

# Understanding intellectual property: Patent law and strategy for managers

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## Why do I need to know about IP? I'm a manager!

- Can't I just leave this IP and patent stuff to the lawyers?
- OK. That's like saying you don't have to take care of your teeth because you have a dentist. If you do, this is what your teeth will look like:

# Your teeth



Brighton I

# The importance of knowing your IP

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“Even for those business professionals who prefer to leave IP matters to lawyers, it is still necessary for them to understand how to identify IP and when to take steps to protect it, even if that means merely knowing when to consult a lawyer.”

(Business Horizons, Lemper, 2012)

IP belongs to the legal category of *personal property*. It is classed as *intangible property*.



Intangible property



Tangible property

# Is this copyright infringement?

Any original, creative, intellectual or artistic *expression* in a fixed tangible form is protected by copyright.

***Cariou vs Prince 2009-2014***





# Is this trademark infringement?

Trademarks are distinctive signs identifying and distinguishing the commercial source of goods or services.

**Gucci v Guess: dispute over Gucci Quattro G pattern infringement**



# Design infringement?

Registered design/US design patent: protects ornamental design, appearance or style of objects

Proctor and Gamble



Reckitt Benckiser



Figure 1

Figure 1 is P&G

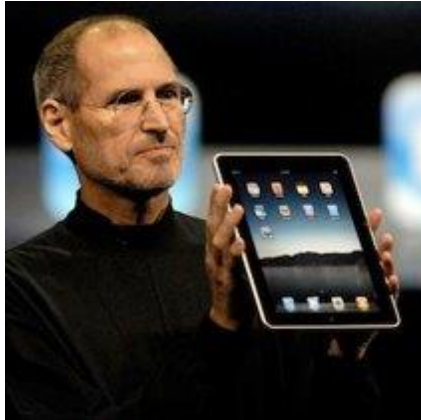


Figure 2

Figure 2 is Reckitt



- Our economy is a knowledge-economy
- Patenting is not restricted to large corporations: many of the businesses filing patent applications are SMEs.
- Patenting is not restricted to high-tech firms.



## No patent strategy – what do you want this patent to do for you?

- Protect your product from imitation?
- Freedom to produce the product yourself?
- Use the patent to block the inventions of competitors?
- Use the patent to licence for fees and/or royalties?
- Use the patent to leverage cross-licence agreements?



## Patent databases – check them

- Failure to appreciate that a patent database is an important resource to help you discover what your competitors are doing, because if they want a patent they have to disclose to the public the nature of the invention.
- Failing to check those databases to see whether your invention is out in the public domain or has already been patented!



## Not knowing your patent law basics

Conference speech



A blog



## The dangers of disclosure – crowdfunding

- Where is the line between setting out the nature of the product in sufficient detail to attract investment and the type of disclosure that would prevent the start-up from being later awarded a patent?
- The very way that crowdfunding works – and can bring great success- is also the biggest risk: media exposure. This not only bring the risk of disclosure ruling out a product being patented, but also that others will copy the product or find ways to design around it.



## Drafting your own patent documentation

- Failure to appreciate that the patent is not just a technical description of an invention; it is also a legal document. It has to be drafted with wording and phraseology that reflect the legal requirements. That requires special skill.

Application/Control Number: 09/318,447

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Art Unit: 3625

information is accomplished by clicking a mouse button when a cursor is positioned over a predefined area of the displayed information. The examiner takes Official Notice that clicking a mouse button when a cursor is positioned over a predefined area of the displayed information was old and well known at the time of the invention. It would have been obvious to a person having ordinary skill in the art to include in the combination of Joseph/Teper clicking a mouse button when a cursor is positioned over a predefined area of the displayed information, because this would provide an efficient means for inputting information and provide additional functionality to make the system more user friendly.

**In regards to claim 114**, The examiner takes Official Notice that displaying partial information to protect the users personal information was old and well known in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art to include in the combination of Joseph/Teper, providing partial



## The nature of a patent

- Not all managers appreciate that **the patent does not give the patent owner the right to use his/her invention**. It only gives the right to exclude others from using that invention.
- Underlying technology may be covered by someone else's patent. A licence fee may have to be paid. Or that patent owner could refuse to grant a licence, using his patent to block development by others.

## Where do you have protection?

- Patents are territorial.
- You only have protection for your invention in countries where you have a patent. The more countries, the more expensive the costs of patenting will be.
- What factors should you take into account in determining where to have protection?



## Expecting that a patent will guarantee absolute protection

- Tangible property tends to have clearly defined and unambiguous boundaries.
- Patent law deals with intangible property: an invention.
- It is the patent claims that determine what exactly the patent owner may prevent others from doing. They put a fence around *your* property.
- **But:** It is more difficult to define the property boundaries of an invention than, for example, the boundaries of a parcel of land or other physical object.

# Improver Corporation v Remington

The Epilady



Smooth & Silky



The 'helical spring' v the rubber rod with slits

## Being outmanoeuvred by competitors' strategies

- Sun Tzu's 'The Art of War':
- **Interact:** Tactical alliances
- **Isolate:** Squeeze your enemy out.
- **Negate:** undermine the effectiveness of your enemy.
- **Eliminate:** force your enemy into the battle field. Surrender or destruction of your enemy.

## Inability to defend a patent

- Smaller firms often invest in a patent, yet have no money available to defend the patent if it is infringed.
- Patent litigation is notoriously expensive: there is no satisfactory insurance cover for patent cases.



## Trade secrets:

- Avoids cost of patenting
- No information regarding the invention is published, so it is not revealed to competitors
- Useful where the invention is a process that is difficult to observe or reverse engineer from the end product.



## Lead-time

- Being the first to market
- Whether in itself sufficient depends on the product.
- Example where sufficient: VacuVin glass stickers



Thank you!

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