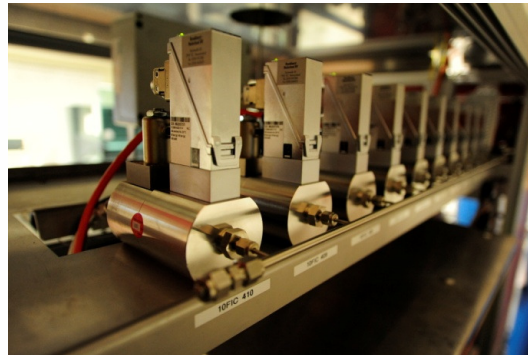
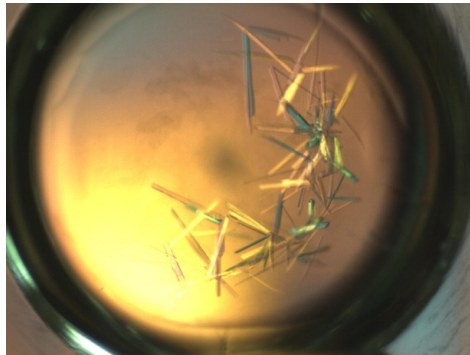
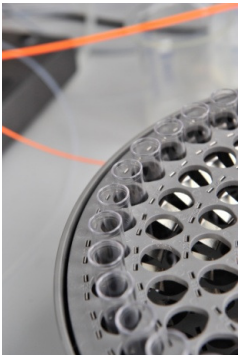


INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

HUGO LOOSVELT





➤ ***Connecting science & society***

Technology transfer is the process by which new ideas, early stage technologies arising from the university are identified, protected, developed and commercialized

➤ ***Valorization of research***

Knowledge transfer to *society & industry*, reinvest return in excellent research

Knowledge & Technology Transfer Interface as entry point

Academic responsibility

Vicerector Innovation & Valorization Hugo Thienpont

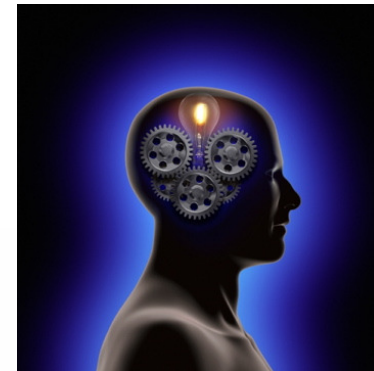
WHAT IS INTELLECTUAL PROPERTY?

WIPO-Convention 14.07.1967 (art. 2, viii)

(viii) “intellectual property” shall include the rights relating to:

- literary, artistic and scientific works,*
- performances of performing artists, phonograms, and broadcasts,*
- inventions in all fields of human endeavor,*
- scientific discoveries,*
- industrial designs,*
- trademarks, service marks, and commercial names and designations,*
- protection against unfair competition,*

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”



IP: WHY?

LEGAL RIGHT

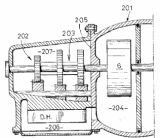
- Patents
- Copyright
- Trade marks
- Registered designs
- Trade secrets

WHAT FOR?

- New inventions
- Original creative of artistic forms
- Distinctive identification of products or services
- External appearance
- Valuable information not know to the public

HOW?

- Application and examination
- Exists automatically
- Use and/or registration
- Registration*
- Reasonable efforts to keep secret



IP : WHY?

IP RIGHTS PROVIDE THE OWNER THE RIGHT TO PREVENT THIRD PARTIES FROM
MAKING, USING, OFFERING FOR SALE, SELLING OR IMPORTING
INFRINGING PRODUCTS
IN THE COUNTRY
WHERE THE IP RIGHTS ARE GRANTED
AND AS LONG AS THE IP RIGHTS ARE VALID



- 1) Allow the owner to conclude contracts (R&D collaboration, licensing, ...)
- 2) Promote investment in R&D and generate ROI
- 3) Tax deduction / optimisation

WHO OWNS THESE RIGHTS?

You:

When you have created the work

When you were hired as a freelancer / consultant

Your employer:

When the work was created on the job

Need to check / arrange terms and conditions in contracts & regulations !!

«RIGHTS & OBLIGATIONS OF THE RESEARCHER »

- A Flemish university owns research results
 - VUB recognizes rights of inventors
- Inventors have the obligation to collaborate in the valorization procedure
- VUB pre- finances patent procedure and recuperates costs only if there is an income
- Income will be distributed among inventors, the research lab and the VUB

RIGHTS & OBLIGATIONS OF A MASTER STUDENT?

- Master owns the IP rights to his research results
- Ma student gains access to VUB confidential information: need for NDA to be signed
- In case of involvement in third party R&D collaboration and/or VUB valorization file (e.g. pending patent): need to transfer IP rights to VUB!
- Defence: confidential version behind closed doors; external reviewers to sign a NDA / inform VUB TechTransfer to evaluate valorization opportunities / 'reduced' version to be publicly available
- Students promotor: best placed and key role !
- Increasing awareness with students ! Good thing!
- Documentation and paper trail is key to discriminate between contribution and IP rights of VUB personnel and Ma student -> lab notebook

PRODUCT CARRY MANY IP RIGHTS

TRADE MARKS:

- Made by “Apple”
- Product “iPhone 6”
- Software “iOS”

PATENTS:

- Data-processing methods
- Semiconductor circuits
- Chemical compounds
- Handling methods
- ...

TRADE SECRETS:

?

Designs (some of them registered):

- Form of overall phone
- Arrangement of buttons in oval shape
- Three-dimensional wave form of buttons
- ...

COPYRIGHTS:

- Software code
- Instruction manual
- ...
- ...



TRADE SECRETS

Legal framework: EU trade secrets directive (Directive 2016/943)

Trade secret = piece of information that meets the following :

- It is NOT generally known or readily accessible:
- Has commercial value because it is secret:
- Has been subject to reasonable steps to keep it secret by the person lawfully in control of the information

-> most research data are trade secrets at least for some period of time !

(at least in the early stages of collection / generation and BEFORE any public disclosure / data sharing)

Trade secret are legally protected in instances where the confidential information was obtained illegitimately

Complementary to IP rights:

- Allow for everlasting protection (as long as the conditions remain fulfilled)
- No need for originality, does not discriminate between types of data
- No private or exclusive rights to its use: independent discovery of same information remains possible
- Cannot prevent competitors from copying and using the same solutions -> reverse engineering is lawfull!

CONFIDENTIAL...

