

Intellectual Property



What are we going to cover in this session;



1. What is Intellectual Property?
2. Trademarks
3. Registered Designs
4. Copyright
5. Patents
6. Patent Searching
7. Innovation & Patents
8. Just one more thing.... Exam 2pm on 14th December



Intellectual Property



What is Intellectual Property?



Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce.

4

Task!



5

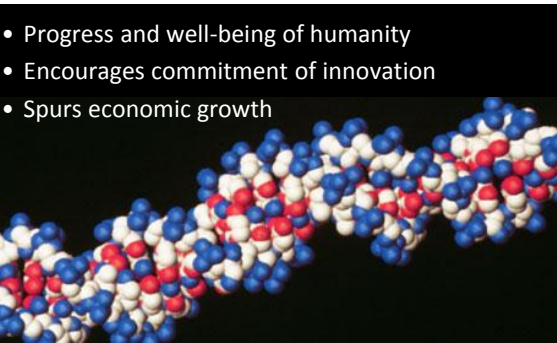
Why protect intellectual property?



- 1. Copyright
- 2. Industrial Property

6

Why promote intellectual property?



- Progress and well-being of humanity
- Encourages commitment of innovation
- Spurs economic growth

7

Trademarks



8

Trademarks



9

Trade marks are not registrable if they...



- 1. Describe your goods or services or any characteristics of them, for example, marks which show the quality, quantity, purpose, value or geographical origin of your goods or services;
- 2. Have become customary in your line of trade;
- 3. Are not distinctive;
- 4. Are 3D shapes, if the shape is typical of the goods you are interested in (or part of them), has a function or adds value to the goods;
- 5. Are specially protected emblems
- 6. Are offensive
- 7. Are against the law, for example, promoting illegal drugs; or;
- 8. Are deceptive. There should be nothing in the mark which would lead the public to think that your goods and services have a quality which they do not.



Acceptable trade marks



Trademark	Why is it acceptable
FARNOOZ	This is an invented word, arguably the most distinctive of all trade marks
Emarno Windows	This trade mark includes the invented word "emarno". Although the word "windows" is totally descriptive of goods and services relating to windows the word "emarno" is totally distinctive and this results in an acceptable trade mark
Danryvol	Another invented word
Herringbone Finance	Although this mark consists of two well known words the word "Herringbone" is acceptable for financial services. However, the word "Herringbone" would not be acceptable for e.g. textiles because it is a type of pattern.



Unacceptable trade marks



Trademark	Why is it unacceptable
7 days a week	These days many traders advertise that their goods or services are available seven days a week
Tasty food	If you are trading in food, these two words simply describe a quality of your goods. Joining the two words together does not make the mark as a whole acceptable
TOYS direct	The word "direct" describes goods or services sold directly to the public and it is widely used by traders.
The one for you	Slogans such as this are often used in trade and are not distinctive



History of Trademarks



History of Trademarks



History of Trademarks



- Created in 1971 by Carolyn Davidson, a graphic design student at PSU.
- She was paid \$35, but later, in 1983 was given a diamond swoosh ring and an envelope of Nike stock.



Benefits of registration



- If you have a registered trade mark you can put the ® symbol next to it to warn others against using it.
- May put people off using your trade mark without your permission
- Makes it much easier for you to take legal action against anyone who uses your trade mark without your permission
- Allows Trading Standards Officers or Police to bring criminal charges against counterfeiters if they use your trade mark
- Is your property, which means you can sell it, franchise it or let other people have a licence that allows them to use it.



Protecting unregistered trade marks



- If you don't register your trade mark, you may still be able to take action if someone uses your mark without your permission, using the common law action of passing off.
- To be successful in a passing off action, you must prove that:
 - The mark is yours
 - You have built up a reputation in the mark
 - You have been harmed in some way by the other person's use of the mark.
 - It can be very difficult and expensive to prove a passing off action.



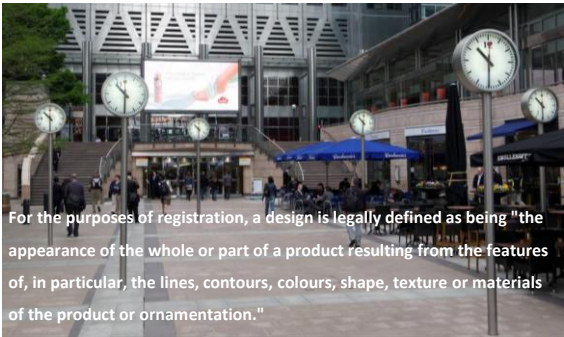
Registered Designs



A Registered Design is a legal right which protects the overall visual appearance of a product or a part of a product in the country or countries you register it.



