

Intellectual Property

A Tool for Business

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Intellectual Property is a Source of Market Power

IP refers to *products* or *processes* that result from creations of the mind



Types of IP



Chemicals



Processes



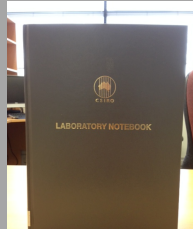
Trade
Secrets



Devices



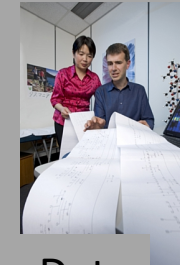
Copyright



Know-how



Trademarks



Data



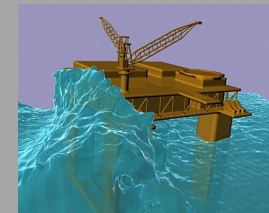
Plant
Varieties



Designs



Software



Models

How can IP be used?

- Financial benefits

Can buy, sell, license IP

- Barter

Use as “currency” to access another’s protected IP

- Incentive for others to invest in accessing the latest technology while giving you money for ‘productisation’.

Government grants, seed funding, VC investment

- To attract productive, world class collaborations and other external engagement opportunities



Smart Phones

Over 250,000 patented features

can you identify these design features?

Black rectangular shape and rounded corners



Graphical layout of icons



Outside frame of the monitor



Registered Designs

Black rectangular shape and
rounded corners
D618,677

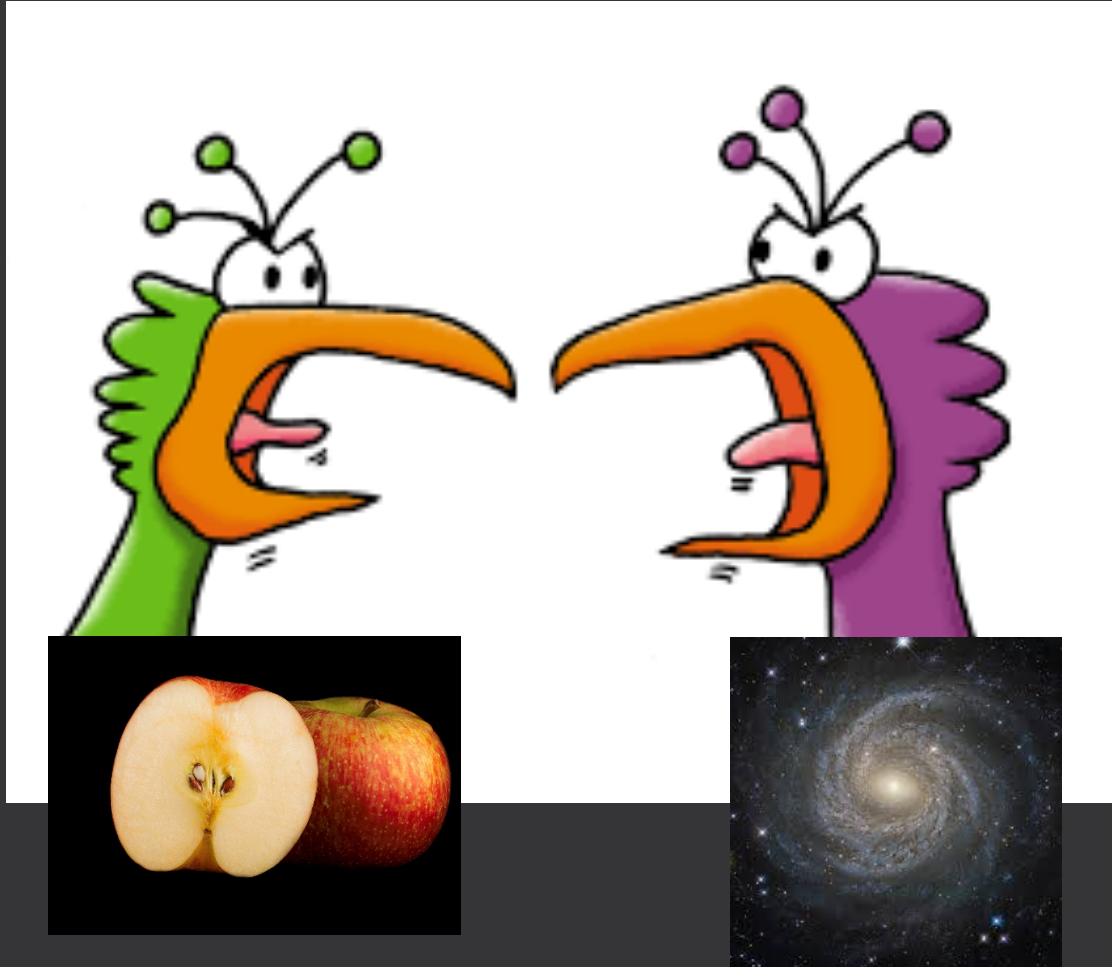
Graphical layout of icons
D627,790

Outside frame of the monitor
D602,016



In Australia, Design registration lasts for five years from the date your design was first filed.
Can be renewed for a further five years for a maximum of ten years.

iPhone vs Galaxy S



2011-2018

2012: 1 billion USD

2013: 930 million USD

2015: 548 million USD

2016: 399 million USD

2017: Court of appeals

2018: Settles (\$ undisclosed)

Is it always an IP War?

No. HTC managed to do deals with both Apple and Microsoft.

The consequence of not having a clear business strategy can be devastating

Ideal Business Strategy



← Business Model Development →

Two fundamental Questions

1. Does your value proposition convert to a Return on Investment (ROI)?
i.e. How can you make money?
2. How can you stop others from copying?

