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Argentina IP Country Factsheet

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1. IPRs in Argentina for SMEs: BACKGROUND

   Intellectual Property (IP) refers to all creations of the mind, such as images used in commerce or music. IP is usually divided into two categories, namely Industrial Property, which relates to inventions, designs or signs used in commerce; and Copyright (or ‘author’s right’, according to some non English definitions), which relates to literary and artistic works.

   Intellectual Property Rights (IPRs) are exclusive rights. As such, they confer a temporary monopoly over creations on the right holders, granting them exclusivity on the use and exploitation of their intellectual creations and also the right to prevent any unauthorized use by third parties.

   Therefore, this protection system allows creators or owners to benefit from their own intellectual work or investments in creations and innovations, as well as to protect their moral and economic interests resulting from the authorship of scientific, literary or artistic productions.

   The following IP rights are further developed throughout this factsheet, focusing on Argentinean particularities: Copyright, Patents, Industrial Designs and Trademarks. Other IP rights such as Geographical Indications, Appellations of Origin and Plant Varieties are addressed in other factsheets (please see website).

   All the aforementioned examples of IP features are considered “intangible assets”, together with other IP-related terms such as licenses, trade secrets or know-how. All intangible assets are defined by a lack of physical substance and the ability to generate future economic benefits.
Nowadays, IPR, as intangible and valuable assets, have become a key factor for innovative SMEs seeking to internationalise, for they provide market exclusivity, allow them to recoup their investment in R&D, allow the negotiation of licence and transfer agreements related to IPR, and can facilitate the access to third party technologies. SMEs that are interested and concerned about their intangible assets and IPR generally have better chances to find new investors, build a better enterprise image, access new markets more easily, and thus increase their value.

TIPS and WATCH OUTS

It is useful to check the European Commission’s TRADE website for information on trade barriers and market access:

http://madb.europa.eu/madb/indexPubli.htm
http://madb.europa.eu/madb/barriers_result.htm?idSps=false&countries=AR

It is likewise desirable to check with your local Chamber of Commerce and/or other support services before making business decisions as regards exports or investments in Argentina.

B. How does Argentina’s IP legal framework compare to INTERNATIONAL STANDARDS?

Argentina is member of the following international conventions and agreements:

- Paris Convention for the Protection of Industrial Property (more information here)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (more information here)
- International Convention for the Protection of New Varieties of Plants (UPOV- 1978 act) (more information here)
- Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (more information here)
- World Intellectual Property Organization (WIPO) Convention (more information here)
- WIPO Copyright Treaty (WCT) (more information here)
- WIPO Performances and Phonograms Treaty (WPPT) (more information here)

However, it is noteworthy that Argentina has not ratified the following ones:

- Trademark Law Treaty (TLT) (more information here);
- Singapore Treaty on the Law of Trademarks (more information here)
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (more information here)
- International Convention for the Protection of New Varieties of Plants (UPOV- 1991 act) (more information here)

Additionally, take into account that Argentina is not a member of the Hague Agreement, the Patent Cooperation Treaty and the Madrid System. Therefore, if your company is interested in applying for a design, a patent or a trademark you will not be able to extend your international registration to Argentina. In these cases, a separate national IPR registration will be required.

2. IP Rights in Argentina: THE BASICS

A. Copyright and related rights

Copyright and Related Rights

Copyright protects intellectual works, both original and derivative works (such as adaptations, translations, compilations, etc.), whatever their genre, form of expression, or merit. Any scientific, literary, artistic or didactic production is subject to protection, regardless of the way it is reproduced. Copyright protection extends to expressions, not to ideas or concepts themselves.

It provides the owner with both economic and moral rights over his/her creation.

Copyright in ARGENTINA: What you need to know

The following are some examples included in Argentinian legislation: scientific, literary, and artistic works, including computer programs (source and object code), compilations of data (databases) and other materials; dramatic works, musical and dramatic-musical compositions, cinematographic and choreographic works; drawings, paintings, sculptures, architecture; artistic and scientific models or works intended to be used in commerce or industry; printed matters, plans, and maps; plastics, photographs, engravings and phonograms...