Registered Designs



For the purposes of registration, a design is legally defined as being "the appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or ornamentation."

19

Does my design have to be brand new?



- A Registered Design can be a valuable intellectual property right.
- It can form the basis of an infringement action, will help you in stopping others from creating designs which are too similar to yours.
- For its registration to be valid, a design must:
 1. Be considered to be 'new' if no identical (or very similar) design has been published or publicly disclosed in the UK or the European Economic Area (EEA).
 2. Have Individual character; means that the appearance of the design (known as the overall impression) is different from the appearance of other already known designs.

20

Are there any exclusions?



You may not be able to register your design if:

1. It is not a design by legal definition as described.
2. It is offensive.
3. It consists of, or includes, certain protected flags and international emblems.
4. It is solely dictated by the product's technical function.

21

‘Design Right’ and ‘Registered Designs’



- The term "Design Right" refers to the specific legal protection available to unregistered designs in the UK.
- Design Right gives automatic protection for internal or external shape or configuration of an original design, i.e. its three-dimensional shape.
- Design Right allows you to stop anyone from copying the shape or configuration of the article, but does not give you protection for any of the 2-dimensional aspects, for example surface patterns.
- Protection is limited to the United Kingdom (UK), and lasts either 10 years after the first marketing of articles that use the design, or 15 years after creation of the design - whichever is earlier.
- For the last 5 years of period the design is subject to Licence of Right.
- This means that anyone is entitled to a licence to make and sell products copying the design.



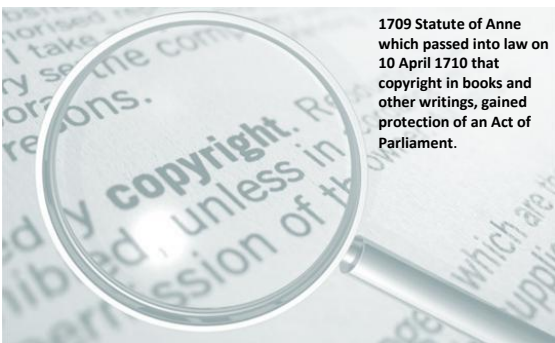
‘Design Right’ and ‘Registered Designs’



- When compared with unregistered design right, a registered design gives protection against subsequent imitations whether or not they are copies, while for unregistered design right copying has to be proven.
- Unregistered design right protection is also relatively short-lived compared with registered design protection.



Copyright



Copyright can protect...



- **Literary works**, including novels, instruction manuals, computer programs, song lyrics, newspaper articles and some types of database
- **Dramatic works**, including dance or mime
- **Musical works**
- **Artistic works**, including paintings, engravings, photographs, sculptures, collages, architecture, technical drawings, diagrams, maps and logos
- **Layouts or typographical arrangements** used to publish a work, for a book for instance
- **Recordings** of a work, including sound and film
- **Broadcasts** of a work



Copyright



- The length of time a copyright work is protected will depend upon the category or type of work and is usually calculated from the death of the creator.
- The term of protection in the UK for an original written (literary), theatrical (dramatic) musical or artistic work lasts for the life of the creator plus 70 years from the end of the year in which he/she died.
- Similarly, copyright in a film runs out 70 years after the end of the year in which the death occurs of the last to survive of the principal director, the authors of the screenplay and dialogue, or the composer of any music specially created for the film.
- Both software (computer programs) and databases are able to be protected as literary works.
- Copyright in a broadcast expires 50 years from the end of the year of the making of the broadcast.



What is a Patent?



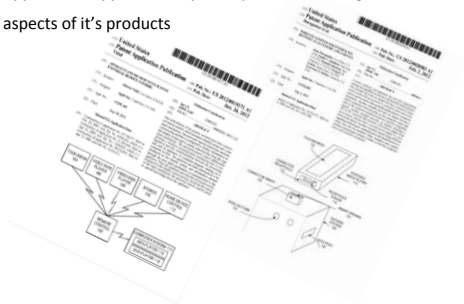
A product or process that provides a new way of doing something, or that offers a new technical solution to a problem.



How does the average person benefit?



- 1. Apple holds approximately 5400 patents covering all of the technical aspects of it's products



28

Patents granted in 2010



Company	Patents Filed	Per Day
IBM	5866	22.6
Samsung Electronics	4517	17.4
Microsoft	3086	11.9
Boeing	658	2.5
Apple	563	2.2
3M	492	1.9
University of California	349	1.3

29

What can be patented?