Confidential information:

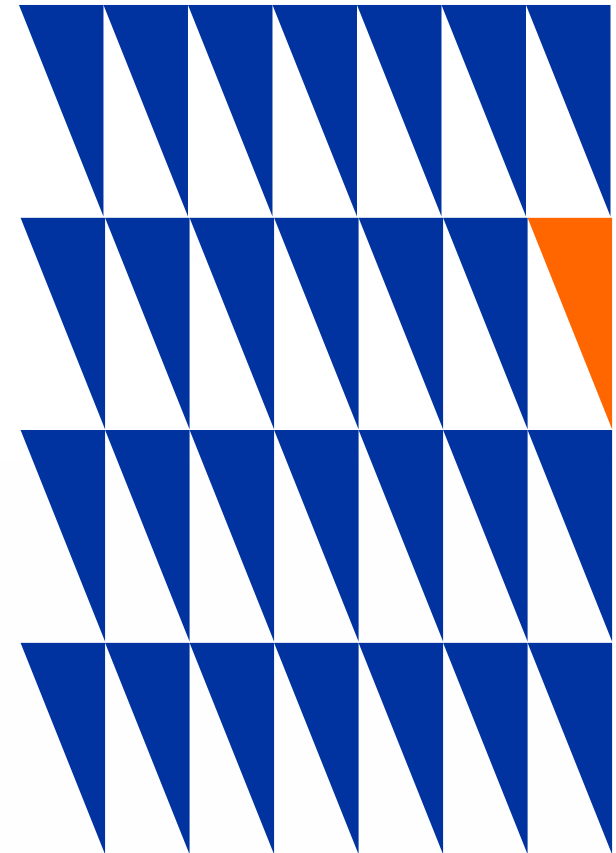
- ✓ Customer list
- ✓ Marketing plan

Know-How

- ✓ 'technical' knowledge of personnel

Trade secrets

- ✓ Formula Coca-Cola
- ✓ Process creating optimal conditions



NON DISCLOSURE AGREEMENT

- Template available @ www.vubtechtransfer.be
- Unilateral or bilateral
- Be careful: definition of confidential information
- Purpose
- No IP rights licensed, assigned, ...
- Duration
- To be signed by Rector

NON DISCLOSURE AGREEMENT

This Non-Disclosure and Confidentiality Agreement (the "Agreement"), is executed as of the ____ day of _____, 20____ (the "Effective Date"),
BY AND BETWEEN:

VRIJE UNIVERSITEIT BRUSSEL (VUB),
with offices at Pleinlaan 2, 1050 Brussel,
herein represented by Prof. Dr. Paul De Knop, Rector,
acting on request of Prof. Dr. _____, Promoter,
who is responsible for VUB's performance under this agreement and who is co-signing
this agreement for acknowledgement and acceptance,

hereinafter called "**Disclosing Party**" or "**Receiving Party**" as the case may be;

AND

with offices at _____

represented by _____

hereinafter called "**Disclosing Party**" or "**Receiving Party**" as the case may be;

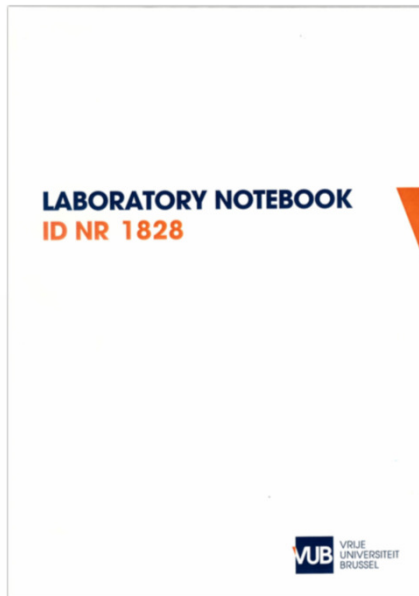
hereinafter jointly referred to as "Parties" or each separately as "Party",

WHEREAS, the Parties have acquired and/or developed a substantial amount of valuable Confidential Information, as hereinafter defined, which the Parties acknowledge to be of a confidential character, requiring suitable security and protection;

WHEREAS, the Parties desire to enter into discussions and exchange information for the sole purpose as described hereunder and desire to ensure that the Confidential Information, as hereinafter defined, revealed during such discussions will be protected from disclosure;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties hereto agree as follows :

DOCUMENT / REGISTER YOUR RESEARCH!!



(Electronic) Lab notebook / data management system / i-depot provides legal documentation of ideas (as reduced to practice), research results

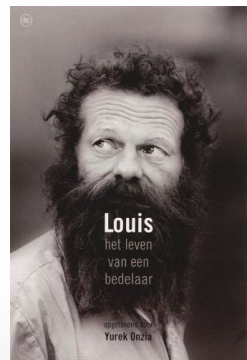


Helps to establish date of invention, authors, inventors, etc

COPYRIGHT

Protects any result of creative activity:

- ✓ literary works, art, drama or musical works, presentations, software code, instruction manuals, questionnaires, etc
- ✓ movies, photographs, translations, editions, collages, adaptations etc.
- ✓ typographies, sound recordings, broadcasts, performances
- ✓ Database: (original) structure



COPYRIGHT

excludes :

- ✓ What is part of nature or not produced by human
- ✓ What is produced by a machine (data, images, ?)
- ✓ Technical solutions (-> patent)
- ✓ Sport achievements
- ✓ Governmental documents

COPYRIGHT

Works must be

✓ Original:

- ✓ = must show personality of the author, ie upon creation creative choices have been made between various options going beyond mere technical requirements
- ✓ Does not require to be new / exceptional imagination / never been publicly disclosed !!!

✓ Expressed in concrete shape:

- ✓ Does not require carrier (eg presentation, choreo, ...)
- ✓ No abstract ideas
- ✓ No style (eg rap): not attributable to an author

COPYRIGHT: TWO COMPONENTS!

Moral rights:

- the right to have a work published anonymously or pseudonymously
- requirement to acknowledge or credit the author of a work which is used or appears in another work
- the right to the integrity of the work

COPYRIGHT: TWO COMPONENTS

Financial rights: such as

- To produce copies or reproductions of the work and to sell those copies (including, typically, electronic copies)
- to import or export the work
- to create derivative works (works that adapt the original work)
- to perform or display the work publicly
- to sell or assign these rights to others
- to transmit or display by radio or video

COPYRIGHT: WHAT RIGHTS

- Infringement if a person does any of the exclusive acts restricted by copyright without the permission of the owner. There are limited exceptions (non-commercial research, private study, teaching, disabled persons)
- Until **70 years** from the end of the year in which the last surviving author died (for related rights it depends)

COPYRIGHT: GOOD PRACTICES?

- ✓Date your work and use copyright symbol
- ✓Gather evidence of being the original author in case needed: e.g. i-DEPOT .
- ✓Other precautions:
use watermarks, keep logbook (laboratory notebook)
- ✓Use copyright notices (eg on your website / mail): cfr next slide

“Copyright © 2018, Vrije Universiteit Brussel (VUB) , Dept. _____, list of authors and contact details
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- (2) all publications based partially or completely on this program will have the main publications of "the authors" related to this work cited as references (ref to be included).

.

Restriction:

Any other type of handling or use of “_____”, CAN NOT BE DONE WITHOUT SPECIFIC PRIOR WRITTEN APPROVAL from VUB, including but not restricted to the following:

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- (B) any use of “_____” which is not for clinical purposes;
- (C) any commercial activity involving the use of “_____” or part of it is strictly prohibited.

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Layers of copyright in databases

- Item level: copyright limited to items that involve expressive choice, eg photograph / images in e.g. Encyclopedia of Life : limitation to expression created !!
 - > data expressed as numeric values are not covered, e.g. pixel colour, can be copied and reused
 - > a drawing of an animal depicted in the photograph not covered
- Organisation layer: the manner in which data are selected / arranged, e.g. excel spreadsheet, selecting field names and arranging their order
 - > republishing data in spreadsheet with renamed and reorganised fields is not infringing
 - > the higher the complexity in the structure of a database, the higher the amount of copyrightable expression!
- Processing of data: annotations, visualisations (figures, charts, graphs, ...) and other forms of metadata can receive copyright protection if sufficiently original !
- Compilations in datasets: copyright only to this selection and arrangement, not to any of the underlying items or organisational features of individual datasets

Sui Generis Database rights in Europe

Legal framework: EU Database Directive

- Pertains to any database that requires substantial investment in the **obtaining** of data (not in the creation of the underlying data)
 - > means that sole source database cannot rely on this but only if you rely on data from others
 - > what about machine generated databases?
- Complementary to copyright ! Database portions that are not original.
- 15 years (however any substantial change to the contents could be considered new investment and renewal of term of protection)
- Protect against extraction / reutilization of substantial parts of a database or frequent extraction (of insubstantial parts)
- Subject to limitation for non-commercial university research or nonprofit hospital use !
 - > is this exception valid in case of commercially sponsored academic research ?

