review
  - Administrative tutorship and control its compliance and observance
  - Customs actions
- Judicial actions
  - Civil actions
  - Criminal actions

### What are the basic requirements for initiating a claim of infringement in Ecuador? What remedies and defenses are available?

#### REQUIREMENTS FOR A CLAIM

- Petitioners must be a title holder of the rights or prove with the information furnished with the demand that documents exist that supports the presumption they are the title holder.
- Depending on the circumstances, a sufficient bond or guarantee must be paid to protect the defendant and avoid any abuse of unjustified claims. This is determined by a judicial judge.

#### REMEDIES AND DEFENSES AVAILABLE

- Judges are empowered to order, on petition from one of the parties, preliminary caution measures which, according to the circumstances, would be needed for the urgent protection of such rights
- The final seizing of the products or other objects involved in the transgression, the final withdrawal from commercial channels of merchandise involved in the transgression, as well as its destruction
- The final seizing of the apparatus and means employed to commit the transgression
- The final seizing of the apparatus and means to store copies

## How long does litigation normally take in Ecuador and what are the likely costs?

Action	Expected Timeline	Total Expenses
Cancellation	6 months–2 years	USD285
Tutorial Administrative	45 work days in first administrative instance	USD2,000
Customs	20 work days in first administrative instance	USD1,500
Civil	3–12 years	USD1,000–USD12,000 in first instance
Arbitration	6 months–4 years	USD1,000–USD5,000 in first instance

## What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Ecuador?

The Customs Administrators and all who have control of incoming and exiting goods to or from Ecuador, have the obligation of impeding products which in any way violate intellectual property rights. If, by petition of the interested party, the incoming or exportation of such goods is not impeded, they shall be considered accomplices of the crime committed, without prejudice of applying the corresponding administrative sanction.

For further information about IP rights in Ecuador see:

[www.ecuadorlawyer.com](http://www.ecuadorlawyer.com)

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**ROMERO ARTETA PONCE ABOGADOS**

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**Quito, Ecuador**

We are a firm of professionals specializing in areas of diverse technical expertise, and we rely on a highly qualified legal support team with a wide range of experience in the area of intellectual property and other fields related to it. Our firm has more than 40 years of experience in the IP field. We have offered our advisory services all over the country, the region, and the world.

Our mission is to achieve IP security, through aggressive fair protection measures, for the products of creative and investigative efforts that the human being is capable of achieving, while in search of their unlimited and infinite capacity of creation.

Our firm has wide experience in areas relating to intellectual property and legal services regarding patents, trademarks, authorship rights and commercial secrets. Such legal assessments range from preparing the patents and trademarks proposals for corporations, to the process of obtaining and registering them. We also offer our services for copyright registration, copyright monitoring and protection, including appeals, oppositions, terminations and all kind of litigation processes, being it administrative or contentious within the intellectual property area.

Our client list includes many multinational corporations in areas such as pharmaceuticals, biotechnology, industrial design and food industry, international geographic indications and other areas.

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**FIRM IP CONTACT**

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in El Salvador?

#### PATENT

Salvadorian law grants patents for inventions, whether goods or processes, in all areas of technology, that are new, involve an inventive step, and are industrially applicable.

#### UTILITY MODEL

Any form, configuration or arrangement of elements of any artifact, tool, instrument, mechanism, and another object, or of some part of the same one, which allows a better or different functioning. The validity of the model is useful for 10 years without extension.

#### TRADEMARK

Any sign or combination of signs, according by their special characters, that clearly distinguish the goods or services of a natural or legal person, from products or services of the same kind or nature, but of a different owner.

#### COPYRIGHT

All works created by the human inventive such as literary and artistic works. The creators have the right to obtain the copyright protection, from the time the work is created.

### What is the expected timeline from initial filing to granting or denial of IP rights with Salvadorian patent office?

IP Registration	Expected Timeline
Patent	18 months
Trademark	6 months
Copyright	1 week

## For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Total Expenses
Patent, per application	USD 1,200
Trademark, per application	USD 525
Copyright	USD 375

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

Registration of a trademark with the competent national office shall confer the exclusive right to its use.

During the application process of trademarks one may oppose similar marks; nevertheless, trademark infringement only can be initiated if the mark is registered. Regarding unfair competition actions, there is no need to have the mark registered, provided that the infringement relates to trade dress or other kinds of imitations.

In the particular case of copyrights, protection is automatically obtained and is not subject to any formality.

In order to enforce a patent right, it must be duly registered.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

In case of copyright, the certificate will constitute a means of proof in case a judicial action is initiated.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from filing date
Utility Model	10 years from filing date
Trademark	10 years from granting date renewable for successive 10-year periods
Copyright	70 years after author's death

### What additional IP laws or regulations might need to be considered before launching a product or service in El Salvador?

IP rights are also protected by international conventions to which El Salvador is a party, like the Paris Convention for the Protection of Industrial Property, Berne Convention, TRIPS agreement, among others. Food, cosmetic, agricultural and pharmaceutical products are regulated by proper authorities and must comply with the provisions developed to protect human health.

### Is it necessary to mark a protected product and if so, how?

It is not mandatory. Nevertheless, the symbol ® is commonly used.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Enforcement of IP rights includes oppositions against applications, judicial infringement actions, preliminary injunctions, custom actions, and compensation, among others.

## What are the basic requirements for initiating a claim of infringement in El Salvador? What remedies and defenses are available?

Basically, one needs to file a written claim before the competent authority along with a Power of Attorney duly legalized before a Salvadorian Consulate or by Apostille.

Among others, the following remedies may be ordered:

- Immediate cessation of all acts constituting the alleged infringement
- Withdrawal from commercial channels of all products resulting from the alleged infringement, including packaging, wrappings, labels, printed material or advertising, or other materials, together with the materials and implements the predominant use of which has been the commission of the infringement
- Suspension of the importation or exportation of the goods or materials or implements previously referred
- Establishment by the alleged infringer of an adequate guarantee
- Temporary closure of the business belonging to the defendant or accused, if necessary, to avoid continuation or repetition of the alleged infringement

Provisional measures shall be ordered only when the persons requesting it accredit their lawful right to act and the existence of the infringed right, and provide evidence allowing for a reasonable presumption of infringement or that infringement is imminent. The competent national authority may require persons requesting the measure to post a “hand: or sufficient equivalent assurance before ordering such a measure.

The applicant for a provisional measure in respect of particular goods shall supply the necessary information and a sufficiently detailed and precise description so that the allegedly infringing goods can be identified.

## How long does litigation normally take in El Salvador and what are the likely costs?

Litigation before the judicial authority may take a minimum of one year. Nevertheless, preliminary injunctions might be issued within the term of two months after filing the claim. Expenses are normally charged per hour at a rate of USD175.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering El Salvador?**

Salvadorian Customs must protect IP rights by facilitating border actions and must inform the competent administrative agency when a likely import of illegal merchandise is detected or acknowledged, so the products can be blocked from entering the market without the trademark owner's authorization. Judicial actions are allowed regarding trademarks and copyrights.

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## ESPINO NIETO & ASOCIADOS

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### San Salvador, El Salvador

Founded in 1960, Espino Nieto & Asociados has a highly rated intellectual property group. Major litigation cases on trademark, patent and copyright infringement have been successfully handled at local courts. Espino Nieto & Asociados is unanimously viewed as a leader in intellectual property in El Salvador.

Our lawyers are experts in litigation, transaction, counseling and administrative matters involving all areas of intellectual property. Our litigation tradition is carried forward by our IP lawyers, who regularly conduct trials of infringement, misappropriation and other intellectual property claims in Salvadorian courts.

Important decisions issued by the Trademarks Office and courts have been and are being achieved by us in the protection of well-known trademarks, which have set a precedent in El Salvador.

Since the adoption of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), our IP department handles data exclusivity protection regarding pharmaceutical or agricultural chemical product.

The firm advises foreign corporations investing in El Salvador, mainly companies operating in service sectors including banking, telecommunications, energy, wholesale and retail services. It also advises manufacturing companies producing pharmaceutical, chemical and processed foods. The firm is recognized for its expertise in privatization processes and regulatory work.

The firm is able to provide in a very efficient manner, full service in the entire Central American area through its alliance in the region.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Guatemala?

The following requirements are stated in Guatemalan Industrial Property Law (Decree 57-200 of the Guatemalan Congress) and Copyrights Law (Decree 33-98 of the Guatemalan Congress).

Trademarks can be any sign capable of providing distinctiveness to goods or services from others in the market.

Patents, utility models and industrial designs must demonstrate novelty, inventive level, capability of industrial application and unity in invention.

Copyrights may be obtained for any primary creation of an artist in the literary, scientific or artistic field, whatever its way or method of expression, as long as it is an original intellectual creation. In particular: written expressions, software, speeches, musical compositions, drama and musical drama, choreography, audiovisuals, paintings, drawings, sculptures, prints, architectonics, photographs, applied arts, illustrations, maps and plastic work related to geography, topography, architecture or science. (This enumeration is merely illustrative and not thorough, so future creations are also protected by law.)

### What is the expected timeline from initial filing to granting or denial of IP rights with Guatemala’s patent office?

IP Registration	Expected Timeline
Patent, Utility Model & Industrial Design	3–5 years
Trademark, Slogan, Trade name & Emblem	6–8 months *
Copyright	6–8 months

\* If there are no contingencies, the sign is completely distinctive and there are no similarities recorded.

## For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Expected Fees
Patent, Utility Model & Industrial Design	USD 1,500–USD 4,000
Trademark, Slogan, Trade Name & Emblem	USD 200–USD 400
Copyright	USD 200–USD 400

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

Yes. For trademarks, slogans, trade names and emblems, application confers to the applicant the right to object or oppose a similar sign. Full enforcement of IP rights is granted by registration.

For patents, utility models and industrial designs, applicant may sue for compensation for damages and losses to whoever, without its authorization, has used or exploited the claimed invention, utility model or industrial design during the term between the application's publication and the date for granting the patent or registration.

For copyrights, creation is fully protected upon its first appearance in public.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

As mentioned above for trademarks, slogans, trade names and emblems, full enforcement of IP rights is granted by registration certificate. The only exception would be for notorious and famous signs, which are protected by foreign registrations or use.

