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INTELLECTUAL PROPERTY RIGHTS IN AZERBAIJAN

An abbreviated guide



*The Copyright Agency of the
Republic of Azerbaijan*



*State Committee for Standardization,
Metrology and Patent of the
Republic of Azerbaijan*

Date of publication: October 30, 2009

Guide to Intellectual Property Rights in Azerbaijan

Introduction

Dear Reader,

The importance of intellectual property in the development of the economy of Azerbaijan has increased enormously during the last few years and special attention has been paid to strengthening the enforcement of intellectual property rights. This has valid reasons – copyrights, related rights, patents and trademarks play an important role in the development of society and technology today. At the same time, enforcement of the intellectual property rights can be problematic. In order to face these problems, one should be aware of the system of protection for intellectual property rights.

This brochure, “Guide to Intellectual Property Rights in Azerbaijan”, introduces some of the main principles of protecting intellectual property rights. It will help clarify many issues on this subject, as well as dispel any mistaken ideas.

NOTE: The “Guide to Intellectual Property Rights in Azerbaijan” is available free of charge in Azerbaijani, Russian and English. It is published within the Swiss-Azeri Project on Intellectual Property Rights Enforcement financed by SECO.

The present brochure has been prepared in close collaboration with the Copyright Agency of the Republic of Azerbaijan and State Committee for Standardization, Metrology and Patent of the Republic of Azerbaijan. We would like to thank Mr. Gunduz Karimov, PhD., an attorney with Baker & McKenzie and registered trademark attorney for his valuable contribution to the brochure (gunduz.karimov@bakernet.com).

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Intellectual Property (IP)

Give your creative ideas a future!

Whoever has a bright new idea, persists in developing it and manages to make it a practical reality should be able to protect this innovative achievement as intellectual property.

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The very nature of creative ideas and assets of an immaterial nature lends them to being easily copied and misused.

Intellectual property laws offer efficient legal protection against this.

Specific features of IP Rights

All goods and services have various features which can be protected by an appropriate intellectual property right. For instance, copyrights protect software, creative information collections of various types, scientific and literary works, and art and music compositions. Performances, phonograms and transmissions by broadcasting companies, on the other hand, are protected by related rights. Innovative achievements are protected by patents while a logo or name identifying and advertising a good or service can be protected by trademarks.

Patents protect inventions that are based on a product or a process through which they are produced. The unique form of an object or its appearance can be protected as a design. A registered trademark protects the logo or name identifying and advertising a good or service.

Objects that cannot be protected by copyright or industrial property rights can be protected as non-traditional objects under special protection rights. Such objects include integral scheme topographies, information collections protected by special protection rights, and traditional cultural patterns (folklore patterns).

In addition, objects protected by copyright can also be protected under unfair competition and commercial secrecy laws.

What does the term ‘intellectual property rights’ mean?

In general, intellectual property rights are rights to the results of an intellectual activity realized in an objective form.

“Intellectual property (IP) rights” is a term that includes rights to objects of copyright and related rights, (such as audiovisual works, performances, phonograms, broadcasts), integrated circuit topographies and information collections, inventions, utility models, designs, trademarks, geographical indications, company names, know-how under the commercial secrecy laws, as well as rights to other objects created as the result of intellectual activity in the field of science and literature. The core objectives are to:

Grant the owner of an IP right the legal means to exclude another person, including a competitor, from unlawfully using it for economic gain. This includes, particularly, the production, use, sale, making publicly available (including as a gift!) and advertising the protected goods or services. Once obtained, owners have the right to sell, rent (license), lease or inherit the rights like any other item of trade with some exceptions as set forth by legislation.

Create an important source of information for businesses, researchers, developers and anyone else in the business of creating new ideas.

Provide an important basis for the professional marketing of a good or service and its reputation.

Strategy of Protection

If you want to protect the idea(s) behind any goods or service optimally, you must define a strategy for protection. This re-

quires answering some fundamental questions:

Defensive or offensive strategy for inventions? Should the know-how (commercial secrets) be kept confidential, or should it be patented (and thereby announced to the public)?

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Is protection even necessary? Is abuse of the intellectual property actually imminent? What exactly needs protection? An invention? A trademark? A design? Or everything together? And how does it need to be protected? Should the clever form of a bottle be protected as a design or as a three-dimensional trademark?

How should the protection and defence of the rights be defined? For example, for what kind of good or service should a trademark be registered?

In which countries is protection and defence necessary? The answer depends on a variety of factors such as the distribution channels, the regional or local representatives, or the desire to insist on a right in a particular country.

Building up an effective IP strategy requires a solid knowledge of the intersection of various intellectual property rights.

Don't forget!

Copyright or related rights come into existence at the moment a work or a perceptible form of a work has been created. Therefore, registration is not mandatory. However, in order to provide more reliable protection and legal defence it is recommended that works and objects of related rights be registered with the Copyright Agency of Azerbaijan Republic.

When the work or object of a related right is registered, the

author (right holder) shall receive a certificate of registration for that work or object. In case of a dispute and lacking other evidence, the certificate shall act as the legal grounds.