Copyright grants economic rights, as well as the so-called moral rights
Economic rights, derived from the property of a work, grant the author the power to make available or to exploit his/her work, and to authorise the use, adaptation, and translation, amongst others, of the work.

Therefore, performing or producing any of these activities on a copyright-protected work is not permitted without the explicit consent of the author or somebody with similar authority.

Performers, producers and broadcasters also benefit from a series of rights set out in the law.

Moral rights consist basically of the right of disclosure, the right to claim authorship of the work, and the right of integrity of the work.

Rights of disclosure means that the author has the authority to decide whether the work shall be disseminated and the form in which it shall be disseminated, or whether it shall remain confidential.

On the other hand, the right of integrity of the work consists of the author's authority to prevent third parties from modifying his/her work, totally or partially without consent.

The right to claim authorship of the work means that the author has the right to be considered as such, i.e. the author's name or pseudonym must appear alongside the work.

Copyright is acquired automatically by the mere act of creation; no formal registration is needed. Nevertheless, the registration of the work offers many benefits to protect these rights, hence ensures greater legal certainty to the author.

By registering the work, the exact date when it was created and its contents are certified; furthermore, it is a presumption of authorship granted by the government.

How LONG does legal protection last?

Generally, economic rights on works last the lifetime of the author and belong to his/her beneficiaries for seventy years, calculated from January 1st of the year after the author’s death.

HOW do I register?

In order to formally register your creation(s) you need to submit the forms that correspond to each type of authorial work, together with the required documentation for each case before the National Directorate for Copyright (DNDA). In addition to this, you have to pay administrative fees.

Required information and documents

Necessary procedures, forms, and fees vary depending on the type of work that you intend to register. In order to obtain information about the different requirements, we recommend visiting the website of the Ministry of Justice and Human Rights of the Argentine Republic.

The National Directorate for Copyright (DNDA) comes under the Ministry of Justice and Human Rights of the Argentine Republic (see Section 6 for further details).

WHO can register?

The registration can be carried out personally, or through a duly authorised legal representative. No special domicile in Argentina is required.

Any natural or legal person may become the holder of a copyright. However, only natural persons may be considered as the author of an intellectual work, thus entities may only be derivative holders of the intellectual work. In those cases where the registration of the work is not personally applied for by its author, the applicant shall be required to explain the reason why he/she acquired the rights.

TIPS and WATCH OUTS

Although the National Directorate for Copyright is the official office to register all the works covered in the Copyright Act, other delegated offices process some specific types of applications:

- Books: Argentina Book Chamber (CAL)
- Software: Chamber of Software and IT Service Companies (CESSI)
- Musical works: Argentine Society of Music Authors and Composers (SADAIC)

Which LANGUAGES can I use?

The application form and other relevant required documents must be submitted in Spanish.
How much does it COST?

A form must be submitted for each of the works to be registered. The price of this form varies, depending on the type of work. The cost of registering may vary from approximately €1 to €9, depending on the type of work and on whether it has been published or not. If the work has been published, the price may be subject to additional taxes as well, depending on the cost price and number of copies. Further information can be found on the National Directorate for Copyright website.

B. Patents

WHAT are patents?

Argentina’s IP system provides protection for Patents and Utility Models.

A patent is an industrial property right granted by the government to the creator of an invention that meets the legal requirements. The inventor is granted the right to prevent third parties from exploiting the work commercially or industrially throughout the national territory of Argentina for a term of 20 years, from the filing date of the application, on the condition that the inventor reveals to the public the technical information about the invention in a patent application.

Patents in ARGENTINA: What you need to know

Not every man-made solution or product is a “patentable invention”. According to international IP treaties, a patent offers a “new solution to a technical problem”. Nevertheless, Argentinean legislation defines a patent as a “patentable invention”, i.e. “every human creation that permits the transformation of matter or energy for human benefit”. However, these characteristics are not enough for an invention to be considered as “patentable”. This solution for a technical problem must meet the following requirements to be patented: “only new inventions, whether a product or a process, with an inventive step that may be used in industry” are patentable.