- Nearly anything “technical”
 - Products (molecules, materials, new composition)
 - Apparatus (for making, purifying, extracting)
 - Methods (synthetic methodology, process steps, treatment)
 - Uses (as a drug, a paint stripper, etc.)
- Must be:
 - New (“novel”)
 - Non-obvious (involves an “inventive step”)
 - Capable of industrial application

30

Novelty (& Disclosure)



- Anything made available (disclosed) to the public anywhere
 - The “Prior Art”
 - Published documents, posters, lectures
 - In order to anticipate a “claim” all the features must be in a single document/lecture/poster
- Disclosure
 - The invention must not have been made available to the public in any way, at any time, anywhere – this is very important!
 - This can be guarded against though imposing a NDA



Inventive Step



- Invention must not be obvious to a person who is ‘skilled in the art’
- The ‘person skilled in the art’:
 - Reads everything (speaks all languages)
 - Makes routine selections
 - Overcomes routine problems
 - Doesn’t make inventive leaps
- An invention may be inventive if:
 - It has an unexpected or surprising result
 - It was not obvious to try or non-routine
 - It overcomes a technical problem



Important Exclusions (UK, Europe)



- Methods of medical treatment/diagnosis
 - Computer programs as such
 - Mathematical models
 - Presentation of information
 - Methods of doing business
-
- A patent attorney often avoids these
 - There are no restrictions in US



You cannot get a patent for...



- A scientific or mathematical discovery, theory or method
- A literary, dramatic, musical or artistic work
- A way of performing a mental act, playing a game or doing business
- The presentation of information, or some computer programs
- An animal or plant variety
- A method of medical treatment or diagnosis
- Anything immoral or contrary to public policy

34

Inventorship & Ownership



- The inventor(s) are the actual devisor(s) of the invention
- Ownership may depend upon the relationship of the inventor(s) and any other parties involved
- A business /company normally owns the IP generated by employees
- This is normally set-out in the employees contract
- This is also the case at a University
- Students however are not employees and a separate agreement will need to be reached between the University and the student
- The patent may be invalidated if the inventor(s) and/or owners are not correctly identified

35

Freedom-to-Operate



- Your patent stops others from using your IP, but does not allow you to use it yourself
- To use your own patent you may need to use something which is covered in the claims of someone else's patent, e.g.
 - Patent 1 – “the wheel”
 - Patent 2 – “the push bike”
 - The owner of patent 2 must ask permission to make his bike!
- You therefore may have to license, buy or attack the other patent to gain the full potential from your invention
- Alternatively you could invent around the other patent

36

Anatomy of a Patent



- **Title** – Usually uninformative
- **Abstract** – To help patent searchers
- **Description**
- **Some background** – what is known
- **Generic statements** defining the invention
- **Detailed description of the invention**, with reference to drawings (optional) and experimental data (usually)
- **Figures** – if they help explain the invention
- **Claims** – are as broad as possible to define the full scope of protection in the patent



Costs of Patents



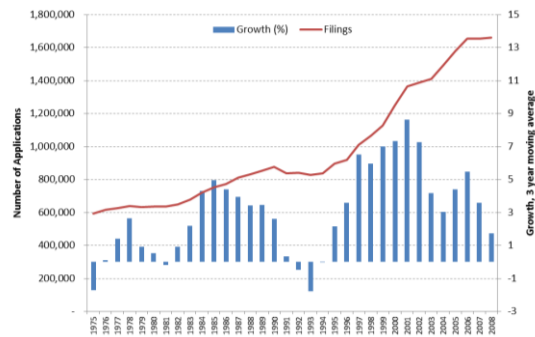
Getting Value from Your Patent



- Imagine your patent is like a house; you can:
- Live in the house – commercialise your IP into a new product
- Take in a lodger – license your IP to a third party
- Let out your house – exclusive license of your IP to a third party
- Sell the house – assign (sell) your IP to a third party

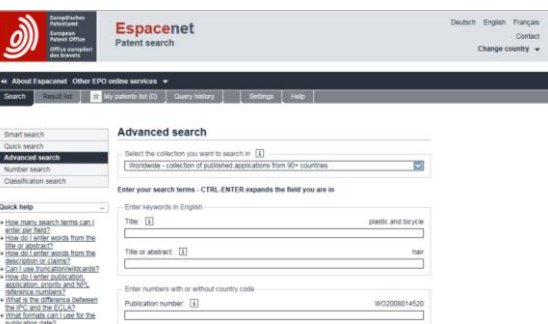


Growth in patent filings worldwide



40

Patent Searching



41

Just one more thing...



Could patent wars hinder innovation?



42