The rights to inventions, designs and trademarks must be formalized. To do so, it is necessary to apply to the State Committee on Standardization, Metrology and Patent.

“First come, first serve”--protective rights belong to whoever first registers (whether trademark, invention, or design).

Deadlines for payments, submissions, maximum terms of validity, etc. start from the date of the first application filing. The so-called “priority period” also begins here. During this time, an applicant can also apply for trademark, patent or design protection abroad as well without another person encroaching on him claim to novelty (subject to local procedures).

In case of litigation, it is essential to consult an expert. It is generally up to the judge to rule on the existence of a previous right. For trademarks and patents a formal procedure for filing opposition exists.

Objects of intellectual property rights are protected for a limited period. Works and objects of related rights whose protection period has expired shall be transferred to public domain. Trademarks are an exception: They can be indefinitely renewed in Azerbaijan.

IP rights are country-specific (the principle of territoriality): A trademark registered in Azerbaijan is only protected in Azerbaijan. For protection in other countries, it must be registered again.

Be aware:

Registers of intellectual property rights and information databases by private companies and non-governmental organizations are optional and do not have legal effect.

There may be private companies which offer to register industrial property rights in so-called info registers or commercial trademark, index or internet databases. However, the only legally binding protection in Azerbaijan is registration in the state registers maintained by the State Committee of the Republic of Azerbaijan on Standardization, Metrology and Patents and the State Copyrights Agency of the Republic of Azerbaijan. Registration in private registers and databases offer no legal protection under any circumstances.

Copyright

What is copyright?

Copyrights refer to the rights associated with literary, artistic and scientific works.

Copyright is an objective term referring to a collection of legal norms which regulate relations between the creation and the use of a works thus acting as a tool for protecting rights. Essentially they are personal (intangible) and property (economic) rights possessed by the creator of a works. These rights have an exclusive character.

Only the form of the work, not its content is protected, i.e., the object of the protection is the work and not the idea or the concept expressed by the work. To illustrate, under the copyright law, a scientific treatise on Albert Einstein's theory of relativity is protected as a literary work but the theory as such is not.

The work is protected in the moment it is created. Thus, protection of the work is not dependent on registration. At the same time, legislation offers opportunities for registration of the work in order to build a "bridge" between the protection of the copyright and its defence in case it is infringed.

What are the practical advantages of copyright?

Copyright has high cultural-humanitarian importance, which benefits the public, and this is the main reason for recognizing these rights. Protecting copyrights creates the conditions for preserving cultural heritage, disseminating cultural values within the society, and fostering new creativity. At the same time, copyright (along with other intellectual property rights) has become an integral part of the knowledge economy and an important tool in economic development. The part of the

production in the world economy based on the copyright, amount to 7.3% (with yearly income for 5%).

Who owns the exclusive rights for the use of works?

Exclusive rights to use the work in any way or form belong to the author of the work or to other right holders, as set forth by the legislation (for example, if the work was created based on a task given at the work place, and if no other agreement exists between the employer and employee, then copyright belongs to the employer, to his legal successor(s) in case the author dies, or to assignees entitled in accordance with legislation).

“Exclusive rights for the use of a work” shall mean the implementation of the actions listed below, the granting of permission to implement those actions, or their non-prohibition by the author of the work or by some other person who holds copyright for the work:

- Right to reproduce: the right to reproduce the work in any way (manufacture of copies), independently of whether the original work is changed or not (such as internet downloads of music in MP3 format).
- Right to distribute: the right to offer copies of a work, to disseminate, or to put on the market in any way.
- Right to make accessible: the right to make a work accessible to the public through a communication network such as the internet for purposes of screen viewing, printing, downloading, etc.
- Right to perform and present: the right to publicly present, produce, perform or to make perceivable in any other way.
- Right to broadcast: the right to broadcast a work over the radio, television or similar type of installation
- Right to rebroadcast: the right to further transmit a broadcasted work with the help of technical installations which are different from the broadcasters original data carries (for example, cable TV)
- Right to adapt: the right to decide whether, when and how

a work shall be adapted and whether it may be used as the basis for the creation of a new work (i.e., derived works, such as translations).

- Right to translate: the right to translated to any language
- Rights holders can use technological measures such as copy protection to protect their works from illegal use: these measures are also protected under copyright.

What are works?

“Works”, in terms of copyright, are creations which have an individual nature. In particular:

- Literary works of any kind, from novels to scientific treatises, magazines articles and marketing brochures.
- Musical and other acoustic works.
- Works of the visual arts (painting, sculpture, graphics) and applied design (artistic objects with a use).
- Works with scientific or technical content such as technical drawings plans, maps or three-dimensional models.
- Architectural works.
- Visual and audiovisual works such as photographs and films.
- Choreographed works and pantomimes.
- Derivative works (translations, adaptations, annotations, analyses, summaries, reviews etc).
- Collections (encyclopaedias, anthologies, databases)

Exclusive rights holders can use technological measures, such as copy protection, to protect their works from illegal use: These measures are also protected under copyright.

Copyright is not applicable to ideas, methods, processes, systems, means, concepts, inventions, mathematical concepts or facts.

