

ppportunity



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ITEK Pty Ltd

Intellectual Property Guide

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What is Intellectual Property (IP)?

- Includes: patents
trade marks
designs
copyright
circuit layouts
plant breeders' rights &
trade secrets
- Exclusive rights for intellectual effort





Why are IP rights important?

- Convert intellectual effort to non-tangible property
- What does this mean?
 - It can be treated like property
 - It can be licensed (lent out) or assigned (sold)
- It can then be commercialised!



Why commercialise IP?

- To generate an income stream from IP
 - eg royalties through licensing
- To provide an incentive to keep inventors/researchers innovating!
 - Commercialisation provides funds for reinvestment into R&D
 - To encourage disclosure and prevent duplication of effort

Various forms of IP

Type of IP	Term	What is protected?	Application process
Patent	20-25 yrs	Any novel and inventive artificially created state of affairs "as claimed"	Long and expensive
Design	10 yrs	The appearance of a design	Easy
Plant breeders' right	20-25 yrs	A new plant variety and an essentially derived variety	Must be distinct, uniform and stable
Copyright	Life + 70 yrs	A substantial portion of an artistic work	None
Circuit layouts	10-20 yrs	Copying and making circuits from a layout	None
Trade marks	Ongoing	Identical or deceptively similar marks (ie names, logos, shapes, colours, smells, sounds) of registered goods and /or services	Moderate
Trade secrets	Ongoing	Anything that can be maintained confidential – eg a product or process that cannot be reverse engineered	None - but must maintain confidentiality

What form of IP??

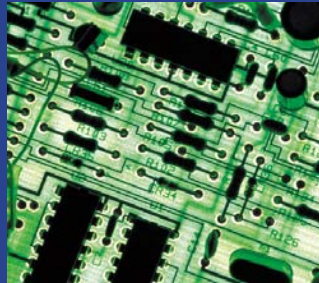
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Software



Telecommunications/IT



Hardware



Business/teaching methods



Instruments/apparatus/medical devices

What form of IP??

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Manufacturing/chemical/
medical/biotech/physical
processes

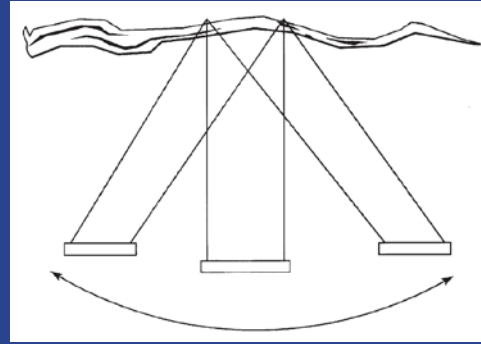


Plants

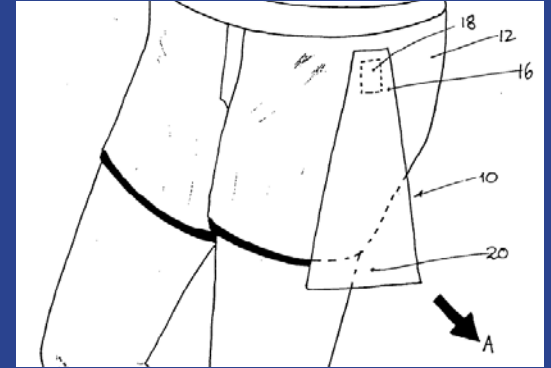


Foods

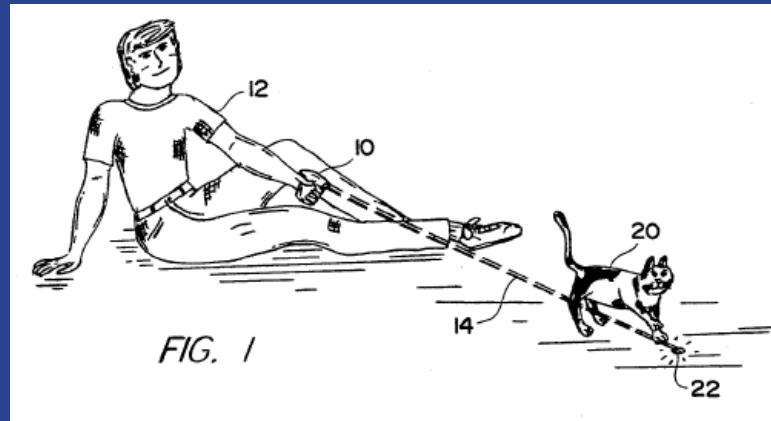
Can you really patent that?



