

From idea to market – Introduction to Intellectual Property Rights

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Outline

Introduction to the IP system

IP rights

Alternatives

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Introduction to the IP system

IP rights

Alternatives

What is IP? What are IP rights?

Intellectual



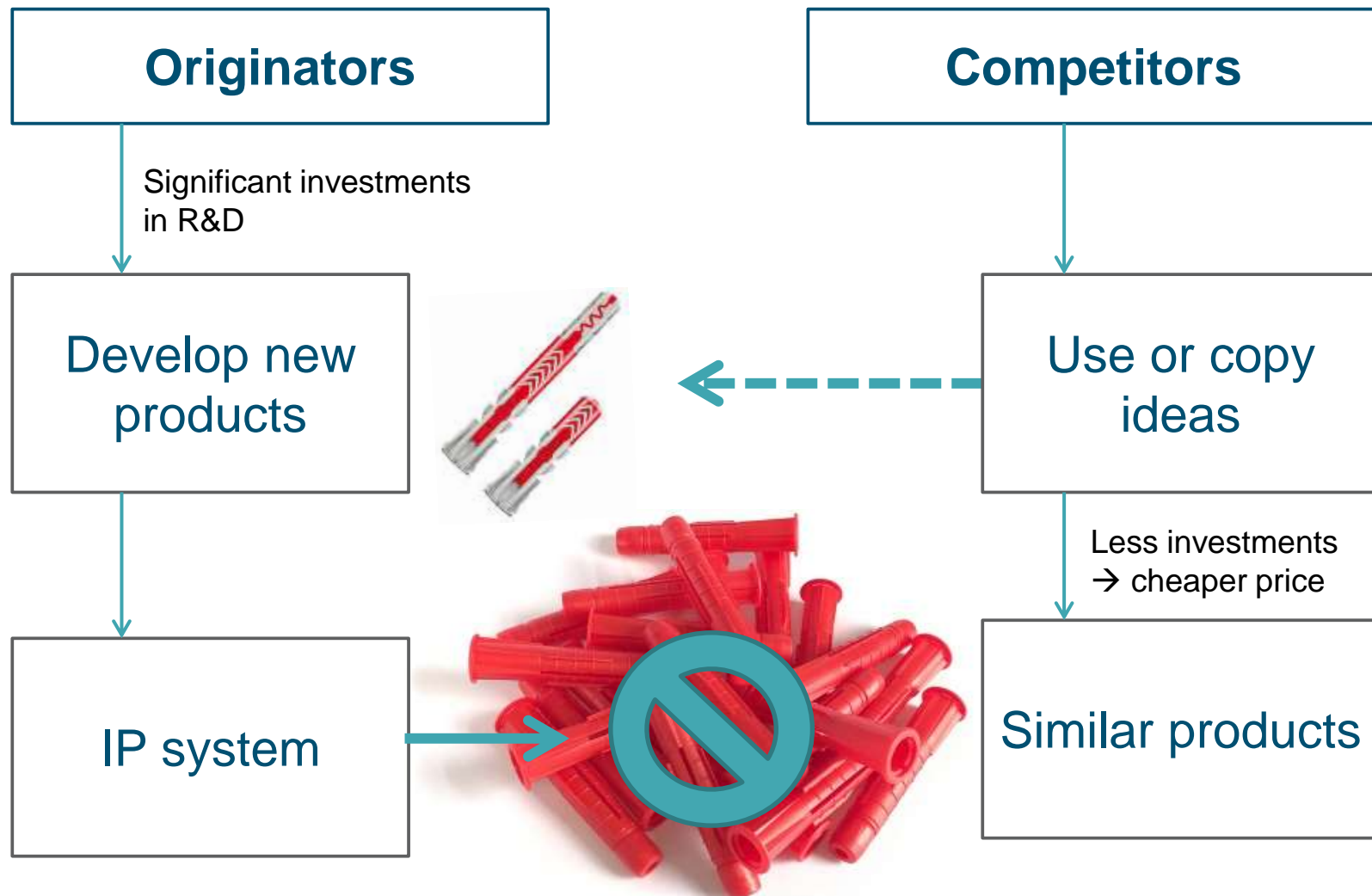
?



