

Guide Sheet 1 – Intellectual Property Basics

What is an invention?

Basically, an invention is simply something new, something which has never been thought up before and which is not obvious. It need not be complicated, nor relate to "high technology". However, not every new idea, however ingenious, can be patented.

Most inventions are new machines, products or industrial processes. These can generally be patented. Inventions and ideas which do not fall into these classes, such as purely aesthetic creations, computer programs (but see the next paragraph) and also animal and plant varieties, are not considered to be patentable, although protection may be available for them in other ways.

Scientific theories and discoveries are not themselves patentable, though their application in industry may well produce inventions which are.

Although computer programs as such are excluded from protection by patents, inventions embodied in computer programs (so-called software-related inventions) may be protected depending upon their technical effect.

What can I do to protect my idea?

When inventors come up with an idea they quite rightly tend to be afraid to disclose anything for fear that someone will "*steal*" the idea as their own. Although outright theft of ideas is unusual it is not unheard of and all parties need to be protected in some way.

Inventors are therefore strongly advised to obtain patent or registered design protection before disclosing an idea to a potential collaborator.

You must ensure adequate protection of your idea and taking professional advice is therefore recommended. You can find lots of useful information on the [Patent Office](#) website.

What is Intellectual Property?

The output of any intellectual activity can legitimately be described as intellectual property. As property, it can be bought, sold or licensed and must be adequately protected. It can include patentable inventions, including industrial processes, trade marks, designs, software, data, and other written work.

Intellectual property generally falls into categories based on whether it has to be formally registered/applied for, or whether rights automatically come into being once the intellectual activity is carried out. Thus, patents and trade marks must be applied for and result in the grant of monopoly rights, whilst copyright (at least in Europe) exists once a written work comes into being, but only provides protection against copying.

What types of intellectual property are there?

Intellectual Property Rights can be held in the form of patents, copyright, designs, trade marks, databases and confidential "know-how".

Patents

A patent is a legal monopoly right to the commercial use of an invention for a period of up to 20 years. It prevents other people from exploiting the invention without consent. In order to gain a

patent your invention has to fulfil certain criteria, namely it needs to be new, be inventive (or involve a non obvious inventive step) and must be capable of industrial application (there are a number of excluded classes, such as mathematical algorithms, methods of treatment of the human or animal body by surgery or therapy, or methods of diagnosis).

Copyright

Copyright law protects an author from having his or her work copied or exploited without permission. Literary and artistic works, films, videos, records, broadcasts and typographical arrangements, including computer software are protected by copyright. Protection is automatic on the creation of the material without the need to apply for any special licence and so it is quicker and cheaper than patenting. The general rule is that the author is the first owner, however, if the work is created during the course of employment, the employer will be the first owner of these rights, although there are ways around this. For literary works, copyright endures until 70 years from the year the author dies.

Registered Design Rights

In some new products, the novelty lies not in a new idea or principle but in their appearance. A registered design will give the proprietor a monopoly in the appearance of his design as applied to a particular article. This gives the owner the right to stop others from making, using or selling the article without permission. Registered design rights usually cover commercial objects with a unique or aesthetic appearance. To apply for a registered design, drawings or photographs showing the item must be submitted to the Designs Registry. Other than initial filing costs there are few if any subsequent costs. The initial application usually buys 5 years of protection although this term can be extended in 5 yearly intervals up until 25 years.

Unregistered Design Rights

Unregistered Design Rights are not directly associated with appearance. The right can protect internal and external features but only gives protection against copying of features of shape and configuration (e.g. product brand names, company logos, physical design of computer chips, engineering components and architectural drawings). Design Right is not applied for. Where a new design is created in the UK or Europe, any drawings, data files or prototypes should be signed and dated by the author. The original drawings and prototypes should be kept in a safe place. While design right can be relied upon in the United Kingdom, overseas protection is not guaranteed unless further protection is sought.

Trademarks

A trademark is a sign or symbol that is used to distinguish a product or service from that produced or supplied by another business. It could be the design of a label or the shape of a product's packaging (for example, the Coca-Cola bottle). Registering a trademark protects the owner from competitors also trying to use that image to promote their own products. Trademarks can be very valuable in keeping that product as a market leader.

Know-How

"Know-how" is confidential information which may be commercially or technically valuable and which is regarded as secret. It may, for example, include information on industrial processes, background techniques or be a list of clients. The law of confidentiality can protect these "trade

secrets". A trade secret can be defined as information known to only a few people where disclosure would constitute a breach of confidence.

What are intellectual property rights?

Intellectual Property Rights define the legally protected rights which enable owners of items of intellectual property to exert monopoly control over the exploitation of these rights, usually with commercial gain in mind. They give the right to stop others exploiting this property, sometimes for a fixed period, sometimes indefinitely.

Who owns an idea?

Clearly the first owner of any invention is the inventor. For an "independent inventor" that settles the matter. However, many people invent things while in employment, this is common within the NHS and the patent law lays down the circumstances in which inventions made by an employee belong to the employer and those in which they remain with the employee. Generally speaking, if you are employed in a position where inventions can well occur and you are employed to contribute in that way, an invention relevant to the field of your employment will be owned by the employer automatically. On the other hand, if you are employed in one area and invent something in a totally different technical area, it will normally be yours, particularly if you are not employed in a position where inventions are expected. If you make an invention you may be bound to disclose it to your employer in any event, but the employer will usually know whether the invention is his or yours.

Although the employer can claim ownership of the IP, in most Universities and increasingly in NHS Trusts there is provision for the inventor to benefit financially if the invention is commercially successful. The simplest method of doing this is to use a "constant ratio of sharing" where net income is shared in a set ratio between the parties involved i.e. inventor, department and institution. Net income refers to the income after patenting and other costs are recovered. In the case of disputes a patent agent and/or the Patent Office should be consulted.

You can get impartial advice from patent agents at the i2 Event – www.medicalfutures.co.uk