

Intellectual Property

Small Business Development Corporation

Intellectual property (IP) is an asset created with the mind or intellect.

Intellectual property (IP) can be bought, owned, sold, licensed out or bequeathed in much the same way as a building or a block of land. IP can be so valuable that many businesses list it among their assets on their balance sheet. It is therefore important to develop an effective strategy for the protection of IP within a business, not only to protect valuable assets but also to safeguard the products, processes and creative inputs from which the profits of the business emanate.

IP rights requiring registration

- **Patent**

A patent is a temporary monopoly that provides you with the exclusive right to commercially exploit (eg make, use, sell or license) an invention. Once the patent expires the invention becomes public property and may be exploited by anyone. An invention cannot simply be a discovery, concept or idea. It must be all or part of a product, process or chemical composition that introduces new technology.

A **standard patent** lasts 20 years, and an **innovation patent** for a maximum of eight years. An innovation patent is a relatively fast, inexpensive patent that can be applied for online. It can be used to protect inventions that are incremental, or small advances to devices, substances, methods or processes that display an innovative step. An innovation patent must meet the test of being an innovative rather than an inventive step.

- **Trade mark**

A trade mark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or a combination of any of these that is used to distinguish the goods or services of a business.

The trade mark should be capable of distinguishing goods or services of the owner of the trade mark from those of competitors. This is done by symbolising a certain image, quality, personality or reputation that will assist in attaining and maintaining a competitive advantage.

While it is not compulsory to register a trade mark, registration does give you the exclusive legal right to use, license or sell the trade mark within Australia, for the goods and services for which it is registered.

For more information on trade marks see the small business brief entitled *The name of the game*.

- **Registered design**

A registered design protects the visual appearance of manufactured products. The appearance can be defined in terms of shape and configuration, or pattern or ornamentation, or both. It is distinct from a patent in that it provides a monopoly to exploit the appearance of the article whereas a patent provides protection for the manner in which the article actually operates, ie registered designs relate to form whilst patents relate to function.

- **Plant breeder's rights**

Plant breeder's rights provide exclusive commercial rights to market a new plant variety or its reproductive material. To become eligible for protection it must be demonstrated by the use of a comparative trial that the variety is clearly distinguishable from any other variety. Further information is available on the websites www.ipaustralia.gov.au and www.affa.gov.au.

Automatic intellectual property rights

- **Copyright**

Copyright rewards creative endeavours by providing automatic rights for literary, dramatic, musical and artistic works including plans, advertising layouts, brochures, manuals, working drawings, photographs, paintings, films, broadcasts and computer programs. It protects the expression or form that ideas take and not the ideas themselves.

For information on copyright, including the new rights of attribution of authorship and of integrity of authorship, visit the website www.copyright.org.au.

- **Circuit layout rights**

Provides automatic protection of original layout designs for integrated circuits, computer chips, etc. The owner of the original circuit layout has the exclusive right to copy the layout in a material form, making integrated circuits from the layout, and exploit it commercially by way of importation, sale, hire, license or distribution of a layout or integrated circuit made according to the layout.

- **Trade secrets**

Any formula, recipe, pattern, plan, device, unregistrable idea or any information used in conducting business which provides a competitive advantage over those who do not know it. Trade secrets should be backed with signed confidentiality agreements obtained from every person who has knowledge of the secret to provide further protection through the law. A confidentiality agreement is a formal document created to legally stop people from revealing secrets or proprietary knowledge during or after their employment or involvement with a business or with trade secrets owned by others.

How can intellectual property be protected?

IP Australia administers patents, trade marks, and design rights whilst the Department of Agriculture, Fisheries and Forestry Australia, through Plant Breeders Rights Australia, administers plant breeder's rights. The Department of the Attorney General administers the legislation for automatic rights to copyright and circuit layouts. Other legislation affecting IP includes the *Trade Practices Act 1974*, administered by the Australian Competition and Consumer Commission (ACCC). Legal action can be taken under common law for infringement of trade secrets, passing off and breaching confidentiality agreements.

Other sources of information

IP Australia
Tel: 1300 651 010
www.ipaustralia.gov.au

IP Lodgement Point
Perth GPO
Shops 3 & 4, 3-7 Forrest Place, Perth WA 6000

Australian Copyright Council
Level 3
245 Chalmers Street
REDFERN NSW 2016
Tel: (02) 8815 9777
www.copyright.org.au

The Arts Law Centre of Australia
The Gunnery
43-51 Cowper Wharf Road
WOOLLOOMOOLOO NSW 2011
Tel: 1800 221 457
www.artslaw.com.au

Patent and trade mark attorneys are listed in the Yellow Pages and on the Yellow Pages website
www.yellowpages.com.au.

For further information and guidance contact:

Small Business Development Corporation
Gordon Stephenson House
Level 2, 140 William Street
PERTH WA 6000
Tel: 13 12 49
Fax: (08) 6552 3399
Email: info@smallbusiness.wa.gov.au
Website: www.smallbusiness.wa.gov.au

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Current at November 2011

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