PATENT: WHAT IS IT?

- the right to **exclude** others from making, using, selling, offering for sale, or importing the patented invention

Not the right to practice your invention yourself!! -> one might need a license to obtain freedom to operate

- granted by a **national** government to an inventor or their assignee

No global patent exists, only a international or European application procedure !!

- for **max. 20 years** (subject to payment of maintenance fees)
- in exchange for the **public disclosure** of the invention

The invention cannot be kept secret!! Quid pro quo!!

QUID PRO QUO

Reveal
invention



Get
exclusivity



... so that others can learn from it
and improve upon it!

COPYRIGHT VS PATENTS

	Copyright	Patent
Protection for	Form (source code)	Functionality (algorithm)
No protection for	Functionality (work around, reprogram)	Form (source code)
Ownership	Creator / author	Applicant <-> inventor
Registration	Not required, burdon of proof !!	First to file / register
Validity	70y after death author	20 years from date of filing

In both cases:

- Transfer of right / license is required for third party use
- No guarantee for freedom to operate
- Right can be used for innovation income reduction
- Published patent application are publications

PATENT? WHEN?

WHEN?

VALUE PATENT + VALUE FREEDOM TO OPERATE > PATENT COSTS + DISADVANTAGE OF DISCLOSURE

Value patent:

- Potential to technical and commercial success of the technology
- Scope of the patent: geographical, scope of protection claims
- Validity of the patent
- Potential market
- Competition: F2O?, better product/process, alternative solutions, knowhow,
- Visibility: how easily can you detect infringement?
- Licensing: crosslicensing, crucial link?, compulsory license, ...

WHEN TO PUBLISH?

WHEN?

- R&D results: fundamental character, no loss of commercial potential; too far from market
- create exposure; show competence of company
- academic researchers: need to publish
- sufficient protection in place by other patents or limited improvement/alternative to existing technology
- hidden publication: significance/link to product is unclear

WHEN NOT?

- avoid know-how to dissipate
- contains information which contradicts patent position
- contains information on an invention to be patented

Cheap and effective way to dissipate information to society with little commercial value
Combine with patenting in a smart way !!

PROTECTING SOFTWARE?

- Copyright: concrete shape (source code, user interface, ...)
 - Fast, cheap, simple
 - Does not protect technical solution provided by software
 - Can be licensed: e.g. basis for free / open source software...
- Patent right: computer implemented invention (solution to a technical problem, more than just the software)
 - Expensive
 - Technical aspects of the invention: must be **novel**, needs to involve an **inventive step**
 - Can be licensed
- Trade secret ?
- Registration: notary act, i-depot, escrow agent depot

(Big) Data and IP rights: issues

Certain elements of big data lifecycle may fall within the scope of protection of IP rights such as:

- **Copyright:**
 - originality criterion difficult: no raw data protected? Need to be presented in original way? In deep learning analytics are being done on unstructured data (no author involved) ...
 - needs to be presented in tangible form -> what about dynamic datasets?
 - need for authorisation of copyright holder of each individual data ...
 - moral rights: cannot be assigned validly in some countries, what rights does the assignee of the data have to use, modify data protected by copyright?
- **Database rights**
 - In big data hard to distinguish between generation and obtainment of data ... (CJEU rejected rights for creation of data as such)
- **Trade secrets:** in big data context requirements may be hard to fulfill
- **(Patents: data sharing may have implications for acquisition of patent protection in inventions with respect to novelty and inventive step requirements)**

PATENT REQUIREMENTS

Art 52 (1) European patents shall be granted for any *inventions*, in *all fields of technology*, provided that they are:

- *new*,
- involve an *inventive step*
- are susceptible of *industrial application*.

Patent office conducts a search and examination before granting a patent

Strong differences (in interpretation -> case law) between countries/regions depending on different jurisdictions!!

European patent convention (EPC) -> <http://www.epo.org>

Sources: EPC 2000 art. 52, 54-57, 100, 138, R. 42, 43, 44

NOVELTY

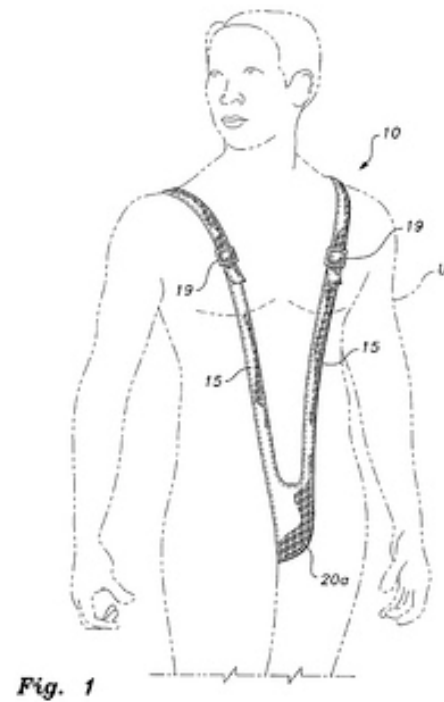
Art 54 (1) EPC: An invention shall be considered to be *new* if it does *not form part* of the *state of the art*.

Art 54 (2) EPC: The *state of the art* shall be held to comprise *everything* made *available to the public* by means of a written or oral description, by use, or in any other way, *before the date of filing* of the European patent application.

INVENTOR is BEST CANDIDATE to destroy the novelty of his invention!

Need to perform thorough prior art search !!

Novelty: example



NOVELTY:EXAMPLE

GB-A-2365393

(12) UK Patent Application (19) GB (11) **2 365 393** (13) **A**
 (43) Date of A Publication 20.02.2002

(21) Application No 0019361.5

(22) Date of Filing 07.08.2000

(71) Applicant(s)
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 153 Waller Road, New Cross, LONDON, SE14 5LX,
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(72) Inventor(s)
 Peter John Ginn

(74) Agent and/or Address for Service
 Peter John Ginn
 153 Waller Road, New Cross, LONDON, SE14 5LX,
 United Kingdom

(51) INT CL⁷
 B64C 25/40

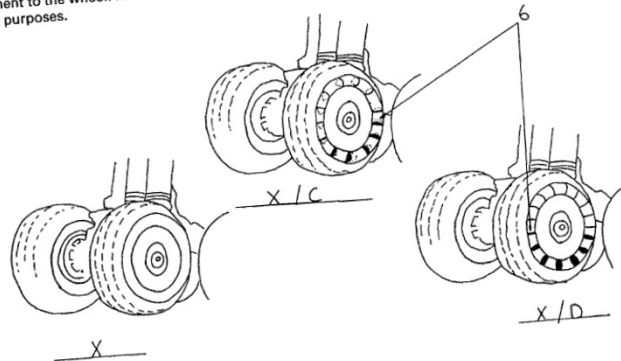
(52) UK CL (Edition T)
 B7G G8H

(56) Documents Cited
 GB 2334925 A GB 2242401 A
 GB 2193932 A GB 2080217 A
 GB 1407358 A GB 0516738 A
 US 4040582 A US 3233849 A

(58) Field of Search
 UK CL (Edition R.) B7G
 INT CL⁷ B64C 25/40

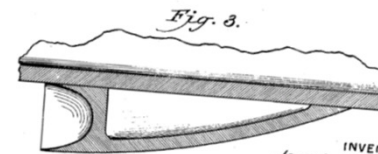
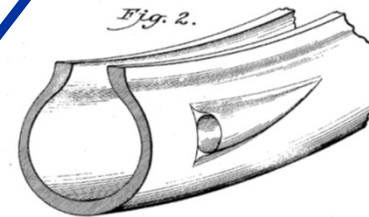
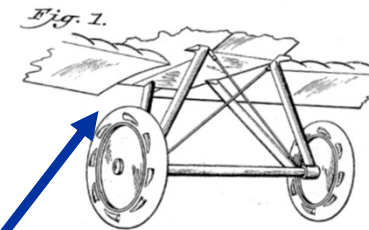
(54) Abstract Title
Rotating aircraft wheels prior to landing

(57) An aircraft tyre or wheel is provided with pockets or ridges 6, which catch the airflow past the wheel and cause the wheel to rotate. The pockets/ridges may be formed in the tyre or an additional member for attachment to the wheel. Means may be provided for diverting air from a pocket into the wheel assembly for cooling purposes.



