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

- Intellectual Property
  - Registered IP Rights
    - Patents
    - Trade Marks
    - Designs
  - Unregistered IP Rights
    - Copyright
    - Trade Secrets/Confidential Information
## Pros and Cons

<table>
<thead>
<tr>
<th>Registered</th>
<th>Unregistered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expensive</td>
<td>No cost</td>
</tr>
<tr>
<td>Limited lifetime</td>
<td>Perpetual (mostly)</td>
</tr>
<tr>
<td>Registration period</td>
<td>Immediate effect</td>
</tr>
<tr>
<td>Registration is proof of ownership</td>
<td>Prove ownership</td>
</tr>
<tr>
<td>International standards for protection</td>
<td>Standards differ</td>
</tr>
<tr>
<td>Disclosure</td>
<td>Possible to keep secret</td>
</tr>
<tr>
<td></td>
<td>No protection if secrets get out</td>
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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

<table>
<thead>
<tr>
<th>Rights conferred by owning a house</th>
<th>Rights conferred by owning IP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sell it</td>
<td>Sell it</td>
</tr>
<tr>
<td>Borrow money using it as security</td>
<td>Borrow money using it as security</td>
</tr>
<tr>
<td>Rent it</td>
<td>License it</td>
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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
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 ™ 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
  - Computer programs

- Actual copying required
- Reverse engineering is allowed
Thank You

- Questions?

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