In patents, full enforcement of IP rights is also granted by registration.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years
Utility Model	10 years
Industrial Design	10 years renewable for one 5-year period
Trademark & Slogan	10 years renewable indefinitely for 10-year periods
Trade Name & Emblem	indefinite
Copyright	75 years

### What additional IP laws or regulations might need to be considered before launching a product or service in Guatemala?

Depending on the type of good or service, several regulations apply such as: Health Code (Decree 902-97), Animal and Vegetal Sanitary Law (Decree 96-98), bilateral free trade agreements, etc.

A very important issue to consider before launching some products or services is the establishment of a distributorship agreement with a Guatemalan entity since most regulations require sanitary registrations and a registered distributor with a sanitary license.

### Is it necessary to mark a protected product and if so, how?

Current Guatemalan law does not obligate trademark owners to use the registered sign in marks. If a person decides to identify its mark as registered, then the mark should be effectively registered in Guatemala and will use the ® sign and not the ™ sign next to the mark.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Industrial Property Law grants to any registered owner of IP rights:

- Civil actions
  - To stop unauthorized parties from using identical or similar signs which may cause confusion in consumers about the legitimate origin of goods or services
  - To oppose or object to the registration of an identical or similar sign when it may cause confusion with original sign or imply an illicit benefit of the sign's notoriety
  - To judicially stop the use of infringing signs by unauthorized parties
  - To ask administrative authorities to forbid or suspend the importation of infringing goods
  - To claim damages and losses caused by infringing actions
  - To accuse of crimes committed against its property and prosecute authors
  - To request injunctions
  - To request cancellation for lack of use of a registered sign
  - To request the declaration of nullity of a registered sign obtained against the law
- Criminal actions
  - To stop forgery and piracy

Civil and criminal actions can only be exercised in the Judicial Branch. Objection or opposition is filed at the registry office and is resolved in an administrative procedure.

### What are the basic requirements for initiating a claim of infringement in Guatemala? What remedies and defenses are available?

Basic requirements include:

- Power of attorney granted to a representative in Guatemala.

- Legalized certificates of IP’s registrations (if not issued by Guatemalan registry office, foreign certificates must be legalized by nearest Guatemalan consulate in country of origin). Registrations are not necessary to file actions against unfair competition.
- Detailed description of infringing action (information available, samples and images of infringing goods or services, invoice sales, advertisements).

Remedies and defenses vary for administrative, civil and criminal actions. For civil actions, defendant may file demurrers, nullities or constitutional action for “amparo.” For administrative procedure of opposition, any of the parties may appeal before the Ministry of Economy and then file a “contencioso” claim.

## How long does litigation normally take in Guatemala and what are the likely costs?

Action	Expected Timeline	Total Fees
Civil	3–5 years	USD3,000–USD5,000
Criminal	3–5 years	USD4,000–USD6,000
Administrative		
Oppositions	2 years	USD600–USD1,500
Contencioso claim	additional 2 years	

## What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Guatemala?

Once ordered by a Judicial Judge (criminal or civil court), Customs is obligated to deny the imports of infringing goods. Such denial takes place at all Customs’ offices where the infringing goods may be interned into Guatemala.

**For further information about IP rights in Guatemala see:**

[www.rrmmp.com/english/index\\_2.html](http://www.rrmmp.com/english/index_2.html)

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**ROSENBERG-MARZANO, MARROQUÍN-PEMUELLER &  
ASOCIADOS, S.C.**

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**Guatemala City, Guatemala**

Rosenberg-Marzano, Marroquin-Pemueller & Asociados, S.C. is a respected well-known law firm, committed to provide high-quality legal services on a national and international level since 1987. Our main objective is to provide a professional, modern, and personalized service, striving to be the best in our field, helping our clients become the best in their fields.

The senior partners of our firm supervise every project in particular and work jointly with the staff to ensure a personalized service to our clients, which has been a distinct characteristic of our professional services.

Our clients value the commitment toward excellence, which we unconditionally strive to achieve by means of our practical knowledge, professional experience and high academic status of each of our members.

Over the past 10 years, the firm has developed a structured department to take care of our clients' needs for protection of their industrial property rights. All work is supervised by Senior Partner and Director, María Mercedes Marroquín de Pemueller, who, with the assistance of the IP team, assures the work performed meets our clients' needs.

We have handled over 2,000 trademarks, slogans and trade names and keep a close relationship with IP's Registry officials to guarantee the appropriate prosecution of industrial property rights registration.

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**FIRM IP CONTACT**

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Honduras?

In Honduras, any human creation that allows transformation of matter or energy existing in nature, for its use or immediate satisfaction of a need and that complies with the following requirements: novelty, inventive level and industrial application, can be registered as a patent.

A utility model can be registered when any shape, configuration or disposition of elements or an object or part of an object allows a better or different operation thereof, or that brings any usefulness, advantage or effect it did not have before. The utility model may obtain a patent when new and capable of industrial use.

Any trademark can be registered, except those which the law considers are not subject to registration, for example: generic word, or words that describe or identify the products or the services or their industrial and commercial establishments. Trademarks which are identical or which have a graphic and phonetic resemblance to other registered trademarks for the same types of products or in different related classes are not subject to registration. Finally, names which resemble foreign registered trademarks in a similar business, are not subject to registration, provided the foreign trademark is famous and notorious.

Any visible sign to distinguish a product or service of a company from those of another company may be registered as a trademark: Trademarks, inventions, drawings, industrial designs, integrated circuits and other distinctive signs and indications.

The documents required for filing an application to register a service trademark, a brand, a propaganda signal or a commercial name are the following:

- Power of attorney of the petitioner, with the Apostille or legalized through the nearest Honduran Consulate
- The articles of incorporation and bylaws of the petitioner, with the Apostille or legalized through the nearest Honduran Consulate
- For trademarks in which the design or illustration will be registered, 25 sample designs (2" x 4")

- The indication of the class or classes in which the trademark will be registered and the description of the products and services which it distinguishes
- Description of the design in the case of illustrated trademarks
- Original Certificate in case priority is being claimed
- Application
- Stamp Tax with a value of HNL50 (approximately USD2.60)

In the case of propaganda signals, a clear indication must be made of the trademark or commercial name to which it will be applied. The trademark or the commercial name can be a part of the expression or propaganda signal, provided it is registered under the same owner's name.

### What is the expected timeline from the initial filing to granting or denial of IP rights with the Honduran patent office?

IP Registration	Expected Timeline
Patent & Utility Model	1 year (local applications) 18 months (foreign applications)
Trademark	approx. 5 months
Copyright	approx. 1 month

These timelines are estimated in a normal process if no opposition is filed. The expected timeframe for patents is two to four years.

In most cases, the IP Office makes a review of the documents within one month from the date in which the application is filed. Thus, if a denial is issued by the Trademark Office, it will be done within one month from the application filing date.

**For each IP type, what is the expected range of expenses, including government fees and taxes?**

<b>IP Registration</b>	<b>Total Fees*</b>
Patent	USD900
Trademark	USD400
Copyright	USD400

\*Includes government fees, expenses (publications, stamp taxes, authenticity certificates, etc.) and attorney's fees

<b>Government Fees</b>	<b>Trademark</b>	<b>Patent &amp; Utility Model</b>
Registry	HNL700 (USD37)	HNL700 (USD37)
License of use registry (agreements)	HNL500 (USD27)	HNL300 (USD16)
Renewal	HNL350 (USD19)	
Merger, Assignment, Transfer.	HNL500 (USD27)	HNL300 (USD16)
Modifications		
change of domicile or holder	HNL300 (USD16)	
Cancellation for non use, reduction or limitation	HNL300 (USD16)	
Voluntary cancellation	HNL200 (USD11)	
Changes of regulation use for collective trademark	HNL200 (USD11)	
Trademark maintenance		
annual rate	HNL100 (USD6)	HNL200 (USD11)
Over-rates	HNL50 (USD3)	HNL100 (USD6)

Background searches are USD75 per class, which includes legal fees and expenses.

### **Are any rights granted during or prior to the application process or must the rights be fully registered to be enforceable?**

Not in trademarks. Its registry is necessary for its protection. In patents and utility models, the right is born from the moment the petition is filed. In theory, copyrights are protected and are granted rights from the moment in which they are created, however, most authors choose to always register their intellectual property rights because registering a trademark brings the following advantages:

- The certainty that there is no other identical or similar trademark
- The right to use the trademark in an exclusive way
- The name of the product or service is protected, thus, also the consumer is protected
- Ready access to the mechanisms of intellectual property right protection against its illegal use
- Protection against unfair competition practices

### **If any IP rights are granted prior to filing an application, what benefits arise from obtaining a registration?**

The registration of commercial trademarks in Honduras grants its owner the exclusive right to prohibit its use to third parties, except in cases in which the use of the trademark by third parties is legitimate and is done as the consequence of any commercial relation initiated directly or indirectly by the owner of a registered trademark, when the product is placed in the national or international market on the basis that the product or service has not suffered any damage, alterations or modifications.

Some of the rights the registration grants in patents and utility models are: priority rights, the right of opposition, and the right to request prohibition of use by third parties. It also gives the right to the owner to prevent others, for a definite amount of time, from the manufacture, sale and commercial use of a protected invention.

Registration of an intellectual property right grants an exclusive right over it, limited to the specific area in which it is registered. Registration also grants the right to transfer (sell), transmit to heirs and be subject to a lien, among others. The owner of an intellectual property right can grant a license in favor of a third party (authorize the use without losing ownership in the term and under the conditions agreed by the parties).

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from filing date with Intellectual Property Registry in Honduras non renewable
Utility Model	15 years from filing date
Trademark	10 years from registry date renewable for successive 10-year periods
Copyright (patrimonial rights)	during author's life plus 75 years after author's death

### What additional IP laws or regulations might need to be considered before launching a product or service in Honduras?

- The Intellectual Property Law
- The Copyright Law
- The Intellectual Property Regimen
- Commerce Code
- The Law and Regulation for Representatives, Distributors and Agents of National and Foreign Companies
- Law for Implementation of Free Trade Agreement (DR-CAFTA)
- Consumer Protection Law
- The Competition Law (Law for the Defense and Promotion of Competition)

### Is it necessary to mark a protected product and if so, how?

It is not mandatory, but it is advisable to do so.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

The Intellectual Property Office intends to enforce IP rights by means of administrative procedures and fines.

