

An introduction to Intellectual Property

The aim of this document is to briefly introduce some topics, facts and issues from intellectual property law. This document is aimed at people who have had little or no contact with intellectual property and is designed as a primer to highlight some particular elements of the subject area.

1. Types of Intellectual Property (IP)

Intellectual property breaks down into two basic categories; (1) IP rights that require registration, such as patents, trade marks, registered designs and domain names; and (2) IP rights that don't require registration, such as copyright, unregistered design right, common law trade marks and know-how/confidential information. These different types of intellectual property will be directed towards protecting different things. However,

“protecting your IP may be integral to the success of your business”

some terms are often incorrectly used interchangeably.

2. Patents

A patent is a legal right enabling the owner of the patent to stop someone else making use of an invention. Patents are generally associated with technical inventions but if you've ever developed something you think is new or cool/solves a problem then you may have a patentable invention! It should also be appreciated that to be enforced, a patent needs to have granted.

3. Software patents

There is a popular misconception that software related inventions (or “computer-implemented inventions”) cannot be patented. Don't believe the hype! While it is true that there may be additional issues to consider compared to hardware based inventions, whether or not a software based invention is patentable may not be obvious. Our advice would be to check with a patent attorney if you have something, even if it is embodied in software, that is new and solves a problem.

4. Registered trade marks

Trade marks relate to branding. If you've ever been involved in setting up a new company (with a new company name) or selling a product or service under a brand name then you have been dealing with trade marks. Trade marks are signs (like words and logos) that distinguish goods and services of one business from another business in the marketplace. A domain name is a unique identifier that identifies something on the Internet, e.g. a website. A domain name may incorporate a trade mark.

5. Due diligence/branding

When identifying IP rights that apply to your business or will be applied to your business, it is important to remember that whilst a company name and a domain name might be available, it does not necessarily mean you are clear to use that name in the course of business. Clearing a trade mark for use and registration should always be the first point of call when considering a new branding exercise.

6. Registered designs

Designs protect the shape and visual appearance of a product. Designs may be obtained for a three dimensional product (such as a tablet computing device like an iPad®) or a two dimensional design, such as a pattern for application to a product. Products can include computer logos/symbols, typefaces as well as more traditional 3D objects.

7. Patents – Don't disclose

It is extremely important not to publicly disclose your invention, for example by including details on your website, before you've filed a patent application. Any disclosures that you make become part of the "prior art" and could be cited against you when your patent application is examined by the Patent Office. So, in a worst case scenario your own disclosures could preclude you from getting a patent through to grant.

Now, in some circumstances you may find yourself needing to disclose information to someone outside of your company, e.g. to an investor, to a developer etc. A confidentiality

arrangement is vital in such circumstances but if possible, think about filing a patent application before you make the disclosure.

8. IP rights are territorial

Intellectual Property rights, such as patents, trade marks and registered designs, are territorial in nature and infringement of those rights is only possible when an intellectual property right is in force. In practice this means that you will need to consider carefully with your IP advisors where you want protection, e.g. where you might be selling goods, where you might have a manufacturing base, where your competitors may be etc.

9. Patent Box

Patents might be able to reduce your UK corporation tax liability. In April 2013 the UK government introduced a lower effective corporation tax rate (10% by 2017) on profits attributable to UK or European patents. This is a complex area but a quick assessment (less than an hour) can be made to see if the patent box regime might be beneficial to your company. Contact us for further details.

10. More information

The subject of intellectual property is a complicated one but there's plenty of free information available. For example check out the UK's Intellectual Property Office website for more information on the above topics at <http://www.ipo.gov.uk/types.htm>. We would also encourage arranging to talk with a patent or trade mark attorney at Keltie as early as possible. More intellectual property related news and stories can be found on our IPcopy blog www.ipcopy.wordpress.com.

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