



An Introduction to Intellectual Property

Eastern Cape Regional Technology Transfer



July 2014



Outline

- General IP
- The IRP Act
- Patents
- Traditional Knowledge
- Registered Designs
- Trademarks & Copyright
- Questions



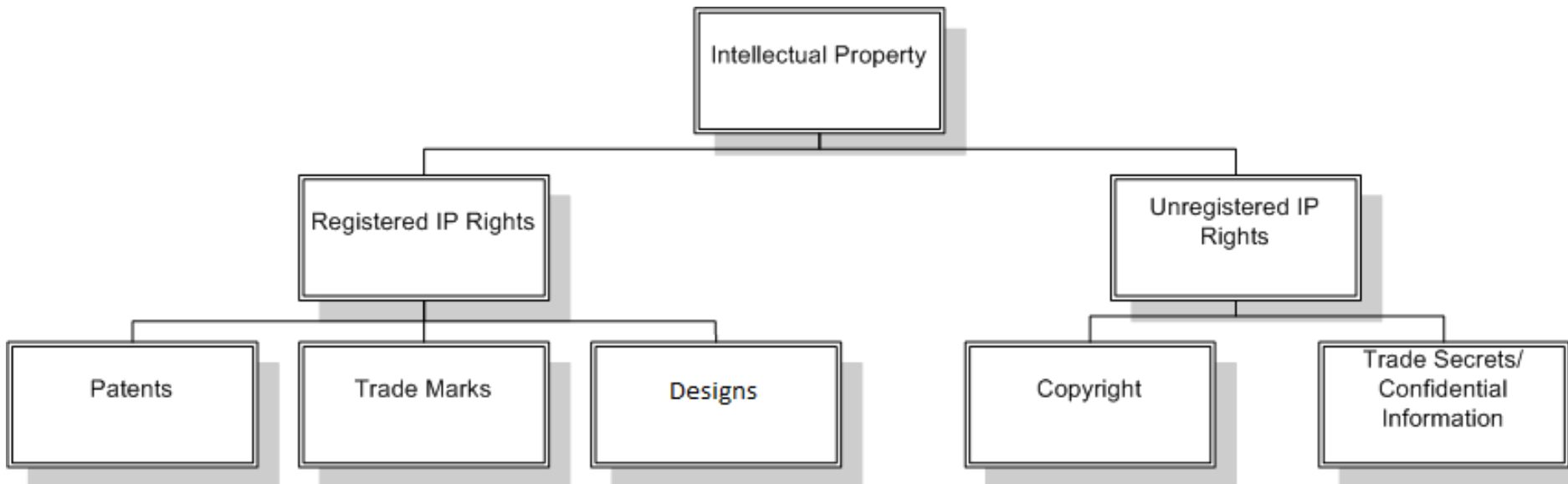


What is Intellectual Property (IP)

- Any creation (artistic or scientific) that originates from the intellect of a person
 - e.g. book, drug, logo, software code, jewellery design, machine, new process, diagnostic method, phrase, symbol
- Intellectual property rights are legal rights granted over IP
- Help originators reap the fruit of their creation / invention commercially
- Provides monopoly to the originator



Different Types of IP Rights





Pros and Cons

Registered	Unregistered
Expensive	No cost
Limited lifetime	Perpetual (mostly)
Registration period	Immediate effect
Registration is proof of ownership	Prove ownership
International standards for protection	Standards differ
Disclosure	Possible to keep secret
	No protection if secrets get out



Holistic Approach to IP - A single product can involve:

Patents

- New Active Ingredient
- Formulation

Registered Designs

- Aesthetic
- Functional



Trade Mark

- "DUCK"

Copyright

- Layout
- Artwork

Trade Secret

- Formulation



Intellectual Property vs. Tangible Property

- Owning IP is very similar to owning a house in many respects

Rights conferred by owning a house	Rights conferred by owning IP
Sell it	Sell it
Borrow money using it as security	Borrow money using it as security
Rent it	License it