Property



Why protecting innovation?



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

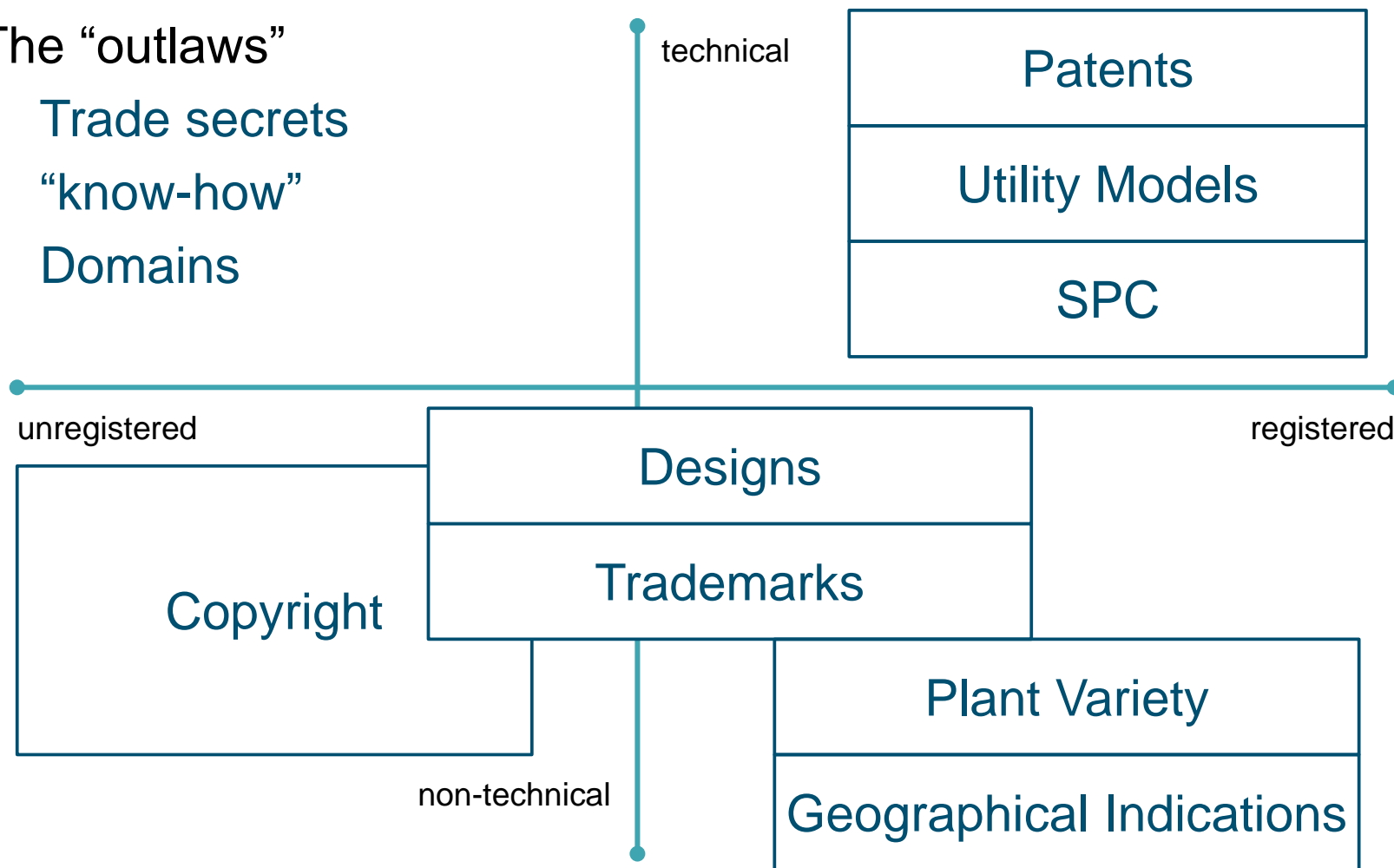


Coding standards

IP Rights: Overview

The “outlaws”

