Practical Assessment Week 9

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# ACTIVITY ONE

1. **List the steps that should be undertaken by you, to start dealing with this situation. Explain why you are taking that step.**

Firstly I would start by searching the trademark in the international trademark registry. [1]

If the trademark is valid, the next step would be to decide if I rename my product to something else, or dispute it further due to the term being a common phrase. As per the Madrid application for international trademarks [2], the term cannot be too vague. I would next get in contact with WIPO (World Intellectual Property Organisation) [3] to raise a dispute to have this investigated. As they have previously approved this as not too vague, I would explain that the term is common in Australia. Because the term “Cobber” is common in Australia this may render the trademark invalid in Australia, permitting me to continue selling products under that name. If my dispute is declined, I will legally need to change the name of my product.

1. **How will you end up solving this controversy? Do you think that selling a product with a synonymous name with a term that encompasses national sentiment will help you deal with this prickly scenario?**

When selling a product synonymous with national values as the Australian company ‘Cobber’ does, which does in fact pertain to a colloquialism meaning friend in Australia, it could be argued in court proceedings against the Canadian organisation similarly named ‘Cobber’ that their trademark may be rendered invalid [4], as it is a common colloquial phrase that was used to promote and sell products that align with the particular interests of the nation (Australia) and not used with any malicious intent towards the Canadian trademark. In order for the trademark to be valid for a common word and phrase such as ‘cobber’, it can only be trademarked if the person or company seeking the trademark can demonstrate that the phrase has acquired a distinctive secondary meaning apart from its original meaning [5]. Which the Canadian processing chip organisation would find difficult to argue when performing a legal challenge of the trademarked colloquialism with the Australian company, thus leading to a high likelihood that the challenge would be dismissed and the Australian company would still be permitted to trade under the guise of ‘Cobber’.

[1] [WIPO Global Brand Database](https://www3.wipo.int/branddb/en/)

[2] [Selecting your goods and services](https://www.ipaustralia.gov.au/understanding-ip/taking-your-ip-global/ip-protection-usa/applying-trade-mark-us/selecting-your-goods-and-services)

[3] [Alternative Dispute Resolution](https://www.wipo.int/amc/en/)

[4] [Disputes about similar business names](https://asic.gov.au/about-asic/contact-us/how-to-complain/disputes-about-similar-business-names/)

[5] [Can you trademark the phrase "Let's roll"?](https://slate.com/news-and-politics/2002/02/can-you-trademark-the-phrase-let-s-roll.html)

# ACTIVITY TWO

1. **Why is this issue contentious?**

This issue is contentious because there are pros and cons for each side. Each side both have logical reasonings that benefit a large subset of people. Because of the subjective nature of the issue, it is likely to cause disagreements based on the people’s individual interpretation of ethical practices.

1. **Present two arguments in defence of having patents to oppose the above mentioned opinion.**

*Patents help people maintain their creative integrity and rights to their intellectual property that they have created [1].*

* **Premise 1:** The creator of an invention is its owner.
* **Premise 2:** Owners should be allowed to control how their invention is used.
* **Premise 3:** Patents protect a creator’s invention from being stolen.
* **Conclusion:** Therefore, patents protect people’s innovation, not destroy.
* **Validity:** Invalid
  + **Counterexample:** Creator A’s innovative inventions use the building blocks of Creator B’s inventions, thus Creator B (with patents) can control Creator A use of their inventions. Thus, the Creator B’s patents destroy the innovation of Creator A.
* **IF VALID - is it sound?:** N/A
* **IF INVALID - is it inductive or fallacious?:** Fallacious. As evident from the counterexample, even when all the premises are held true, they may not lead to the conclusion. This is due to the cyclic nature of the argument; people need resources to create something new, but if people have patents on those resources, it stunts the creation of the new invention.
* **Do the premises hold true in the real world?:** Yes. All premises are verifiable statements in our current society and legal system that recognises patents and intellectual property ownership.
* **Argument’s strength analysis:** Thus the argument is fallacious with true premises. The premises do on occasion result in the conclusion, but in real world practice, not always.

