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# **BLOCK 2**

## **PROTECTING YOUR BUSINESS AND PRESERVING YOUR COMPETITIVE ADVANTAGES**

# PROTECTION OF YOUR BUSINESS

- 1.- SUCCESS AND DURABILITY OF YOUR BUSINESS.** Protected assets support and enable competitive advantages
- 2.- COMMERCIAL USE:** Protected assets can be commercially exploited: transfer, licences, pledges, secured transactions
- 3.- CAPITAL RAISING.** Investors make their investing decisions conditional to high protection of business key assets.

**PATENTS AND  
UTILITY  
MODELS**

**DESIGNS**

**INTELLECTUAL  
PROPERTY/  
COPYRIGHT**

**TRADEMARKS**



**ADVERTISING  
STANDARDS**

**TRADE SECRETS /  
CONFIDENTIALITY**

**UNFAIR  
COMPETITION**

## INTELLECTUAL PROPERTY (Copyright)

## INDUSTRIAL PROPERTY (Patents, Trademarks)

ORIGINALITY

NOVELTY

CREATIVE WORKS

WORKS WITH PRACTICAL  
APPLICATION / BUSINESS  
PURPOSES

MERE CREATION

REGISTRATION

PROTECTION AGAINST COPY

STRONG PROTECTION: use,  
exploitation, distribution,...

LONGER PROTECTION (life + 70

20 YEARS

## DESIGNS

NEW AND SINGULARITY

CREATIVE WORKS WITH PRACTICAL APPLICATION

AVAILABILITY TO THE PUBLIC OR REGISTRATION

PROTECTION AGAINST COPY (non registered) /  
STRONGER PROTECTION (registered)

3 YEARS (registered) / 25 YEARS (registered)



# REQUIREMENTS TO PATENT: INVENTIONS

**1. NEW**

**2. NON OBVIOUS**

**3. USEFUL**

# FIRST STEP: IS IT AN INVENTION?

**INVENTION:** new and innovative solution to a technical problem

- new device
- new product (including biological material)
- method
- process

or an incremental improvement

**NO INVENTION:** discoveries, ideas, scientific theories, artistic works, software, model business, plans, games.

**PATENTABILITY IS FORBIDDEN:**

- against public order or good morals
- diagnostic and surgical methods
- plants and animals
- human being cloning
- commercial use of embryos

## SECOND STEP: DOES IT MEET REQUIREMENT FOR PATENTABILITY?

### 1. IS IT NEW?

**An invention is new if it not included in the state of art (all the relevant technical knowledge available to the public)**

### 2. IS IT NON OBVIOUS?

**Considering the state of art, the invention is not obvious for an expert in the specific field of knowledge**

### 3. IS IT USEFUL?

# THIRD STEP: IS THE PATENT THE BEST OPTION?

## 1. ASSESS PROS AND CONS

- **COST?**
- **LENGTH OF FILING PROCEDURE?**
- **COMPLEXITY OF THE FILING?**
- **NEED TO DISCLOSE**

## 2. CONSIDER ALTERNATIVES

- a) **Keep secret: TRADE SECRET**
- b) **Patent: PATENT**
- c) **Publish: DEFENSIVE PUBLICATION to break novelty**

# BASICS OF FILING PROCEDURES

## REQUEST:

- FORM
- DESCRIPTIVE MEMORY
- CLAIMS
- DRAWING
- ABSTRACT

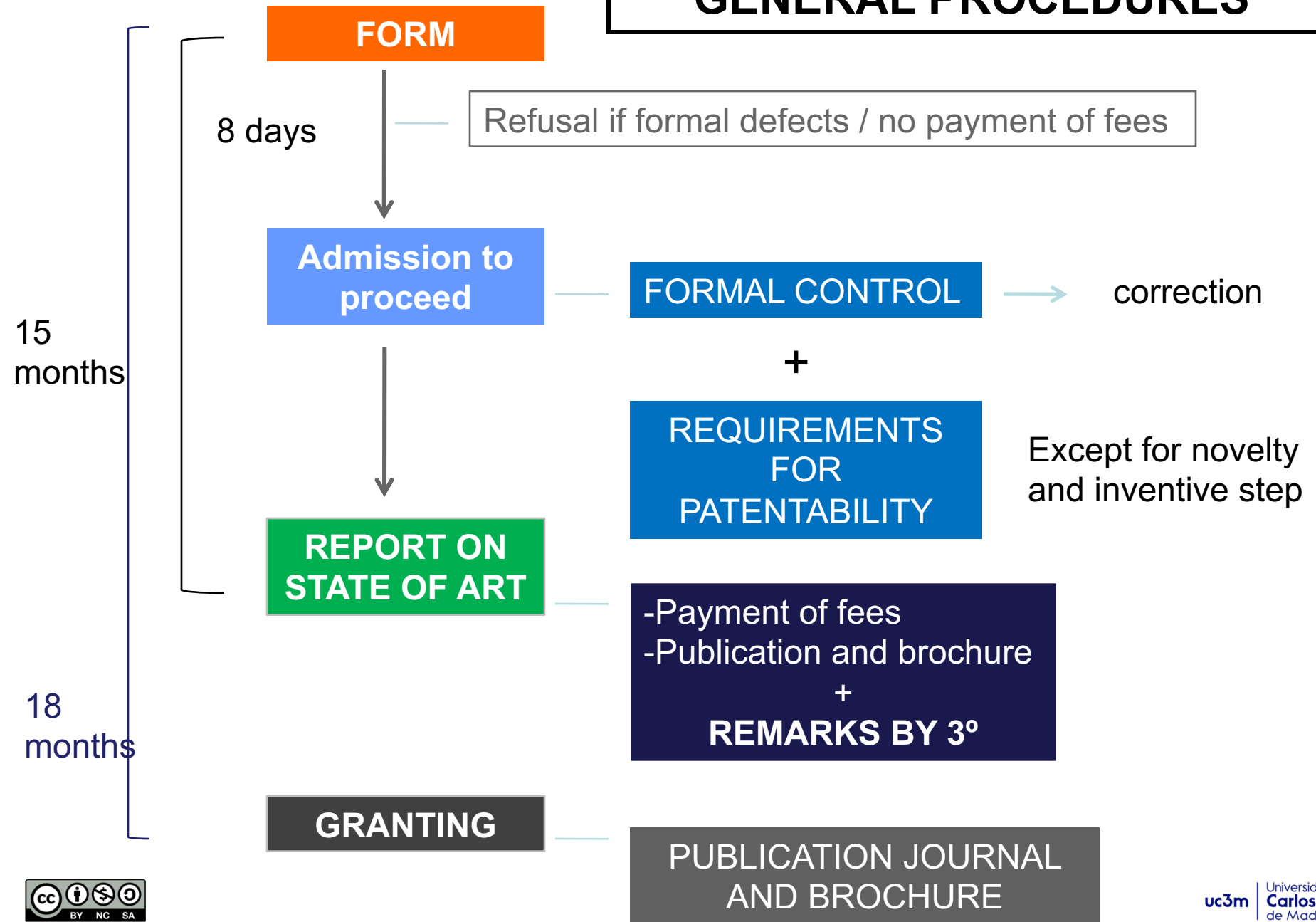
## PROCEDURES:

- MERE FILING
- WITH TECHNOLOGICAL REPORT
- PRIOR VETTING

## GRANTING:

- WITHOUT PREJUDICE TO THIRD PARTIES' RIGHTS
- NO WARRANTY BY THE STATE
- DISCLOSURE AND PUBLICITY

# GENERAL PROCEDURES



# PROCEDURES WITH PRIOR REPORT

**FORM**

8 days

Refusal if formal defects / no payment of fees

**Admission to proceed**

**FORMAL CONTROL**

correction

+

**REQUISITOS PATENTABILIDAD**

Except for novelty and inventive step

**REPORT ON TECHNICAL STATE OF ART**

-Payment of fees  
-Publication and brochure

+ 3 months

**VETTING: sufficiency / novelty / inventive step**

+ 2 months

**DISAGREEMENT OF THRID PARTIES**

**GRANTING**

**PUBLICATION AND BROCHURE**

15 months

+ 18 months

# **PROTECTING DISTINCTIVE SIGNS: TRADEMARKS**

## **THE ROLE OF DOMAIN NAMES**

# VALUE AND FUNCTION OF TRADEMARKS

**1.- BRANDING AND MARKETING Strategies**

**2.- IMAGE-BUILDING AND REPUTATION**

**3.- GOODWILL**

**4.- LOYALTY AND EMOTIONAL  
ATTACHMENT**

**5.- VALUABLE ASSET**  
**CocaCola or IBM more than 50 Million US\$**

# CONCEPT AND REQUIREMENTS FOR PROTECTION

1. A trademark is any sign that can be graphically represented with ability to distinguish in the market products and services of an enterprise from competitors' ones

2. Such signs can be, in particular:

- Word, letters, numerals or advertising slogans
- Drawings, pictures, symbols
- Logotypes, labels or any combination
- Tree-dimensional signs (packaging, shape of product)
- Audible signs (sounds).
- Smells? / Taste marks? / Moving Images?

## 1.- SIGNS

## 2.- DISTINCTIVE CHARACTER: ability to distinguish

- \* no generic
- \* causing confusion
- \* likely to mislead consumers
- \* against public order or good morals (PAKI)

## 3.- GRAPHICAL/VISUAL REPRESENTATION

# DESIGNS



# REQUIREMENTS FOR PROTECTION

## 1. NEW

## 1. SINGULAR OR UNIQUE

**Art 12. Prohibition: designs against public order and good morals**

**NEW**

***Art. 6: “ If no identical design has been made available to the public before the date of filing of the application for registration.***

**2. Designs will be considered identicals provided that they differ each other only in irrelevant details ”**



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## SINGULAR/INDIVIDUAL CHARACTER

**Art. 7:** “The overall impression produced by a design on an informed user differs from the overall impression produced on such a user by any earlier design which has been made available to the public

2. To assess the individual character of a design, it has to be considered the degree of freedom that the author has to develop the design ”

## SCOPE OF PROTECTION

**Art. 47:**

**“1. The protection granted by the registered design will cover any design unable to produce on the informed user a different overall impression.**

**2. To assess the scope of protection of a registered design, it has to be considered the degree of freedom that the author has to develop the.”**

# PROCEDURAL BASICS

## SOLICITUD:

- APPLICATION FORM
- APPLICANT PERSONAL DATA
- VISUAL REPRESENTATION
- PRODUCTS (Locarno Agreement)
- \* *DESCRIPTIVE MEMORY*
- \* *AUTHOR/S (Designer)*
- \* *multiple application (+ 50)*
- \* *DEFERRED PUBLICATION*
- \* *PRIORITY*

## PROCEDURES: POST-GRANTING

## THIRD PARTIES' OPPOSITION

## GRANTING

## WITH PUBLICITY unless deferment

# GENERAL PROCEDURE

