From idea to market –
Introduction to Intellectual Property Rights

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Outline

Introduction to the IP system
IP rights
Alternatives
Outline

Introduction to the IP system
IP rights
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What is IP? What are IP rights?

Intellectual

? 

Property
Why protecting innovation?

Originators

- Significant investments in R&D
- Develop new products
- IP system

Competitors

- Use or copy ideas
- Similar products
- Less investments → cheaper price
Purpose of IP system

Distribution of knowledge and innovation
Conservation of knowledge and innovation
Exchange of knowledge and innovation
Exploitation of knowledge and innovation
Incentive for development

- By providing a temporally and locally restricted monopole
Brief history of IP systems

- 14th century: „Ständerecht“, privileges
- 15th century: first patent system 1474 in Venice
- 17th century: „statute of monopolies“ 1624 in England
- 18th century: 1790 introduction of US-patent system
- 19th century: 1877 first German patent law
- 1883 Paris Convention
- 1978 Patent-Cooperation Treaty („PCT“)
- 1978 European Patent established („EPC“)
- TRIPS and WTO
- 2018 (?) UPC
Examples of IP

Software

Consumer devices

Film & literature

Trademarks

Drugs

Coding standards
IP Rights: Overview

The “outlaws”
- Trade secrets
- “know-how”
- Domains

- Patents
- Utility Models
- SPC
- Designs
- Copyright
- Trademarks
- Plant Variety
- Geographical Indications
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Introduction to the IP system

IP rights
- Patents
- Utility Models
- Designs
- Trademarks
- Copyright

Alternatives

registered
unregistered

BOEHMERT & BOEHMERT
Patents
The United States.

To all to whom these Presents shall come. Greeting:

WHEREAS, Samuel Hopkins of the city of Philadelphia and state of Pennsylvania hath discovered an Improvement, not known or used before, in the making of Oat Ash and Pearl Ash by a new apparatus and Process, that is to say, in the making of Pearl Ash 1st by burning the raw Ashes in a Furnace, 2nd by dissolving and boiling them when so burnt in Water, 3rd by drawing off and settling the soap, and 4th by boiling the soap into Salts which then are the true Pearl Ash; and also in the making of Oat Ash by fusing the Pearl Ash so made as aforesaid; which Operation of burning the raw Ashes in a Furnace, preparatory to their Dissolution and boiling in Water, is new, leaves little Residuum; and produces a much greater Quantity of Salt: These are therefore in pursuance of the Act, entitled "An Act to promote the Progress of useful Arts," to grant to the said Samuel Hopkins, his Heirs, Administrators and Assigns, for the Term of fourteen Years, the sole and exclusive Right and Liberty of using and vending to others the said Discovery of burning the raw Ashes previous to their being dissolved and boiled in Water, according to the true Intent and Meaning of the Act aforesaid. In Testimony whereof I have caused these Letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the City of New York this thirty first Day of July in the Year of our Lord one thousand seven hundred and Ninety.

G. Washington


I do hereby certify that the foregoing Letters patent were delivered to me, in pursuance of the Act, entitled "An Act to promote the Progress of useful Arts," that I have examined the same, and find them conformable to the said Act.

The invention relates to a thermal heat pump consisting of a heat pipe in which the vapor passage between the heat transfer zone to the heat supply and the heat transfer zone to the heat removal section has a cross section which varies across its length.
What is a patent?

• Patents protect inventions
• Granted by government or international organizations (EPO, national PTOs)
• Prevents third parties from exploiting an invention for commercial purposes without authorization.
• “Negative” protective right: It is not a right to carry out the invention!
• In return for the absolute monopoly → disclosure of the invention
• Effects
  • Absolute (against everybody)
  • Temporary (usually 20 years)
  • Regionally limited (national)
Patents: Rights

Extent of protection

• Patented invention as defined in the claims
• Description/drawings are used for interpretation

Without authorization by patentee, a third party is prohibited from

• Product/process: using
• Product/product obtained directly by process: making, offering, selling, importing, stocking
• Supplying essential elements of the invention (indirect use)
Patents: Limitations

Limitation of the effects
- Private use / no commercial purpose
- Experimental purposes

Exhaustion of the rights
- Acts with regard to products which have been put on the market by patentee or with his/her consent

Prior use
- At the time of filing the application
- Invention has been already used
- Necessary preparations for use have been made
Patents: Criteria for patentability

- Invention
- Novelty
- Inventive Step
- Industrial Applicability
Patents: Invention

Legal definition?

