

Intellectual Property Protection of IT Innovations

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What is an IT innovation?

IT / Information Technology innovations involve using technology to implement better solutions for prevailing drawbacks or issues faced in the technology domain (robotics, artificial intelligence, mobility, 5G, cloud computing etc. just to name a few). Recent and upcoming IT innovations which cannot be overlooked, range from tools for linking human brains with computers without the need for a physical connection to swallowable medical devices.

The need for IP protection of such upcoming innovations is crucial and paves a path for the inventors or developers to obtain stronger investments and boost their businesses.

IT innovations may be subject to various types of IP protection, namely patent, trade secret and copyright

A copyright protects the 'literal expression' of a programming code or a computer program, or the source

code (or an expression of the code itself), against reproduction by non-authorized parties. Copyright, although an easier route for protecting the program code / software – fails to protect any invention or novel concept underlying the IT innovation. Hence, the risk is that a third party may be able to design around the copyright protection by independently developing a new computer software replicating the same innovative concept. Since the third party is not reproducing the code or a substantial part thereof, it will be difficult to catch him under copyright infringement.

A patent protects an invention, which may consist of a device, system or process in relation to the IT innovation. A patent is normally directed to protect the inventive contribution, which is the innovative concept. A patent prohibits a third party from exploiting the patented invention (in the form of a device or a process) even if the program code was developed independently or differently. A patent once granted guarantees exclusive ownership rights for 20 years from the filing date of the patent application, which would enable the owner to commercialise the patent through licensing or other commercialising means leading to a higher return on investment outcome. Not all IT innovations may be eligible for patent protection, as this would depend on the nature of the innovation and the specific patentability requirements in the countries where protection is to be sought. A patent would normally secure a wide scope of protection, which extends to the spirit of the invention far beyond the literal expression of the computer instructions or software code itself.

Trade secrets are also considered when it comes to software protection – however, trade secret protection is relevant only for confidential data including algorithms, models or formulas fundamental to a software / program code. A significant point for ensuring data confidentiality includes having developers working on the innovative concept to sign a confidentiality agreement, and the company taking the measures to keep the data confidential. Also, it is important for the confidential information not to be included as part of the patent or copyright registration as this would disclose the information to the public and renders any trade secret protection moot.

Conclusion

IT innovations are subject to sophisticated technical and legal considerations when it comes to IP protection. IT innovations should be assessed by patent attorneys (coming with a technical/engineering background) specialised in the ICT sector who would define a clear IP protection strategy for the IT innovation at the outset clearly defining the various technical components of the innovation, and the appropriate IP legal vehicle to protect each one of these components – trade secret, copyright and/or patent. An IT innovation may be subject to a comprehensive IP protection strategy combining the three main IP vehicles, knowing patent, trade secret and copyright. Patent and trade secret protection should be assessed first before any copyright registration as the latter would put the invention and the code in the public domain rendering any such patent or trade secret protection moot. This is an important step which must not be underestimated. Any misstep at this level might lead to irreversibly compromising the possibility of obtaining suitable IP protection of the IT innovation.

Al Tamimi & Company's Patents & Designs (IP) team regularly advises in securing legal protection for innovative products and technologies resulting from R&D in a wide range of industries including engineering and life sciences. For further information please contact [Ahmad Saleh](#).