

*Intellectual Property
at a glance*

Invention Pathways Pty Ltd

"Guiding inventors through the minefield of Commercialisation"

Our Vision:

"To guide inventors through the minefield of commercialisation".

We will achieve this through the –

- Development of appropriate strategies,
- Application of due diligence,
- Coordination of professional skills and competencies,
- Application of our Invention Specific Commercialisation Program, and,
- Recognition of lifestyle impacts throughout this journey.

Quality Standard:

In Australia there is no Standard covering Intellectual Property commercialisation.

At Invention Pathways Pty Ltd, we feel strongly that there should be, and so we have aligned our operations to the British Standard -

BS 8538:2011 Specification for the provision of services relating to the commercialisation of intellectual property rights.

What?



Intellectual Property

IP or Intellectual Property represents the product of your mind or your intellect. This can be an invention, trade mark, original idea or the practical application of a good idea.

Trade Secrets, patents, designs, copyright, trade marks, circuit layout rights and plant breeders rights are IP rights.

Inventors, innovators and business owners need to know about intellectual property and how to protect their ideas and their intellectual assets.

Why?

Ownership of IP rights is the legal recognition and reward you receive for your creative effort.

IP is a business asset and in many cases, more valuable than "bricks & mortar". Many successful businesses identify and value their IP, listing it with other assets on the company balance sheet.

A patent generally is treated legally like property. Patents can be bought and sold, mortgaged, licensed, given away or just forgotten.

Failure to correctly register your IP can be a substantial loss. It should not be made public prior to filing an application as it could jeopardise the granting of the patent.

Patents



Patents cover inventions: A patent once granted, gives you, the patent holder, the statutory monopoly over your invention.

Only you, the owner of the patent, can use, manufacture or sell your invention or you can consent to others doing so, by way of a licence or franchise.

Your patent is there to protect your investment and as a legal way of preventing others from copying your idea.

An Australian patent gives you the exclusive right to manufacture, use or sell your invention and the legal rights to prevent anyone else from doing so.

In most countries, the legal protection of a patent lasts for 20 years, after that the invention becomes part of the public domain.

You can only patent inventions that are:

- Novel or New
- Non-obvious: Your invention must be sufficiently different. Just

substituting one material for another or changing the size of something is not usually patentable. So even if your invention has not been made before in exactly the same way, if the differences between it and the next similar thing already known are just too obvious (too close to being the same) your patent will be declined.

- Inventions must be useful. Your invention must have a practical purpose and it must work!

Patents

PCT or International Patent Application

Over a hundred and forty countries in the world are parties to the Patent Cooperation Treaty (PCT). Under the provisions of the PCT, a single International patent application can be filed with the International Bureau, designating those countries in the PCT in which patent protection is desired.

The PCT (International Application) enables the inventor to defer filing individual country (National Phase) patents for up to 31 months (depending on the country) from the original Priority Date. As a result the inventor, having filed a Provisional Application or a Standard (20yr) Patent will need to file a PCT before the twelve (12) months period from their Priority Date has expired. This will give them another 18 months of protection of their Priority Date.

The PCT is useful when the inventor/owner is trying to give the invention 'time in the market' to establish itself, or when cash flow requires the deferment of the expense of taking National Phase (20 yr) patents in specific countries. It also allows the inventor/owner time to research and identify those countries where potential markets exist.

It should be noted that the PCT application does not take the place of the individual "national" applications in each country, but simply defers the national processing of the patent application in each country. The costs of the PCT application phase are additional to the cost of the processing of the patent application in each selected country.

Trade Marks



Trade marks are used to signify that products or services originate from a particular person or company, and distinguishing them from other similar products or services.

A trade mark usually signifies that the product or service is of a particular standard of quality and can consist of word(s), numbers, a logo or a combination of these. A trade mark may even be a three dimensional shape (although these are more difficult to register).

A trade mark can be a letter, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or combination of these.

Registration of the trade mark gives the owner legal rights to exclusively use or control the use of the trade mark for the goods or services for which it is registered. Registration is obtained under the Trade Marks Act 1995 and covers the whole of Australia.

Trade marks: General

In Australia, the owner of a trade mark is the first person to use the trade mark in Australia, or in the absence of any use, the first person to apply for trade mark registration with a bona fide intent to use the trade mark in the future.

Use of a trade mark in an unregistered form results in the creation of a reputation in the trade mark that can be protected by “passing off” action (under common law), the Trade Practices Act, or the various State Fair Trading Acts. In each instance, it is

generally necessary for the user of the trade mark to prove reputation.

The Australian Trade mark Office does not investigate unregistered trade marks when assessing a trade mark application for suitability for registration. The Trade mark Office will only search through earlier trade mark applications and registrations. Thus, a Trade mark Office search is not conclusive of an applicant’s rights in the trade mark.