What is an IP strategy

An IP strategy takes into consideration ;

- What your taking into the market – product or service or both
Dr juice - a healthy juice option
- Where your markets are
Australia, US
- What types of IP will support your value proposition or competitive advantage.
Seek advice
- An agreed plan of how you will accomplish this

Types of IP - Dr Juice



Chemicals



Processes



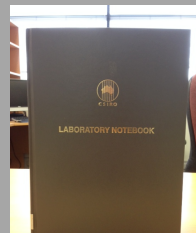
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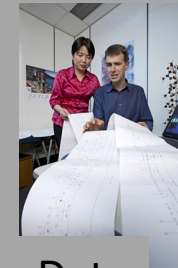
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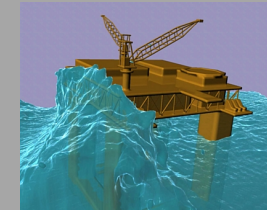
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How many
Types of IP?

- A. 1
- B. 2
- C. 3
- D. More than 3

Types of IP - Dr Juice



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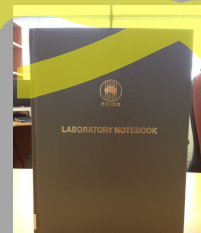
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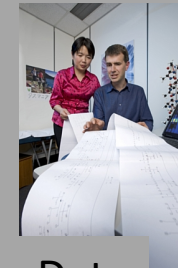
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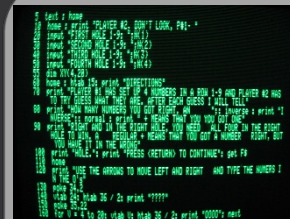
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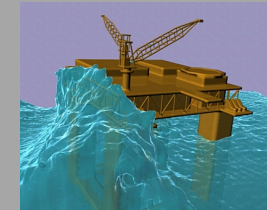
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DR JUICE

Dr juice TM

Dr juice [®]

Trade Marks

Used to distinguish goods or services of one business from those of another business.

Need to renew every 10 years

Inexpensive approx. \$250-330.

Lasts as long as you pay renewal fees (approx. \$400 in AU)

Examined prior to registration

Can use TM (prior to registration) and need to use after registration



To register or not register?

Woolworths Story



2009: Apple opposes registration of trademark
[description of goods was too broad as it included consumer electronics]

2011: Woolworths amends trademark application to remove various goods and services. Apple withdraws its opposition

2011: Woolworths logo is on the app store.

A Good Trademark

Should be distinctive

Should not be descriptive

Should not be similar to other marks (sound, look, spelling etc.)

