

COMPLETE IP NEWS

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“Be Intellectual—Protect Your Property!”

Inside this issue:

Page 1 - Designs & Patents - What Are They?

Page 1 - What You Can and Cannot Register as Patents and Designs

Page 2 - How to Get Started and Things to Remember

Page 2 - Overseas Protection

Page 3 - Maintaining and Enforcing Your Rights in Australia

Page 3 - Special Offer. \$150.00 of Value for Free.

DESIGNS & PATENTS - WHAT ARE THEY?



In previous issues, we have spoken about trademarks and other ‘names’ that may be registered, both in Australia and overseas. In this issue we will give you information about other types of intellectual property, namely patents and designs.

Patents are commonly referred to as the registration of ‘new ideas’, which is ironic as you cannot patent merely an ‘idea’ in Australia!

Designs are sometimes confused with logos, which are trademarks. A design is in fact the way a product looks, the shape and configuration of an item.

In both cases, your patent or design

must be new and cannot have been disclosed prior to filing your applications. If your new looking product, or your invention have already been released or disclosed - by anyone anywhere - any application you file seeking registration could become void.

A patent protects the way something works, the functionality of a product or concept. Your invention must be useful and non-obvious to others in your industry. An example is a photocopier. The way it looks is a design, while the way it works is a patent.

WHAT YOU CAN AND CANNOT REGISTER AS PATENTS AND DESIGNS

IMPORTANT:

If you need to disclose the details of your patent or design to someone, have them sign a ‘Non Disclosure Agreement’ first. This ensures that any information you tell them must be kept confidential. By doing this, any registration for a patent or design you obtain should not be deemed invalid.

You can get a Patent for:

Devices and machines; industrial, chemical and bio-chemical products; computer hardware and software.

Your Patent, or invention, must:

Be new, involve an inventive or innovative step, be useful, do exactly what you say it will do and not yet have been used.

You cannot get a Patent for:

Artistic creations; theories; mental processes; mathematical models or merely ideas.

You can get a Design for:

The overall appearance of a product; the shape of a product; the pattern on a product - essentially the visual features of a product

Your Design must:

Be new and distinctive, meaning it must appear visually different to any other product that has been either registered as design, or, exists in the marketplace.

You cannot get a Design for:

Medals; coins or notes; products bearing the Olympic Rings, slogans or the Olympic torch; coats of arms, emblems or flags that belong to the Commonwealth of Australia.

HOW TO GET STARTED AND THINGS TO REMEMBER

The first thing we would suggest you do is your own searching. You know your industry better than anyone, so, if you have an idea for a new product or a new design, have a look at websites and marketing materials of other people in your field. As patents and designs must be new and not published anywhere before, you will also need to look at overseas companies. If you come across something that seems the same as your idea, you may not be able to register a patent or a design. If this happens, contact our office or a patent professional

Whilst releasing your patent or design to the public domain means you cannot obtain exclusive rights, it also means no-one else can either. If you don't wish to spend the time and money involved with registration this at least stops others gaining rights and preventing you from using your own invention!

who may be able to confirm if your invention or design is different enough to your findings, and able to be registered. Once you have done as much research as possible, we would advise you to have a professional search conducted for registrations that may already exist. With patents

in particular, it is recommended that you weigh up the commercial viability of your invention before registering the patent. You can file a 'provisional application' in Australia while you do so. This is like a preliminary application that gives you 12 months to do further planning, with the knowledge your idea is safe.

Look at whether your invention has a place in the public domain, will it be successful? If the answer is no, the cost of registering a patent may exceed the worth of the invention and therefore may not be the best thing for your business to pursue.

OVERSEAS PROTECTION

There are many things to consider when deciding if registration of your patent or design overseas is worthwhile. The first thing on most people's minds is the cost involved. Whilst Australia is a member of an international treaty for international patent



registration, the same cannot be said for designs. Using the International agreement can get you a relatively inexpensive 'foot in the door' as far as registration of your

invention in over 100 countries.