*Patents help prevent the competition from stealing your innovative ideas [2].*

* **Premise 1:** Patents protect innovative ideas from being stolen by the competition.
* **Premise 2:** Innovators will be less deterred from innovating if they can be assured their ideas wont be stolen.
* **Conclusion:** Patents encourage innovation.
* **Validity:** Valid. The assumption that innovators **will** be less deterred from innovating due to patent protection, is an absolute. Thus, it will always lead to the conclusion.
  + **Counterexample:** N/A
* **IF VALID - is it sound?:** The argument fulfils criteria 1 (Argument must be valid). The argument does not fulfil criteria 2 (Argument must hold true in the real world). With some critical thinking, innovators may see the benefits of patents as listed in the premises. But they might also see the negative points; and if they value the consequences of patents over its benefits, patents will in turn deter their innovation rather than encourage it.
* **IF INVALID - is it inductive or fallacious?:** N/A
* **Do the premises hold true in the real world?:** *Answered in the “IF VALID - is it sound?”**section.*
* **Argument’s strength analysis:** Thus the argument is valid but unsound. In theory the argument holds up. But only if we assume the premises to be true; which is not always verifiable in the real world in people’s decision making.

1. **Present two arguments defending the viewpoint that patents are destroying innovation.**

*Large companies over-use of patents to gain market advantage takes away incentive for companies to innovate and improve their products [3, 4].*

* **Premise 1:** Innovation through improvement of existing ideas is made impossible through the longevity and broad use of patents.
* **Premise 2:** Companies use patent litigation to take competitor products off the market.
* **Conclusion:** Therefore, patents destroy innovation by making it extremely difficult to create new products without being faced with immense resistance through use of patent litigation.
* **Validity:** Valid. Both premises if true make it impossible for new products with components from existing patented ideas to make it onto the market.
  + **Counterexample:** N/A
* **IF VALID - is it sound?:** Unsound.
* **IF INVALID - is it inductive or fallacious?:** N/A
* **Do the premises hold true in the real world?:** Not all companies use patent litigation to take competitor products off the market, and not all companies target their competitors through patent litigation.
* **Argument’s strength analysis:** The argument is valid but unsound, as the premises do not always hold true in the real world.

*Non-practising entities (NPEs), also known as patent trolls, target companies for patent infringement purely to turn a profit, monopolising their low-quality patents and forcing firms to divert money from R&D to other areas to avoid and deal with lawsuits from NPEs [5].*

* **Premise 1:** Firms that are forced to pay NPEs dramatically reduce research and development (R&D) spending.
* **Premise 2:** To discourage NPEs filing lawsuits, firms spend a lot of money on legal representation.
* **Conclusion:** Therefore, NPEs force firms to spend less money on R&D/innovation and more on preventing and dealing with NPEs patent lawsuits.
* **Validity:** Valid.
  + **Counterexample:** N/A
* **IF VALID - is it sound?:** Sound.
* **IF INVALID - is it inductive or fallacious?:** N/A
* **Do the premises hold true in the real world?** The premises hold true in the real world as they are based on facts from studies and real life situations.
* **Argument’s strength analysis:** Valid and sound. NPEs exist only to make profit from old or low-quality patents and do not sell any products of their own.

[1] [The Pros and Cons of Patenting Your Invention](https://www.lawdepot.com/blog/the-pros-and-cons-of-patenting-your-invention/)

[2] [Why Are Patents Importants? (Pros & Cons)](https://patentrebel.com/why-are-patents-important-advantages-disadvantages-pros-cons/)

[3] [US Patent System Is Killing Innovation](https://www.gizmodo.com.au/2011/08/us-patent-system-is-killing-innovation/)

[4] [Do Patents Kill Innovation?](https://www.forbes.com/sites/erikkain/2011/10/27/do-patents-kill-innovation/#3af8e53c3800)

[5] [New study shows exactly how patent trolls destroy innovation](https://www.vox.com/2014/8/19/6036975/new-study-shows-exactly-how-patent-trolls-innovation)

# ACTIVITY THREE

There is no such thing as a World Patent. That is, it is not possible to get protection for an invention such that it is protected in all of the countries in the world at once.