Protecting Software

Computer programs are protected under copyright as literary works. Protection of software is applied to all types of software expressed in any form and language including the preliminary text and code of the object, and including the operation systems.

Works that do not enjoy copyright protection?

- Official documents (laws, court verdicts, other texts of legislative, administrative and judicial character), as well as their official translation;
- State symbols and signs (flags, emblems, hymns, insignias, monetary signs, other state symbols and signs);
- National creativity (folklore) patterns;
- Updates of the day, data of information character about different events and facts.

Term of protection

Excluding circumstances explicitly defined by the Law of Azerbaijan Republic on Copyright and Related Rights, copyright takes effect the moment a work is created and lasts the entire life time of the author plus 70 years after the date of his/her death.

Holders of the exclusive copyrights to the work may register their rights by the State Copyright Agency of Azerbaijan Republic during the term for which the copyright is valid.

What are related (neighbouring) rights

Related rights are the secondary rights arising from the original copyrights, i.e. they are derived from copyright, and their duration is relatively limited: Related rights are protected for 50 years.

Related rights can be held by the following subjects:

- Performers (actor/actresses and musicians as related to

- their performance);
- Producers of phonograms (audio-video discs as related to voice recording);
- Broadcasters (as related to their audio and television broadcasts).

The main feature of the related rights is their derivation from and dependence on the copyrights. Related rights are recognized according to their compliance with the copyrights.

No formal procedure exists for the granting and enforcing of the related rights.

Producers of phonograms and/or a performer have the right to use the sign symbolizing the protection of related rights. This sign is shown on each copy of a phonogram and/or on the box in which it is packed, and has three features:

- A circled P latin letter - ©;
- The name of the related right holder;
- The year when the phonogram was first produced.

International copyright legislation

The Law of Azerbaijan Republic on Copyrights and Related Rights only protects copyright and related rights in the Republic of Azerbaijan. The administrative management is carried out by the State Agency of the Azerbaijan Republic on Copyright. However, there are also several international treaties which regulate the protection at an international level (such as the Berne Convention for the Protection of Literary and Artistic Works and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations).

Organizations collectively managing copyrights (sometimes referred to as “collecting societies”)

When the holders of copyright and related rights are not able to realise their rights individually (public performances, including on radio and television and reproduction via mechanical, magnetic or other voice recording method and other cases) in

accordance with the Law of Azerbaijan Republic on Copyright and Related Rights, they can establish organizations to collectively manage their rights.

Organizations that collectively manage copy rights may not engage in commercial activities. The authority to collectively manage rights is vested voluntarily to these organizations directly by the holders of copyrights and related rights based on a written contract or by becoming a member of such an organisation.

Organizations collectively managing such rights shall be registered with the Ministry of Justice and then be accredited by the Copyright Agency and their activity in the context of copyright legislations is supervised by the Agency.

Don't forget!

Making a copy of a lawfully published work without permission from the author or other holders of the copyright and without paying royalties, is allowed if the copy is meant personal use and without making a profit. However, it is not allowed to reproduce an architectural work, in the form of a building or other similar structure, databases and their parts, computer programs (excepting as described in the legislation), books (totally), musical notation, originals of fine art or copies of works publicly delivered through interactive processes or other reproduction that restricts the author's interests without grounds.

When reproducing an audiovisual work or phonogram for personal use without commercial gain, authors, performers, and producers of audiovisual works have a right to receive a royalty for their respective work.

The holder of an exclusive copyright may indicate his/her right to the work by using three elements on each copy of the work: circled © sign, name of the right holder and the year when the work was first published.

Derived works such as translations, film screen adaptations or musical arrangements (e.g., cover recordings) are also protected.

It is permitted to reproduce architectural works, photographs, works of fine arts that are located on publicly accessible ground (for example, photographing a statue).

If software is used more than one computer, then a license is required for each computer.

Quotation of parts of a lawfully published work for scientific, education, or other purposes as well as reproduction of the works in the volumes necessary for conducting judicial and administrative proceedings is allowed. In this case, consent of the author is not required and royalty is not paid. However, during the use, the name of the author and the source must be clearly indicated.

Overview of intellectual property rights within the framework of legislation on copyrights

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What is protected?	Works	Performance, phonogram or broadcast
How does it become protected?	Voluntarily registered with the Copyright Agency	Voluntarily registered with the Copyright Agency
Minimum conditions	<p>Must be original;</p> <p>Must be a result of a creative activity;</p> <p>Must exist in objective form.</p>	<p>Must exist in objective form</p> <p>Note: Unlike other subjects under related rights, each performer has personal (non-tangible) rights. This right to his own name and reputation is protected by law. Because of this, performances can be registered as a result of creative activity.</p>

**In accordance with the provisions of the Law on Protection of Azerbaijani Folklore Patterns, an electronic information database was established by the Copyright Agency within the framework of activities related with the collection of folklore patterns, their registration, systematization, and documentation. This work is being continued.*