Method of swinging
on a swing



Oztag

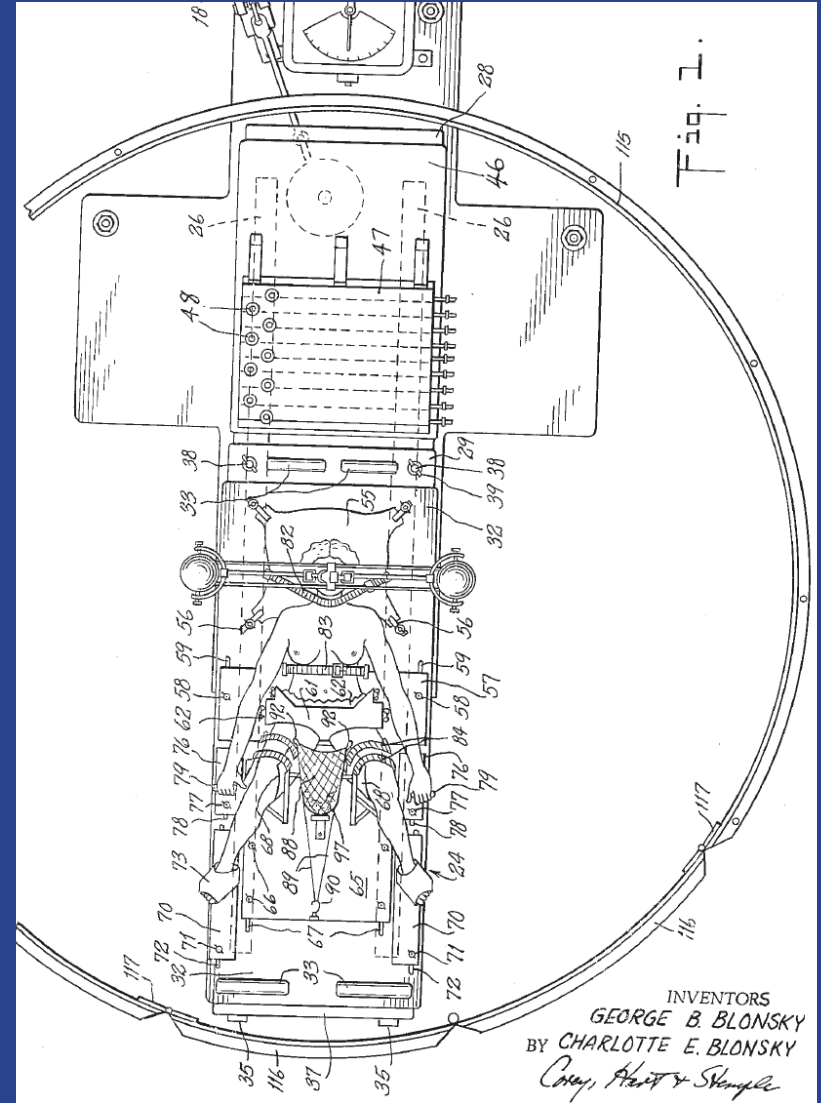


Method for exercising a cat

Can you really patent that?

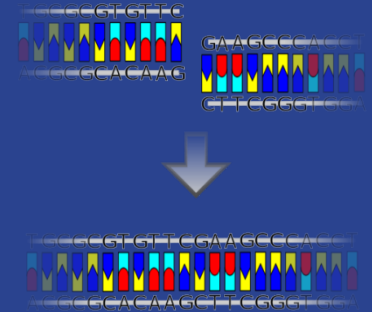


Apparatus
for
facilitating
the birth
of a child
by
centrifugal
force

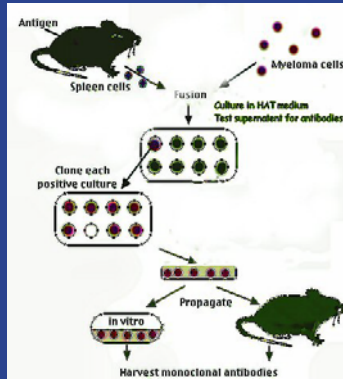


Example 1 - patent protected

- Cohen-Boyer patent (US)
 - Method for producing recombinant DNA
 - Cohen, famously, was not keen to patent
 - Stanford Uni filed patent
 - 370 licenses issued
 - Royalties in excess of US\$200m (patent expired in 1997)