Additionally, the local courts can impose civil and criminal sanctions for the illegal use of trademarks. Recently, the Commission for the Defense and Promotion of Competition can also initiate administrative procedures when unfair practices and competition is made by any third party.

Finally, the Public Prosecution Office has a specialized IP Investigation Unit which seeks to enforce IP rights and which aides in the investigation and seizure procedures.

### What are the basic requirements for initiating a claim of infringement in Honduras? What remedies and defenses are available?

The basic requirement for initiation of a claim of infringement in Honduras is to file the claim before a competent authority, and in case registration is required for protection from illegal actions from third parties, proof that the IP right has been duly registered in the Intellectual Property Office.

IP and related laws in Honduras provide a variety of remedies and actions for infringement of IP rights on various bases, depending on the specifics of each case. For example, it is possible to file an administrative process with the Intellectual Property Office, to request preliminary injunctions, to file criminal charges, to present a petition for investigation before the IP Unit of the Public Prosecution Office, and to request an investigation of the Competition Authority, among other actions to seek remedies. The main remedies are to declare the illegal use of an IP right, the discontinuance of actions which constitute an IP infraction, and to sue in an action for payment of damages caused by the infringing third party.

Additionally, the Industrial Property Law specifies civil and criminal fines for unauthorized use of IP rights; therefore, administrative actions before the

Intellectual Property Registry are viable. Finally, criminal actions against the unauthorized use of the trademark can be alleged on the basis of bad faith and the practice of unfair practices to induce clients into confusion with respect to the trademark and its products, and the unjust enrichment of a third party with the infringement of a registered intellectual property right.

Honduran Intellectual Property Law mentions that in case of infringement of protected intellectual or industrial property rights, the plaintiff may request one or more of the following measures:

- Discontinuance of acts which constitute an infringement of the rights
- Indemnification for damages
- Seizure of the infringing objects resulting and of the means that predominantly served to commit the infraction
- The prohibition of importation or exportation of the infringing products, materials or means
- The withdrawal of the objects or means from the commercial areas, or their destruction, when appropriate
- The adjudication of the objects and means, in which case the value of the goods will be imputed to the amount of the indemnification of damages
- The necessary measures to avoid the continuance or repetition of the infringement, including the destruction of seized goods

The preliminary injunctions which the owner of the IP right can request are as follows:

- The discontinuance of the acts causing an infringement of rights
- The preventive seizure, withholding or deposit of the objects related with the infraction and of the means that were predominantly destined to commit the infringement
- The constitution by the presumed infringer, of a surety bond or another payment guarantee to cover for the eventual indemnification of damages
- The suspension of the importation or exportation of the objects or means with which the infringement is being caused

## How long does litigation normally take in Honduras, and what are the likely costs?

As for the time frames of litigation in our local Courts, we can make a more or less approximate time projection for the conclusion of these actions.

- As for the first petition, presenting the legal action at the local Courts, the approximate time would be one year
- In case there is an appeal during the process, obliging us to litigate in the Court of Appeals, we estimate this process could take more or less seven months
- In case it should be necessary to address the case in the Supreme Court of Justice, we estimate an additional time period of eight months

Preliminary injunctions can be obtained in a reasonable amount of time, ranging from one to three months.

It is necessary to point out that we do not control the courts' time frames, so these terms may vary; however, these are the time periods, in our experience, the Courts take to issue their rulings.

## What role do Customs play in enforcing IP rights and preventing counterfeit items from entering Honduras?

Customs play an important role in enforcing IP rights and preventing counterfeit items from entering Honduras. However, the customs generally do not act on their own means, rather they generally aid in enforcement of administrative processes, investigations and enforcement actions to prevent introduction or export of illegal materials and, if possible, its seizure.

**For further information about IP rights in Honduras see:**

**[www.cascolaw.com](http://www.cascolaw.com)**

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## CASCO-FORTIN, CRUZ & ASOCIADOS

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Tegucigalpa, Honduras

Casco-Fortin, Cruz & Asociados provides legal services in the area of intellectual property ranging from background searches, trademark and copyright registration, legal opinions, to enforcing and protecting IP rights by preliminary injunctions and court orders. As a full-service IP firm, we cover all of our clients' intellectual property needs from litigation, prosecution, licensing, transfers and counseling services relating to trademarks, copyrights and to unfair business and unfair trade practices. We have successfully enforced IP rights in Honduras proving remedies to illegal use and abuse by third parties. We have a strong association with Bufete Casco, a law firm with an IP practice of 102 years, a highly-respected firm ranked as one of the largest in Central America.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Mexico?

A patent is an exclusive right granted to protect an invention, which may be a product, a process and in some cases, a new use of a former invention. In order to be subject to the protection granted by law, the invention shall be new, useful, shall have an industrial application and must involve an inventive activity. Patents Authorities evaluate the compliance of these requirements.

Any objects, utensils, devices or tools that, as a result of an amendment in their configuration, structure or shape, provide an advantage for the use or have a different function or advantage according to their original use (improvement to existing inventions) and capable of an industrial application, can be registered as utility models. There is no requisite that the utility model involves an inventive step.

Any visual distinctive sign (nominative, unnamed, combined and three-dimensional) used to identify the source of a product, can be registered as a trademark.

Any artistic work or software fixed in a material support, such as a tangible asset, can be registered under the copyright law. It is important to consider that in Mexico, related rights are also protected and, in a *sui generis* way, also characters, some kind of publicity and artistic names, are protected.

Moreover, trade names, slogans and industrial designs are also protected under Mexican law.

### What is the expected timeline from initial filing to granting or denial of IP rights with Mexico's patent office?

IP Registration	Expected Timeline
Patent & Utility Model	approx. 4 years
Trademark	6–12 months
Copyright	15 days

With the exception of copyright, the timeline depends on the kind of intellectual property right the application is related to, and the results of the substantive examination.

### **For each IP type, what is the expected range of expenses including government fees and taxes?**

Registration of patents and utility models costs depend on the invention's field and whether the creator is an entity or an individual, an investigative body or educational institution. The range of expenses (governmental fees, translations, samples) can vary from USD1,000 to USD7,000 plus legal fees that would generally be charged on an hourly basis depending on the invention's field. Government fees of approximately USD750 for patents, and approximately USD220 for utility models and industrial designs, apply. In either case, the fees are subject to modifications at the authority's discretion, and in some cases it is possible to obtain a 50 percent discount.

Costs for the registration of trademarks depend mainly on the substantive examination. The range of costs and expenses (considering legal fees, governmental fees and translations, if any) can vary from approximately USD1,000 to USD1,400. The fees charged by the government for a trademark application currently run approximately USD250, subject to modifications according to the authority's discretion.

Expenses for registration of Copyrights (including software) vary from USD200 to USD1,000 (considering legal fees, governmental fees and translations, if any). Protection costs relating to rights and sui generis registration provided to characters, certain publicity and artistic names considerably increase and vary in each case.

Governmental fees are updated every year. Furthermore, costs may vary depending on additional requirements and official letters to be attended before the Mexican Institute of Intellectual Property Offices.

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

With regard to inventions and utility models, there is no applicable enforceable action as long as the patent or registration has not been granted. However, since the law provides that at the 18<sup>th</sup> month after the application date, a publication of an abstract of the utility model or invention shall be made, the titleholder of a patent can claim for infringements and damages if those happened after the publication date.

Regarding trademarks, a non-exclusive right of use is provided under the law prior to the application process, as long as:

- This use can be fully demonstrated in a trial or before the competent authority
- There is not an equal or confusingly similar registered trademark

The use of a trademark prior to the application process grants to the user a right to nullify any equal or confusingly similar registered trademark; this action can only be claimed during a three-year period from the date of publication of such trademark in the Patent and Trademark Office's Gazette.

Nevertheless, the **exclusive right to use** a trademark and the consequent entitlement to enforce intellectual property rights and avoid unfair competition or counterfeiting related to distinctive signs can only be claimed when the trademark is fully registered.

With respect to copyrights, protection by law is granted since the time in which the work is fixed in a material support (a tangible asset). Due to the above, infringements and damages can be claimed since the artistic work or software was created, as long as the authorship and the creation date can be proved. Thus, competent authority requests a registration certificate in order to start any proceeding (as such, registration certificates are considered valid evidence of the authorship). As copyrights are protected worldwide, a foreign registration certificate is considered valid as long as:

- The country that issued it was part of the Copyrights Conventions administered by the World Intellectual Property Organization or the World Trade Organization
- The certificate was duly translated and legalized

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

Please refer to responses of the previous question.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years, non renewable
Utility Model	10 years, non renewable
Industrial Design	15 years, non renewable
Design of Integrated Circuits	10 years, nonrenewable
Trademark	10 years renewable for 10-year terms

The Federal Law of Vegetable Varieties protects plant varieties and has a term of effectiveness of 15 to 18 years, depending on the nature of the variety.

### What additional IP laws or regulations might need to be considered before launching a product or service in Mexico?

The following laws shall be taken into consideration:

- The Industrial Property Law, which regulates patents, utility models, industrial designs (patents of design), trademarks, integrated circuit designs, industrial secrets and appellations of origin
- The Federal Copyright Law, which protects the rights of creators of artistic and literary works and software; as well as characters, artistic names and radio and TV programs
- The Federal Law of Vegetable Varieties, which protects the innovators of vegetable variations
- In some cases, the Federal Consumers Protection Law, the General Law for Health and some of its regulations can be applied, as well as labeling regulations and Mexican Official Norms (NOMs) by their

abbreviation in Spanish) which are consensual rules established in coordination by governmental and private sectors together, in order to set up the general specifications that certain groups of products must accomplish in order to be commercialized

Moreover, to produce, import, export or commercialize products or services, the regulations related to such specific product or service shall also be considered.