Nov. 24, 1931.

US-A-1833019
 J. A. FAUCHER ET AL
 AIRPLANE TIRE
 Filed Nov. 1, 1929
 1,833,019



INVENTORS
 Joseph A. Faucher
 Erle P. Halliburton
 BY
 [Signature]
 ATTORNEY

NOVELTY



No publication **prior to filing**
e.g. no article, press release, conference presentation/poster/proceedings or blog entry



No **sale/exchange** of products incorporating the invention prior to filing, be careful when showing prototypes on trade fairs, exhibitions

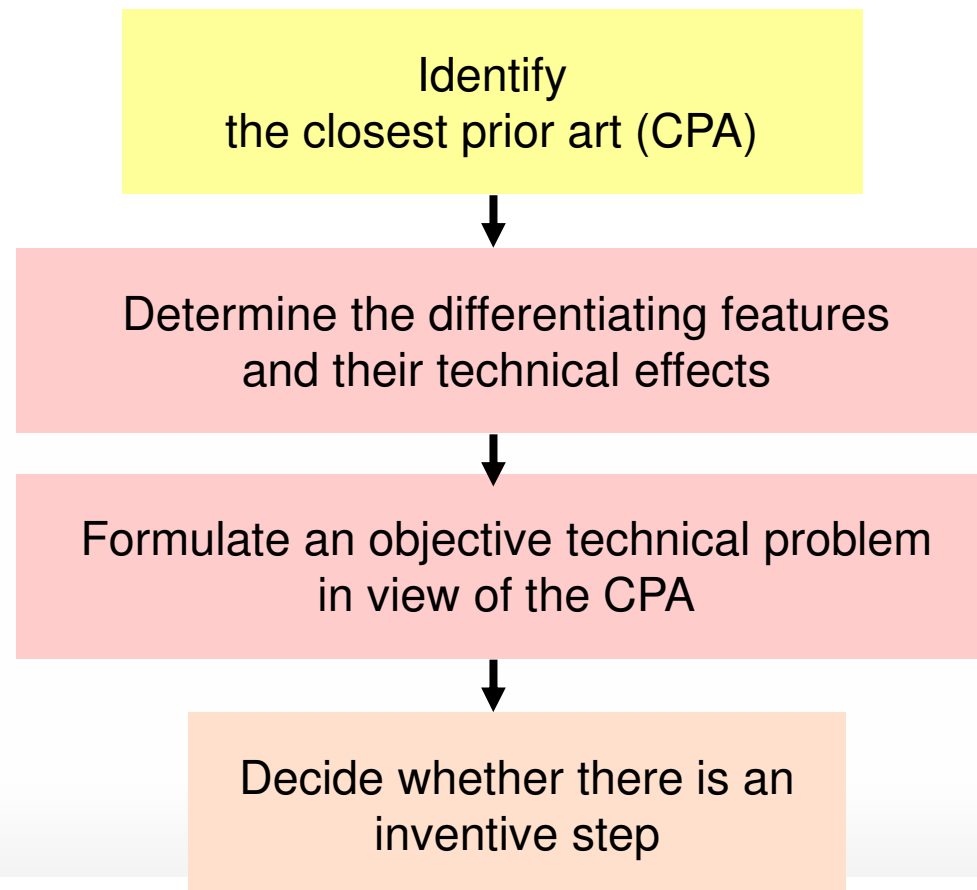


No lecture or presentation **prior to filing**
except under a **non-disclosure agreement (NDA)**



Contact IP office ! File a record of invention.

INVENTIVE STEP: PROBLEM-AND-SOLUTION APPROACH



PATENTS: INFORMATION SOURCE!

Avoid duplication of R&D efforts and spending

- 80% of all technical information in patent documentation (OESO)
- Duplication of R&D efforts: costs 20 billion EURO/year ; 25% of all R&D efforts ... on inventions that have been invented yet (European Commission)
- Define technology trends: what is in a patent application now, is the product of tomorrow...
- Preparing new patent: writing/ studying patentability

Find solutions to technical problems

- 85% of all patents no longer in force
- Vast number of inventions available for free
- Patent contain reliable information due to exigency of sufficiency of disclosure, enablement, clarity (for person skilled in the art to be able to repeat the experiments)


FREE PATENT DATABASES

Free patent databases:

- espacenet: <http://ep.espacenet.com>
- google patents: <http://www.google.com/patents>
- Japanese Patent Database http://www.ipdl.inpit.go.jp/homepg_e.ipdl
- USPTO database <http://www.uspto.gov/patft/index.html>
- WIPO patentscope <http://www.wipo.int/pctdb/en/search-struct.jsp>

More detailed information in patent register: <http://www.epoline.org/portal/public>

ESPACENET



Europäisches Patentamt
European Patent Office
Office européen des brevets

Espacenet
Patent search

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Change country ▼

◀ About Espacenet Other EPO online services ▼

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→ [What is the difference between the IPC and the ECLA?](#)
→ [What are the valid date formats?](#)
→ [What are the admissible entries for a date range search?](#)
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Advanced search

1. Database

Select the database in which you wish to search: **i**
Worldwide - full collection of published patent applications from 80+ countries ▼

2. Search terms

Enter keywords in English - ctrl-enter expands the field you are in

Keyword(s) in title: i	plastic and bicycle
Keyword(s) in title or abstract: i	hair
Publication number: i	WO2008014520
Application number: i	DE19971031696
Priority number: i	WO1995US15925

INVENTION: SUBJECT OF CLAIMS

- Claim= (technical) features of an invention
- # features in claim is inversely proportional to scope of protection
- Infringement of claim: if infringing on all features of the claim
- Dependent versus independent claims

INVENTION: WHAT CAN BE CLAIMED

(depending on evolving case law and patent law in various jurisdictions)

- a product / compound
- a method of producing a product
- a process
- a computer implemented method (if further technical effect)
- a use of a product
- “[Composition] for use in the treatment of [disease]”
- Even hybrid claims such as : Drug X for use in a method of treating a patient with cancer, wherein the method comprises: (i) determining whether a test sample from the patient comprises a mutation in gene 1; and (ii) if the test sample from the patient comprises a mutation in gene 1 administering to the patient an effective amount of drug X.”

SOFTWARE PATENTABILITY IN EUROPE

Strict reading of the law leads one to believe that software “as such” is not patentable.

European Patent Office (EPO) Board of Appeals interpreted “as such” very broadly in several cases.

20,000 software patents approved by the EPO, 6,000 applications per year in UK.

There is software patentability in Europe.