Should not create confusion in the marketplace

Cannot resemble a well-known mark (heart foundation tick)

Types of IP - Dr Juice



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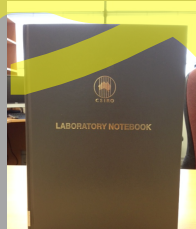
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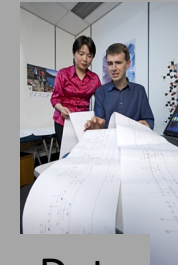
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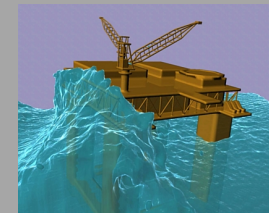
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What are Patent Rights?

Intellectual Property Rights are *legal* rights over IP.

Similar to property rights

A patent owner has a right to *exclude others* from making, using or selling an invention

Owned by inventors or their employees

Patent rights are

- *temporary* (generally last up to 20 years from filing) and
- *country specific* (there is no such thing as an “international” or “worldwide” patent)



What do I need to file a patent application?

Need to identify what is



Novel (new)

If published, presented or available to the public (prior art).



Inventive (non-obvious)

Obvious if it is a combination of known features put together by a well-known way.

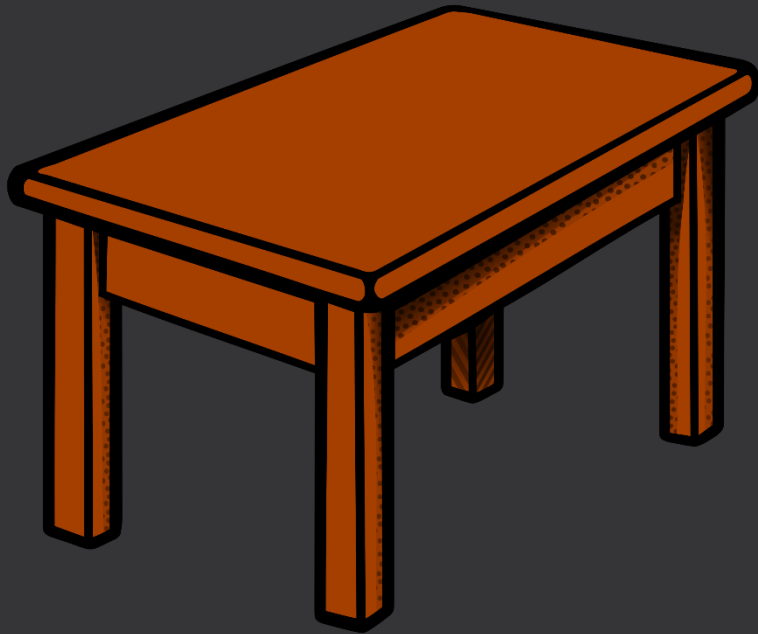
Useful

Invention cannot be secretly used

Patents are granted *in return for disclosure* of the invention

Once I file a patent application can I sell my product?

Check out the claims



Tabco patent has claims to a table comprising:

- Four legs
- At least one weight bearing surface

You have invented a table which has:

- Four legs
- At least one weight bearing surface
- Shelf



Do you have the right(s) to sell your table?

- A. Yes
- B. No

Do you have the right(s) to sell your table?

No, not without permission from TabCo.

Why?

Because your table has

- Four legs
- At least one weight bearing surface features that are claimed in TabCo's patent.

Because of TabCo's patent,

You would need to negotiate a license from TabCo to make, use or sell your table.

This is one way to obtain FTO.



What can you do?



'Invent around' the patent

Obtaining a license from the patentee



Get advice to assess if TabCo's patent is valid
FTO is a legal opinion

Being able to make financial benefits without *contravening the rights of others* is generally known as having “Freedom to Operate” (FTO).

A patent search will help you invent around IP

<http://pericles.ipaustralia.gov.au/ols/auspat/>

https://worldwide.espacenet.com/singleLineSearch?locale=en_EP

What if you were doing research and not making products for sale?