- Trade secrets
- “know-how”
- Domains



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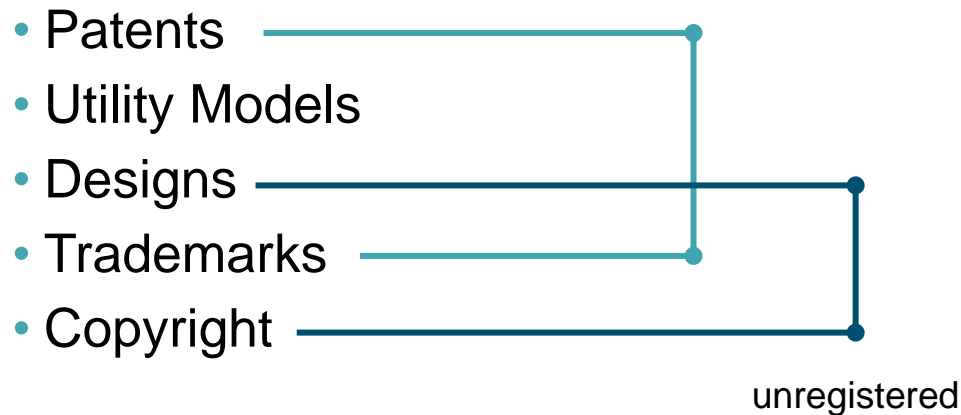
IP rights

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IP rights



Alternatives

Patents



X000001

July 31, 1790

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, such Discovery, in the making of Pot 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, 2^d by dissolving and boiling them when so burnt in Water, 3^d by drawing off and settling the ley, and 4th by boiling the ley into salts which then are the true Pearl ash; and also in the making of Pot ash by fluxing 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 & Ninety.

G. Washington

City of New York July 31st 1790. -

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.

Edm: Randolph Attorney General for the United States. -

EUROPÄISCHE PATENTSCHRIFT

Anmeldenummer: 78200013.7

Int. Cl.³: F 28 D 15/00 F 24 J 3/04

Anmeldetag: 01.06.78

Thermische Wärmepumpe

Priorität: 02.09.77 DE 2739689

Veröffentlichungstag der Anmeldung: 20.12.78 Patentblatt 78/01

Bekanntmachung des Hinweises auf die Patenterteilung: 07.01.81 Patentblatt 81/01

Benannte Vertragsstaaten: BE CH FR GB NL SE

Entgegenhaltungen:
 DE - A - 2 181 506
 FR - A - 2 025 459
 US - A - 3 532 159
 US - A - 3 568 762
 US - A - 3 913 665
 US - A - 3 985 970
 US - A - 4 018 269

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 Postale 1907
 Luxembourg (LU)

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Vertreter: Wey, Hans-Heinrich, Dipl.-Ing., et al
 Patentanwälte Müller-Börner Wey & Körner
 Widenmayerstrasse 49
 D - 8000 München 22 (DE)

Anmerkung: Innerhalb von neun Monaten nach der Bekanntmachung des Hinweises auf die Erteilung des europäischen Patents im Europäischen Patentblatt kann jedermann beim Europäischen Patentamt gegen das erteilte europäische Patent Einspruch einlegen. Der Einspruch ist schriftlich einzureichen und zu begründen. Er gilt erst als eingelegt, wenn die Einspruchsgebühr entrichtet worden ist (Art. 99(1) Europäisches Patentübereinkommen).

Courier Press, Leamington Spa, England.

