

# IP isn't rocket science (unless it is)

You may be surprised at how many aspects of an idea or business can be protected. Your name and logo, designs, inventions, works of creative or intellectual effort or trade marks that distinguish your business can all be types of IP

## Software is patentable

Provided that certain conditions are met, software can be patented in the UK, Europe and other jurisdictions around the world. Be aware that the requirements for software patentability may be different in different jurisdictions; what may be ineligible for protection in Europe may be patentable in the US, and vice versa. In a similar vein, what may have been considered ineligible for protection in the past may now be considered patentable in the right circumstances.

## Don't get left behind your competitors

Patents aren't just for big businesses and can be even more important to protect your market as an SME. Our recent in-depth research into trends in AI patent applications in Europe over the last 20 years indicates that there is significant growth from companies filing only one or two patent applications in any given year. **Marks & Clerk is a market leader—our success rate in securing granted AI patents at the European Patent Office is consistently higher than market average.**

## Don't disclose too soon

In the UK and Europe, **you can't get a patent for something that has already been disclosed outside of a confidential setting.** Consider whether you want to get protection for your invention before going to market.

## Ensure ownership is clear (and what you want!)

Many digital innovations are developed in collaboration with other experts. If your invention has been developed in collaboration, or using contractors, ensure there is no doubt that you own the rights you think you do.

## Beware reliance on copyright

Copyright may not offer you the protection you think it does. Copyright is a much less robust form of protection than a patent and has more stringent requirements when you seek relief—for example, **reliance on copyright protection means you must prove that direct copying occurred.** In contrast, a patent is infringed when an unauthorised party (the “infringer”) works your invention even if the infringer did not copy from you.

## The importance of record keeping

Make sure you keep record of when something was created. In the case of software, **consider putting source code in escrow.** Good record-keeping helps prove when something was created, which can in some countries even affect who is entitled to a patent. In addition, it can also help you to identify inventions which you may otherwise have overlooked.

## Are you free to operate in your market?

Although digital innovations can be patentable, innovators sometimes choose not to pursue patent protection. Regardless of whether you wish to pursue patent protection covering your digital innovation, others may have, or may do in the future. Even if you are not interested in obtaining a patent for your product, do you know if you are infringing anybody else's rights? **A freedom-to-operate opinion can set your mind at rest** before you enter the market.