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Intellectual Property in business


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Today's outline

- Business structures
- Types of intellectual property
- IP strategies



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Business Structures

- Sole Trader
 - No formal requirements for formation of business
 - Legal requirements are keeping are mainly keeping accounts for income tax and VAT
 - Unlimited personal liability for debts
- Limited Company
 - Company is a legal entity in its own right
 - Company is liable for debts, but the owner's liability is limited
 - Ownership and management are distinct
 - Director runs business, but absolute control lies with the owners.

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Business Structures

- Partnership
 - A business owned by more than one person
 - No formalities required to form partnership
 - Partners are liable for acts of other partners
 - Partners have unlimited liability
- Limited Liability Partnership (LLP)
 - LLP is a legal entity in its own right
 - LLP is liable for debts, but the partners' liability is limited
 - Must file accounts and annual returns, which become public
 - Each partner has power to bind the partnership

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Types of Intellectual Property



- Copyright
- Trade marks
- Designs
- Patents

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Copyright

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Copyright

- Protection against copying (e.g. bodies of text, music, films, etc.).
- An unregistered right – arises automatically so long as the work is original.

What does it protect?

- Literary, dramatic, musical and artistic works.
- Recordings or broadcasts of a work.
- Copyright protects the expression of an idea.



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Trade Marks

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Types of Trade Marks

- Unregistered
 - Protected by common law - passing-off.
 - No upfront cost.
- Registered
 - Formal official examination.
 - Can be opposed by third parties.

TM

®

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Trade Marks (Registered)

- Must be graphically represented (or otherwise recordable on the register).
- Provides a monopoly right for an unlimited period.
- May consist of words, designs, letters, music, smells, numerals or the shape of goods or their packaging.




All trade marks used in this presentation are the property of their respective owners.

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The Importance of Trade Marks

- Brand value
- Recognition
- Repeat purchases
- Reputation
- Asset



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Trade Marks Overview (1/2)

Words	Logos
'Coca-Cola'	
'Levis'	
'Starbucks'	
'Google'	

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Trade Marks Overview (1/2)

Colours



Shapes



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Designs

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Designs



- A design relates to the appearance of an article.

Two aspects of design protection

- Unregistered designs ('Design Right')
- Registered designs

UK design right and registered designs

- Give rise to rights in the UK only

Community design right and registered designs

- Give rise to rights in all 25 EU member states

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Registered Designs

- Must be **novel** – no identical design made available to public.
- Have **individual character** – create different overall impression on an informed user to existing designs.
- Remains in force for up to 25 years.



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Patents

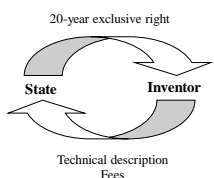
- Overview of Patents
- Preparing a patent application
- Patenting Strategies

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What is a Patent?

- A patent is a bargain between the inventor and the state.
- The inventor discloses their invention.
- The state grants a temporary monopoly for the invention.
- Stimulates innovation by rewarding it.




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What is a Patent? (continued...)

- Usually relate to products or methods.
- Territorial.
- A prohibitive right.
- Proprietor can prevent: use; importation; making; keeping; offering for disposal; or disposal of the invention in the UK, without permission.




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The Importance of Patents

- Exclusivity – You can prohibit third parties from unauthorised use of your invention.
- Personal property – can be:
 - Licensed,
 - Used as security for a loan,
 - Sold.
- UK Corporation tax relief.
- Makes an invention identifiable and so enables an inventor's achievement to be recognised and eases asset appraisal.




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What is an Invention?

A patent will only be granted for an invention that is:

- New
- Involves a (technical) inventive step
- Capable of industrial application
- Not excluded from patentability by statute




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These things are excluded:

- (a) a discovery, scientific theory or mathematical method,
- (b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever,
- (c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer,
- (d) the presentation of information.

...as such...



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Preparing a Patent Application


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First things, first...

- Keep the invention confidential.
 - Non-disclosure agreements.
- Do you have an invention?
 - Check Google, Espacenet.
- Do you own the invention?
 - Check contracts.