Integral circuit topologies	Information collections	Patterns of folklore
Voluntarily registered with the Copyright Agency	Voluntarily registered with the Copyright Agency	* See: Footnote
<p>Must be original; Must be a result of creative activity.</p>	<p>Information collection protected by copyright must be original as a result of creative activity; To determine whether an information collection can be protected under special rights, the financial means and substantial investment in the form of energy and time are taken as a base; Must exist in objective form.</p>	<p>When using patterns of folklore their natural essence and content must not be impinged.</p>

What is protected?	Works	Performance, phonogram or broadcast
What are the exceptions?	<p>for personal use;</p> <p>for administrative and judicial purposes and for purposes provided for in the legislation.</p>	<p>for personal use;</p> <p>scientific research, polemic and information purposes;</p> <p>introduction of small parts for overviews of current events and for other purposes set forth in the legislation.</p>
Duration of protection	Maximum 70 years	Maximum 50 years
Indications of protection	<p>circled C Latin letter-©;</p> <p>name of the holder of the exclusive copyrights (physical or legal persons);</p> <p>year in which the work was first published</p>	<p>circled P Latin letter -Ⓟ;</p> <p>name of the holder of the related rights;</p> <p>year in which the phonogram was first produced</p>

Integral circuit topologies	Information collections	Patterns of folklore
<p>for personal use without economic gain as well as for evaluation, analysis, research or education purposes.</p>	<p>for use in scientific research works and for illustration in the education process; for the purposes of public safety or during administrative or judicial investigations.</p>	<p>Forms of use within the territory of Azerbaijan Republic is free. Use of patterns of Azerbaijani folklore abroad requires the consent of the State Copyright Agency (note that the international instrument for protection of folklore has not been adopted yet).</p>
<p>Maximum 10 years</p>	<p>Maximum 15 years</p>	<p>Unlimited</p>
<p>«™» printed letter ; date on which the protection of the topology began; name and (or) surname of the right holder</p>	<p>circled C Latin letter - ©; name of the holder of the exclusive copyrights for information collections (physical or legal persons); year in which the information collection was first published</p>	

What is protected?	Works	Performance, phonogram or broadcast
Filing fees (AZN)	<p>for registration of the work- 5 AZN;</p> <p>for registration of the contract on full or partial granting of rights related to the use of works (copyrights) - 7 AZN.</p>	<p>for registration of the object of related rights - 5 AZN;</p> <p>for registration of the contract on full or partial granting of rights related to the use of objects under related rights (copyrights) - 7 AZN.</p>

Integral circuit topologies	Information collections	Patterns of folklore
<p>registration of the voluntary transfer of rights to a topology and issuance of a registration certificate -5 AZN;</p> <p>for registration of the contract on granting property rights and issuance of the registration certificate - 7 AZN.</p>	<p>for official registration of an information collection -5 AZN;</p> <p>for registration of a contract on the full or partial granting of rights to information collections -7 AZN.</p>	

Patents

Why protect inventions, utility models and industrial designs?

Patents are rewards and incentives for research and development in all fields of technology. They encourage technical innovation and contribute to the growth and spread of technical knowledge. They are proof of the innovative strength of an enterprise and can be carefully used to advantage in tough competitive markets. In Azerbaijan patents are granted for inventions, designs and utility models.

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What are the practical advantages?

A patent gives its holder the right to prevent third parties from commercially using (i.e., manufacture, apply, use, sell, offer to sell or import) the invention described in the patent without express permission. The patent owner may, however, transfer the rights to someone else, either by selling the patent or by licensing it.

What is an invention?

Legally, an invention is something that uses technology to solve a technical problem.

What cannot be patented?

Ideas, concepts, discoveries, scientific theories and mathematical solutions, results of an artistic constructive solution (design), business methods, game rules, lottery systems, teaching methods and work plans, methods of presenting information, arbitrary symbols, schedules, rules, diagnostic procedures, therapies and surgical procedures (whether used on humans or animals), plant sorts, animal breeds and primarily biologically-based procedures used for breeding plants or animals are all not patentable. Finally, any invention, the use of which would be contrary to public order or morality, (for example, certain

biotechnological inventions) is not patentable.

Aesthetic creations are, by definition, not technological solutions and may be protected under copyright. Computer programs as such are protected under copyrights although inventions based on a computer program, such as electronic steering, are patentable.

Conditions for protection

Inventions have to fulfil three conditions in order to be patentable:

Novelty: An invention is novel when it is not already prior art. Any knowledge which is publicly accessible in any form, in any part of the world, before an application for a patent is filed is considered prior art. Before a patent application for an invention is filed, any knowledge which is publicly accessible in any part of the world shall be considered.

Industrial application: The invention must be industrially applicable, suitable for executing and reproducible.

Inventive step: The invention must not be obviously inferable from the current state-of-the-art. Characteristics of an inventive step are the simplicity of the solution, the unexpectedness of product features, or something that is counter to a common assumption.

Duration of protection

Inventions may be protected for a maximum of 20 years beginning from the date of the patent application. The first term of protection is 3 years; annual maintenance fees (“renewal fees”) are due thereafter.

