

Lecture : Intellectual property as part of product policy

PRODUCT AND QUALITY

WHY PROTECT IPR?

- ✗ To prevent plagiarism?
- ✗ To prevent others using it?
- ✗ To prevent others using it for financial gain?
- ✗ To fulfil an obligation to a funder?
- ✗ To support an income generation strategy?

TWO TOOL TYPES

- | | |
|---|---|
| <ul style="list-style-type: none">✗ Registered rights<ul style="list-style-type: none">+ Trade marks+ Registered designs+ Patents | <ul style="list-style-type: none">✗ Unregistered rights<ul style="list-style-type: none">+ Copyright+ Confidential information+ Passing off+ Unregistered design right |
|---|---|

AN OVERVIEW OF INTELLECTUAL PROPERTY

1. Copyrights
 - ✓ Works of authorship - literary and artistic expression
2. Patents
 - ✓ Inventions - innovative ideas embodied in goods or services
3. Trademarks / Trade Dress
 - ✓ Protects advertising or marketing efforts
 - Why would we want to stimulate this?
4. Trade Secrets (or unfair competition)
 - ✓ Protect against 'unfair' appropriation of commercial information
 - Why would you want to do this?

AN OVERVIEW OF INTELLECTUAL PROPERTY

	Copyright	Patent	Trademark
<i>Works</i>	Literary & artistic works	Process, machine, composition of matter	Distinctive 'marks' or appearance
<i>Standard</i>	Originality, authorship, fixation	Novelty, Nonobviousness, Utility	Distinctiveness, secondary meaning
<i>Acquisition</i>	Automatic; registration for remedies	Application process	Registration + use at Federal level
<i>Law</i>	17 U.S.C. et seq; exclusively federal	35 U.S.C. et seq; exclusively federal; Appeals to Fed Cir	15 U.S.C. et seq; <u>plus</u> state laws
<i>Term</i>	Life of author + 70 years	20 years from application for patent	Perpetual, subject to abandonment

AS WITH ALL TOOLS...

✗ We:

- + Use different tools for different jobs
- + Can use more than one tool at a time

WHAT CAN YOU DO WITH IPR?

- ✗ Find out about others
- ✗ Protect your rights
- ✗ Stop others abusing your rights
- ✗ Buy and sell rights
- ✗ Licence others to use your rights
- ✗ Get a licence from others to use their rights

INTELLECTUAL PROPERTY REFERS TO CREATIONS OF THE MIND: INVENTIONS, LITERARY AND ARTISTIC WORKS, AND SYMBOLS, NAMES, IMAGES, AND DESIGNS USED IN COMMERCE

- ✗ Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source;
- ✗ Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in recordings, and those of broadcasters in their radio and TV programs.

PATENTS

- ✗ Concerned with inventions:
 - ✗ “a new idea with a useful practical application in a product or manufacturing process”
- ✗ Grant 20 year exclusivity to:
 - ✗ exploit the invention
 - ✗ make
 - ✗ use
 - ✗ sell
 - ✗ hire
- ✗ In a specified territory e.g. GB

PATENTABILITY

- ✗ The invention is new
- ✗ Involves an inventive step
- ✗ Has industrial applications
- ✗ CONFIDENTIALITY

PATENTS

Who do you go to for help?

- ✗ Industrial Liaison Office/Research & Commercialisation Office
- ✗ (may be looking for commercial return)
- ✗ Patent Agents
- ✗ Patent Databases

PATENTS

What do you need to take with you?

- ✗ what is problem your invention solves?
- ✗ How is problem currently addressed?
- ✗ How does your invention solve the problem?
- ✗ Why is it novel and inventive?
- ✗ What are its applications?
- ✗ Who are inventors?
- ✗ How was work funded?

PATENTS-TIMING

	Month
✗ Discussion with R&C Services	0
✗ Consult Patent Agent	0
✗ Draft Patent Specification	0
✗ File UK Patent application (£4.5k)	0
✗ Complete foreign filings (£ 10-15k)	12
✗ Grant (Total cost £25-40k)	50
✗ Renewals (annually) £2-5k p.a.	