However, once the initial checks have been conducted by the World Intellectual Property Office, you still need to progress your patent in each of those 100 countries separately. Whilst the treaty allows for a much

simpler way of doing things and certainly a much more organised way (as there is a central body) it can become quite costly and may easily exceed \$10,000.00 AUD.

Designs must be registered 'country by country' from the beginning, with no central department for simplifying things. In most cases, your design application will need to be filed in each individual country, where protection is possible, within 6 months of filing your Australian application. Once your applications for Design or Patent registration are sitting with the official offices in each country of interest, you will need to meet their individual requirements. In most countries this will mean having a local address that correspondence can be sent to.

If you are successful in registering either your patent or design around the world, and need to take action against a person or business breaching your rights, you would need to do so in accordance with the laws of the country where the breach occurs. In some countries it can be quite difficult to police this and enforce the protection you are granted. Remembering of course, once you 'publish' it anywhere, at least no-one else can register and gain rights over you.

Did you know?

In Australia, Design registration is 'automatic'. That's right. You can register your design with only a basic check done by the government office. However, to obtain a legally enforceable registration you must request the Designs Office examine your application

MAINTAINING AND ENFORCING YOUR RIGHTS IN AUSTRALIA

Designs: Under the current Designs Act, your registration will only be considered legally enforceable if you request an examination be conducted by the government office. Registration itself is automatic, and will allow you to claim that the design is registered, and prevent other people from claiming any rights to it. However, should you become aware of another party using your design and wish to take legal action against them, you will need to request examination of your design. It is suggested you do this as soon as possible after filing the application so that if you need to take action against infringers, you will be able to do so promptly, without the delay associated with waiting for an examination to be completed.

Patents: After your patent has been granted to you by the government office, which essentially means they approve you as the owner of the invention, you must pay annual

maintenance fees to the government in order to keep your patent "alive". Failure to make these payments may result in your patent protection becoming invalid. If you come across someone using your patent without your permission, you may need to take legal action against them. In some cases, the situation may be resolved without resulting in court proceedings.

Although it is not required of you to use terms such as "patented" or "patent pending", or refer to your product with a patent number, it is advised where possible that you **do** use these terms. This alerts other parties to your claim and rights straight away, making it much more difficult for infringers to rely on the defence of "I didn't know". The government office does not provide services against infringers, so it will be up to you to enforce your rights.

Tip: Diarise your renewal fees because the government won't remind you. If you don't pay them, you may lose your rights!

DID YOU KNOW?

All intellectual property, including trademarks, designs and patents are **valuable commercial assets**.

In all of these cases, registration (with examination) will give you **exclusive rights** to use, license the use, sell or lease the property.

Recent business studies have shown that business' can **exist longer**, simply because they have registered their intellectual property!

Formal registration assists in ensuring you look professional and reliable.

Complete IP Pty Limited
ABN: 79 121 180 505
PO Box 63, Boronia, Vic, 3155
Ph: 1300 365 715 ~ F: 1300 365 719
office@completeip.com.au
www.completeip.com.au or
www.australiantrademarks.com.au

Special Offer: \$150.00 of Value at NO charge to you!



Whilst we don't normally charge to draft a Non-Disclosure Agreement between you and our company, there is a standard fee of \$150.00 if you ask us to draft one between you and another party. Until the 31st October 2007 we will draft a Non-Disclosure Agreement between you and any other party of your choice at absolutely no cost to you!

Contact Name: _____

Company/Business Name: _____

Email Address: _____

Phone: _____ State: _____

Please contact me by Email Phone

If by email, please indicate the information you would like

- Further information about patent registration in Australia
- Further information about design registration in Australia
- International information for patent registration
- International information for design registration
- Form to have Non-Disclosure agreement drawn up
- Information about trademark registration

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