The Value of IP



- **The Castle Wall**

- Can prevent your competition from implementing new technologies which you have developed / acquired



- **The Toll Booth**

- You can license new technologies to others and collect royalties



- **The Stamp of Approval**

- Patents demonstrate that your technology is novel
- Increases business value



- **The Bargaining Chip**

- Patents give you the power to negotiate cross-licenses on favourable terms



- **Benefits to Society**

- The technologies come to the public domain and the world can enjoy or benefit from these creations / inventions;
- Reduce effort on re-inventing the wheel and enhance quick technological developments



IPR Act - A (Very) Brief Overview

- **Objective**
 - To ensure that any IP emanating from **publicly financed** R&D is identified / protected / utilised / commercialised for the benefit of the people of SA
- **Applicable to**
 - Any institution which acquires IP from publicly funded R&D
 - Including collaborations (co-ownership), partially publicly funded inclusive
- Establishes NIPMO - to be consulted in administrative matters
- Obligation on research institutions to manage IP - University IP Policy
- TTOs used in the commercialisation process
- Allows for state intervention
- Rights of researchers and institutions recognised
- The IP emanating from publicly funded research should be considered for the betterment of the people of the Republic of South Africa

IPR Act - A (Very) Brief Overview



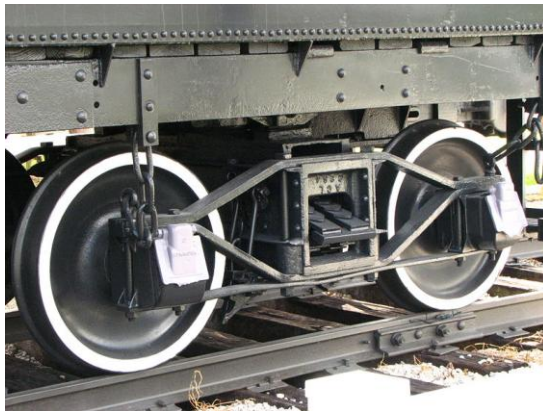
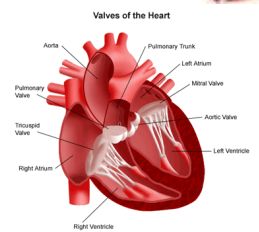
- **Selling protected IP**
 - Consult NIPMO first
 - Commercialisation should preferably be conducted within SA, to small enterprises or BBBEE entities

- **International IP transactions**
 - Institutions must take into account: satisfy, advise and comply or obtain prior approval from NIPMO.

- **Private sector co-operation**
 - Exclusive licenses can be granted, to the betterment of the people of the Republic
 - Co-ownership of IP rights by contributing resources or joint creatorship
 - “Full cost” funding by a private entity is not considered to be protected by the IPR Act



Patents





Patents

- Protects inventions / ideas
- Monopoly in exchange for disclosure
 - 20 years
- Territorial
- Requirements
 - New (worldwide)
 - Inventive (not obvious to skilled person)
 - Capable of use in trade and industry



(e.g. process, fuel product, GMO)



Patents - Novelty

- New
 - Not available to the public
 - By anyone - including inventor
 - Includes:
 - Printed Publication, Journal Article, Advertisement, Oral disclosure
 - Sale, Use (including secret use on commercial scale in SA)
 - Does not include:
 - Confidential disclosures
 - Reasonable technical trial
 - Unauthorised disclosures
 - Anywhere in the world (absolute)
 - Before applying for the patent
 - First to File



Patents - Inventiveness

- Inventive in the light of the “prior art”
 - Prior art = everything available to public at time of filing application
 - “Clever”

- Inventive
 - Judged by expert in the art
 - Very subjective
 - Only need small improvement or advantage
 - Technical
 - Cost of manufacture
 - Ease of use
 - “Long felt need” in market



Unpatentable - As Such

- Discoveries
- Scientific Theories
- Mathematical Methods
- Literary, dramatic, musical or artistic works or any other aesthetic creations
- Schemes, rules or methods for performing mental acts, playing games or doing business
- Computer Programs
- Presentation of Information
- Methods of treatment on the human or animal body



Key Stages

- Pre-disclosure review
 - File provisional/complete patent application?