A PATENT IS AN EXCLUSIVE RIGHT GRANTED FOR AN **INVENTION**, WHICH IS A **PRODUCT** OR A **PROCESS** THAT PROVIDES A NEW WAY OF DOING SOMETHING, OR OFFERS A NEW TECHNICAL SOLUTION TO A PROBLEM.

- ✗ A patent provides **protection** for the invention to the **owner** of the patent. The protection is granted for a limited period, generally 20 years.
- ✗ Patent protection means that the invention cannot be commercially **made, used, distributed or sold** without the patent owner's **consent**. These **patent rights** are usually enforced in a court, which, in most systems, holds the authority to stop **patent infringement**. Conversely, a court can also declare a patent invalid upon a successful **challenge** by a third party.
- ✗ A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected (**may give permission, license, sell**)
- ✗ Patents provide **incentives** to individuals by offering them **recognition** for their **creativity** and **material reward** for their marketable inventions. These incentives encourage **innovation**, which assures that the **quality of human life** is continuously enhanced

CONDITION FOR INVENTION PROTECTION AS A PATENT

- ✗ It must be of **practical use**;
- ✗ it must show an element of **novelty**, that is, some **new characteristic** which is not known in the **body of existing knowledge** in its technical field ("**prior art**").
- ✗ The invention must show an **inventive step** which could not be deduced by a person with average knowledge of the technical field.
- ✗ Finally, its subject matter must be accepted as "**patentable**" under law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, or methods for medical treatment are generally not patentable.

PATENTS

- ✗ For ideas/inventions
- ✗ Can be a product or process
- ✗ Must be novel
- ✗ Must not disclose before applying
- ✗ UK patent no./Patent pending
- ✗ Copying not necessary to infringe

PATENT EXAMPLES



Traditional stuff
for patents

New stuff
for
patents

Amazon's "1-click" patent

CONDITION FOR INVENTION PROTECTION AS A PATENT

- ✗ A patent is granted by
- ✗ a national patent office or
- ✗ a regional office (European Patent Office and the African Regional Industrial Property Organization).
- ✗ Patent Cooperation Treaty (PCT) provides for the filing of a single international patent application. which has the same effect as national applications filed in the designated countries.

DESIGN RIGHTS

Unregistered Design Rights

- ✗ Automatic right - no need to apply.
- ✗ "Non-commonplace design" of any aspect of shape or appearance of a 3-dimensional article
- ✗ Exclusions
- ✗ Lasts until 10 years from the date article is first marketed
- ✗ Final 5 years of this - anyone is entitled to a licence
- ✗ (above point doesn't apply to semiconductor topographies)

DESIGN RIGHTS

Registered Designs

- ✗ Monopoly Right - akin to patent
- ✗ Implementation by UK of new EC Directive will greatly extend scope
- ✗ Novelty required - but 12 month "grace period"
- ✗ Renewable in 5 year terms to 25 year maximum

AN INDUSTRIAL DESIGN

- ✗ An industrial design is the **ornamental or aesthetic** aspect of an article. The design may consist of three-dimensional features, such as the **shape or surface** of an article, or of two-dimensional features, such as **patterns, lines or color**.
- ✗ Industrial designs are applied to a wide variety of products of industry and handicraft
- ✗ To be protected under most national laws, an ID must **appeal to the eye**. An ID is primarily of an aesthetic nature, and does not protect any technical features of the article to which it is applied.

WHY PROTECT INDUSTRIAL DESIGNS?

- ✗ Industrial designs are what make an article **attractive and appealing**; hence, they add to the **commercial value** of a product and **increase its marketability**.
- ✗ The **owner** - the entity that has registered the design - is assured an exclusive right against **unauthorized copying or imitation of the design** by third parties.
- ✗ System of protection also benefits **consumers and the public at large**, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products.
- ✗ Protecting ID helps **economic development**, by encouraging creativity in industry, in traditional arts and crafts.
- ✗ ID can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen.