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Applying for a Patent

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Doing it yourself:

- Cheap,
- Time consuming,
- You've only yourself to blame...



Getting an agent to do it for you:

- Mandatory for some foreign applications,
- Better chance that you will obtain commercially useful protection,
- The agent will ensure that rules and deadlines are complied with.

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Patenting Strategies

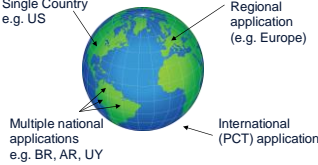
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First things, first...

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- Obtaining a patent is often a long process
- Applications may be required in several countries.



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What can we do with a patent?

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- Use rights ourselves?
- Use rights in our country of interest and licence in other countries?
- Only licence patents (IP generating companies)?
- One key patent, or lots of smaller patents?
- Do we need patents at all?!

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Analysing a company's IP strategy

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- Which countries are they applying for patents in?
- Are there licences recorded on the register?
- Do they even have patents? Why or why not?
- Are patents filed under a subsidiary name to keep inventions secret? - Search known inventor names.
- Do they have trade marks or registered designs?



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Summary

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- Several 'flavours' of IP.
- Patents protect 'inventions'.
- Many options for tailoring the process to suit business requirements:
 - Cash flow,
 - Scope of protection / length of prosecution.

The content of this presentation is simplified and intended as a general introduction to the subject. It is not authoritative and cannot be considered to be advice. The content of this presentation should not be applied to specific situations when making business decisions.


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Additional information slides

- The following information is not covered in the presentation but may be useful or of interest to some people.
- Please contact me if you have any questions on the following content.



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Preparing an Invention Disclosure

- What do you consider the invention to be?
 - You may have a whole device, but what is new?
- Why it is good?
 - Why is it better than what exists already?
- What is the background to the invention?
 - Provide background reading


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Preparing an Invention Disclosure


- Be Clear.
 - Don't use unnecessary jargon or made-up terms.
- Provide instructions in good time.
 - Drafting takes time!
- Tell your agent what your commercial objectives are.
 - This is key.

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Priority

- Filing an application establishes a "priority date".
- Only disclosures before this date are prior art.
- Subsequent applications can be filed within a year of the first application and claim benefit of the priority date.
- Foreign applications can be filed within the priority year.



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UK First Application

- Mandatory for some inventions (those relevant to national security).
- Reasonably inexpensive official fees.
- Quick search results from a respected authority.
- No renewal fees before grant.



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Typical National Procedure

Time	Step
Start	• Draft application and file at Patent Office.
~1m	• Formalities examination.
~6m	• Search report established.
>1yr	• Substantive examination (multi-rounds).
18 m	• Publication (possibly provisional protection).
x yrs	• Granted (possibly...).
20 yr	• Lapse.

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Multiple National Applications

- Separate application in each country of interest.
- Initial translation costs.
- Cost of representative in each country.
- Prosecution not necessarily coherent.
- Harder for opponents to challenge after grant.



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Regional Application (e.g. Europe)

- Single prosecution for multiple countries.
- Prosecution in one language.
- Can be cheaper if protection is required in several countries.
- Centrally revoked if successfully opposed after grant.
- Results in a bundle of patents in multiple countries.



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International (PCT) Application

- Consists of an international and a national phase.
- Single prosecution for multiple countries within the international phase.
 - Central search.
 - Option for centralised (but non-binding) examination.
- Can be used to delay costs.



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Typical Regional Procedure

Time	Step
Start	• Draft application and file at Patent Office.
~1m	• Formalities examination.
~6m	• Search report established.
>1yr	• Substantive examination (multi-rounds).
x yrs	• Granted (possibly...).
~x yrs	• Validate in required designated states.
20 yr	• Lapse.

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Typical PCT Timeline

Time	Step
Start	• Draft application and file at a patent office.
~1 m	• Formalities examination.
~6 m	• Favorable Search report established.
12 m	• File PCT application at receiving office.
<16 m	• International search report established.
30 m	• Enter national phase.
> Yrs	• National search and examination.
21* yrs	• Lapse.

*This example is for an application that claims priority from an earlier application.

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