Filing for a patent in Azerbaijan Republic

Patent protection must be applied for, using an application form preferably obtained online by downloading it at <http://www.azstand.gov.az>, or it can be requested from the Patent Department. A patent application includes a description of the invention, at least one formal patent claim and relevant drawings. The technical documentation must be in Azerbaijani language. The application must be submitted to the State Committee on Standardization, Metrology and Patent. The patent application is published in an official bulletin for 12 months after filing, and the patent is published at the same address upon granting.

Is the invention new and does it show an inventive step?

Once a national patent has been applied for, you can request a search to determine if your invention is new and inventive. More information about patent searches can be found under <http://www.azstand.gov.az> .

International filing

There are 2 ways to get a patent in other countries:

Directly applying in Azerbaijan through the local patent office

Be aware that the legal system, application formalities and examination and granting procedures vary from country to country.

Eurasian applications

A Eurasian patent can be applied for directly at the Eurasian Patent Organization in Moscow. One application/filing can grant protection in 9 different countries. More information about Eurasian patents can be found under www.eapo.org.

International protection (PCT applications)

The World Intellectual Property Organization (WIPO) in Ge-

neva offers an international patent application process which is based on the Patent Cooperation Treaty (PCT). With a PCT application, an invention can be protected in up to 141 treaty states. Information and filing for Azerbaijan can be done with the Patent Division.

The fees for patenting an invention are independent from the type of application or the number of countries designated for protection. The only variable cost is for the translation of the patent documentation, although international negotiations (e.g. PCT) have recently found ways of greatly reducing such costs.

Don't forget!

File first, then talk! An invention which has already been made public in any form before the application is not patentable. Third parties can further develop the invention.

Patents secure investments in research and development. In return for the right to patent, the information in the patent is disclosed. This allows a certain control over technological development and creates a high degree of transparency which in turn contributes to research and technological progress.

Designs

Why protect industrial designs?

Design (composition) touches our senses, affects our emotions, creates identity, and distinguishes one thing from another. Design has become one of the decisive marketing factors for these reasons, and counterfeiting designs has become one of the preferred forms of product piracy.

What are the practical advantages?

The designs protection law prohibits other people from using the same or similar design for commercial purposes. “Use” includes manufacturing, storing, offering, putting on the market, importing, exporting, or transporting a design as well as simply possessing it for these purposes.

What is an industrial design?

The legal definition of design includes the exterior form of a product or some part of it. Form is characterized by the arrangement of lines, contours, colours and surfaces or by the material used. In short: Only the exterior form of an object is protected by design rights. Examples are: consumer items such as cutlery and toothbrushes; industrial designs such as locomotives or production installations; detail designs such as watch faces, fabrics, or part of the chassis of an automobile.

No protection

Designs which cannot be protected are those which are exclusively a result of the technical realization of a function (for example, the threads on a screw) or which go against a national law (such as the protection of insignia), a national agreement or public policy or morality. Design protection also explicitly does not include methods of production (for example a particular way of manufacturing clothing), utilitarian purposes (such as a flow chart) and technical functions. Such things are protected as inventions.

Duration of protection

Design can be protected for a maximum of 10 years. A term begins on the day of official registration of the application filed with the State Committee on Standardization, Metrology and Patent for the registration of an industrial design.

Conditions of protection

Creative designs can be protected when:

- The design is new. “New” means when no other identical design has been published before filing the application for deposit.
- The design is distinctive (original). Distinctive means that the design has important features which distinguish it from other designs.
- Industrially applicable. Industrially applicable means it can be repeatedly produced.

In cases of conflicting interests, the courts are obligated to decide exactly what constitutes these aspects.

Don't forget!

Designs protection is independent from the dimensions of the design. In other words, a scaled model is protected just the same as the original (which is why the scale is not indicated).

Utility models

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What is a utility model?

The legal definition of a utility model is a new constructive (technical) solution for a means of production, a consumer good or its components if the functional peculiarities are utility, or intended to give practical advantages. A utility model is somehow similar to a patent, but the requirements to get the utility model are less strict. Other terms are used for “utility models” such as “small patent” or “innovation patent”.

What are the advantages of a utility model?

A utility model gives its owner the right to exclude unauthorized persons from using his/her product (appliance) for up to 10 years. “Use” means putting on the market any product in which the patented utility model has been used, as well as the use of the application process protected by a patent.

Why protect a utility model?

It is necessary to register a utility model in order to assert the rights of an inventor and to exploit other advantages.

No protection

Utility models which cannot be protected are those which go against public interest, principle of humanity or morality. Utility model protection also explicitly does not include processes, substances, strain of microorganisms, cultures of plant or animal cells, and also the use thereof for a new purpose, as well as scientific theories, mathematical methods, outcome of an artistic constructive performance (design), methods of organization and execution of intellectual and business activity, rules and methods for playing games, algorithms and programs for computers, methods of presenting information, symbols, schedules and rules, projects and plans for structures and buildings and for land development, plant varieties and

animal breeds, layout designs of integral circuits, methods for diagnosing illnesses, methods for therapeutic and surgical treatment of humans or animal organisms.