Argentina’s patent system recognises, under special circumstances, that the inventions that have been published by any means of communication or during an international exhibition, inside or outside the country within one year prior to the filing date of the application (both by the inventor and his/her successors in title) are still patentable*. For an invention to be considered as sufficiently inventive, it is necessary that, at the filing date, the invention to be patented is not considered to clearly derive from the state of the art by a person skilled in the art.

The third requirement for patentability is industrial applicability. For an invention to be patentable, it must have industrial character and applicability. Merely theoretical inventions cannot be patented if their industrial application is not explained.

Argentina is a member country of the Paris Convention. Consequently, the international priority system is applied: an applicant for a patent in any member state can apply for the same patent in Argentina within a year after the first application. The filing date of the first application will be taken into account when evaluating the state of the art.

TIPS and WATCH OUTS

Argentina is not a member of the Patent Cooperation Treaty (PCT), and therefore, EU applicants cannot benefit from the simplified procedures and reduced costs that World Intellectual Property Organization’s (WIPO) systems provides to foreign applicants.

In addition to patents, Argentina’s legislation provides protection for Utility Models, which are defined as “any new form or characteristic obtained or introduced in already known tools, devices, and objects with a practical application, as long as they provide an improvement in the function of these objects”. The creator is granted the exclusive right of exploitation. Legislation requires Utility Models to be new and to serve for industrial purposes; the fact that they lack inventiveness or that they are known or have already been disclosed abroad is not an impediment. Novelty must be based on the technical utility of the invention. Even though the law establishes that the standard of novelty is not absolute and universal, in other words, it requires a local novelty, at the administrative level at the moment of the final examination, the INPI applies a universal standard, since it conducts a search on the Internet in order to detect if there is an existing model abroad.

The new model must have a practical application and the object it applies to must be standardised enough to be mass-produced.

How LONG does legal protection last?

Patent protection lasts for 20 years, calculated from the filing date of the application. This legal protection cannot be extended and/or renewed. The duration of the registration process in Argentina varies depending on the technological field the invention belongs to, for instance, applications for biotechnological patents take currently a processing time of 5 years, whilst applications for metal-mechanical patents are processed within 3 years approximately.

The legal protection of Utility Models is 10 years, calculated from the filing date of the application. No extension is possible.
HOW do I register?

The legislation in force in Argentina gives priority to the first person(s) to apply for a patent. This person(s) will be granted legal protection and is/are presumed to be the inventor(s) as stipulated on the patent application or Utility Model form.

TIPS and WATCH OUTS

Argentina does not have specific laws to protect regulatory test data (in the agro-chemical and pharmaceutical sectors) for a certain number of years. This does not allow for legal certainty for foreign companies and it appears that ANMAT (the National administration of medicines, food and medical technology) grants marketing authorisations to “copies” of products which have been granted a patent or whose patent application is still pending.

Required information and documents

The form must be original and completed in typewritten form following the instructions. It must be filled out clearly and legibly, and bear original signatures.

- Patent application form
- Cover sheet
- Specification
- Set of claims
- Drawings (Appendix III)
- Abstract (Appendix I)
- Technical data sheet (Appendix II), two copies, and if applicable:
  - Priority document and translation (if applicable)
  - Transfer document and translation
  - Authorisations

Remember to submit original documents.

Further information can be found on the INPI website. Patent applications must be submitted at the INPI offices (see further details in Section 6):

WHO can register?

Any natural or legal person can register. It is noteworthy that foreign applicants must have a registered domicile in the country.

Which LANGUAGES can I use?

Spanish; a translation, duly certified by a sworn translator, must be submitted for every document issued in a foreign language.

How much does it COST?

Administrative fees for filing a patent vary depending on the number of claims contained in the patent application. The price for an application containing 10 claims or less is €111. Fees can be found on the INPI website. SMEs should bear in mind that other expenses are likely to increase the total cost of patenting, such as legal assistance, translations and additional fees.

TIPS and WATCH OUTS

Argentina has a sui generis system for plant variety protection called “Plant Breeder’s Right” for those varieties that are new, distinct, stable and uniform. The holders are granted exclusive rights for their commercialisation for a term of between 10 and 20 years, depending on the plant variety, and following the rules set out under the UPOV Convention 1978. SMEs shall take note that the EU is party to UPOV 1991 (not ratified by Argentina). Therefore, it is advisable to make enquiries before taking business decisions related to Argentina.