• In all fields of technology

Inventions are innovations with a **technical** character

Patents protect inventions which solve technical problems

• Categories: product, process, method, apparatus or use
This invention relates to a method of raising sunken or stranded vessels by introducing into the interior of said vessels buoyant bodies by means of a stream of water. [...]
Images from “The Sunken Yacht”, Walt Disney Corporation, 1949
METHOD FOR MAKING A STUFFED PIZZA CRUST


Assignee: Crostar Crusts, Inc., Northbrook, Ill.

Appl. No.: 09/183,276
Filed: Oct. 30, 1998

Related U.S. Application Data

Division of application No. 08/697,903, Jul. 21, 1997, Pat. No. 5,962,107.

Int. Cl.7 .............................. A21D 13/00
U.S. Cl. .................. 426/94; 426/274; 426/275; 426/283
Field of Search ............ 426/360; 94, 274, 426/275, 283, 289, 302, 523

References Cited

U.S. PATENT DOCUMENTS

3,753,733 8/1973 Bell ................................. 426/275
4,283,431 8/1981 Giordano et al. ......................... 426/94

Primary Examiner—Lien Tran
Attorney, Agent, or Firm—Knechtle, Dernear & Samlan

ABSTRACT

A stuffed pizza crust includes a lower layer of an uncooked crust dough having a flanged peripheral edge, an upper layer of a baked crust having a peripheral edge, and a layer of an edible filling material disposed between the lower layer and the upper layer. The flanged peripheral edge of the lower layer is sealed with the peripheral edge of the upper layer, thereby encasing the layer of edible material therebetween. A method and apparatus for making the stuffed pizza crust is also provided.

6 Claims, 12 Drawing Sheets
Patents and Politics

→ Exclusions and exceptions from patentability
Utility Models
What is a utility model?

- Utility model protects inventions
- Granted by (several) national PTOs and two international organizations (in Africa)
- Similar to a patent
  - Prevents third parties from exploiting the protected invention for commercial purposes without authorization.
  - “Negative” protective right: It is not a right to carry out the invention!
  - In return for the absolute monopoly → disclosure of the invention
  - Same effects

But (usually)
- Shorter term of protection
- Limitations with regard to categories
- Less stringent requirements for protection
Utility models: Countries / regions

Albania, Angola, Argentina, ARIPO, Armenia, Aruba, Australia (innovation patent), Austria (Gebrauchsmuster), Azerbaijan, Belarus, Belize, Brazil, Bolivia, Bulgaria, Chile, China (utility model patent), Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany (Gebrauchsmuster), Greece, Guatemala, Honduras, Hungary, Indonesia (simple patent), Ireland (short-term patent), Italy, Japan (utility model), Kazakhstan, Kuwait, Kyrgyzstan, Laos, Malaysia (utility innovation), Mexico, OAPI, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Slovakia, Spain, Taiwan, Tajikistan, Trinidad & Tobago, Turkey, Ukraine, Uruguay and Uzbekistan.
Utility models: “The little brother” of patents?

<table>
<thead>
<tr>
<th>Utility models</th>
<th>Patents</th>
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</thead>
<tbody>
<tr>
<td>• Shorter protection (10 years)</td>
<td>• Protection for up to 20 years</td>
</tr>
<tr>
<td>• Search reports in some countries only</td>
<td>• Search reports standard</td>
</tr>
<tr>
<td><strong>Registered and published after a few months</strong></td>
<td>• Application published after 18 months</td>
</tr>
<tr>
<td>• Generally no substantive examination (novelty, inventiveness)</td>
<td>• Substantive examination (novelty, inventive step)</td>
</tr>
<tr>
<td>• Reviewed only in revocation or infringement proceedings</td>
<td>• Grant or refusal after substantive examination procedure</td>
</tr>
<tr>
<td>• <strong>Different prior art</strong>: grace period, limited classes (CN), limited public availability</td>
<td>• Prior art: any publicly available information</td>
</tr>
<tr>
<td>• Limited categories: no methods</td>
<td>• All categories of inventions</td>
</tr>
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</table>
Designs
What is a design?

What can be protected?

- The appearance of the whole or of a part of a product resulting from the features of, in particular lines, colors, shape, texture and/or materials of the product

What are the requirements for protection?

- Novelty and individual character
- Protection non-technical

How long is the protection?

