

Chemistry: Idea to Market

Protecting Your Idea

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Protecting your idea

Patents

Patents usually describe an invention and they are granted by governments. They are the property of the patent holder and can be bought, sold or licensed. Permission must be sought by the patent holder in order to use the patent. Essentially the patent prevents others from using/exploiting your invention in the country(ies) where it is registered.

What can be patented?

The invention must be new so there must be nothing in the public domain as prior art (see below) (In USA there is a 1 year limit). It must be undisclosed before the filing of the patent, there needs to be an inventive step and it must also be capable of an industrial application

Definitions:

Prior Art – Everything that has been made available to the public by any means of communication (e.g., written, verbal correspondence – unless a secrecy agreement in place)

Novelty – Must be different to anything in the prior art at the date of filing the application.

Inventive Step – Must not be “obvious” to anyone “skilled in the art.” (Patent agents advise).

Selection Inventions – Unexpected properties of a material that is described by another patent.

Regarding Chemistry patentable products can be:

- New compounds
- New isomers
- New polymorphs
- New intermediates
- New properties of a known compound

Processes can be patented:

- New methods of synthesis
- New purification methods
- New test methods
- New methods of use
- New applications

Not eligible

- Previously disclosed in the prior art
- A discovery or theory
- Artistic creations (These may be covered by registered designs or copyright)
- Computer software (covered by copyright)

Protecting your IP

It is essential to keep accurate and complete records of all work that relates to a patent. This means that laboratory notebooks and records must be well kept and dates must be recorded as they may become evidence against counter claims of prior invention.

Registration for patents

The registration of a new patent is a long and complicated process. Note there is an element of risk, as much of the necessary detail for the product or process needs to be disclosed. A patent must be written so that “a person skilled in the art” would be able to reproduce the result. Therefore it is advisable to hire a patent agent. An agent will determine whether an invention is patentable and if so will write the patent in such a way that it is acceptable for filing. They will check the patent against any known prior art.

Patents are not published until at least 18 months after the filing date

Copyright

In broad terms, anything which is printed, written, made or recorded in any form is subject to copyright. Copyright exists whether or not it is asserted using the © symbol or otherwise. No work that is protected by copyright may be reproduced without the permission of the author.

See: <http://www.leeds.ac.uk/library/rights/copyrigh.htm> for more information

Copyright gives the copyright owner the exclusive right:

- to copy the work
- to issue copies of the work to the public
- to perform, show or play the work to the public
- to broadcast the work
- to make an adaptation of the work

What can be protected by Copyright?

- Original literary works
- Artistic works
- Music (written or audio)
- Any computer software

Proof may be required that the author was the first person to write that piece of copyright.

“Registration” of Copyright

Copyright is automatically conferred; there is no registration system in place in the UK. This means that no work that is protected by copyright may be reproduced without the permission of the author. The author owns the copyright, unless the work was done in the course of employment in which case the employer owns the copyright.

Rules for copyright

Copyright in literary, dramatic, musical or artistic works remains the property of the artist until 70 years after the artists death. Typographic copyright in the printed page lasts for 25 years from publication in that edition, so a recent edition of a long-dead author cannot be freely copied.

Small amounts of works may be copied under certain circumstances

Further information on copyright is available:

Leeds Library <http://library.leeds.ac.uk/copyright>

The Copyright Licensing Agency Limited (CLA) <http://www.cla.co.uk/>

Trade Marks

A trade mark is a sign or symbol that is used as a form of identity and is generally used for brand recognition.

What can be registered as a Trade Mark?

Trade marks can include:

- words (maybe including the font)
- logos
- colours
- slogans
- three dimensional shapes
- sometimes sounds
- smells

Some examples

Slogans

- 1989 Can't Beat the Feeling.
- 1990 Can't Beat the Real Thing.
- 1993 Always Coca-Cola.
- 2001 Life tastes good.

Shapes

- Coca-cola bottle
- Apple Mac
- Swizzles "love heart" sweets
- Viennetta ice cream

Sounds

- Windows
- Pentium

Registration process for Trade Marks

Can be registered for 10 year periods at a time and an examiner will check the application.

The process takes approx 6 months.

™ is used to indicate that the word or symbol is a trade mark, but may not be registered.

® is used to show that the word or symbol preceding it is a registered trade mark.

Registering Colours as Trademarks

Brand owners need to ensure that colours used as trade marks are used appropriately and in ways that clearly demonstrate that the colour is functioning as a badge of origin. An application to register a colour as a trade mark will need to be very specific and clearly define the colour by way of pantone numbers.

BP registered the colour green in Australia, Coca-cola registered the colour red globally

Registered Designs

A registered design protects the appearance of a product or part of a product from being copied by anyone else. They are open for public inspection (and objection). Wall coverings or lace are not available for 2 years. Textile designs are not available for 3 years.

To constitute a registered design the must be new and have original character. It can be a whole product, or part of a product. It cannot be a design of how a product works, i.e. must be aesthetic

Registration of Designs

Registration lasts for 5 years and can be renewed to a maximum of 25 years. The owner (or an agent) should register the design which takes, on average, 3 months. After 15 months, applications that have not been registered are abandoned

IP and the Law

Patents are “negative rights” i.e. they allow you to stop others from making your product. It is the role of the patent holder to enforce the patent and an infringement is a case for the Patent Courts (not criminal court). Patent infringement means the patent holder can order all infringed goods to be handed over, receive damages or an account of profits, etc

What IP doesn't do

- They do not give you the right to do anything
- You don't have the right to make anything
- They don't guarantee commercial success

Application for a patent can disclose vital information to competitors. Very high risk if the patent isn't granted. Not valid in all countries. Production and use can still occur in countries where the patent isn't enforced.

Suing for patent infringement can be difficult and costly.