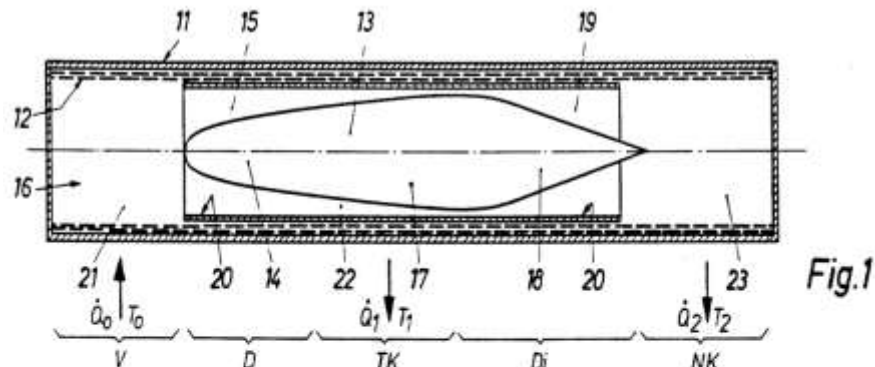


Fig.1

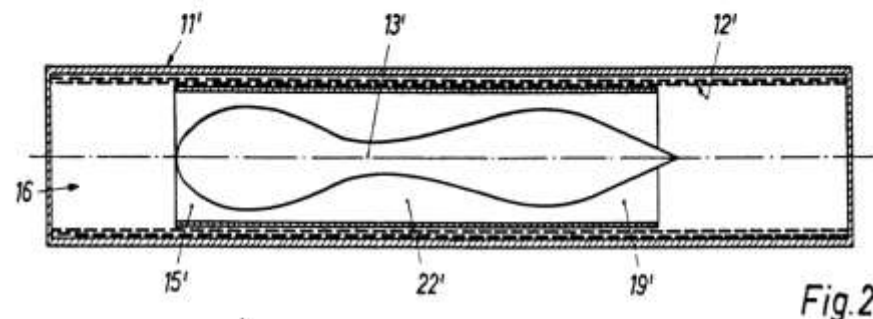


Fig.2

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

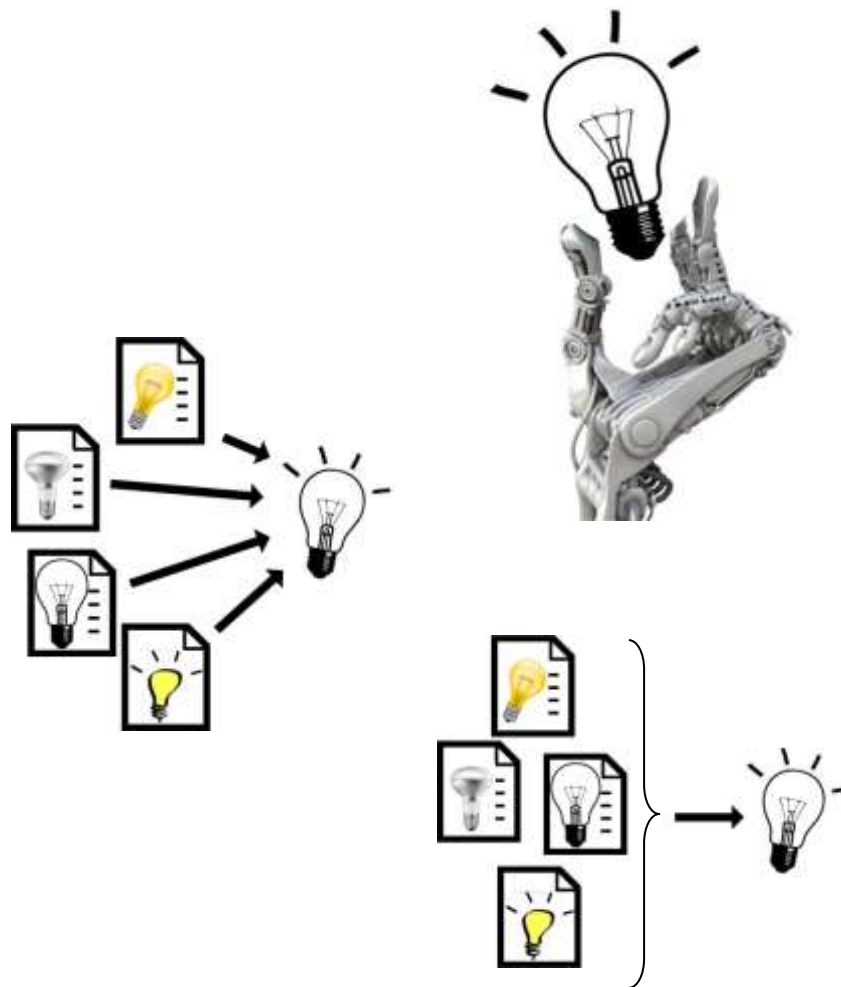
- Acts with regard to products which have been put on the market by patentee or with his/her consent

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

Patents: Novelty & inventive step

OCTROOIRAAD



NEDERLAND

Ter inzage gelegde

Octroolaanvraag No. 6 5 1 4 3 0 6

Klasse 65 b 3 c.