Example 2 - not patent protected



Kohler and Milstein's monoclonal antibodies

- Method for producing monoclonal antibodies

“difficult for us to identify any immediate practical applications that could be pursued as a commercial venture”

“the general field of genetic engineering is a particularly difficult area from the patent point of view and it is not immediately obvious what patentable features are ... present”

- Now widely used in R&D, diagnostics, drug development, therapeutic agents

Trade secret – Coca Cola



- Formulation is held in SunTrust Bank's main vault in Atlanta
- Two executives have access to the formula
 - each only has half the formula
- Coca cola concentrate sold to licensed bottlers
- Bottlers combine concentrate with filtered water and sweeteners to produce the finished product
- What other forms of IP could exist on the Coca Cola product?

Design registration

- ROH Wheels Australia (based in SA)
 - Largest aftermarket wheel manufacturer in AU
 - Niche products from innovative alloy designs
 - Export to Germany, Japan, New Zealand and the USA
- ROH protect new wheel designs to meet changes in automotive **fashion**
- Designs protect shape and appearance



FLARE CHROME



FLASH



TROJAN



DRAGMAG

Trade marks for products



- Registration for shape trade marks
- Philips applied for registration of the three-headed rotary electric shaver
- Remington also produce three-headed rotary electric shavers
- Commenced infringement and revocation proceeding around the world
- WHY??
- Trade mark registration can be indefinite!!

Commercial success story Gardasil

- Patent owned by CSL and the University of Queensland
- Licensed solely to Merck
- By 2007 in Australia alone
- Sales of Gardasil - \$100 million
- Royalties for CSL - \$86 million
- 8 June 2006 - Gardasil approved by the US FDA
- 30 June 2007 - Gardasil approved in 80 countries another 40 under review!!

What does this mean for CSL?

- CSL Biotherapies
 - Sales growth 49% to \$317 million
 - Total revenue increase 12-14%

“Research and Development, which is a cornerstone of our growth strategy, will receive an additional investment of around 15% taking total spend to around \$220 million.”



But...

- Inventorship disputed in the US
 - Frazer and Zhou (inventors of the CSL/UQ patent) and Schlegel and Jensen (Georgetown University)
 - who was the first to invent?
- The USPTO awarded the patent to Georgetown University
- CSL/UQ appealed to US Court of Appeals for the Federal Circuit
- Returned the patent to CSL/UQ

Inventorship

- In AU correct inventors **must** be given
 - Adding inventors that **are not** true inventors, or
 - Omitting inventors that **are** true inventors
 - may invalidate a patent!
- Inventorship is different to authorship
 - Inventive contribution to the “claimed” invention
 - Apply the “but for” test

When naming inventors goes wrong..

- *Aventis Cropscience v Monsanto (US)*
 - Monsanto held patent for transgenic cotton
 - Aventis located an un-named inventor
 - Added the un-named inventor to the patent
- Aventis could co-exploit the invention
- NB in Australia the patent could have been invalidated!



Demonstrating inventorship

- Evidence of invention
 - Documentation of progress
 - Eg Lab books
 - Must be current and complete
 - Should be non-tamperable (bound)
 - Should be dated & signed off on a regular basis

Summary

1. Why protect IP?
2. What are the different types of IP?
3. Can a product be protected by more than one type of IP?
4. What types of things can be patented?
5. What can happen if there are too many inventors listed on a patent?
6. How can the process of invention be documented?

Opportunity



Next Step

1. Maintain a Lab book.
2. Make an informed decision.
3. Contact ITEK.
4. It's a free service to you.