1. **How can inventions be protected overseas?**

Inventions can be protected overseas by filing a Patent Cooperation Treaty (PCT) “international” patent application [1]. In this application the applicant nominates the countries in which the applicant intends to have patent protection extended to [2]. To file an international patent application the individual must be a national or resident of a PCT Member Country. The process of obtaining an international patent consists of firstly entering the international stage which involves filing an international application and having the application processed by countries evaluating under their independent patent laws in place [3]. During this process a supplementary international search may be carried out and communication of the international application and search report may occur [4]. On completion of the international stage, the applicant may choose to proceed to the national phase which involves applying for a patent through member countries [5]. Inventions can also be protected overseas without submitting a PCT application form by filing separate applications for each country the inventor would like the patent to be granted [2].

1. **List three international patent treaties and briefly explain what their purpose is.**

The International Patent Cooperation Treaty is an international treaty which allows patent protection simultaneously in multiple countries by filing an application. The treaty simplifies the process as applicants are only required to submit one patent application rather than multiple separate forms for each nation [6]. This process lowers the fees incurred by applicants when applying for international patent rights as they can apply for multiple nations and only incur a single international filing fee, a search fee and a transmittal fee, rather than incurring these fees for each individual country they apply for [6]. Benefits of the treaty include that applicants are able to defer costs for filing applications and allows applicants to assess the chances of obtaining the patent and whether or not it is worth pursuing the application based on search report documents [7].

The Patent Law Treaty (PLT) aims to simplify the formal processes involved in obtaining international rights by outlining the maximum administrative requirements that a Contracting Party can make use of, ensuring requirements are reasonable for applicants [8]. Provisions that are covered in the treaty include the standardisation of requirements for applicants in securing a filing date [8], limiting the formal requirements available to parties and the time restraints that may be inflicted and allowing the correcting of priority claims and priority rights restoration [9]. By simplifying international formal requirements the PLT allows applicants and owners to obtain and maintain patents globally with ease [9].

Similarly to the PLT, The Singapore Treaty on the Law of Trademarks aims to simplify Contracting Party administrative procedures, however it is concerned with those in filing applications for national or regional trade/service mark applications. The treaty outlines the maximum formal requirements that may be imposed by the Contacting Party’s Trademark Office on the requesting party [10]. By streamlining the trademark application process, applicants can proceed to enforce trademark rights of the contracting party in a more efficient and easier way [11]. Procedures covered in the treaty include those related to filing applications, filing dates, recording name and address changes, correcting mistakes and registration renewal [10].

[1] [Patent Cooperation Treaty (PCT)](https://www.wipo.int/treaties/en/registration/pct/)

[2] [How do I apply for a patent in other countries?](https://www.business.qld.gov.au/running-business/protecting-business/ip-kit/browse-ip-topics/new-products,-processes-and-inventions-patents/how-to-apply-overseas)

[3] [PCT 101: International Patent Application Filing Basics](https://www.ipwatchdog.com/2018/11/11/pct-international-patent-application-filing-basics/id=103231/)

[4] [PCT Applicant's Guide – International Phase](https://www.wipo.int/export/sites/www/pct/guide/en/gdvol1/pdf/gdvol1.pdf)

[5] [What Is PCT National Phase Application?](https://www.upcounsel.com/pct-national-phase-application)

[6] [WIPO Patent Cooperation Treaty (PCT)](https://www.un.org/ldcportal/wipo-patent-cooperation-treaty-pct/)

[7] [Effective use of the Patent Cooperation Treaty | IAM](https://www.iam-media.com/effective-use-patent-cooperation-treaty-0)

[8] [Summary of the Patent Law Treaty (PLT) (2000)](https://www.wipo.int/treaties/en/ip/plt/summary_plt.html)

[9] [Law Treaty | USPTO](https://www.uspto.gov/ip-policy/patent-policy/patent-law-treaty)

[10] [The Singapore Treaty on the Law of Trademarks (STLT)](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_508.pdf)

[11] [Singapore Treaty | USPTO](https://www.uspto.gov/ip-policy/trademark-policy/singapore-treaty)

Note 1: To answer this question, you need to do some research online. The website of IP Australia and Wold Intellectual Property Organisation are good recourses to use. You need to figure out what the process of securing international patents is and explain that in your own words.

Note 2: To answer the second question, you need to find the relevant treaties and write a paragraph for each, in your own words, to explain what the intention of the treaty is. DO NOT copy any content from any websites -- that is plagiarism. You are expected to write everything in your own words. You need to provide references of the online resources that you used for writing your answers (e.g. hyperlinks).