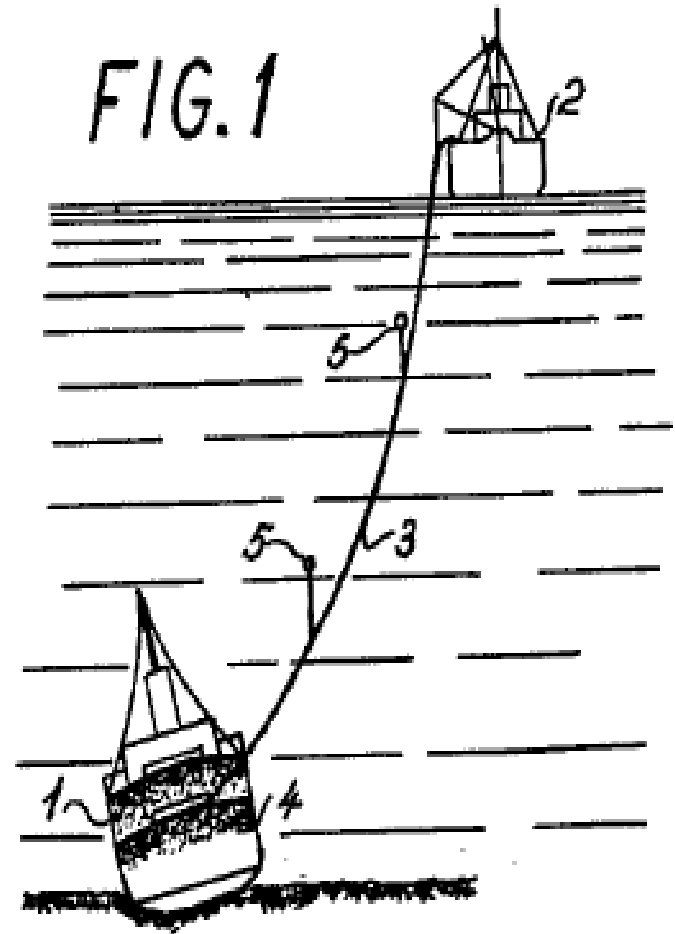
I. P. C. B 63 c.

Indieningsdatum: 4 november 1965,
15 uur 35 min.

Datum van terinzagelegging: 5 mei 1966.

Aanvrager: Karl Kristian Kobs Krøyer te Aarhus-Viby Denemarken

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. [...]



Patents: Novelty?



Images from "The Sunken Yacht", Walt Disney Corporation, 1949

Patents: High-Tech / Business / Pizza

United States Patent [19] [11] **Patent Number:** 6,048,556
Sanguinetti et al. [45] **Date of Patent:** Apr. 11, 2000

[54] **METHOD FOR MAKING A STUFFED PIZZA CRUST**

[75] Inventors: **Paul Sanguinetti**, Antioch, Tenn.; **Rick L. Nelson**, Mead, Wash.; **David M. Dungan**, Xenia; **Richard L. Hayward**, Washington C.H., both of Ohio

[73] Assignee: **Crestar Crusts, Inc.**, Northbrook, Ill.

[21] Appl. No.: **09/183,276**

[22] Filed: **Oct. 30, 1998**

Related U.S. Application Data

[62] Division of application No. 08/897,593, Jul. 21, 1997, Pat. No. 5,865,107.