Conditions of protection

Utility models can be protected when:

- The utility model is new. “New” means when no other identical utility model has been published before filing the application and it contains significant features which are unknown in the existing data. Industrially applicable.
- “Industrially applicable” means it can be produced and used in any field of industry or economy.

Trademark, Technology and Patent Searches

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Intellectual property registers as sources of information

Registers of intellectual property rights are immense databases containing an unbelievable amount of information. An estimated 80% of the world's technology information is available somewhere in one of the over 74 million patent documents in existence – information which can be retrieved through data searches and interpreted, making it an invaluable resource for strategic decision making in commercial, marketing and legal matters.

Trademark and patent searches in Azerbaijan can determine if an already existing protective right is being infringed. In Azerbaijan the procedure for examining patent applications (even if an optional prior art search is requested) or trademark registration is also available.

Narrowly defined searches (such as for state of the art or registered trademarks in a certain product area) can facilitate work processes in research, development or design creation while avoiding dead-end or copycat development.

Searches also lend themselves to monitoring or analyzing competition or certain sectors and for identifying trends.

The State Committee of the Republic of Azerbaijan on Standardization, Metrology and Patent has its own database of patents and trademarks. However, this database does not make it possible for a person who is not a specialist in the field to conduct simple preliminary searches through the intellectual property registers. Searches can be ordered via registered trademark attorneys in Azerbaijan whose names are available at www.azstand.gov.az

Trademarks and Geographical Indications

Why protect trademarks?

A trademark is absolutely the identifying feature of a goods or service. For that reason, trademarks represent valuable capital in which a lot of money and time are often invested for building up and maintaining market recognition

What are the practical advantages?

Trademark protection gives the owner the exclusive right to use a mark for identifying goods or services and to make this mark available to others (for example, through licensing). The trademark owner can prohibit others from using a similar or identical sign for similar or identical goods or services as long as there is a risk of confusion.

What is a trademark?

Legally speaking, a trademark (or mark) is a graphic sign that is capable of distinguishing the goods or services of one business from those of other businesses. Trademarks cover a very wide and diverse group, they can be very wide and diverse.

Forms of marks

Trademarks can be registered as words (e.g. Kral), personal names (e.g. Jale), letters (e.g.), numerals (33), figurative elements, shapes of goods or packaging and combinations of colors. Any combination of such signs (e.g. 7 gozel) can also be protected.

Types of marks

Individual marks for single companies for one good or service. Collective marks which indicate the legal affiliation of a company (or its goods or services) to an organization (such as the Pharmacists Association).

Special types of trademarks

Accepted trademarks: Descriptive signs can be protected if they have achieved general acceptance as a trademark for the goods or services of a particular company by the public (e.g., AZEL).

Public domain: Trademarks can mutate to generic indications through years of market presence and thereby lose their protection (for example, “xerox” (kseroks in Azerbaijani”) for photocopying services).

Trademarks of wide repute: Well-known trademarks, such as Ferrari, Coca-Cola or Cartier are protected from exploitation by third parties even for classes of goods and services they are not registered for, provided that they are recognized as well-known trademarks in Azerbaijan.

Internet domain names: Assigning and registering domain names for the country codes “.az” is under the authority Network Technologies (www.nt.az) and Extra Web (www.extraweb.az) . Domain names can also be registered as trademarks under the usual conditions.

Indications of Source: Certain goods or services are distinguished from others by the geographical origin indicated, NOT by the manufacturer. There is a difference between indications of direct source (e.g., Azeri carpet), indirect source (e.g., Azerilme) and qualified geographical indications of origin (e.g., “Badamli” for mineral water).

No protection

Signs that belong to the public domain cannot be monopolized; for example, signs such as single letters of the alphabet or numbers, provided that they have not yet gained the benefit of being differentiated by the public as trademarks, abbreviations that stand for something, or descriptive logos (such as “4x4”, “AGS”).

National and international insignia may only be used as trademarks by institutions or enterprises directly affiliated with the government already using the identifying insignia.

As a rule, single colours cannot be protected. Exceptions are colors that have become accepted as a trademark for the

goods or services for which they are claimed.

What is a geographical indication?

A geographical indication is a sign that indicates the relationship of the commodity to the country of origin or region in the territory, or indicates the connection of the product to a location within this territory, its special quality, reputation or other features.

Duration of protection

Trademarks and geographical indications are protected for 10 year terms from the date of application and can be renewed indefinitely for periods of ten years at a time.

Registration of trademarks in the Republic of Azerbaijan

Trademark protection must be applied for a completed application form, including the classification of goods and services being claimed for protection, and a good reproduction of the trademark must be submitted to the State Committee of Azerbaijan on Standardization, Metrology and Patent. Application forms can be downloaded at www.azstand.gov.az.

Conditions for protection

In general, according to the law, any sign capable of being represented graphically can be considered a trademark as long as it is distinctive.

A trademark should not be descriptive: i.e., it should not include any indications of the material, the quality, the type or place of production, or the purpose or price of the good. (An example: “NAR” may not be used as a trademark for pomegranate or fruit, however, it can be registered as a trademark for a telecommunications business.)