For further information on the topic, please check our Factsheets on Plant Varieties in Argentina.

C. Industrial Designs

Industrial Designs in ARGENTINA: what you need to know.

Industrial Designs are Intellectual Property Rights that protect two- and three-dimensional forms applied to an object with ornamental purposes, and therefore, make it possible to register new ornamental forms used in industry.

This system is very important for SMEs, because the protection of their designs can be obtained easily, quickly, and at a low cost.

An ornamental form must be new in order to be registered. Thus, a design cannot be protected if it meets any of the following criteria:

- It has been disclosed or exploited before the application is filed. Nevertheless, if the design was disclosed at a fair or exhibition, it is subject to protection, as long as the application is submitted within 6 months of the date that the fair or exhibition took place.
- It is not original enough.
- It is the result of a mere colour change.
- Its components are imposed by the purpose of the product
- It is contrary to morals and good customs.
HOW LONG does legal protection last?

Industrial design protection lasts for 5 years and may be renewed for another two consecutive periods of the same duration. Thus, the protection can be extended for a maximum of 15 years.

HOW do I register?

Industrial Designs must be applied for at the National Institute for Industrial Property (INPI).

There is a legal deposit requirement and, if there are no objections by the INPI, the registration only takes 4 working days.

Required information and documents

Application forms for Industrial Designs can be found and downloaded from INPI website.

Required documents

For the registration, it is necessary to submit:

- Application form
- Drawings
- Description
- View
- Payment of the corresponding fee

WHO can register?

Any natural person or legal entity can register. The registration can be conducted either personally or through a legal representative. The applicant must have a registered special domicile in the city of Buenos Aires.

Which LANGUAGES can I use?

Spanish, a translation, duly certified by a sworn translator, must be submitted for every document issued in a foreign language.

How much does it COST?

Administrative fees for filing one industrial design or model application rise to € 39.

Other activities and services subject to fees can be found on the INPI website.

Argentina’s IP system does not provide for any substantial examination prior to the registration.

The INPI does not check whether the industrial design has already been registered. Only the formal requirements are verified, but not the existence of previously registered industrial models that are identical or similar to the one intended to be registered.

It is under the jurisdiction of Federal Courts to solve disputes about the novelty of a design.

TIPS and WATCH OUTS

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The INPI does not check whether the industrial design has already been registered. Only the formal requirements are verified, but not the existence of previously registered industrial models that are identical or similar to the one intended to be registered.

It is under the jurisdiction of Federal Courts to solve disputes about the novelty of a design.

D. Trademarks

What are trademarks?

A trademark is “any sign or means that distinguishes or serves to distinguish a person’s product or services from another person’s similar or identical products or services on the market”.

In Argentina, the following items are subject to registration as a trademark: one or more words, with or without conceptual content; drawings, emblems, monograms, engravings, stamps, seals, images, lines, combinations of colours on a specific part of the product or its container, packaging and containers, the combinations of letters and numbers or a special drawing thereof, slogans, reliefs, and any other sign with distinctive character.

In Argentina, any sign or means with distinctive character is subject to registration, whether the distinctive features are visual, olfactory, or hearing. For this reason, olfactory and hearing marks are also subject to registration.

Trademarks in ARGENTINA: What you need to know

Trademarks distinguish products or services. Therefore, the essential requirement for an item to become a trademark is to have a distinctive character: it must be different from other trademarks previously registered or applied for the same type of products or services.

Another key aspect is that trademarks are used to distinguish identical or similar products, which means, in principle, that there can be two identical or similar trademarks in clearly different products or services.

Finally, the territorial scope of the protection must be taken into account. A trademark registered in Argentina is only protected in the national territory. Furthermore, trademarks that have a reputation (so called ‘well-known marks’) shall be protected even if they have not been registered in Argentina (as it is stated in the Paris Convention, Article 6bis).
How LONG does legal protection last?