[51] **Int. Cl.**⁷ **A21D 13/00**

[52] **U.S. Cl.** **426/94; 426/274; 426/275; 426/283**

[58] **Field of Search** 426/89, 94, 274, 426/275, 283, 289, 302, 523

[56] **References Cited**

U.S. PATENT DOCUMENTS

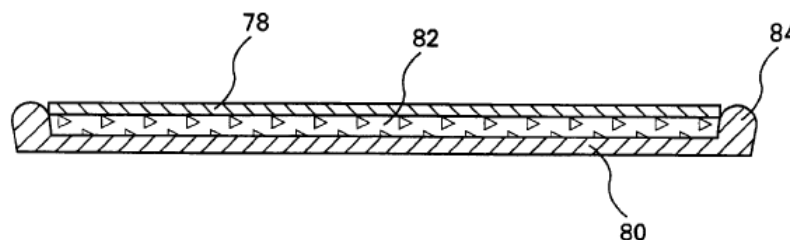
3,753,733	8/1973	Bell	426/275
4,283,431	8/1981	Giordano et al.	426/94
5,720,998	2/1998	Proctor et al.	426/94

Primary Examiner—Lien Tran
Attorney, Agent, or Firm—Knechtel, Demeur & Samlan

[57] **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?

Utility models

- Shorter protection (10 years)
- Search reports in some countries only
- **Registered and published after a few months**
- Generally no substantive examination (novelty, inventiveness)
- Reviewed only in revocation or infringement proceedings
- **Different prior art:** grace period, limited classes (CN), limited public availability
- Limited categories: no methods

Patents

- Protection for up to 20 years
- Search reports standard
- Application published after 18 months
- Substantive examination (novelty, inventive step)
- Grant or refusal after substantive examination procedure
- Prior art: any publicly available information
- All categories of inventions

Designs

What is a design?

What can be protected?

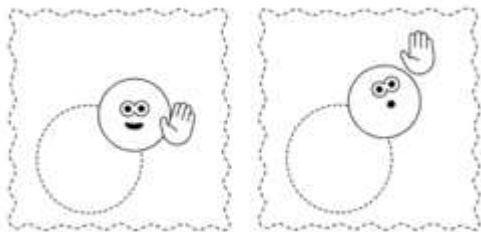
- The appearance of the whole or of a part of a product resulting from the features of, in particular lines, colors, shape, texture and/or materials of the product

What are the requirements for protection?

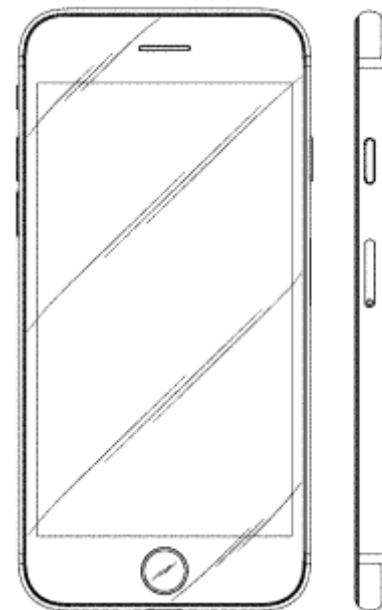
- Novelty and individual character
- Protection non-technical

How long is the protection?

- A maximum of 25 years (5 + up to 4 times 5)



“Display screen with animated graphical user interface”, D0800780, Microsoft Corporation



“Electronic device”, D0800716, Apple Inc.

