

INTELLECTUAL  
PROPERTY RIGHTS  
IN A NUTSHELL

# General introduction

## 01. What are IP rights?

Our economic system is based on **freedom of trade and commerce**, which entails the right for each individual to conduct any trade or practice any profession, business or craft as he sees fit. The corollary is **freedom of competition**, which ensures that people can conduct the same kind of trade and offer their goods and services on the same sales market.

Freedom of competition includes the **freedom to copy or imitate** (the goods and services of) others. However, there are limits. As stated by the Belgian Supreme Court, copy or imitation may not be accompanied by unlawful conduct.<sup>1</sup>

Infringements of intellectual property rights are considered to be such unlawful conduct.

Hence, to copy is the principle and intellectual property rights are thus to be considered “exceptions” or “**islands of exclusivity within a sea of competition and copying**”.

Intellectual property rights are a form of legal protection for certain intangible assets, namely “creations of the human mind”. They are **exclusive rights** that grant their owner a monopoly over the exploitation of a creation or innovation for a certain period of time. More specifically, ‘exclusive’ means that others may not use the creation or innovation without the right owner’s consent.

There are several ways to categorise intellectual property rights (“IP rights”). One way is to categorise them by the way they come into existence: either automatically (provided certain legal conditions are met) or through the filing for protection with the competent authority:

### Rights that require a filing

- patent rights
- trade mark rights
- registered design rights
- plant variety rights

### Rights obtained automatically

- copyright and related rights
- *sui generis* database right
- unregistered Community design rights
- Microchip rights
- rights in trade secrets

<sup>1</sup> Cass. 29 May 2009, RW 2010-2011, 1562.

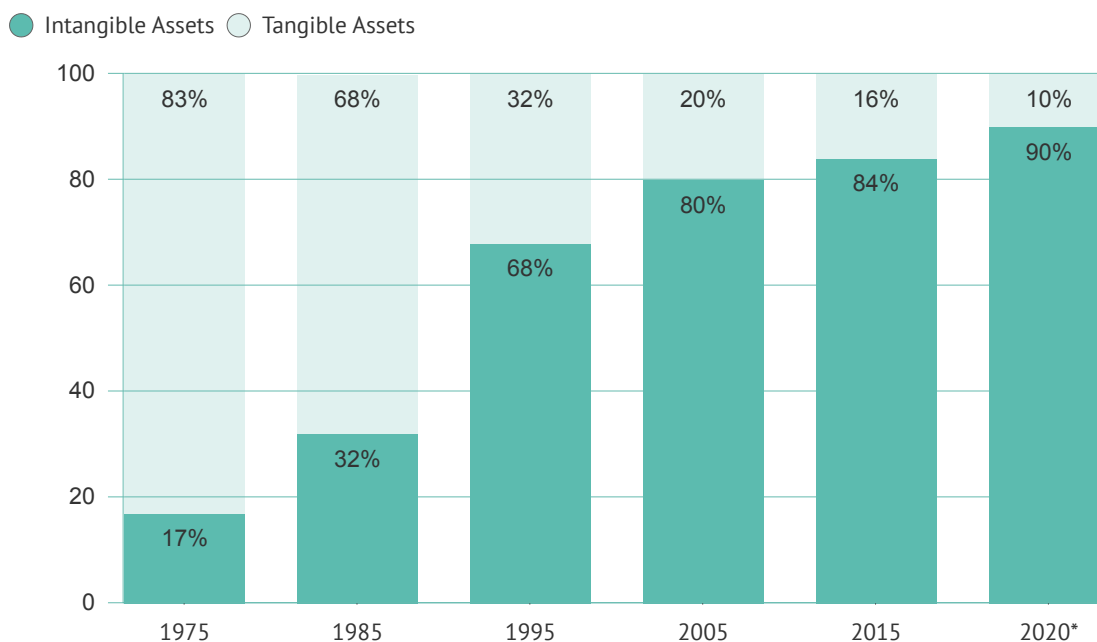
In the following chapters we will take a closer look at each one of these IP rights under Belgian law (except plant breeder's rights considering their rareness) and the specific rules applicable to them. Hereunder we already provide an overview of the field of protection, the possibility to obtain and the duration of the protection of the different IP rights. Some nuance is in order, however, as rights in trade secrets are actually not intellectual property rights.

IP Right	Field of protection	How to obtain protection	Duration of protection
<b>Trade marks</b>	A sign – commercial identification of goods and services	Registration at the relevant IP office	10 years – renewable indefinitely
<b>Copyright</b>	Works that are expressed and original	Automatically	Lifetime of the author + 70 years after his death
<b>Registered Designs</b>	The appearance of a product that is new and has an individual character	Registration at the relevant IP office	5 years, renewable 5 times with a maximum of 25 years
<b>Unregistered Community Designs</b>	The appearance of a product that is new and has an individual character	Automatically	3 years as of the day of first public use
<b>Patents</b>	An invention that is new, inventive and industrially applicable	Registration at the relevant IP office	Up to 20 years
<b>Microchips</b>	The topography of a microchip that is the result of the creator's own intellectual efforts and is not generally known in the semiconductor industry	Automatically	10 years after the first exploitation, or in the absence thereof, 15 years after the first fixation
<b>Sui generis database right</b>	The (substantial) investment underlying the creation of a database	Automatically	15 years after completion  However, the way the content of the database is selected and arranged can also be protected under copyright (i.e. lifetime of the author + 70 years after his death)
<b>Trade secrets</b>	Any information that is secret, has a commercial value and is subjected to reasonable measures to keep it secret by the person lawfully in possession thereof	Automatically	No duration limit. As long as the requirements remain fulfilled, the trade secret protection remains

## 02. The importance of IP rights

The importance of IP rights may be explained through an important macro trend in the global economy, i.e. the transformation of our economy from a manufacturing base manned by laborers to a service base driven by knowledge workers. Due to this transformation, **intellectual capital** (being the value of a company's intangible assets such as IP rights) **has emerged as a leading asset class**.

Companies are increasingly realising that **intangible assets have become more valuable** than their physical counterparts. Today, many companies focus on creating new products and promoting the company's brands to attract customers. New technology, attractive designs and the reputation of a brand are key to a company's success. The amount of company value residing in intangible assets has therefore increased significantly.



Source: ocean tomo. LLC Intangible asset market value study, 2020 - \*interim study update as of 7/1/2020

Having exclusivity over these intangible assets is of course crucial and this is where IP rights come in: **legal protection through intellectual property rights provides exclusivity over the use of a company's intangible assets in business.**

The importance of intellectual property is therefore also increasing, and this trend is not going to stop. According to the latest statistics of WIPO, the IP rights in force are increasing every year. In 2020 there were more than 92 million IP rights in force.



Source: WIPO Statistics Database, September 2021.

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