COMPUTER IMPLEMENTED INVENTION

- an invention whose implementation involves the use of a computer, computer network or other programmable apparatus
- with features realised wholly or partly by means of a computer program

Guidelines G-II, 3.6

Examples:
a program-controlled ...



- washing machine cycle;
- car braking system.



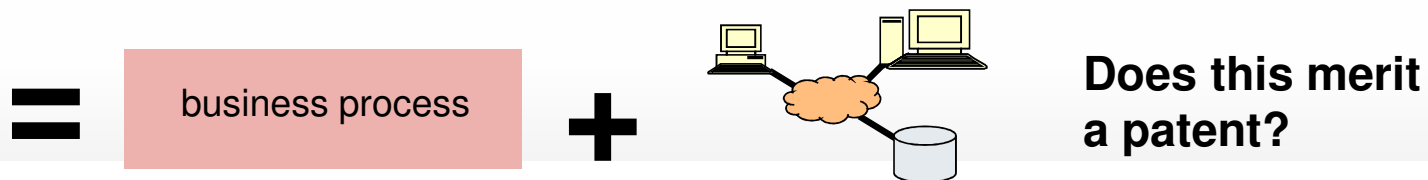
TECHNICAL IS...

further technical effect	no further technical effect
control of a brake in a car	aesthetical effects of music or a video
faster communication between mobile phones	new rules for an auction scheme
secure data transmission (encryption of data)	selling and booking sailing cruise packages
resource allocation in an operating system	calculation of a pension contributions

EXAMPLE II: COMPUTER-IMPLEMENTED BUSINESS METHOD

A **computer-implemented** method of controlling payment and delivery of content within a **computer system** comprising a user **terminal**, a provider **server** and a **database** which are **connected via a communication network**, the method comprising:

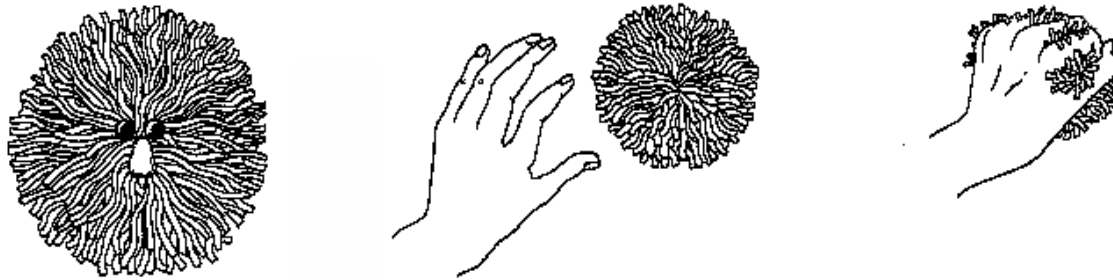
- ▶ the provider **server** receiving a request for content from the user **terminal**;
- ▶ the provider **server** accessing **in the database** content information describing the requested content;
- ▶ the provider **server** accessing regulation information **in the database** describing at least one regulation that is related to the payment and the content information of the requested content and to geographical information of the user;
- ▶ determining the geographic location of the user;
- ▶ the provider **server** determining whether the requested content satisfies the at least one regulation;
 - ▶ if so, delivering the requested content to the user **terminal**
 - ▶ if not, transmitting a payment request to the user **terminal**.



CLAIMS: EXAMPLE

TAKEN FROM EPO LEARNING KIT

A ball that is fun to use, easy to catch and looks nice.



How can you protect it from imitation?

- "Fun to use" → cannot be protected
- "Looks nice" → registered design
- "Easy to catch" = technical function → patent

CLAIMS: EXAMPLE

Patent Claim: "~~A ball that is easy to catch.~~"

Making a ball "easy to catch" is a technical problem. Problems cannot be patented – but specific solutions can! What is the **technical feature** that makes the ball easy to catch?

Patent Claim: "A ball comprising a **core region** and plural elastomeric **filaments** radiating from the core region."

You don't want anyone circumventing the patent by replacing the ball **shape** with something else!

Patent Claim: "An amusement **device** comprising a core region and plural elastomeric filaments radiating from the core region."

A prior art search will show whether the invention – **as claimed** – is actually **new**.

CLAIMS: EXAMPLE

Your patent attorney found US 3,759,518, "Foot impellent toy", which discloses a similar invention.

United States Patent [19]
Mroz

[11] **3,759,518**
[45] **Sept. 18, 1973**

[54] **FOOT IMPELLENT TOY**

[76] Inventor: **John M. Mroz**, 623 N.E. 2nd St.,
Hallandale, Fla. 33009

[22] Filed: **Oct. 13, 1971**

[21] Appl. No.: **188,902**

[52] U.S. Cl. **273/106 B, 273/58 A, 273/58 K**

[51] Int. Cl. **A63b 65/10**

[58] Field of Search **273/106 R, 106 B,**
273/58; 15/181, 179

FOREIGN PATENTS OR APPLICATIONS

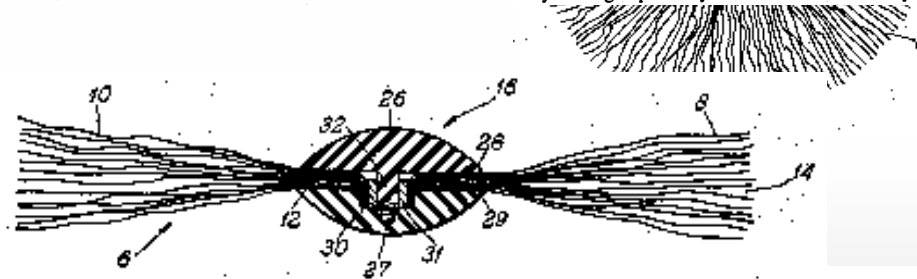
763,695 5/1934 France 273/58 R

Primary Examiner—Richard C. Pinkham
Assistant Examiner—Paul E. Shapiro
Attorney—Dominik, Knechtel and Godula

[57] ABSTRACT

A unitary toy to be repeatedly kicked to keep the toy in play and away from play-ending ground contact, said toy having a plurality of flexible strands disposed in a

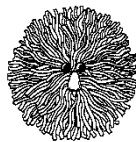
"... said toy having a plurality of flexible strands ..."



CLAIMS: EXAMPLE

Your invention
as claimed

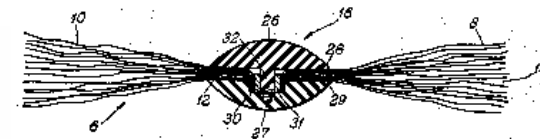
"An amusement device
comprising a **core region** and
plural elastomeric filaments
radiating from the core region."



"... radiating in **plural angularly offset planes**
from the core region."

US 3759518

"A toy of a disc-like body
... including ... a
plurality of flexible strands radiating
outwardly from said ...
center ... having
sufficient inherent rigidity
to retain the pattern of a
circular plane."

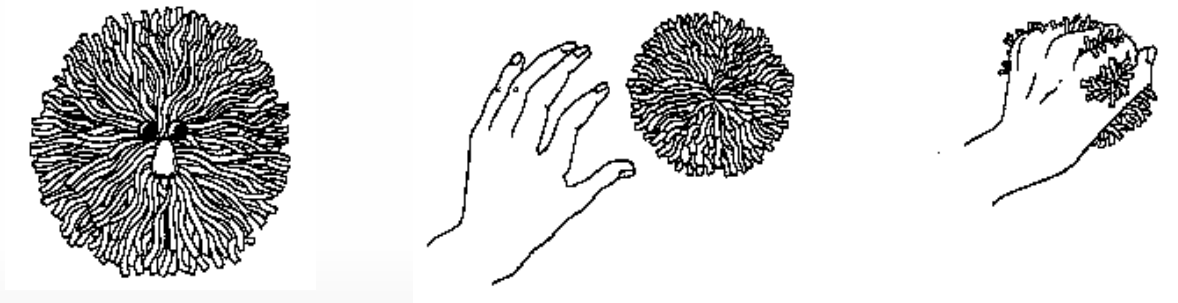


- New!
- Inventive step
(modification yields new function
of making it easier to catch)!