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

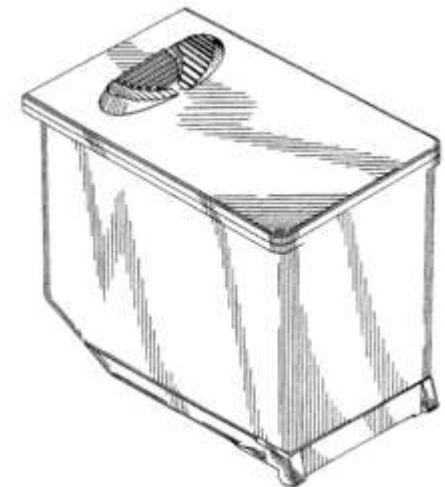
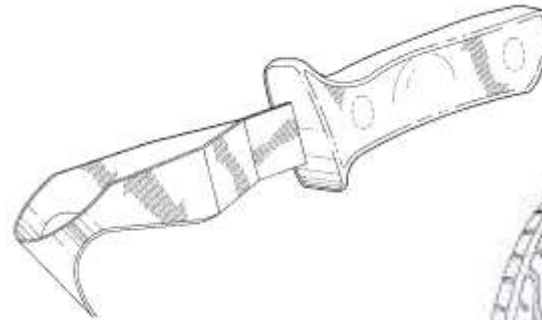
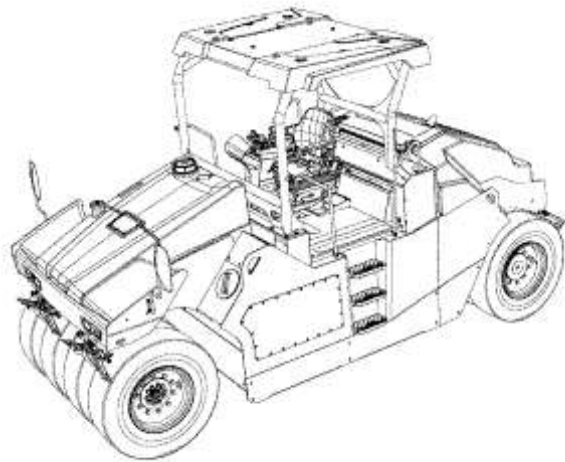
Unregistered designs

- No application procedure
- No costs
- Protection against copying
- Protection for 3 years
- No grace period
- No priority

Registered designs

- Application with EUIPO
- Fees payable to EUIPO
- Full protection
- Min. 5 years, max. 25 years
- 12-month grace period
- 6-month priority period

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”)

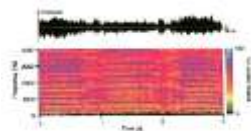
Trademarks: What can be protected?

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**

PHILIPS



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



MILX ? MILK

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)

Exhaustion 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?

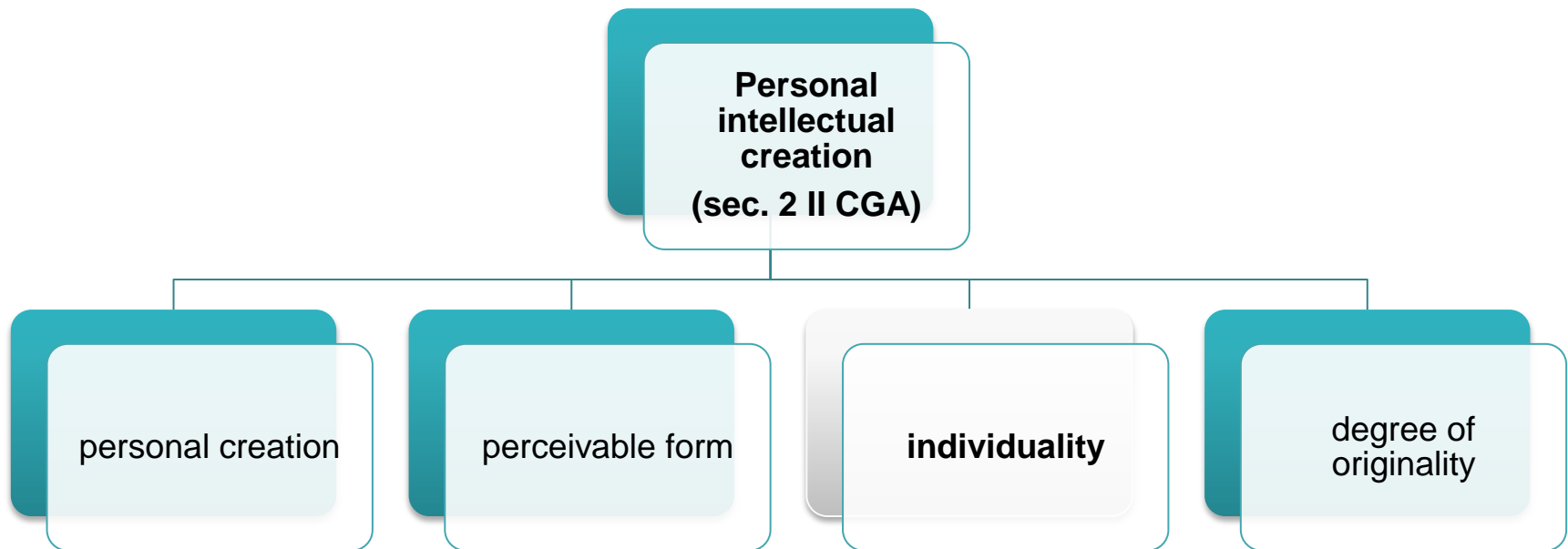
Generally "literary, scientific and artistic works" (sec. 1 GCA):

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



What does “individuality” and “originality” mean?