Protection lasts for 10 years calculated from the date on which the trademark is granted, and it can be indefinitely extended for periods of the same duration.

Other deadlines should also be borne in mind such as the priority period established in the Paris Convention. This implies that foreign applicants must submit their applications for trademark registrations in Argentina within a period of 6 months from the application date of the first trademark filing.

In addition, it must be borne in mind that use of the mark is required for maintaining alive the trademark registration.

The owner of a registered mark should have to submit before the INPI a sworn declaration of use within the sixth year, counting from the registration date, and at the moment of renewing the trademark registration (in the tenth year). If the mark is not used for 5 consecutive years, it could be subject to cancellation by request of the INPI (ex officio) or a third party interested in the mark.

The average time currently needed to obtain a trademark registration in Argentina is around 18 months, as long as the trademark application does not encounter objections or oppositions of third parties.

HOW do I register?

In Argentina a trademark is obtained once it has been granted by the INPI. However, marks that have been used prior to registration are protected by case law, under certain circumstances (it must be proved (i) use for a considerable period of time; (ii) use has generated goodwill and/or a customer portfolio; and that (iii) use has been uncontested). The major steps of the proceedings are:

- Filing of the application
- After filing, the INPI examines the admissibility of the application (formal analysis) and the documents submitted.
- Within a period of 90 days after the filing, the application is published in the Trademark Bulletin of the Argentine Republic, by the INPI.
- After publication, there is a period of 30 calendar days during which third parties may file oppositions against the application.
- If the trademark application does not get any oppositions, the INPI will issue the final examination results and, if no objections are issued, the trademark will be granted for ten years.
- According to the new system of resolution of oppositions recently established in January of 2018, once a trademark application gets an opposition/s, the applicant will have 90 calendar days as of the notification of the opposition/s, to negotiate the withdrawal of the opposition with the opponent/s. If the applicant fails to obtain the withdrawal, the matter will necessarily be decided by the INPI through administrative proceedings. The final decision issued by the INPI will be subject to review by the Federal Courts.

Required information and documents

The documents to be submitted for the application are: the form and a copy of the sign or means to be registered.

To file the application it is necessary the following information:

- Applicant’s name;
- Document type and number;
- CUIT (Single Tax Identification Number or CUIL (Worker Identification Number);
- Ownership percentage;
- Marital status – in case the applicant is married, it will be necessary to specify the spouse’s name and document type and number;
- Address (street, number, district-state, zip code).

Moreover, applicants need to submit their legal personality accreditation, as well as a power of attorney when the documentation is submitted by a representative. If the application is conducted through an Industrial Property Agent, he/she must submit the duly legalised authorisations and documents with a certified, authenticated signature.

Further information can be found on the INPI website

WHO can register?

Any natural or legal person (public or private entities) can register. The application can be conducted through a legal representative with sufficient mandate. Normally, foreign enterprises do so through an Industrial Property Agent, who is empowered to act as a representative at the National Institute of Industrial Property (INPI).

Which LANGUAGES can I use?

All procedures are conducted in Spanish.
How much does it COST?

Administrative fees to apply for a trademark are about € 39 per mark, per class. The average market price of professional support for trademark filing is about €500 per mark, per class.

Official fees can be found on the INPI website.

TIPS and WATCH OUTS

Over the last years, several controversies have arisen between Argentina and the EU in relation to Geographical Indications (GI) and Appellations of Origin (AO).

By law, foreign right holders can apply for protection of both rights. Nevertheless, no registrations from the EU have been completed so far, which implies a lack of enforcement means.

The main obstacle for a GIs or AOs to be granted is that many of these names from Europe are considered “generic” in Argentina. Many terms have already been used (partially due to the immigration there has been from Europe for decades), and many are even listed in Argentina’s “Código Alimentario” (Food Codex).

It is also noteworthy that some Argentine right holders have registered European Geographic Indications and Appellations of Origin as trademarks, especially in the wine and spirits sector.

Currently, solving these matters in the National Institute for Industrial Property (INPI) implies long procedures.

For further information on this topic, please visit the Latin America IPR SME Helpdesk’s website.