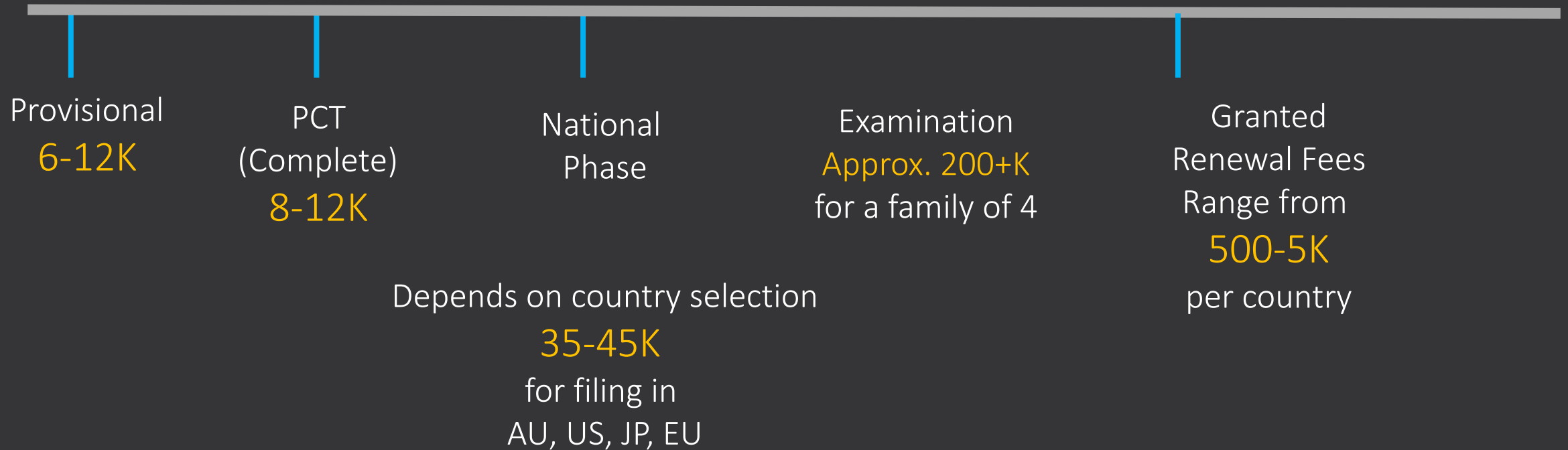
The laws have changed in Australia and there is a research exemption available for research activity.

This is a limited exemption and does not exempt research tools.

What is the time line



What is the cost?



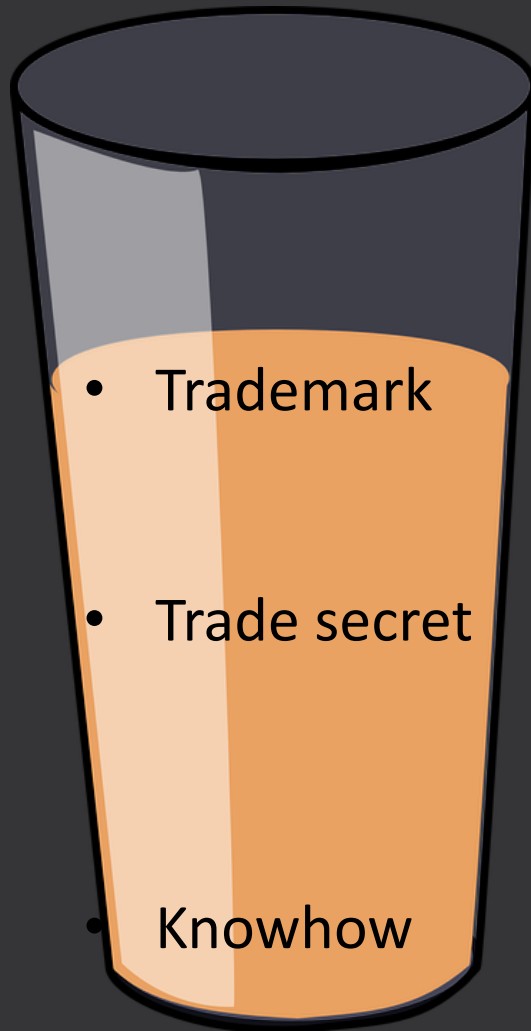
What if I want to rely on unregistered IP?