CLAIMS: EXAMPLE

Claim to be filed:

"An amusement device comprising a **core region** and **plural elastomeric filaments** radiating in **plural angularly offset planes** from the core region."



EXAMPLE FREEDOM TO OPERATE

Example: Patenting the button (From: www.iusmentis.com)

Assumption: only cloaks without fastening mechanism exist

Alice's invents the button and gets a patent granted with claim:

‘a cloak with a front opening, with a row of fasteners down one side of the front opening, and a row of holes at corresponding locations down another side of the front opening into which the fasteners can be inserted’

Independently Bob gets claim granted:

‘ a cloak with a front opening, having at least one metallic hook at one side of the front opening, and at least one receptacle for said hook at the other side’

- > Bob:
- can litigate people who sell metallic hooks
 - but not wooden buttons
 - can litigate people using a single hook as opposed to Alice whose claim requires a row of buttons

PATENTS: SCOPE AND F2O

What about ?

Ian: manufacturer of cloaks with buttons

-> license from Alice ('fasteners') but not from Bob ('metallic hooks')

Jack: produces cloaks with metallic hooks on one side which are plugged into holes on the other side

-> license from Bob, but also from Alice (covers fasteners of all shapes)

Keanu: produces cloaks with fasteners, but instead of holes he provides loops made of string through which rectangular wooden buttons are to be put

-> outside the scope of Bob's claim (wooden buttons)

-> outside the scope of Alice's claim (do not have a row of holes)

Leo: shirt manufacturer who puts buttons on shirts, not on cloaks

-> outside the scope of Bob and Alice

WHERE TO APPLY FOR A PATENT

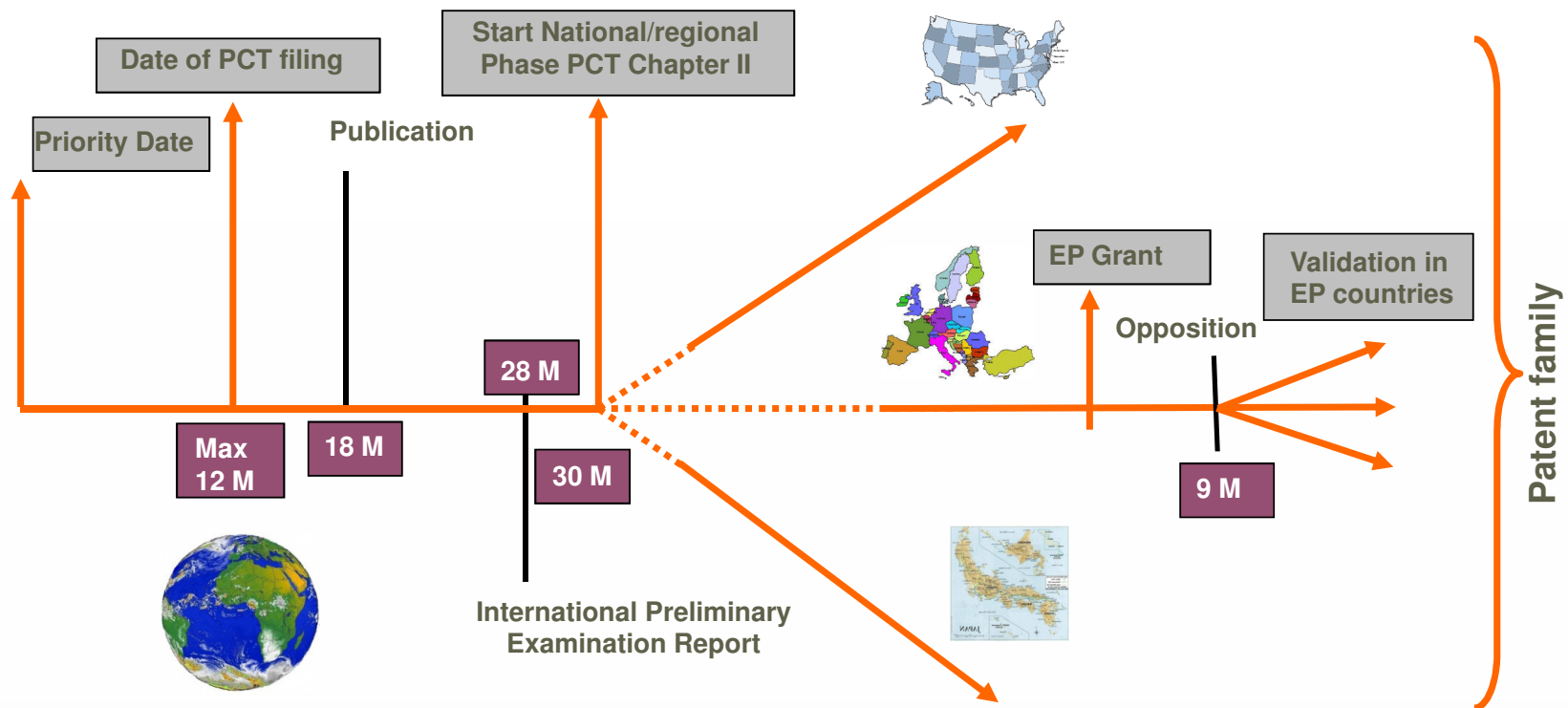
Patent rights can only be enforced in countries where patent is granted

To obtain a granted patent in a country: 3 routes

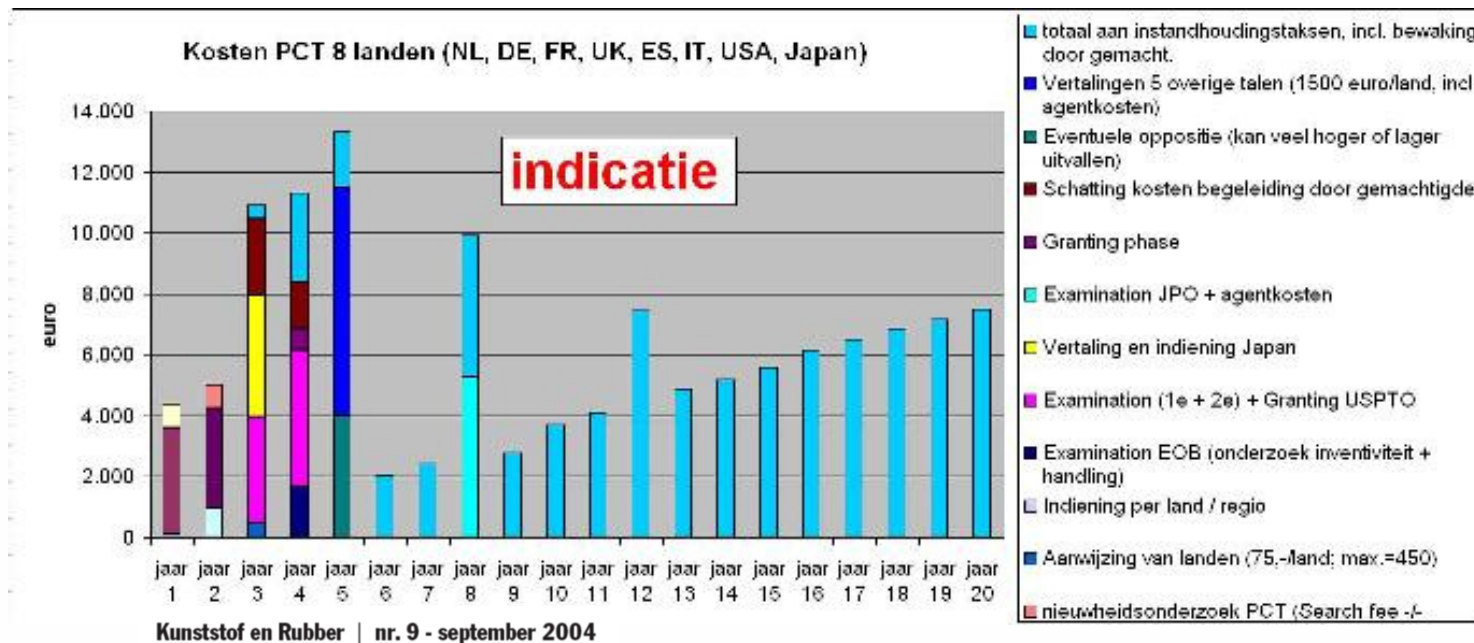
- Patent application(s) in National patent office(s):
- European Patent application in EPO: European Patent – *NEW: Unitary Patent*
- Patent Cooperation Treaty