### Is it necessary to mark a protected product and if so, how?

Yes, in order to enforce any industrial property right, it is compulsory to make third parties aware of the protection given by the government. Therefore, in the case of patents, utility models and industrial designs, it is necessary to state (in the product envelope) that the patent or registration is in process or granted. When the registration is granted for trademarks, it is compulsory to add the “®” symbol, the “M.R.” abbreviation or the words “*Marca registrada*” (registered trademark) next to the trademark. However, if the words, abbreviations or symbols were not applied to the products or services protected, in order to start a criminal, administrative or civil proceeding, it is necessary to publish (in newsletters) notes or statements making public the protection granted to the relevant inventions, utility models or trademarks.

In case of copyright, it is not compulsory to mark artistic works or software. However, it is convenient to use the symbol © to state that the work is protected and in order to create a presumption of intentional infringement in case of litigation.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

IP rights can be enforced under administrative, civil and criminal laws. Administrative litigation brings cases before the Patent and Trademark Office (where also copyright litigation can take place in certain cases), which can be appealed before the Federal Administrative Court. Civil litigation takes place before Civil Courts. Criminal litigation brings actions before the General Prosecutor’s Office and trials before Criminal Courts.

Infringements can be claimed in administrative and criminal trials (depending on the infringement's nature, and the intellectual property right involved). Damages are only claimed in civil trials; nullification and cancellation of IP rights are claimed in administrative and civil procedures. Depending on the IP rights nature:

- Nullification and cancellation of industrial property rights take place before the Patent and Trademark Office
- Nullification of copyrights takes place before Civil Courts

It is important to consider that there is no possibility to start both administrative and criminal actions in relation to the same infringement; law typifies and sets out when criminal or administrative actions can be requested. As a result, it is crucial to correctly determine the action applicable to each case, in order to avoid rejections or denials to the actions sought.

### **What are the basic requirements for initiating a claim of infringement in Mexico? What remedies and defenses are available?**

Requirements for initiating a claim of infringement are:

- Have a valid and enforceable intellectual property right in Mexico and have the proper evidence of it.
- In the case of industrial property rights, make third parties aware of the protection. With regard to patents, by mentioning that the invention is registered, patented or that the patent is in process of granting. In the case of trademarks, by adding the "®" symbol, the "M.R." abbreviation or the words "*Marca registrada*" (registered trademark).
- For administrative procedures, pay the fee established by the competent authority.
- In case of goods' impoundment, guarantee the payment of possible damages with a bond.
- In case of goods' impoundment at the border, in administrative procedures, specify the number of Customs Declaration (called "*pedimento*"), the name of the importer and exporter, the Customs where the product will be introduced to Mexican territory and the approximate date.

- In case of criminal actions, only pirated and counterfeited goods can be seized.
- In case of industrial property, evidence of use, especially when the infringement is related to trademarks.

Injunctions can be asked in administrative and criminal procedures. In criminal trials, only seizure of infringing goods and tools to produce them can be requested. In administrative procedures, impoundment of goods, prohibition to perform certain activity and closing downs can be sought.

Defenses provided by the law in these cases of injunctions are mainly extraordinary writs (*amparos*) before the Federal Courts. Once the resolution has been issued, it can be appealed and, in some cases, extraordinary writs are available, too.

### How long does litigation normally take in Mexico and what are the likely costs?

The length of litigation can vary in each case, considering the complexity of the case, the kind of IP rights involved, evidence offered in trials and whether the resolutions are appealed or not. However, the minimum time is approximately, one year and the maximum three or four years in order to get the administrative or criminal resolution, plus two to four years if damages are requested.

Costs vary from approximately USD3,500 to USD35,000. Patent cases are the most expensive.

It is important to mention that costs can be considerably increased by translations, expert opinions offered as evidence and the number of hours devoted to the case depending on its complexity.

### What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Mexico?

Customs has the authority to stop merchandise related to IP rights infringements only on request of authorities in charge of carrying out criminal and administrative proceedings. Nevertheless, when Customs' authorities detect pirated or counterfeited merchandise, they inform:

- Titleholders through their representatives
- Patent and Trademark Office

and/or

- General Prosecutor's Office

so they can issue the injunction orders and seize or impound the merchandise where applicable.

### For further information about IP rights in Mexico see:

[www.cuestacampos.com/site/services/srv\\_intellectual\\_property](http://www.cuestacampos.com/site/services/srv_intellectual_property)

## CUESTA CAMPOS

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**Mexico City • Guadalajara, Mexico**

Intellectual property has been increasingly important in international markets and requires the high level of specialization required by global investors.

The recognition of Mexico as a global player in international markets requires skilled professionals to face the challenges faced by global concerns in our country.

Cuesta Campos, an exclusive member of Meritas Law Firms Worldwide and recognized as a leading firm, understands the demands of global investors, whether they are in New York, Tokyo, Buenos Aires, London or Mexico City, as well as the importance of protecting intellectual property rights. Our firm has wide-ranging intellectual property protection experience in the broadest sense with an extensive range of services.

Cuesta Campos also advises on the legal protection of data and industrial secrets.

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### FIRM IP CONTACTS

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Nicaragua?

#### PATENT

Any product or procedure invention can be registered as a patent.

A product invention is any substance, composition or material, including biological, and any apparatus, machine, equipment, mechanism, device or another object or tangible result, as well as any part of such.

A procedure invention is any method, operation or set of operations, use or application of a product or a procedure, or its parts and stages, conducive to the obtaining, manufacture or transformation of a product or to the obtaining of a result.

#### TRADEMARK

As a trademark one can register any sign such as words or group of words, slogans, advertising phrases, letters, numbers, monograms, figures, portraits, labels, shields, prints, vignettes, edges, lines and stripes and combinations and provisions of colors. Trademarks can also consist of the form, presentation or conditioning of products or their packaging or wrappings, or of the means or premises for the retailing of the respective products or services.

#### COPYRIGHT

Copyright in Nicaragua includes the following:

- Rights of reproduction of total or partial, permanent or temporary, in any type of support
- Rights of transformation
- Rights of translation
- Rights of adaptation
- Rights of communication to the public, like:
  - The declamation
  - The representation, execution, in direct or indirect form
  - The projection and exhibition or public exhibition
  - The digital or analogical transmission, or by any means, thread or without thread, of sounds, images, words, at a distance, which includes/understands the protected pick up in public work site and productions, included/understood the make

available of the public of works of such form that the members of the public can accede to these works from the place and at the moment that they choose

→ The public access with computer science data by means of telecommunication

- Rights of distribution to the public
- Rights of rent
- Rights of import

### What is the expected timeline from initial filing to granting or denial of IP rights with Nicaragua's patent office?

IP Registration	Expected Timeline
Patent & Utility Model	18–24 months
Trademark	7–9 months
Copyright	2–3 months

### For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Total Fees
Patent Registration	USD200
Each complementary class	USD100
Annual payments for years 3 through 20	up to USD4,070
Utility Model	
Annual payments for years 3 through 10	up to USD425
Trademark Registration	USD100
Each complementary class	USD50
Certificate fee	USD20
Copyright	USD40–USD100 depending on work type

### Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

It must be fully registered in order to have any IP rights.

### If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

Full rights are only conferred after registration.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from filing date non renewable
Trademark	10 years from granting date renewable indefinitely for consecutive 10-year periods
Copyright	for life of author plus 70 years after author's death or declaration of absence

### What additional IP laws or regulations might need to be considered before launching a product or service in Nicaragua?

For patents there is Law no. 354

For trademarks there is Law no. 380

For copyright there is Law no. 312

## Is it necessary to mark a protected product and if so, how?

One can register a product already protected in another country. To do so, it's necessary to file the application in Nicaragua six months before filing the application in the other country and mark the Right of Priority category.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

The following mechanisms are regulated by law:

- Compensation for damages
- Seizure of the products
- The prohibition to import or export products or material
- Any measure necessary to avoid the continuation of the prohibited acts
- The publication of the judgment and the notification of the judgment to the persons interested
- The products referring to illicit distinctive signs, marketing material referring to the use of those signs and the materials used to commit the infraction will be taken away by customs or the police

### What are the basic requirements for initiating a claim of infringement in Nicaragua? What remedies and defenses are available?

The basic requirement for initiating a claim is to prove the person initiating the procedure is the owner of that right with the certificate given by the IP Registry.

The person can either start a claim under criminal law or civil law.

## **How long does litigation normally take in Nicaragua and what are the likely costs?**

There is no specific time established for the process. It varies and could take more than a year.

It could cost at least USD4,000 and this cost will vary depending on the action taken.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Nicaragua?**

Customs make inspections in order to collaborate with the police when there is a process going on.

## **For further information about IP rights in Nicaragua see:**

**<http://rpi.mific.gob.ni/>**

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## NÚÑEZ, RIZO, ZAMBRANA & ARGÜELLO

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Managua, Nicaragua

Núñez, Rizo, Zambrana & Argüello provides comprehensive and competitive services to its clients, based on the highest quality criteria and the most rigorous professional and ethical standards. The team of lawyers is distinguished by its extensive knowledge and experience in a range of legal specialties, acquired through years of practice in both private and public institutions.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Panama?

Law 35 of 10 May 1996 of Industrial Property, provides the following requirements for registration as a patent, utility model and trademark.

#### PATENT

New inventions that are a result of an inventive activity and have an industrial application. An invention is any idea applicable in the solution of a determined technical problem. Inventions may consist of products, procedures, the special use of a product or a non-evident use of a product. The invention of a product includes, among others, any substance, composition or material, article, gadget, machine, equipment, mechanism, devise or other object or tangible result, as well as any of its parts. The invention of a procedure includes, among others, any method, system or sequence of stages leading to the manufacture or to obtaining a product or result, as well as the use or application of a procedure or a product to obtain a specific result.

#### UTILITY MODEL

Any shape, configuration or disposition of elements of any artifact, tool, instrument, mechanism or other object, or of any of its parts, that allows a better or different functioning, use or manufacture of the object to which it is incorporated or that adds a utility, advantage or technical effect. The utility model must be new and have an industrial application.

#### TRADEMARK

Words or combination of words, including those serving the purpose of identifying persons.