Registration Rights



Registration of a trade mark (as opposed to use of an unregistered trade mark) offers many advantages. Enforcement of the trade mark is simplified by doing away with the requirement to prove reputation.

Registration is Australia-wide, and the registered owner is able to prevent an unauthorised later user from using the registered trade mark on the class of goods/ services for which the trade mark is registered anywhere in Australia irrespective of where the owner is actually using the trade mark.

A big advantage of a trade mark is that it can go on forever providing that registration is maintained through renewals. Once registered however, a person can apply for removal of the registration if you have not used the trade mark for a period of 3 years. If you do not oppose the removal action it will be removed.

A name may be registered as both a business name and a trade mark.

You should choose a trade mark that is easily registered so that registration can be obtained quickly and with minimal cost.

Registered Designs



Registered designs are used to protect the visual appearance of products.

Examples of registrable designs include clothes designs, vehicle designs, electronic device designs, sports equipment designs and container designs, furniture designs, appliance designs etc. In order to register a design it must be new and distinctive.

New, means that the design (or one very similar) has not been publicly used in Australia and has not been published anywhere in the world.

A Distinctive design is one that is substantially different in overall appearance to other designs in the public domain.

With design registrations you need to be aware that:

- They are intended to protect industrial designs rather than a single artistic work (the latter is covered by Copyright protection).
- The protection you receive is only for the appearance of the product and not how it works.
- Applications to register a design must be filed before the design is publicly disclosed. A registered design can provide legal protection from unauthorised copying of the design for up to 10 years.

A registered design which has been examined and certified gives you a legally enforceable right to use your product's design to gain a marketing advantage. It also prevents others from using the design without your agreement.

What's in a Name?

Choosing the right name for your new business, company, product or Internet domain name is vital to distinguish your goods and services from competitors. You are creating an identity - something memorable and meaningful.

Business, company names and domain names are best protected when they are registered as trademarks. If your new name is identical or similar to another person's registered trademark, you could be sued for infringement.

Company name

A registrable body must be registered with the Australian Securities and Investment Commission.

If a company wishes to trade using a name other than its registered company name, it must register that trading name as a business name.

Unlike trade marks, company names do not necessarily provide proprietary rights for the use of the trading name.

Business name

Is the name under which a business operates and registration identifies the owners of that business. Registration is compulsory, and must be completed before the business starts trading.

Unlike trade marks, business names do not necessarily provide proprietary rights for the use of the trading name.

Domain name

Is a site address on the Internet. Before registering your domain name a search of company name, business name and trade mark databases are conducted for possible infringement.

An Internet name must be a registered Australian/New Zealand commercial entity and derived from your business or company name.

Copyright



Copyright protects the original expression of ideas, not the ideas themselves. It doesn't protect you against independent creation of similar work.

It protects original works of art, music, films, literature, broadcasts and computer programs against unauthorised copying and certain other uses.

Copyright material is automatically protected from the time it is first written down, drawn, filmed or taped.

The term of copyright is currently the life of the author plus 70 years.

There is no registration system in Australia for copyright, however a copyright notice of the owner's name and date first published can be used to indicate ownership (though the notice is not required for protection).

Monitor

When you own IP, you are responsible for monitoring its use and protection against infringement.

You must be diligent in maintaining your rights against unauthorised use or infringement of your IP.

Defend

If you find someone infringing on your IP, there are a number of actions you can take - letter from your Patent Attorney, out of court settlement, court action. Whatever you do you should pursue the infringer vigorously.

Commercialising your Intellectual Property

Unfortunately the majority of patent firms, solicitor and accounting firms think that commercialising IP is just licensing it or selling it for financial return.

Intellectual Property portfolios are therefore viewed this way, and surprisingly, hardly ever appear in the Strategic Plan of the organisation. There are many examples of the failure to understand what an IP Portfolio is all about

- Nokia (Hero to near zero)
- Kodak (Hero to zero)

are just two examples of organisations that did not effectively utilise their IP portfolios to create future "break through" products, but sat back on their leadership positions.

Without undertaking proper Scenario based Strategic Planning that incorporates the IP Portfolio, it is impossible to identify and create future products/services that will drive corporate growth.

Without this process, the R&D undertaken will be completely misguided and patent filing will be, in many cases just an expensive exercise without a future.

It should however, be the driving force for the creation of new innovative products/ services that monopolise chosen markets, or create wealth through the strategic licensing of these products or the IP itself.

"The best way to predict the future is to invent it." Alan Kay (American computer scientist, researcher and visionary), and your IP Portfolio is where it all starts.

Contact us for more details on how we can assist you to really commercialise your Intellectual Property.



Invention Pathways Pty Ltd

Trusted Adviser Centre
145 Ross River Road
MUNDINGBURRA QLD 4812
Ph: 07 4728 2800
Mob: 0407 477 505

IP ENQUIRIES

Mob: 0437 633 610

Email: terry@hurlocks.com.au

www.inventionpathways.com.au