There is no such thing as an international patent!

PATENT APPLICATION ROUTE



PATENT: COSTS



~ 125000 after 20 y / ~ 15000 after international phase: may be more depending on costs patent attorney, opposition costs, # designated countries

THANK YOU

Hugo.loosvelt@vub.be / 026293865



VRIJE
UNIVERSITEIT
BRUSSEL

What is a design?

A design is the outward appearance of a product or part of it, 2D or 3D, such as dessins, furniture, cars, computers, etc.



DESIGN

- Industrial design may also be protected as work of art under copyright. Depending on the country both rights may exist concurrently or may be mutually exclusive.
- -> if the product is made by machines (mass production): protect the outward appearance through design rights, don't rely on copyright only!



DESIGN

- packaging of products
- design of normal single products
- design of composite products
- sets of articles
- parts of products
- logos
- computer icons
- typefaces
- drawings and artwork
- ornamentation to be put on different items
- web design
- maps, ...

Design: requirements ?



- New("grace period" = 12 months) = no identical design publicly disclosed
- Have individual character ('informed user', different from known design)

DESIGN

- Initially valid for 5 years, renewable in 5 year periods up to max 25 years
- Unregistered versus registered design: 12 months 'grace period'!
- Important marketing tool.
- Only enforceable in the jurisdiction for which it is registered

DESIGN

Cannot protect:

- any item whose appearance is exclusively dictated by its technical function
- any item which does not consist of the outward appearance of a product or part of it: e.g. a building plan
- any item which is not an industrial or handicraft item: e.g. anything belonging to the natural world
- any item against morality or public policy: not easy...

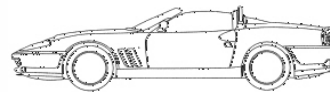
HOW TO REGISTER MY DESIGN

- ✓Forms to be filled in
- ✓Add figures
(unique features must be clearly distinguishable).
- ✓Pictures from various angles
- ✓Min. 1 pictures shows the entire design
- ✓Neutral background

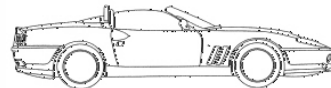
HOW TO REGISTER MY DESIGN

Example: Ferrari

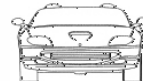
Deposits Published Under the 1960 Act
(11)DM/055710(15)06.03.2001(18) 06.03.2011
(73)FERRARI S.P.A., Via Emilia Est, 1163, I-41100 MODENA (IT)
(86)(87)(88) IT (74) JACOBACCI & PARTNERS S.P.A. Corso Emilia, 8, I-10152 TORINO (IT) (72) RAMACIOTTI Lorenzo (28) 1 (54) Car / Automobile(51) Cl. 12-08 (81) BG, BJ, BX, CH, CI, DE, FR, GR, HU, KP, LI, MA, MC, MD, ME, MK, MN, RO, RS, SI, SN, SR. (30) 12.09.2000; TQ2000O000222; IT (45) 31.05.2001



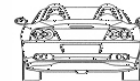
1.2



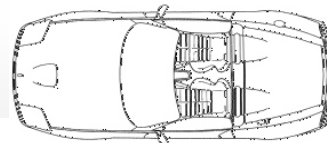
1.3



1.4



1.5



WHAT TO USE THE DESIGN RIGHT FOR?

Act against somebody that:

- ✓ Copies your design
- ✓ Uses your design on different product, e.g. design print to sell T'shirt
- ✓ If design is registered: no burden of proof with respect to public disclosure

How to register ?

- ✓ Benelux design
- ✓ Registered Community Design right
- ✓ Unregistered Community Design right
- ✓ International Design right

UNREGISTERED COMMUNITY DESIGN

- ✓ No formal registration
- ✓ Valid: 3 years.
- ✓ OK for products with short market duration (e.g. fashion)
- ✓ Act only against copying (<-> any use).
- ✓ Evidence: i-DEPOT, notary act.

INFRINGEMENT?

Soap dispenser Aldi



Senseo Philips



WHAT IS A TRADEMARK?

A trademark is a sign that distinguishes your products from those of your competitors

Emotions

Associations

Your mark exists in the head of your customers



WHAT IS A TRADEMARK?

✓ People connect to your trademark...

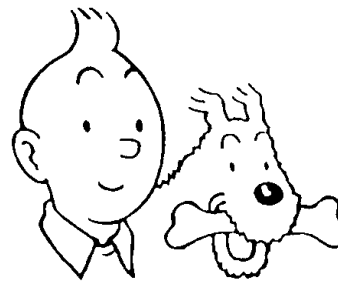


EXAMPLES: WORDS

- ✓ Lady Gaga, Afrojack, Google
- ✓ Dio, Daryl van Wouw, Albert Heijn, Björn Borg, Bikkemberg,
- ✓ Lost Boys, Philips, Commpositie



EXAMPLES: SYMBOLS



EXAMPLES: MIXED

VIKTOR&ROLF


ONE TO SIT




Picture PICTURE
magic

EXAMPLES: SPECIAL

✓shape



✓colour



✓scent



✓sound



TRADEMARK MISTAKES?

- ✓ Trademark not accepted (not new, ...)
- ✓ Linguistic: bad translation ; association



TRADEMARK MISTAKES



Work bench **FARTFULL** \$109.00/ pieces

(price reflects selected options)
website prices may vary from store prices.

- ▶ Storage space for games and accessories under the seat.
- ▶ Mouse pad both for right-handed and for left-handed people.
- ▶ Seat part with handle; casters to be easy to move about.
- ▶ The metal front doubles as a magnetic board.

designer: Lisa Norinder



TRADEMARK

- Can be obtained through registration of the mark with the trademarks office
- Lasts 10 years, renewable indefinitely for 10 year periods
- Mark becomes 'stronger' by specific marketing, use in the market
- Any unauthorised use of the mark in relation to products or services which ***are similar*** is prevented.
- Only enforceable in the jurisdiction for which it is registered



Cannot be registered

- If there are other marks on our register that look/sound the same as (or similar to) yours, for the same (or similar) goods or services
- describe your goods or services or any characteristics of them e.g. "**Cornish Clotted Cream**" for cream;
- have become customary in your line of trade e.g. "**China Garden**" for Chinese restaurant services;
- are not distinctive e.g. "**The Cheese Company**" for cheese;
- are specially protected emblems e.g. "**The Red Cross**";
- are against public moral or are against the law or are deceptive.