- Images, figures, symbols and graphics
- Letters, amounts and their combinations when they are formed of distinctive elements
- Three-dimensional shapes, including wrappings, packages, shapes of the product or its presentation and holograms
- Colors in their different combinations
- Any combination of the above

According to Law 15 of 8 August 1994 of Copyrights, any original intellectual creation of literary, scientific or artistic nature that may be divulged or reproduced by any means can be registered as copyright, including among others:

- Works expressed in writing, including software, conferences, sermons and other works consisting of words orally expressed
- Musical compositions, with or without lyrics; choreographies, films, photographs
- Paintings, drawings, sculptures, engravings
- Architectural works, illustrations, maps, layouts, sketches and geography related works
- Any literary, academic or scientific work that may be divulged or published by any means or procedure

The protection granted by Law 15 of 1994 will not apply to the text of laws, decrees, official regulations, public treaties, judicial decisions and other official acts. Nor will it apply to generic expressions of folklore, daily news, simple facts or data.

### What is the expected timeline from initial filing to granting or denial of IP rights with Panama's patent office?

IP Registration	Expected Timeline
Patent, Utility Model & Industrial Model	approx. 30 months
Trademark	approx. 1 year
Copyright	approx. 6 months

Unless the application for a patent refers to a non-patentable object, the application will not be denied. In this sense, the law determines the application for a patent will be granted without prejudice to third parties rights and without any guaranties from the government as to the effectiveness of the patent, the invention itself or the utility of the object covered by the patent.

The denial of a utility model and/or industrial model application takes approximately one year and eight months as of the date of initial filing. Trademarks take around two to three months to deny an application. It is very unlikely for a copyright application to be denied, since the copyright office does not analyze and/or determine the originality of the work.

**For each IP type, what is the expected range of expenses including government fees and taxes?**

<b>IP Registration</b>	<b>Total Expenses</b>
Patent	approx. USD1,240
Utility Model & Industrial Model	approx. USD840
Trademark	approx. USD300
Copyright	approx. USD60

**Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?**

**COPYRIGHT**

All copyrights over an original work exist and are enforceable as of its creation; hence registration of such work is not necessary to enforce copyrights over such work.

**PATENT, UTILITY MODEL AND INDUSTRIAL MODEL**

No rights are conferred prior to the application. Nevertheless, in the case of patents, the owner of a patent registration may claim compensation from any third party that exploited the patent during the time prior to the granting of the registration and after the publication of the patent application made by the Patents Office.

**TRADEMARKS**

No exclusive rights over the trademark are conferred prior to the application (the use of the trademark prior to the application only provides a priority right over others to obtain such registration); nevertheless, there are some precedents that have recognized the right to forbid third parties from using a trademark that is in process of registration.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

The benefit of copyright registration is that it constitutes a means of publicity and evidence of the existence and ownership of such work as of a specific date.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from application date
Utility Model	10 years from application date
Industrial Model	10 years from application date renewable for additional 5 years
Trademark	10 years from application date renewable indefinitely for 10-year periods
Copyright	lifetime of author plus 50 years for heirs

If a copyrighted work is published anonymously or with a pseudonym, the protection will be for 50 years as of the year of its divulgation. If the work is a collective work, software or film, the protection will be for 50 years as of its first publication or, in its defect, as of its termination.

### What additional IP laws or regulations might need to be considered before launching a product or service in Panama?

The main laws that should be considered are:

- Law 35 of 10 May 1996 of Industrial Property
- Law 15 of 9 August 1994 of Copyrights
- Criminal Code
- Law 45 of 31 October 2007 of Antitrust and Consumer Protection

## Is it necessary to mark a protected product and if so, how?

It is not mandatory. Nevertheless, it is common to see protected works include the symbol of copyright protection (©) when they are commercialized.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Panama has two specialized civil courts trained to attend civil IP litigation. In the past decade these courts have demonstrated competence and diligence in trying and resolving IP disputes. IP laws contemplate injunction measures that are very effective in suspending the IP infringement during the course of the proceedings, as well as seizing all the infringing products and/or works. These measures have been, and continue to be, successfully applied by the civil courts to protect IP rights.

Panama also has a specialized District Attorney's Office that investigates all IP infringements that are criminally charged. This office may initiate investigations directly and apply injunctive measures to ensure the protection of IP rights during the investigations. During the past 15 years, this office has participated in significant operations resulting in, among many others:

- Seizing thousands of illegal video films located at customs that were in transit to other countries
- Dismantling of several laboratories dedicated to the illegal reproduction of software
- Reducing software piracy from 98 percent to 60 percent

Panama also has an IP Department in customs and the Free Trade Zone of Colon, both of which work as helpful tools in the protection and enforcement of IP rights.

## **What are the basic requirements for initiating a claim of infringement in Panama. What remedies and defenses are available?**

For civil litigation, any person affected by the infringing activity may file, through an attorney, a civil claim against the infringing party. In industrial property cases it is important to present the certificate of registration of the industrial property in order to demonstrate the ownership and interest. In copyright cases this is not necessary since the registration of a copyright is not necessary for enforcement of rights. Among the remedies available are:

- The suspension of the infringing activity
- The seizure of all the infringing products and/or works, as well as of the equipment or machinery used to elaborate the infringing products and/or works
- The suspension of the importation or exportation of the infringing products
- The obligatory posting by the defendant of a bond equal to the amount of the suit filed by plaintiff in order to ensure plaintiff will be able to collect the requested indemnity (only for industrial property cases and not copyrights)
- An indemnity

For criminal litigation, there is the option of filing a denunciation or an accusation. In the first case, the denouncing party is not obligated to demonstrate the facts grounding its denunciation whereas in the second case the party filing the accusation must demonstrate the facts supporting its accusation as well as its rights over the protected product and/or work. The available remedies include the immediate seizing of the counterfeit or illegal product and/or works, as well as of the machinery, tools and equipment used to elaborate the counterfeit or illegal product and/or works. In addition to imprisonment, an indemnity may be requested and appointed by the criminal judge in the criminal proceedings.

## How long does litigation normally take in Panama and what are the likely costs?

It is hard to determine a specific time frame for IP litigation in Panama, since it varies from case to case. In general, for civil lawsuits regarding IP claims, litigation may take as long as three years. For amounts that exceed USD500,000 litigation may take an additional two years since these cases may be challenged before the Supreme Court.

For criminal cases regarding IP claims, litigation may take as long as six years since these cases may be challenged before the Supreme Court.

The costs also vary depending on the case and generally include expert fees, translations, and authentication of documents, among others.

## What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Panama?

Customs may inspect and/or retain any merchandise that is under customs proceedings in any part of the Republic of Panama directly, following orders of competent authorities or if informed, at any time, that a specific merchandise infringes IP rights. Customs has been proactive in collaborating with the Specialized District Attorney's Office in major operations that have successfully resulted in the seizing of thousands of illegal video films.

## For further information about IP rights in Panama see:

[www.digerpi.gob.pa](http://www.digerpi.gob.pa)

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## ALEMAN, CORDERO, GALINDO & LEE

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Panama City, Panama

Aleman, Cordero, Galindo & Lee offers a broad range of experienced attorneys and advisors in the legal aspects of commercial law, international private law, telecommunications law, tax law, corporate law, administrative law, in the negotiation of contracts and in public bids in the Republic of Panama and in IP and antitrust matters and litigation.

We have successfully developed and implemented, for over four years, Pfizer's antipiracy campaign (including legal actions and massive mailing) regarding patent protection with significant results. We have advised leading companies across multiple industries in important civil and criminal IP litigation. We provide general advice to many of the most prominent companies in Panama in intellectual property related matters. These companies include Cable & Wireless, The Shell Company (W.I.) Limited, Brinks Inc., and Panama Canal Railway Company. Our firm has successfully represented international clients, like Pfizer, in public bids in the telecommunications, electricity, construction, and real estate fields.

We have advised companies such as Cable & Wireless plc in the privatization of the Panamanian telecommunications company; Constellation Power in the privatization of the Panamanian electricity distribution company (now owned by Ashmore Fund); London & Regional Properties Ltd., in the award of a Master Developer concession for the development of a former US Air Force Base in Panama City; Colon Container Terminal (CCT) for the establishment and operation of a container terminal in the Atlantic, to name a few.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in PERU?

#### PATENT

Peruvian law grants patents for inventions, whether goods or processes, in all areas of technology, that are new, involve an inventive step, and are industrially applicable.

#### UTILITY MODEL

Any new shape, configuration, or arrangement of components of any device, tool, implement, mechanism or other object, or any part thereof, that permits improved or different operation, use, or manufacture of the object incorporating it, or that endows it with any utility, advantage, or technical effect that it did not have previously shall be considered a utility model. Utility models shall be protected by patents.

#### TRADEMARK

Any sign that is capable of distinguishing goods and services on the market shall constitute a trademark. Signs capable of graphic representation shall be eligible for registration as trademarks. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

#### COPYRIGHT

All works created by the human inventive. Protection is automatically obtained and is not subject to any formality. However, industrial properties do require registration before the competent authorities to guarantee protection.

### What is the expected timeline from initial filing to granting or denial of IP rights with Peru's patent office?

IP Registration	Expected Timeline
Patent	18 months
Trademark	6 months
Copyright	1 month

## For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Expected Timeline
Patent	USD450 per application
Trademark	USD250 per application
Copyright	USD60

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

During the application process it's possible to oppose or start action against any persons infringing or performing acts that may result in an infringement.

In the particular case of copyrights, protection is automatically obtained and is not subject to any formality.

Registration of a trademark with the competent national office shall confer the exclusive right to its use.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

In case of copyright, it's not necessary to prove to be the author or owner of the right. For other IP rights, any decision regarding a claim will be issued after rights are fully registered. A patent or registration of a trademark with the competent national office shall confer the exclusive right to its use.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years from filing date
Utility Model	10 years from filing date
Trademark	10 years from granting date renewable for successive 10-year periods
Copyright	70 years after death of author

### What additional IP laws or regulations might need to be considered before launching a product or service in Peru?

IP rights are protected by the Constitution and ruled by Decision 486 of the Andean Community, a supranational law applicable to the Andean Community countries (Bolivia, Colombia, Ecuador and Peru). IP rights are also ruled by the international conventions to which Peru is a party, like the Paris Convention for the Protection of Industrial Property, the Pan American Convention of Washington and all the major international conventions regarding IPR.