- 12 months from provisional filing
 - File PCT application / convention applications?

- 30 months from provisional filing (if PCT filed)
 - Determine countries of interest



Likely Costs

- Provisional application
 - R16,000 to R25,000
- PCT application
 - R70,000 – R80,000 (legal entity)
- National phase filings
 - Europe: R95,000
 - US: R45,000
 - China: R55,000
 - Japan: R65,000
- Prosecution of national phase applications
 - Budget to spend the filing costs again over 1-4 years
- Renewal fees
 - Varies by country; usually about R1,000 to R6,000 per year





Deciding Where to Patent

- Consumer countries
 - Where you will sell / licence the technology
- Producer countries
 - Where likely competitors will manufacture the technology





Traditional Knowledge and Bioprospecting

- National Environmental Management: Biodiversity Act
- Bioprospecting:
 - Any research on, or development or application of, **indigenous biological resources** for commercial or industrial exploitation
- **Sustainability** of biological resources and the **sharing** of benefits with stakeholders, i.e.:
 - Anyone providing or giving access to a biological resource
 - Anyone providing knowledge of traditional use which is used in or initiated the bioprospecting





Two Stages of Biosprospecting

- Discovery stage:
 - Commercial aspects of the biosprospecting are still being investigated
 - Need only **notify** the Minister, and commit to comply with requirements at the commercialisation stage (unless exporting, which will require a permit)

- Commercial stage:
 - Process of commercialisation sufficiently established i.e.:
 - Complete patent application filed,
 - Commencement of clinical trials, or
 - Product development
 - Requires a **Permit** from the Minister



Obtaining a Permit

- All material information must be disclosed to the relevant stakeholders and their **permission** obtained
- The applicant and stakeholder must enter into:
 - a material transfer agreement (**MTA**) to regulate provision of/access to the biological resource
 - a benefit sharing agreement (**BSA**) to share any future benefits arising from the bioprospecting
- The Minister must approve the MTA and BSA
- If exporting, purpose of export must be in public interest
- May also require a permit from relevant provincial authority for collecting biological resources



Registered Designs





Registered Designs

- Protects shape / appearance of products
- Territorial
- Filed in specific classes
- Requirements
 - New: not available to the public anywhere in the world
 - Original / not commonplace
- Grace period – 6 months (SA not all foreign countries!)



Registered Designs



- Two types
 - **Aesthetic**: aesthetic features judged solely by the eye
 - **Functional**: features necessitated by the function which the article is to perform

- Duration
 - Aesthetic – 15 years
 - Functional – 10 years





Trade Marks





Trade Marks

- Protect brands and product identity
- Registered in one or more of 45 different classes
- Sign capable of being represented graphically
- Able to **distinguish**, not likely to cause deception/confusion
- Marks compared on
 - Appearance
 - Sound
 - Meaning
- Indefinite term of protection (provided renewed every 10 years)
- No relationship with company and domain names
- Use of TM or ® symbol
- Value accumulates in brand
- Can lose brand if you don't protect it





Copyright

- Protects artistic expression
- **Original** and in **material** or digital form (no copyright for ideas)
- No registration required
- Authorship / ownership dilemma - Always have the copyright assigned to you by a contractor/developer, don't assume you own the copyright
- Lifetime generally 50 years from...
 - Public disclosure
 - Death of author
 - Broadcast





Copyright

- Author's right to prevent copying

- “works”

- Literary works



- Musical works



- Artistic works



- Cinema films



- Sound recordings



- Broadcasts



- Signals



- Published editions

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- Computer programs



- Actual copying required

- Reverse engineering is allowed



Thank You

- Questions?



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