JODEN

Sanitary equipment



Training & legal services

Registered?

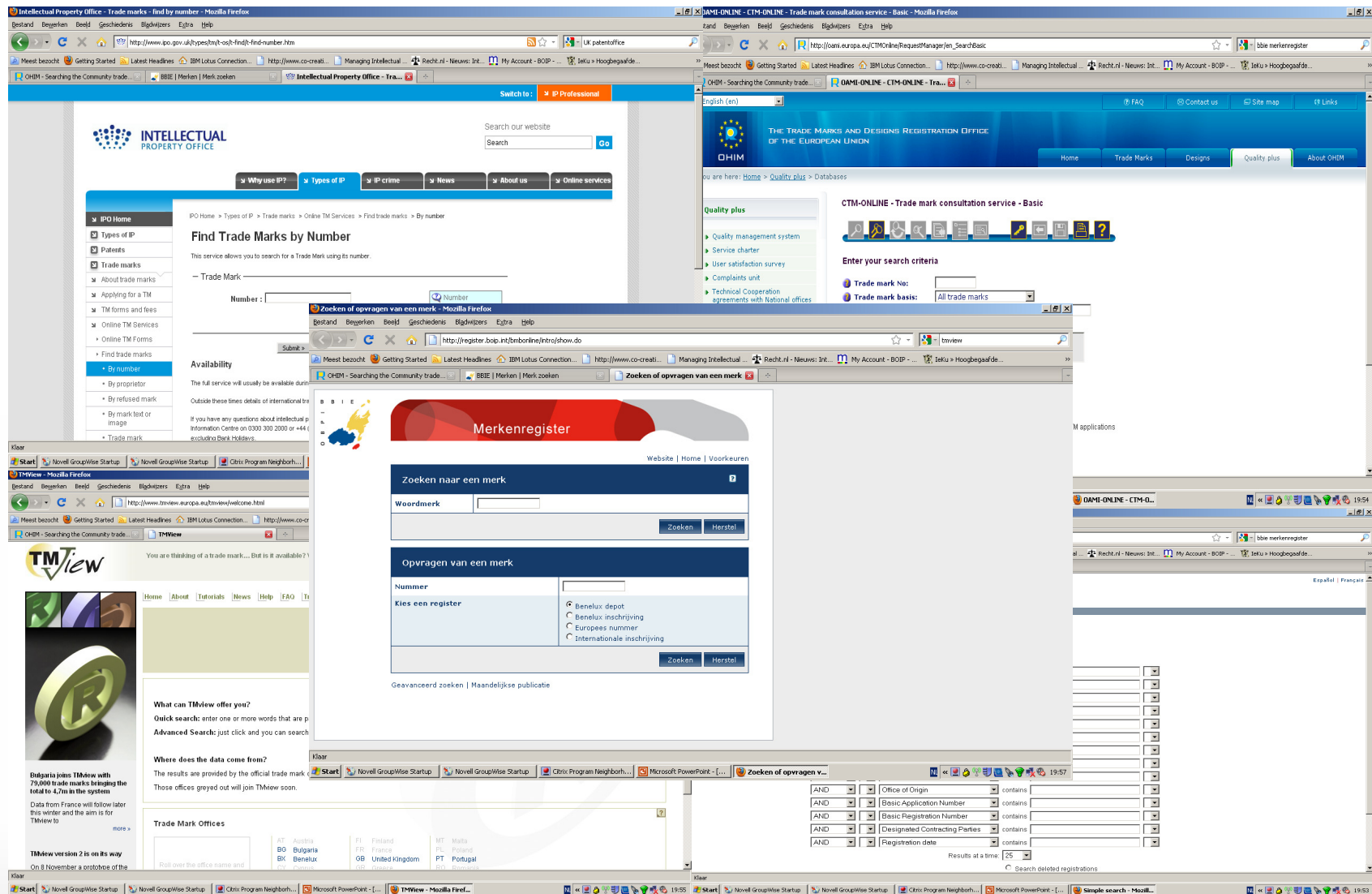


~~JK / NEE~~

~~JK / NEE~~

Check whether your trademark has been registered

- ✓Public databases
- ✓For which class of products / services
- ✓Identical or similar?
- ✓Indicative, not conclusive: ask trademark attorney



REGISTER YOUR TRADEMARK

- ✓ Online registration via www.boip.int or via post or fax
- ✓ Within 4 – 5 months official registration certificate
- ✓ Follow status in trademark registry

Attention to:

- ✓ Classification
- ✓ Examination
- ✓ Opposition

REGISTRATION OUTSIDE BENELUX

- ✓ In 27 landen EU → Office for Harmonization in the Internal Market (OHIM), Spanje. Website: www.oami.europa.eu



- ✓ Uitbreiding registratie vanuit Benelux naar 80 landen → World Intellectual Property Organization (WIPO), Zwitserland.

Website: www.wipo.int



MAKE SURE YOU CAN USE YOUR LOGO FREELY

- ✓ Designer of logo owns copyright ! You as the client receive the right to use the logo for the purposes as described in the contract
- ✓ Logo designed for website may not necessarily be used on other documentation
- ✓ Rights to be determined and agreed upon in a contract



SHOW THAT YOUR TRADEMARK IS REGISTERED

✓Use the



sign

✓Create a link on your website to the trademark register

USE YOUR TRADEMARK AS MUCH AS YOU CAN



MORE INFO ON TRADEMARKS AND DESIGNS

- World intellectual property organisation (WIPO)

<http://www.wipo.int>

- Europe: Office of Harmonization for the Internal Market (OHIM) is the official trade marks and designs registration office of the European Union

<http://oami.europa.eu/ows/rw/pages/index.en.do>

- Benelux: Benelux-Bureau voor de Intellectuele Eigendom (BBIE)

<http://www.boip.int/nl/homepage.php>

- National IP offices: e.g. Belgium:

http://economie.fgov.be/nl/ondernemingen/Intellectuele_Eigendom/

ALDI VERSUS INBEV

Aldi maakt met logo Buval-bier inbreuk op beeldmerk Jupiler Voorz. NL Rechtbank van Koophandel Brussel 13 januari 2016, IEFbe 1682 (Inbev tegen Aldi)

Lees meer op: <http://www.ie-forum.be/artikelen/aldi-maakt-met-logo-buval-bier-inbreuk-op-beeldmerk-jupiler-1>



Luidens artikel 2.20.t.c BVIE kan de merkhouder iedere derde die niet zijn toestemming hiertoe heeft verkregen, het gebruik van een teken verbieden: " c. wanneer dat teken geluk is aan of overeenstemt met het merk en in het economisch verkeer gebruikt wordt voor waren of diensten, die niet sooftgelij'k zijn aan die waarvoor het merk is ingeschreven, indien dit merk bekend is binnen het Benelux-gebied en door het gebruik zonder geldige reden, van het teken ongerechtvaardigd voordeel wordt getrokken uit of afbreuk wordt gedaan aan het onderscheidend vermogen of de reputatie van het merk;"

4/1/2018: Rood Buval-blikje mag weer

De warenhuisketen Aldi mag opnieuw zijn eigen pilsmerk Buval verkopen in rode blikjes, die erg gelijken op die van Jupiler. Dat heeft de **rechtbank in beroep** beslist, meldt *De Tijd*.