### Is it necessary to mark a protected product and if so, how?

It is not necessary. If desired, the international symbol ® may be used.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Enforcement of IP rights includes oppositions against registration, border measures, Infringement Action before an administrative court, provisional measures and indemnity action before a judicial court.

## What are the basic requirements for initiating a claim of infringement in Peru? What remedies and defenses are available?

Basically, a written action in Spanish must be filed before the competent authority, indicating the name and local address of the filing party's legal representative and a Power of Attorney duly legalized before a Peruvian Consulate.

Among others, the following provisional measures may be ordered:

- Immediate cessation of all acts constituting the alleged infringement
- Withdrawal from commercial channels of all products resulting from the alleged infringement, including packaging, wrappings, labels, printed material or advertising, or other materials, together with the materials and implements the predominant use of which has been the commission of the infringement
- Suspension of the importation or exportation of the goods or materials or implements previously referred
- Establishment by the alleged infringer of an adequate guarantee
- Temporary closure of the business belonging to the defendant or accused, if necessary, to avoid continuation or repetition of the alleged infringement

Provisional measures shall be ordered only where the persons requesting it accredit their lawful right to act and the existence of the infringed right, and provide evidence allowing for a reasonable presumption of infringement or that infringement is imminent. The competent national authority may require persons requesting the measure to post a bond or sufficient equivalent assurance before ordering such a measure.

The applicant for a provisional measure in respect of particular goods shall supply the necessary information and a sufficiently detailed and precise description so that the allegedly infringing goods can be identified

## How long does litigation normally take in Peru and what are the likely costs?

Litigation before the administrative authority may take not less than six months. Expenses including government fees and taxes are normally under USD800.

## What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Peru?

Peruvian Customs veils for the protection of IP rights by facilitating border actions and should inform the competent administrative agency when a possible import of illegal merchandise is detected or acknowledged, so the merchandise can be stopped from entering the market without the trademark owner's authorization.

For further information about IP rights in Peru see:

[www.indecopi.gob.pe](http://www.indecopi.gob.pe)

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## GARCIA SAYAN ABOGADOS

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Lima, Peru

Garcia Sayan Abogados provides full services in general practice law and is one of the best-known Peruvian law firms, with a long-standing reputation for integrity and excellence.

Garcia Sayan Abogados assists its clients on all aspects of IP law including trademark and patent registration and protection. Our firm has been engaged in various transactions including IP matters which involved due diligence, advising on unfair competition, consumer rights and advertising issues.

Our firm provides legal advice on dumping issues; unfair competition issues; copyright and related issues; negotiation and drafting IP related agreements; registration of trademarks, inventions, utility models, and copyright.

Garcia Sayan Abogados carries out all litigation causes arising from every IP right and specializes in direct registration of trademarks in Peru.

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### FIRM IP CONTACT

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Puerto Rico?

Since the Commonwealth of Puerto Rico is a U.S. jurisdiction, patents must be registered with the U.S. Patent and Trademark Office (USPTO) under the federal Patent Act. Thus, one may register a new and non-obvious:

- Utility patent for any useful process, machine, article of manufacture, or composition of matter
- Design patent for any ornamental design for an article of manufacture
- Plant patent for any asexually reproduced, distinct variety of plant.

Although such registration proceeds at the federal level, certified copies of USPTO patent registrations may be registered with Puerto Rico's Department of State.

Trademarks, service marks and trade names may be registered in the Trademarks and Trade Names Registry of the Commonwealth's Department of State. In addition, trademarks and service marks registered in the USPTO's Principal Register are fully protected in Puerto Rico under the federal Lanham Act. Registration is available on a use or intent-to-use basis for words, phrases, designs and other things capable of serving as marks. It requires that the mark be fanciful, arbitrary, suggestive or descriptive with secondary meaning. Composite marks combining registerable and non-registerable components may be registered subject to disclaimers.

Copyrights may be registered to protect an author's economic rights or moral rights in a work of authorship fixed upon a tangible medium. In the case of economic rights, registration is accomplished through the U.S. Copyright Office pursuant to the federal Copyright Act. With respect to moral rights, local law requires registration with the Intellectual Property Registry of the Commonwealth's Department of State for an author to enjoy the rights of attribution, withdrawal, publication, and integrity.

### **What is the expected timeline from initial filing to granting or denial of IP rights with Puerto Rico's patent office?**

As noted above, patent registration in Puerto Rico must be accomplished through the USPTO. On average, the expected timeline from initial filing to granting or denial is almost three years, but this varies substantially depending on the type and complexity of the patent. The USPTO has procedures for expedited review at additional cost.

In the case of trademarks, registration in Puerto Rico can take from one to two years, although the Registry is currently implementing a new system that may speed up the process. Registration with the USPTO is somewhat faster and takes about 13 months on average, with an option to expedite at additional cost.

Copyright registration in the U.S. Copyright Office and in Puerto Rico's Department of State generally takes several months.

### **For each IP type, what is the expected range of expenses including government fees and taxes?**

The total cost of a patent application before the USPTO, including attorney's fees, is often in the tens of thousands of dollars, depending on its complexity. Such applications must be presented and prosecuted by registered patent attorneys or agents (unless the inventor presents his own application).

Puerto Rico and USPTO trademark applications typically cost USD300 to USD400 for each product or service class in which registration is sought. This does not include attorney's fees, which is typically a flat rate of approximately USD1,000 per application and class. If an application encounters objections from the relevant agency or a third party, its cost will be in the thousands of dollars due to the corresponding attorneys' fees.

In the case of copyrights, registration with the U.S. Copyright Office or the Commonwealth's Department of State is a relatively simple process whose filing fees range in the tens or hundreds of dollars.

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

Patent rights exist only after registration has been achieved.

Trademark rights under Puerto Rico and federal law generally do not require registration to exist and be enforced. Yet registration confers several important benefits. Under Puerto Rico law, these benefits begin on the registry application's filing date, assuming the application is approved. USPTO registration, in contrast, generally confers benefits only after the application has been approved, subject to an important exception: once a USPTO application has been filed, a successful registration will imply that the applicant has used the mark since the filing date in the entire territory of the United States, including Puerto Rico.

In the case of copyrights, although an author acquires his economic rights when the work is produced, such rights may not be exercised judicially until registration if the work is of U.S. origin (as discussed below). With respect to moral rights, the relevant statute provides that registration is required for an author to enjoy rights.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

Trademark registration in Puerto Rico and with the USPTO has many advantages. Among the most important is a rebuttable presumption regarding the mark's ownership and validity as well as the availability of special monetary remedies for trademark infringement, such as statutory damages and attorney's fees. In addition, Puerto Rico's Trademark Act establishes a special, *ex parte* injunction proceeding to protect registered marks. Federal registration makes it possible to prevent the importation of infringing foreign goods, obtain registration in other countries, and easily establish federal court jurisdiction in trademark infringement and dilution cases. Both federal and local registration is necessary for using statutory trademark notices (discussed below). Finally, it is important to emphasize that registration is a legally effective and important way for providing public notice of trademark rights, such that infringers may not claim they were unaware of the mark's prior use.

Federal copyright registration has several benefits. First, under current federal case law applicable to Puerto Rico, authors may bring infringement actions in federal court with respect to their economic rights over works of U.S. origin only after a successful registration, although the infringement may have occurred prior to registration. (There is an exception for certain pre-registered works). Second, registration is *prima facie* evidence of the copyright's validity as well as the facts stated in the registration certificate, assuming registration takes place within five years of the work's publication. Third, statutory damages and attorney's fees are available as remedies for copyright infringement if registration takes place before infringement or within three months of the work's publication. Finally, registration makes it possible to prevent the importation of infringing copies of the work through the U.S. Customs Service. On the other hand, Puerto Rico copyright registration is necessary for the author to exercise moral rights, except in cases where the author maintains that another person is claiming authorship.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

U.S. Patents last for 20 years, except design patents, which last 14 years.

Puerto Rico and federal trademark registrations have a renewable 10-year term. The underlying trademark or trade name rights last indefinitely, so long as the mark's owner is using it properly and the mark does not become generic or lose its secondary meaning (in the case of descriptive marks).

Copyrights under federal law have various lengths depending on several features of the work in question, such as its date and whether it is for hire. As a general rule, works created after 1 January 1978 are protected during the author's life plus 70 years. If the author remains anonymous or uses a pseudonym, or if the work is for hire, copyright protection lasts for 95 years after the work's first publication or 120 years after its creation (whichever is earlier). Meanwhile, the rights protected under Puerto Rico law last for the author's life plus 50 years.

## What additional IP laws or regulations might need to be considered before launching a product or service in Puerto Rico?

There are several IP-related laws that should be considered before launching a product or service in Puerto Rico. First, individuals enjoy a right of privacy or publicity that prohibits others from using their identity for commercial purposes, presenting them in a false and offensive light, causing an offense by disclosing private facts about them, and obtaining information through improper intrusions. Although such causes of action are common in other U.S. jurisdictions, it is important to understand that Puerto Rico privacy rights have the potential for broader application whenever individuals have a reasonable expectation of privacy. This is because such rights derive from a constitutional provision that restrains private parties and not simply the state.

Second, Puerto Rico law recognizes a variety of IP-related rights insofar as it combines a very general Civil Code provision regarding culpable or negligent acts with an incorporation of many common law doctrines. For example, the improper disclosure of trade secrets, false advertising, product disparagement, and the misappropriation of “hot news” are prohibited under Puerto Rico law in a manner similar to other U.S. jurisdictions.

## Is it necessary to mark a protected product and if so, how?

Products and works do not have to be marked in any particular way for the patent or copyright holder to acquire and exercise the corresponding federal rights (subject to certain exceptions in the case of older copyrighted works). There is an optional, federal copyright notice for indicating the work is protected, which usually takes the form of a copyright symbol (©) followed by the author’s name and the year of first publication. Copyrighted works registered under Puerto Rico law, in contrast, should bear a copyright notice (an “R” enclosed in a triangle), according to the relevant statute.

In the case of trademarks, there are optional statutory notices under federal and Puerto Rico law. The federal Lanham Act’s notices, such as the ® symbol, may be used only in connection with federally registered marks. For marks registered in Puerto Rico, the optional regulatory notices are “*Marca Registrada*” or “MR.”