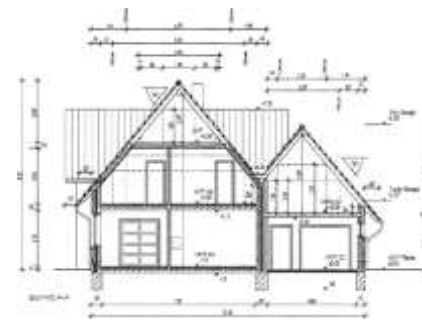
Individuality

- 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

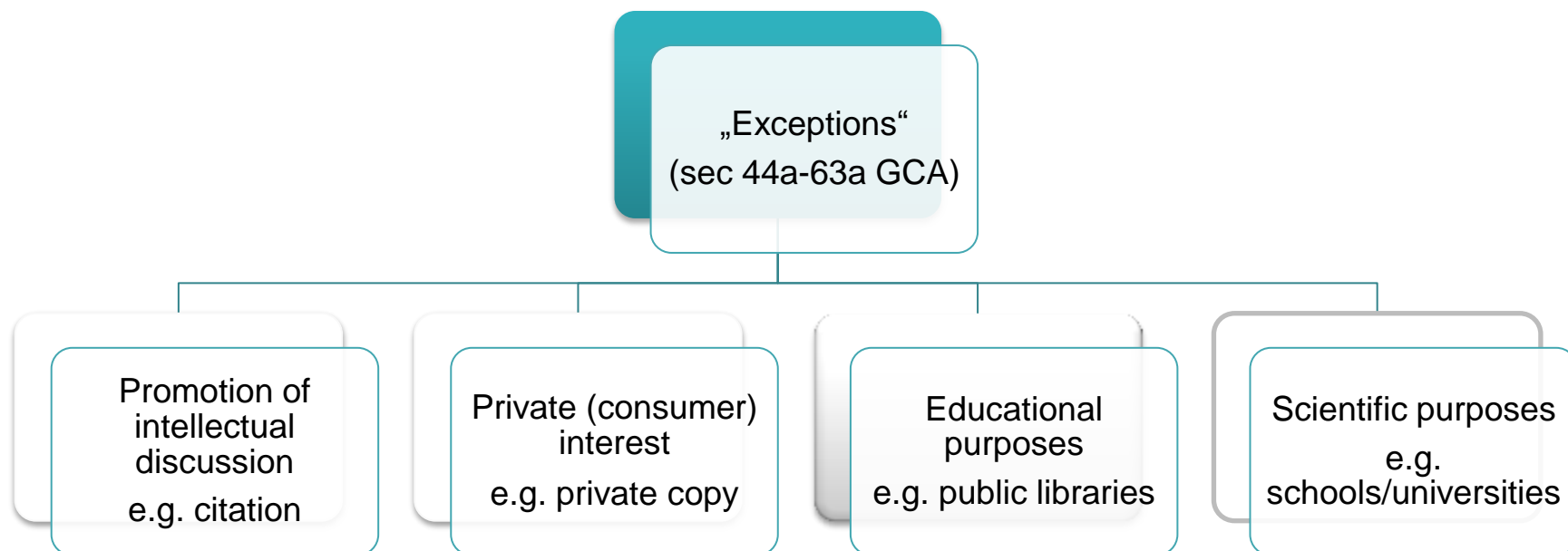
- Low level sufficient (Arnold Schönberg vs. ring tones)
- Special requirements for software?
 - Depends on case law
 - Usually, most programs are protected

Copyright: Examples



Copyright: Limitations

Exception means: You do not have to ask the rightsholder



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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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