- Trade secrets
- Know-how
- Copyright

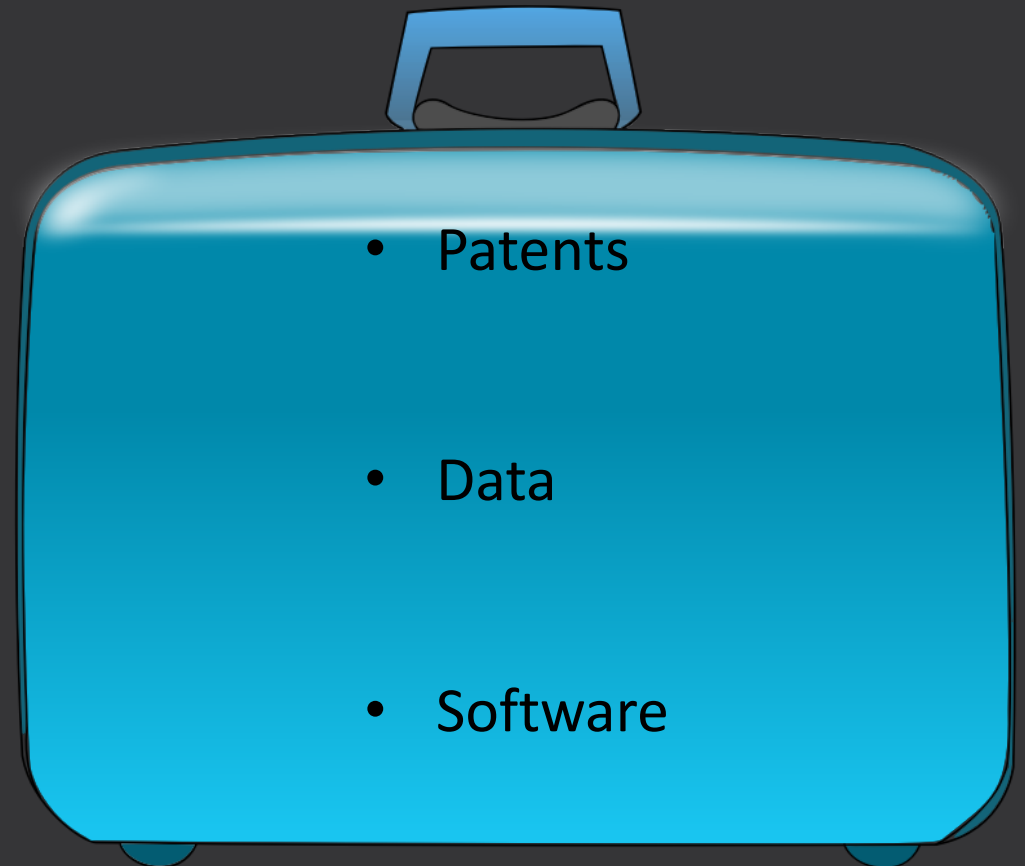
No protection against reverse engineering for unregistered IP

A better way?

Dr Juice



Diagnostic – using MRI to detect the health of your brain



IP Enforcement: P&G

Need a granted patent

Background

P&G, the world's largest consumer-products company

Spends approx. \$2 billion a year on R&D

More than 40,000 patents

Enforces IP rights

History of teeth whitening procedures:-

- In the 1980s, people spent hours in a dentist's chair undergoing painful procedures that cost \$600 or more.
- Whiten teeth at home overnight, using custom-made moulds supplied by dentists.

2000 P&G Crest Whitestrips

Hydrogen peroxide-coated film that moulds to teeth

Can be removed in an hour

\$40 a box

2009 Clio

Own brand sold through Target and other distributors
for \$15 less

2012 Patent Law Suit

P&G sued Clio USA and two distributors
for infringing patents

2014 Settlement



IP Enforcement

Johnson & Johnson

Discontinued its Listerine Whitening Quick Dissolving Strips as part of a 2008 settlement with P&G

Be Well Marketing

Made store-brand strips for Walgreen, exited the market under the terms of a 2012 settlement

Colgate Innovations

2002 Simply White gel

2014 Optic White™ - tooth paste that costs a lot less!

To be successful, you need to continuously innovate

Useful Links

IP Australia Toolkit

<https://www.ipaustralia.gov.au/tools-resources/ip-toolkit>

Model Confidentiality Agreement

Model Term Sheet

Model Contracts

<https://www.ipaustralia.gov.au/tools-resources/ip-toolkit/entrepreneur/contracts-and-other-resources#model>

Thank You

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