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

Intellectual property rights are enforced primarily in Puerto Rico and federal courts. Claims regarding patent and federal copyright infringement must be filed in a proper federal court, which in Puerto Rico is the U.S. District Court for the District of Puerto Rico. Protection for moral copyrights, in contrast, must be sought in a local court, unless there is a federal court able to exercise jurisdiction for other reasons (e.g., because the action combines federal and state law claims). Finally, trademark cases may be brought in Puerto Rico courts with respect to violations of federal and local laws. They may also be heard in a proper federal district court if there is jurisdiction under the federal Lanham Act or for other reasons.

### What are the basic requirements for initiating a claim of infringement in Puerto Rico? What remedies and defenses are available?

Puerto Rico's judicial system and its rules of civil procedure are roughly analogous to the systems and rules in other U.S. jurisdictions, except that there are no jury trials in civil matters tried before the state courts. In addition, there is a federal, U.S. District Court for the District of Puerto Rico. Hence enforcing intellectual property rights would typically involve filing a lawsuit, posting a non-resident bond, conducting service of process, engaging in discovery and other pre-trial proceedings, conducting a trial, and executing the judgment. Generally, the party alleging an infringement will have to allege and prove with preponderant evidence its ownership of valid intellectual property and the acts constituting infringement. The other party will have to allege and prove any available defenses.

The remedies and defenses available with respect to intellectual property infringement depend on the kind of property involved and the circumstances of each case. Generally, infringement may be remedied through an injunction to prevent further infringement, the destruction of infringing material, and monetary compensation. There is a wide variety of defenses available, drawn mainly from U.S. constitutional, common, and statutory law.

Finally, it should be noted that Puerto Rico court judgments may be executed in other U.S. jurisdictions, since they would receive full faith and credit there. If the judgment is issued by the federal court in Puerto Rico, enforcement in other U.S. jurisdictions is facilitated by its registration in any other U.S. federal district court (so long as it is a judgment for recovery of money or property).

## **How long does litigation normally take in Puerto Rico and what are the likely costs?**

The length and cost of litigation in Puerto Rico depends primarily on whether the case is settled or not. Often the parties are able to reach a settlement ending the controversy in a matter of months, without resorting to actual litigation in court, keeping the costs between USD5,000 and USD20,000. However, cases that go into injunction hearings, discovery, trial and/or appeal phases may take years to resolve and cost in the tens or hundreds of thousands of dollars.

As a general rule, litigation in local courts takes longer than litigation in federal court, primarily because there is a larger volume of cases and there are interlocutory appeals. Yet litigation in local courts is often less expensive than litigation in federal court.

Finally, it is often possible to obtain temporary restraining orders and preliminary injunctions in order to protect intellectual property while an infringement case is litigated, especially where said property has been registered and the infringement is relatively clear.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Puerto Rico?**

The U.S. Customs Service can play an important role in Puerto Rico by preventing the importation of material that infringes on patents, trademarks, and copyrights.

**For further information about IP rights in Puerto Rico see:**

**[www.fgrlaw.com](http://www.fgrlaw.com)**

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## FIDDLER, GONZÁLEZ & RODRÍGUEZ, P.S.C.

San Juan, Puerto Rico

Fiddler, González & Rodríguez, P.S.C. is a leading, full-service law firm in Puerto Rico whose intellectual property practice group incorporates the talents of select attorneys with expertise in this specialized area of Puerto Rico and U.S. law. The group's attorneys advise and represent clients to assure the fullest legal protection for clients' unique products and services, as well as the customer goodwill that clients have established for their existing products and services.

The intellectual property practice group counsels clients in the registration, transfer, and protection of their proprietary rights through trademarks, service marks, collective marks, patents, and copyrights, and with reference to parallel import actions. The group also has expertise in matters involving computer and Internet law, trade secrets, the negotiation of licensing and franchise agreements, advertising, contests, and packaging and labeling. In addition, group attorneys have considerable experience litigating infringement actions in federal and local courts, as well as pursuing intellectual property matters before administrative tribunals. In the area of trademarks, the group has an extensive list of clients from almost every country in the world.

Attorneys in Fiddler's intellectual property group participate with officials of the Commonwealth of Puerto Rico in drafting amendments to the Puerto Rico Trademark Act. The group regularly offers seminars concerning the full range of intellectual property concerns. The Firm's intellectual property group is represented in the United States Trademark Association, with participating attorneys in such committees and task forces as the International Committee and the Model Laws for Developing Countries task force.

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in the Turks and Caicos Islands?

The following may be registered in the Turks and Caicos Islands.

#### PATENT

Any patent previously registered in the United Kingdom pursuant to the Patents Acts 1949 and 1977.

Any European patent that takes effect in the United Kingdom pursuant to the Patents Act 1977.

#### TRADEMARK

Any sign consisting of designs, letters, numerals, a word or combination of words or the shape of the goods or its packaging, which is used by an individual or corporation to distinguish its goods or services from that of another individual or corporation.

### What is the expected timeline from initial filing to granting or denial of IP rights with Turks and Caicos Islands' patent office?

Three to six months.

### For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Filing Fees	Professional Fees
Patent		USD1,250
filed by grantee	USD40	per patent
filed by grantee agent	USD60	
Trademark	USD50	USD850
Publication Fee	USD50	

### Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

Patent rights are conferred when a certificate of registration is issued by the Registrar. However, the rights of a patent will date from the commencement of the term of the patent in the United Kingdom and will remain in force as long as the patent continues to be in force in the United Kingdom.

For trademarks, once there is no opposition to the application, rights are conferred from the date of filing of the application.

### If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

No IP rights will be conferred prior to the filing of an application.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	infinite protection, as long as UK protection is in force
Trademark	10 years renewable 6 months before expiration for further 10-year periods

### What additional IP laws or regulations might need to be considered before launching a product or service in the Turks and Caicos Islands?

None.

### Is it necessary to mark a protected product and if so, how?

No.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

The Supreme Court has the power to revoke a patent if it is seen to infringe on the rights of another person with an invention that was used within the islands before the priority date of the patent in the United Kingdom.

It is also possible to appeal decisions at the Court of Appeal and the Privy Council.

### What are the basic requirements for initiating a claim of infringement in the Turks and Caicos Islands? What remedies and defenses are available?

#### PATENTS

The basic requirements extend from the Patents Act 1977 of the United Kingdom. There must be proof of either:

- Unauthorized use of either the patented product or product made from the patented process

or

- Use of the patented process, which is deliberate or obvious to a reasonable person to be unauthorized and an infringement of the patent

The available remedies are:

- An injunction to restrain further infringement
- A declaration of the validity of the patent
- Damages to compensate the proprietor of the patent for losses suffered due to the infringement
- An account for profits
- An order that infringing articles be delivered up to the claimant and destroyed

The available defenses are:

- Proof of lack of infringement
- The patent allegedly infringed is not valid

- The allegedly infringing act was done privately and for non-commercial purposes
- The alleged infringement was done for experimental purposes with respect to an invention
- The alleged breach was a continuation of activities carried out prior to the registration of the patent
- The alleged acts were done with the claimant's License

### TRADEMARK

The basic requirements for an infringement claim are:

- Proof of use of a sign that is identical to the trademark and is used in relation to goods or services similar to those for which the trademark is registered
- Proof of use of a sign that is similar to the trademark and is used in relation to goods or services identical with or similar to those for which the trademark is registered
- Proof of a likelihood of confusion on the part of the public which includes the likelihood of association with the trademark

The remedies are:

- Removal of the sign from goods, material or articles
- If it is not reasonable or practical to simply remove the sign, then destruction of the infringing goods, material or articles
- Delivery up of the infringing goods, material or articles

The defenses are:

- The registered mark is not infringed by the use of another registered mark
- Once the use is in accordance with honest practices in industrial or commercial matters, there is no infringement if:
  - The use is of a person's own name or address
  - The use acts as indications of the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services
  - The use indicates the intended purpose of a product or service

## **How long does litigation normally take in the Turks and Caicos Islands and what are the likely costs?**

Three to six months. Litigation will be lengthier if appeals to the Court of Appeal and the Privy Council are also made.

The cost of litigation will be on an hourly basis, ranging from USD300 to USD500 per hour.

## **What role does Customs play in enforcing IP rights and preventing counterfeit items from entering the Turks and Caicos Islands?**

Depends on circumstances.

## MILLER SIMONS O'SULLIVAN

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### Providenciales, Turks & Caicos Islands

Miller Simons O'Sullivan is one of the largest firms of lawyers practicing in the Turks & Caicos Islands. We offer a full range of professional services. Miller Simons O'Sullivan is organized into several departments, including: Corporate and Commercial, Trusts, Property and Tourism Development, Litigation and Intellectual Property.

Our offices are staffed by lawyers and other professionals with qualifications in various jurisdictions as well as the Turks & Caicos Islands, including England and Wales, Ireland, Australia, the Cayman Islands and Hong Kong.

The firm acts as the local agent for a number of substantial European and North American patent and trademark agents and is involved in the registration of trademarks with the Registrar of Trade Marks and Patents.

Miller Simons O'Sullivan will receive instructions with regard to registration of Trade Marks and Patents by mail or by facsimile and it is not necessary for the applicant to travel to the Turks and Caicos Islands to secure registration.

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Uruguay?

Uruguayan laws do not include a description of patentable subject matters and merely provide a list of exclusions, and therefore must be determined according to the general principle.

The general principle is set forth under the international standard, article 27.1 of the TRIPS.

Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application.

The following are not patentable:

- Discoveries, scientific theories and mathematical methods
- Plants, animals and essentially biological processes for the production of the same
- Schemes, plans, gaming rules, business, accounting, financial, educational, advertising, raffle or supervision principles or methods
- Literary or artistic works or any other aesthetic creation or scientific works
- Computer programs taken separately
- Different ways of reproducing information
- Genetic and biological material, occurring in nature
- Diagnostic, therapeutic and surgical methods for the treatment of persons or animals
- Inventions which are contrary to public order, propriety, public health, population nutrition, safety and the environment
- Underlying uses of an already patented invention
- Chemical and pharmaceutical patent

### UTILITY MODEL

Any novel arrangement or conformation obtained or introduced in tools, work instruments, utensils, devices, equipment or any other known objects which imply a better use or better result of their function.