A trademark may not be contrary to public policy or morality. In other words, a trademark may not offend the customs, morality, religious values or cultural sensibilities of a minority, nor impact diplomatic or international relationships.

A trademark may not make any misleading claims.

Industrial property rights at glance

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What is protected?	Trademarks Signs registered to prevent misuse by a third party
How should it be protected?	Must be registered in the register of trademarks
Minimum requirements	Other rights must not be infringed Must be distinctive Must be descriptive Must not contradict state policy and moral
No protection available for	Abridgements Names of objects Insignias and etc.

<p>Inventions Inventions, i.e. new technical solutions for technical problems</p>	<p>Utility models Household appliances, devices, technical solutions directly applicable to devices</p>	<p>Industrial designs Appearances i.e. of a product</p>
<p>Must meet requirements for granting a patent</p>	<p>Must meet requirements for granting a utility model</p>	<p>Registration in the register of industrial designs</p>
<p>Novelty industrially applicable Level of inventiveness Disclosure of the essence of the invention</p>	<p>Novelty Industrial applicability</p>	<p>Novelty industrially applicable Must not contradict state policy and moral</p>
<p>Scientific theories Mathematical models Results of artistic construction of works Results of economic and intellectual activity Rules and methods of games Computer algorithms and programs Methods of information presentation Conditional signs, tables and rules</p>	<p>Processes Substances Micro organism strains Planting cultures and animal cells, or the use of such for new purposes</p>	<p>For purely technical purposes Ideas and concepts Anything contradicting existing legislation or agreements</p>

What is protected?	Trademarks
What are the exceptions?	Personal use only
Volume of protection	Defined by signs and class of the goods and services
Period of protection	10 years (with 10-year terms of renewal)

International registrations: the Madrid System

This application procedure makes it possible to extend the protection granted under Azeri law to other countries or organizations which have signed an international agreement referred to as the Madrid Agreement and the Madrid Protocol. The extension of protection can be requested at the State Committee of the Republic of Azerbaijan on Standardization, Metrology and Patent.

Inventions	Utility models	Industrial designs
<p>Structures, buildings, territorial projects, and planning schemes</p> <p>Integral scheme topology</p> <p>Animal species, plant diversity</p> <p>Diagnostic procedures, therapies or surgery procedures on human beings or animals</p> <p>Those that contradict public order, law or morality;</p> <p>bio-technological inventions</p>		
<p>Personal use, scientific research, education</p>	<p>Personal use only</p>	<p>Personal use only</p>
<p>Defined in patent specifications</p>	<p>Defined in patent specifications</p>	<p>Defined by description</p>
<p>Maximum 20 years</p>	<p>Maximum 10 years</p>	<p>Maximum 10 years</p>

What is protected?	Trademarks
Indicators of protection	® registered trademark Not for use Violations punishable under law
Registration fees * (AZN)	Registration – 10 AZN (preliminary examination) +50 AZN (substantial examination for granting trademark)
Renewal /maintenance fee * (AZN)	Renewal - 95 AZN for 10 years
Only for Azerbaijan	Search recommended

* This sum does not include any legal fees to patent attorneys.

Inventions	Utility models	Industrial designs
Preliminary payment - 26 AZN	Preliminary payment - 23 AZN	Preliminary payment - 23 AZN
<p>For patent after the second year since the registration of the patent application for invention, applicant is obligated to pay the annual service fee: 5 AZN for the period from 3-to 10 years, escalation for the subsequent year (increase) the fee is 3 AZN; 40 AZN for the period from 10-till 20 years, escalation for each subsequent year (increase) the fee is 4 AZN.</p>	<p>Sliding fees: Annual maintenance fees due beginning 3 years after filing date are 5 AZN from year 3 to 10. Beginning year 10, additional 3 manat per year is required.</p>	<p>Sliding fees for designs: Annual maintenance fees due beginning the 3rd year after deposit are 5 AZN up until year 10. After year 10, fees increase 3 AZN.</p>
Search recommended	Search recommended	Period of publication - 6 months

Non-traditional intellectual property

“Non-traditional intellectual property” shall include integral circuit topologies, information collections and patterns of folklore. Administrative management of the special legislation on this area of intellectual property is carried out in Azerbaijan by the Copyright Agency.

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Integral circuit topologies

According to the legal definition, topology is a three-dimensional disposition resulting from the position of layers of material to create a semiconductor. Only the exterior form of the topology is protected, not the electronic function of the semiconductor.

“Integral circuit” shall mean electronic information implementing, completely or partially, the functions of electronic circuits made of inter-electronic relation elements prepared in a non-dividing manner from each other on the surface and (or) volume of layers.

Legal protection applies only to the original topology.

Exclusive rights for the use of a topology are valid for 10 years and its author, or right holder, can voluntarily register the topology with the Copyright Agency of Azerbaijan Republic.

The law of Azerbaijan Republic on the “Legal Protection of Integral Circuit Topologies” was adopted 31 May 2002.

Information collections protected by special protective rights

What is included under the term Information collections?