3. ENFORCING your IP

Under Argentinean law, an owner of an Intellectual Property Right (IPR) is entitled to prevent others to use and/or exploit economically his/her/its right without their consent. For this purpose, IP legislation provides four types of legal actions.

- **Protective measures**: the Argentine legal system provides to the owners of IPRs, preventive measures in order to preserve their intangibles and the relevant evidence, so as to use it in a judicial proceeding to claim compensation for the damages caused by the infringement.

- **Civil actions**: Actions intended to cease unauthorized use of an IPR and repair the damages caused by the infringement.

- **Criminal actions**: IPR infringement involves, apart from property damage to the right holder, a criminal offence that shall be prosecuted by the government representing the interests of the society.

- **Border measures**: Customs officers have the authority, ex officio or upon right holder’s request, to prevent the customs clearance of a good in case of infringement of any kind in some types of IPR (Trademarks and Copyrights).

TIPS and WATCH OUTS

Argentina’s legislation also provides measures to act against infringers. Concerning economic compensation, a claim for damages for loss of profits may be filed. However, it should be pointed out that the judicial process is not expeditious and decisions can be disappointing for applicants.

Infringements are still widespread and affect several sectors. Enforcement measures are generally slow and ineffective, especially in the case of provisional court measures when they are urgent. Moreover, there is a lack of deterrent effect in sanctions and condemnations.
4. Using CUSTOMS to block counterfeits

The regulatory framework for customs in Argentina is in line with the provisions of the TRIPS Agreement. Therefore, Argentina has procedures in place to enable a right holder - who has valid grounds for suspecting that the import of counterfeited or pirated goods that infringe trademarks and copyrights may take place - to initiate legal proceedings before the competent administrative or judicial authorities. Right holders can bring a claim (in writing) to suspend the release of such goods by the customs authorities. This request may also be made for goods that infringe other IP rights.

In Argentina, Customs authorities are empowered to inspect goods in transit through the national territory and even to stop the cargo.

5. RELATED LINKS and Additional Information

Find out more about IPR in Argentina, visit the Latin America IPR SME Helpdesk website: http://www.latinamerica-ipr-helpdesk.eu/

Links to relevant websites and particular documents have been included throughout the text. The most relevant websites for further information on IP in Argentina are:

- Dirección Nacional de Derechos de Autor DNDA - National Directorate for Copyright: http://www.jus.gob.ar/derecho-de-autor.aspx
- Cámara de Empresas de Software y Servicios informáticos CESSI – Chamber of Software and IT Service Companies: http://www.cessi.org.ar
- Instituto Nacional de Semillas INASE – Argentine Seed Institute: http://www.inase.gov.ar
The Latin America IPR SME Helpdesk offers multilingual services (English, French, German, Spanish and Portuguese¹), with free information and first-line legal advice on IP related subjects, as well as training, webinars and publications, especially designed for EU SMEs.

HELPLINE First-line advisory service on IP protection and enforcement for EU SMEs working or planning to operate in Latin America.

TRAINING Targeted trainings and webinars on IPR protection and enforcement for EU SMEs (including sector-specific approaches).

IP CONTENT State-of-the-art publications (factsheets, learning modules, videos, IP glossary, info graphics, case studies and newsletters) on the protection and enforcement of IPR in Latin America – specifically addressing IP matters from the SME business needs point of view.

AWARENESS RAISING EVENTS Participation in events attended by EU SMEs to increase the awareness of IP and of the visibility of the services provided by the Helpdesk.

IP ANALYSIS Analysis of IP challenges faced by EU SMEs in the target markets.

IP DIAGNOSTIC TOOLKIT Toolkit for self-evaluation of the IP-status of the user in terms of IP knowledge and management.

IP COST TOOL Online tool that allows the user to pre-evaluate the costs related to IP management in every Latin American country covered by the Helpdesk.

¹The language offer will depend on the specific service and experts’ availability.

If you have any queries on how to protect your Intellectual Property in Latinamerica contact our Helpdesk service:

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+34 96 590 9684
Working Hours: Monday - Friday 9:00 - 16:30 (CEST)

If you want more information on additional free services offered by the Helpdesk contact the coordination team:

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