## INDUSTRIAL DESIGNS

Original creations of an ornamental nature which once incorporated or applied to an industrial or handcrafted product give it a special appearance.

### What is the expected timeline from initial filing to granting or denial of IP rights with Uruguay's patent office?

After the application for a patent is filed, officials give it a formal preliminary review. If it fulfills the legal requirements, the applicant then must publish a public notice of the patent application. Within 60 days following publication, third parties may file oppositions to the application.

After publication, the application undergoes further examination. If after the 60 day post-publication period, any objections have been raised or oppositions filed, the applicant must reply within 90 days. After filing the reply, if there are no objections, the applicant goes to final resolution.

The resolution can be appealed to the Administration of Industrial Property within 10 days after notification of the decision. If the Administration affirms the initial resolutions, one can further appeal to the Ministry of Industry.

If the Ministry affirms the Administration's resolution, within 60 days after notification of the decision, an unsuccessful applicant may file an action in the Court of Claim to overturn the decision.

### For each IP type, what is the expected range of expenses including government fees and taxes?

The government charges fees for each procedure in a national monetary unit whose value is regulated periodically and automatically. Current rates for an application for a patent are:

IP Registration	Application Fee	Publication Fee
Patent of Invention	UYU650	UYU50
Utility Model	UYU450	UYU50
Industrial Design	UYU450	UYU50

## Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

The right is created when the trademark is registered.

Priority rights exist in case of later applications.

## If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?

For trademarks and patents the right must be registered to be enforceable.

No registration is needed to protect copyrightable work.

## EXPLOITING IP RIGHTS

### What is the duration of protection for each IP type?

IP Right	Protection Duration
Patent	20 years
Trademark	10 years
Copyright	life of author plus 40 years after author's death

### What additional IP laws or regulations might need to be considered before launching a product or service in Uruguay?

- The Law for Consumer protection
- The Law to promote and protect the free competition

### Is it necessary to mark a protected product and if so, how?

It is not necessary.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

There is a special Police Force that specializes in IP rights.

### What are the basic requirements for initiating a claim of infringement in Uruguay? What remedies and defenses are available?

The basic requirement is to have a registration which will allow filing for infringement.

There are precautionary measures, for example: pre-judgment attachment.

### How long does litigation normally take in Uruguay and what are the likely costs?

Normally it takes three or four years.

The cost is not determined, it varies in each case.

### What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Uruguay?

Customs plays an important role. They are in charge of deciding whether or not to adopt measures to protect IP owners' rights.

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## POSADAS, POSADAS & VECINO

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Montevideo, Uruguay

Posadas, Posadas & Vecino is one of the oldest law firms in Uruguay. It was founded in 1926 and currently has a staff of over 120 persons, headed by partners Dr. Germán Vecino Sánchez and Dr. Ignacio de Posadas Montero.

The firm has traditionally focused with special emphasis on the various legal aspects related to business, particularly in matters of commercial, corporate, tax and financial legislation. We have assisted corporations and other entities, both local and international, in the organization and structuring of business, in acquisitions; mergers; the establishment of joint ventures; tax planning; overall fiscal advice international trade, etc.

Over the years Posadas, Posadas & Vecino has developed a growing regional practice, providing, to foreign clients pursuing trade or financial interests abroad, the legal and tax instruments available in Uruguay as a channel for international activities.

The variety of aims pursued by the firm's clients, both domestically and internationally, have generated in the organization the need to provide a wide spectrum of services. Thus it has developed a multi-disciplinary professional staff, suited for handling all those subjects which may be of interest to its clients, concerning legal, accounting, tax, notarial and international trade matters, related to the Uruguayan or international areas.

In this last field, Posadas, Posadas & Vecino acts with the backing of first-class law or consulting firms within the different jurisdictions and in turn, gives advice and support in Uruguay to foreign law and consulting firms.

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## OBTAINING IP RIGHTS

### What can be registered as a patent, utility model, trademark, or copyright in Venezuela?

#### PATENTS OF INVENTIONS

The following are patentable:

- Any new, definite and useful product
- Any new machine or tool and any new instrument or apparatus of industrial use, or of medicinal, technical or scientific application
- Parts or elements of machines, mechanism, apparatus, accessories through which a greater saving or perfection in the products or results is obtained
- New processes for the preparation of materials or goods of industrial or commercial use
- New processes for the preparation of chemicals and new methods of manufacture, extraction and separation of natural substances.
- Reforms, improvements or modifications introduced in already-known things
- Any new model or design of industrial use
- Any other invention or discovery suitable for industrial application
- Any invention, improvement or industrial model or design which, being patented abroad, has not been divulged, patented nor put into execution in Venezuela

This list is merely enumerative and not restrictive since in general the result of the inventive effort of the human mind can be the subject matter of a patent, with the exceptions established by this law.

The following are not patentable:

- Beverages or food, whether for humans or for animals; medicines of all kinds; medicinal or pharmaceutical preparations and chemical preparations, reactions and combinations
- Financial, speculative, commercial, advertising systems, combinations or plans, or those of simple control or inspections
- The simple use or advantage of natural substances or forces, even though recently discovered

- The new use of goods, objects, substances or elements already known or applied to definite purpose and the mere variations of shape, dimensions or material of which they are made
- Working patterns or secrets of manufacture
- Purely theoretical or speculative inventions whose industrial feasibility or well-defined application could not be possibly indicated or demonstrated
- Inventions contrary to national laws, public health or public order, to morality or good customs and to the security of the State
- The juxtaposition of already patented elements or of elements which are of public domain, unless they are put together in such a way that they cannot work independently, losing their characteristic action
- Inventions made known in the country for having been published, divulged in printed paper or in any other form, and those being of public domain by reason of their execution, sale or advertising within or outside the country, prior to the patent application

### **INDUSTRIAL DESIGN**

Deposition or union of lines, colors and lines, and colors destined to give any industrial object some special appearance.

### **INDUSTRIAL MODEL**

Plastic forms combined with colors or not and any industrial, commercial or domestic utensils or suitable pattern for the production or manufacture of other ones which differ from similar objects through their distinctive shape or configuration.

Containers are included among goods protected as industrial models.

Industrial designs, as well as models, must show novelty features and originality conferring upon them a characteristic appearance.

### **TRADEMARK**

Any sign, form, drawing, word or combination of words, legend and any other token presenting novelty, used by individuals or corporations to cover the goods produced, those with which they trade, or their own enterprise.

The mark intended to cover a commercial, industrial, agricultural or mining enterprise, business, exploitation or establishment is called a trade name.

A commercial slogan in the mark consists of a word, sentence or legend used by an industrial, businessperson or agriculturist, as a complement to a trademark or trade name.

### What is the expected timeline from initial filing to granting or denial of IP rights with the Venezuelan patent office?

IP Registration	Expected Timeline
Patents	4–6 years
Trademarks	12–18 months *

\* If no opposition is filed

### For each IP type, what is the expected range of expenses including government fees and taxes?

IP Registration	Official Fees & Taxes	Professional Fees
Patent	USD551	USD1,132
Publication Cost	USD450	
Trademark	USD551	USD735
Publication Cost	USD175	
Copyright	USD775	

### Are any rights conferred during or prior to the application process or must the rights be fully registered to be enforceable?

The rights must be registered to be enforceable. However, Venezuela being a member of the Berne Convention, in theory no registration is needed to protect copyrightable work.

**If any IP rights are conferred prior to filing an application, what benefits arise from obtaining a registration?**

There are no exclusivity rights without a registration, just a right of priority (for example, for prior use).

**EXPLOITING IP RIGHTS**

**What is the duration of protection for each IP type?**

<b>IP Right</b>	<b>Protection Duration</b>
Patents of Invention	10 years
Patents of Introduction	5 years
Trademark	15 years renewable 6 months before expiration date
Copyright	life of author plus 50 years after author's death

**What additional IP laws or regulations might need to be considered before launching a product or service in Venezuela?**

- The Law to Promote and Protect Free Competition
- The Law for Consumer Protection
- The Labeling Law
- Advertising Law
- Exchange Control Law

**Is it necessary to mark a protected product and if so, how?**

It is not mandatory. However, if marked as protected, and not protected, a penalty fine may be imposed.

## ENFORCING IP RIGHTS

### What mechanisms are in place to ensure effective enforcement of IP rights?

There is a special Police Force specializing in IP rights which makes procedures more efficient.

### What are the basic requirements for initiating a claim of infringement in Venezuela? What remedies and defenses are available?

The basic requirement is to have a registration which will allow filing for infringement and requesting preliminary injunctions within a fairly reasonable time (six months).

### How long does litigation normally take in Venezuela and what are the likely costs?

Litigation can take an unreasonable amount of time (several years). However, injunctions can be obtained within a reasonable amount of time. Costs vary depending on the complexity of the case.

### What role does Customs play in enforcing IP rights and preventing counterfeit items from entering Venezuela?

Customs plays an important role. If infringement is notified to Customs, it will take measures to collaborate with the rightful holder.

### For further information about IP rights in Venezuela see:

[www.bentata.com](http://www.bentata.com)

## BENTATA ABOGADOS

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Caracas, Venezuela

This international law firm was established more than 50 years ago by Prof. Dr. Victor Bentata, OBE. Today the firm ranks among the most active international law firms in the country and includes graduates of leading universities worldwide. As an exclusively professional firm, Bentata Abogados offers to its clients independent legal assistance in all important branches of national and international business law, through the most modern communications technology.

Our experts in corporate law provide strategic legal counseling regarding business and trade, including antimonopoly and consumer protection, franchise, mergers and acquisitions, foreign investment treatment, joint ventures, incorporation and acquisition of companies, counseling in labor matters, bidding procedures and contracts, including contracts with the State.

Through an organized and efficient team of lawyers specialized in Intellectual Property, as well as paralegals, technicians, translators and support staff, we offer overall service of counseling, clearance, surveillance, prosecution, licensing, renewal, maintenance and litigation regarding patents, industrial designs, utility models, trademarks, slogans, copyright and other forms of Intellectual Property rights.

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