REGISTERED DESIGNS

- ✗ Law just changing
- ✗ For designs of articles or applied to articles
- ✗ Must have features appealing to the eye
- ✗ Requirement for design to be “new”
- ✗ 1 year from first marketing to register
- ✗ Registered design number
- ✗ Can protect computer graphical items
- ✗ Copying not necessary to infringe

REGISTERED DESIGN EXAMPLES



A TRADEMARK IS A DISTINCTIVE SIGN WHICH IDENTIFIES CERTAIN GOODS OR SERVICES AS THOSE PRODUCED OR PROVIDED BY A SPECIFIC PERSON OR ENTERPRISE.

- ✖ A trademark provides **protection** to the owner the **exclusive right** to use it to identify goods or services, or to authorize another to use it in return for payment.
- ✖ The **period of protection varies**, but a TM can be renewed indefinitely beyond the time limit on payment of additional fees.
- ✖ TM promote initiative and enterprise worldwide by **rewarding the owners** of TM with recognition and financial profit.
- ✖ As **Symbols of Product Quality** TM help us select one product or service over another. The owner of a TM uses it to enable customers to recognize the product.
- ✖ As **Indicators of Product Source** a TM indicates that all products bearing the trademark come from, or are controlled by, a single source.
- ✖ As **Tool for Advertising** TM sells products. The TM is a symbol upon which buyers can fix their expectations and associations concerning a product and its qualities.
- ✖ A TM gives the owner the right to prevent others from "**infringing**" - using the mark in a way that is likely to cause confusion. The most blatant kind - **counterfeiting**, often called **piracy**, is the reproduction of a TM by an unauthorized party, for purposes of deceiving consumers.

THE POSSIBILITIES OF REGISTERED TRADEMARKS ARE ALMOST LIMITLESS. IT MAY BE ONE OR A COMBINATION OF WORDS, LETTERS, AND NUMERALS. THEY MAY CONSIST OF DRAWINGS, SYMBOLS, THREE- DIMENSIONAL SIGNS SUCH AS THE SHAPE AND PACKAGING OF GOODS, AUDIBLE SIGNS SUCH AS MUSIC OR VOCAL SOUNDS, FRAGRANCES, OR COLORS USED AS DISTINGUISHING FEATURES.

TYPES OF TRADEMARK

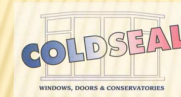
- ✖ **Collective marks** are owned by an **association** whose members use them to identify themselves with a level of quality and other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects.
- ✖ **Certification marks** are given for compliance with defined standards, but are not confined to any membership. They may be granted to anyone who can certify that the products involved **meet certain established standards**. The internationally accepted "ISO 9000" quality standards are an example of such widely-recognized certifications.

- ✖ An application for registration of a TM must be filed with the appropriate **national or regional trademark office**. The application must contain a clear reproduction of the sign filed for registration, including any colors, forms, or three-dimensional features. The application must also contain a list of goods or services to which the sign would apply.
- ✖ The sign must fulfill certain conditions in order to be protected as a TM or other type of mark. It must be distinctive, so that consumers can **distinguish** it as identifying a particular product, as well as from other trademarks identifying other products. It must neither mislead nor deceive customers or violate public order or morality.
- ✖ The rights applied for cannot be the same as, or similar to, rights already granted to another TM owner. This may be determined through **search** and **examination** by the national office, or by the **opposition of third parties** who claim similar or identical rights

TRADE MARKS

- ✗ Any sign which is distinctive
- ✗ Mainly trade names and logos
- ✗ Can apply for mark before use
- ✗ Classes of goods
- ✗ ® Symbol
- ✗ Registration increases rights
- ✗ Copying not necessary to infringe

TRADE MARK EXAMPLES



A GEOGRAPHICAL INDICATION IS A SIGN USED ON GOODS THAT HAVE A SPECIFIC GEOGRAPHICAL ORIGIN AND POSSESS QUALITIES OR A REPUTATION THAT ARE DUE TO THAT PLACE OF ORIGIN.

- ✗ Most commonly, a **geographical indication** consists of the name of the place of origin of the goods.
- ✗ Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.
- ✗ The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.
- ✗ An **appellation of origin** is a special kind of geographical indication, used on products that have a specific quality that is exclusively or essentially due to the **geographical environment** in which the products are produced. The concept of geographical indication encompasses appellations of origin. Since those qualities depend on the place of production, a specific "link" exists between the products and their original place of production.