- A maximum of 25 years (5 + up to 4 times 5)
Designs: The Community Design

Registered Community Design

- Scope: the European Union as a whole
- Level of protection: exclusive right
  - to use the design concerned and
  - to prevent any third party from using it anywhere within the European Union
- Protection against deliberate copying and the independent development of a similar design

Unregistered Community Design

- 3 years after disclosure within territory of EU
- protection against deliberate copying
### Designs: A mixed IP right

<table>
<thead>
<tr>
<th>Unregistered designs</th>
<th>Registered designs</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No application procedure</td>
<td>• Application with EUIPO</td>
</tr>
<tr>
<td>• No costs</td>
<td>• Fees payable to EUIPO</td>
</tr>
<tr>
<td>• Protection against copying</td>
<td>• Full protection</td>
</tr>
<tr>
<td>• Protection for 3 years</td>
<td>• Min. 5 years, max. 25 years</td>
</tr>
<tr>
<td>• No grace period</td>
<td>• 12-month grace period</td>
</tr>
<tr>
<td>• No priority</td>
<td>• 6-month priority period</td>
</tr>
</tbody>
</table>
Designs: Examples
Trademarks
Trademarks

A trademark protects

- **brands** or branding, logos, names etc.
- distinguish the **goods and services** of one business from those of another

Provided by government or international organizations (EUIPO, national PTOs)

**Nature of trademark**

- Exclusive right to mark a product or service

**Effects**

- Absolute (against everybody)
- Temporally (usually 10 years), but can be extended
- National, but regional marks available
- Negative protective right (no “allowance”)
Trademarks: What can be protected?

Signs

- Words, letters and numerals, slogans
- Figurative elements, logos
- Three-dimensional shapes
- Colours
- Sounds, music, jingles
- Signs with movement

- Smells? Tastes?

However, signs must be represented **graphically**
Trademarks: Criteria for registrability

Signs capable of being represented graphically
- words, designs, letters, numerals
- shape of goods or of their packaging
- distinguishing the goods or services of one undertaking from those of other undertakings

Absolute grounds for refusal
- devoid of any distinctive character
- designations of characteristics of the goods or services

Relative grounds for refusal
- earlier trademarks identical or confusable trademarks
- only upon opposition by the proprietor
Trademarks: Limitations

Limitation of the effects

- use of name & address in the course of trade
- indications concerning characteristics of goods or services (absolute grounds for refusal)
- intended purpose of a product or service (accessories / spare parts)

Exhausston of the rights

- goods which have been put on the market by proprietor or with his/her consent

Obligation to use the trademark

- genuine use within 5 years following registration
- use suspended during an uninterrupted period of 5 years
Copyright
What is copyright?

Free and automatic form of IP

• Protects authorial works and entrepreneurial works from unauthorised copying.
• The existence of the right requires the work to be original, but does not generally depend on the quality of the work.
• Different work types, such as literary, scientific, and artistic works.

Term of protection

• At least 50 years post-mortem.
• In most countries: 70 years post-mortem.
Copyright: What is protected?

Generally "literary, scientific and artistic works" (sec. 1 GCA):

Catalog of protected works (sec. 2 GCA):

- Works of language, such as writings, speeches and computer programs
- Musical works
- Works of pantomime
- Works of fine art, including works of architecture and of applied art
- Photographic works
- Cinematographic works
- Illustrations of a scientific or technical nature

The term “work” is neutral, in terms of value, quality, investments
Copyright: Requirements for protection

- Personal intellectual creation (sec. 2 II CGA)
  - personal creation
  - perceivable form
  - individuality
  - degree of originality
What does “individuality” and “originality” mean?

Individuality

- The individual spirit of the author must be expressed in the conception, content or form of the work
- The work must distinguish itself from the mass of everyday works
- The expression of human thoughts must emanate from the work
- Chance products excluded
- Subjective novelty sufficient

Originality

- Low level sufficient (Arnold Schönberg vs. ring tones)
- Special requirements for software?
  - Depends on case law
  - Usually, most programs are protected
Copyright: Examples
Copyright: Limitations

Exception means: You do not have to ask the rightsholder

- Promotion of intellectual discussion e.g. citation
- Private (consumer) interest e.g. private copy
- Educational purposes e.g. public libraries
- Scientific purposes e.g. schools/universities

"Exceptions" (sec 44a-63a GCA)
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Do nothing

Advantages

• No efforts required

Disadvantages

• Does not offer exclusivity
• Competitors will often learn details
• Does not prevents others from patenting the same invention (if unpublished)
Information disclosure: Public domain / open source

Advantages

• Cheap
• Prevents others from patenting the same invention

Disadvantages

• Does not offer exclusivity
• Reveals the invention to competitors
Keep your IP secret

Know-How and Trade Secrets

- If technology cannot be derived from final product, consider keeping it secret
- Strategic reasons for not including all technical information into a patent
- What about unpatentable topics? Business considerations, such as business plans, marketing strategies
- Use of non-disclosure agreements (NDAs), material transfer agreements, and restrictive covenants to protect trade secrets

Relatively cheap: cost of maintaining secrecy

No protection against

- Reverse-engineering
- Duplication of invention
- Employee turnover
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→ Exercise session
Thank you for your kind attention

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