In accordance with Article 1 of the law of Azerbaijan Republic on the legal protection of information collections, “information collections” shall mean the objective form of presentation for works, databases and other materials accessible electronically or by other means and compiled in systematic or methodic manner.

Information collections have dual protection: Information collections which are the result of creative activity for the selection and placement of information are protected under copyright. Information collections that requires large investments for preparation, verification and compilation of the content and that do not have signs of creativity are protected under special protection. In other words, large investments of financial means, time and energy are considered the criteria for protection of the information collection by special protective rights. In this case the novelty of the information collections is not mandatory.

Exclusive rights to the use of an information collection, unless otherwise envisioned in a contract concluded between the parties, shall belong to the employer with the employee being the author. Regardless of who holds property rights to the information collection which is the object of the copyright, personal (non-tangible) rights shall belong to the author.

Exclusive right(s) holder(s) to information collections, including to those protected under special protective rights, or the producer(s) may officially register such rights with the State Copyright Agency during the period when such rights are valid. (Excluded are cases involving information designated as state

secrecy). A contract designating all or some of the rights to an officially registered information collection may be registered with the relevant state authority in accordance with the appropriate procedures.

Patterns of Azerbaijani folklore

Patterns of verbal art, national music, national games and dances, national crafts and patterns of applied art (those in material and non-material form), as well as patterns of other national creativity are considered folklore patterns. As patterns of creativity, the folklore patterns are protected as products of intellectual creative activity based on tradition and transferred from one generation to the next. The use of folklore patterns is free, however, this use must not change their natural essence nor damage their content.

The World Intellectual Property Right Organization (WIPO) and UNESCO have been discussing the issue of preservation of folklore patterns for a long period of time, summarizing national experiences and trying to draft international instruments that would provide protection for folklore patterns. UNESCO has focused on identification, documentation, dissemination and other issues related with folklore patterns. “Recommendation on the Safeguarding of Traditional Culture and Folklore”, adopted by UNESCO in 1989, also envisioned main directions for the preservation of folklore classifications, and the issues mentioned above occupied an important place in this document.

WIPO, on the other hand, is engaged in establishing legal instruments for protection by granting a type of intellectual property rights to the objects of cultural heritage for their legal protection. WIPO also created certain conditions for folklore works alongside authorship works by introducing amendments into Article 15(4) of the Berne Convention for the Protection of Literary and Artistic Works during the diplomatic conference

held in Stockholm. A model for provisions on the illegal use of folklore patterns, proposed in 1982 by WIPO (Draft Treaty, and the model provisions for national legislations on protection of folklore from unlawful use and harmful actions, prepared together with UNESCO in 1985), can be regarded as important steps in this direction.

Since 1992, specialists have concluded that it is not possible to provide legal protection of folklore through copyright and that special protection («sui-generis») is needed. Such protection is supported by UNESCO and WIPO. WIPO has also established a permanent inter-governmental committee on genetic resources, traditional knowledge and folklore. Several special expert sessions regarding the legal protection of folklore were held in 2001-2009, and, as a result, an improved national legislation model for the legal protection of folklore was drafted and a text of a new international convention has been submitted for discussion. At the same time, the UNESCO recommendations on the preservation of intangible cultural heritage (including patterns of folklore) discussed during recent years has influenced legislation on a national and international level. The results of the discussions also have an important significance for Azerbaijan with its rich folklore traditions. It should be noted that, within the Eastern Europe and CIS, Azerbaijan was the first to enact a law on the legal protection of folklore patterns in 2003.

Cases violating the procedure for using expressions of Azerbaijani folklore can be filed with the Copyright Agency.

Contact

State Committee of the Republic of Azerbaijan on Standardization, Metrology and Patent

The State Committee of the Republic of Azerbaijan on Standardization, Metrology and Patent is the centre for all industrial property rights in Azerbaijan and, depending on the procedure, for international registrations. It examines national applications, grants protective rights and administers the various registers.

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Copyright Agency of the Republic of Azerbaijan

The Copyright Agency of the Republic of Azerbaijan is the relevant authority for all questions regarding copyrights, related rights, integrated circuit topographies, information collections, and patterns of folklore in Azerbaijan. The Agency implements a state policy, ensures normative-legal regulation, and coordinates activities in the field.

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Swiss State Secretariat for Economic Affairs (SECO)

The State Secretariat for Economic Affairs (SECO) is a part of the Ministry of Economy of Switzerland. Its Foreign Economic Directorate is SDC's partner in implementing and coordinating Swiss development cooperation. Its mandate is to foster sustainable economic growth and poverty reduction by promotion market-based economies, supporting conducive regulatory and economic policy conditions and enhancing the integration of developing and transition countries into the world economy.

Azerbaijan, as a member of the Swiss Constituency in the Bretton Woods institution, is an important country for SECO financial cooperation projects.

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Swiss Federal Institute of Intellectual Property

The Federal Institute of Intellectual Property in Bern is the federal authority for all questions regarding intellectual property rights. It is also the center for all industrial property rights in Switzerland (also for patents in Liechtenstein) and, depending on the procedure, for international registrations. The Institute examines national applications, grants protective rights and administers the various registers. For information about intellectual property rights:

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