



知識產權

Intellectual Property

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The Art of Intellectual Property Law™

什麼是知識產權？

- Intellectual Property is a type of legal rights that result from intellectual activity in the industrial, scientific, literary and artistic fields.
- 一組無形的獨立財產權,保護人的創意

知識產權 - 重要類型

- 專利 (Patents)
- 商標 (Trademarks)
- 外觀設計 (Industrial Designs)
- 版權 (Copyrights)

知識產權

- 國家性 (National)
- 期限 (Length):
 - 專利 - 20年
 - 商標 - 15年 renewable
 - 外觀設計 - 10年 (25年 in Europe)
 - 版權 - 作者的一生 + 50年



專利 - PATENTS



The Art of Intellectual Property Law™

什麼是專利?

- A government granted exclusive right to make, use, construct or sell
- 政府賦予的獨家權利來製造,使用,構建,或出售
- Some countries also protect against importation (進口) of patented products

什麼可以獲得專利保護？

- 適當題材: Art, process, machine, manufacture and composition of matter
- New (新穎性/從未於公開)
- Non-obvious (創造性)
- Useful (實用性)

專利不保護

- 科學性原則 (scientific principles)
- 抽象的定理 (abstract theorems)
- 主意 (ideas)
- 生物 (lifeforms)
- 醫療法 (methods of medical treatment)

專利例子

U.S. Patent

Oct. 25, 2011

Sheet 5 of 15

US 8,046,721 B2

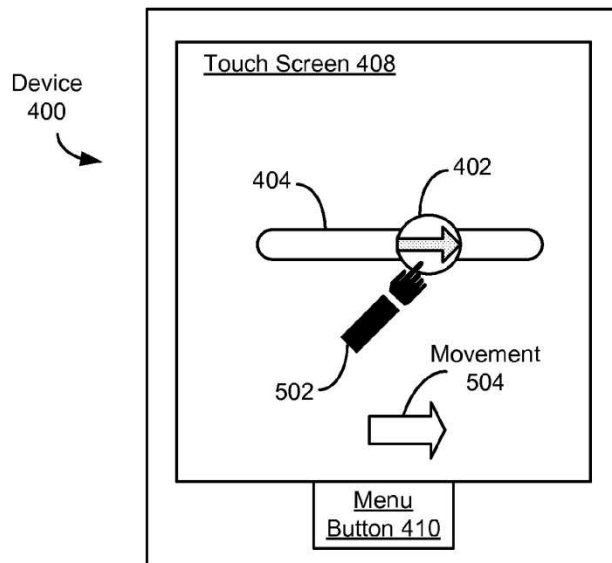


Figure 5B

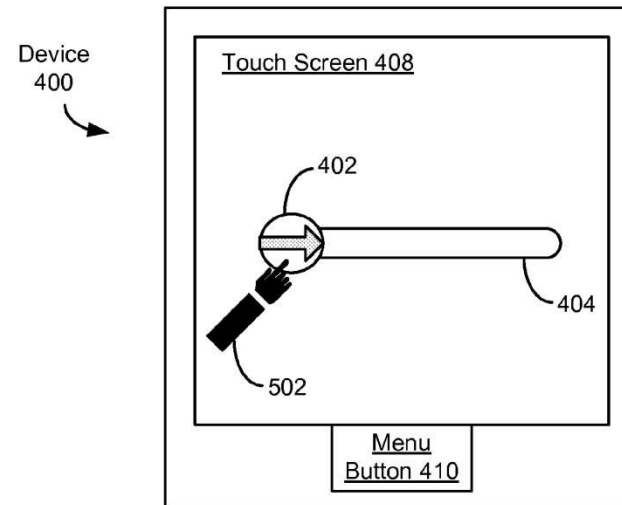


Figure 5A

Apple - Slide to Unlock

- Claims: (專利要求)
- 1. A method of unlocking a hand-held electronic device...
- 7. A portable electronic device, comprising:

[侵權?]

- Patent is an exclusive right to make, use, construct or sell the patented invention
- 政府賦予的獨家權利來製造, 使用, 構建, 或 出售

補救 (Remedies)

- 到法院要求
 - 禁令 (Injunction)
 - 賠償 (Damages)
 - 沒收/銷毀 (Delivering up/Disposal)
- 同其他知識產權一樣

進口侵權產品

- 歐洲: Customs Detention
 - Regulation (EC) 1383/2003
- 美國: Import Ban
 - International Trade Commission (US)
- 加拿大: CBSA only deals with products infringing trade-marks and copyright

專利的好處

- 禁止他人製造 (Monopoly)
- 財產 (Asset for leverage, funding)
- 競爭優勢 (Competitive Advantage)
- 帶來收入 (Source of revenue)
 - 許可金 (Licensing Fee)
 - 出售 (Sale) - Example: Nortel sold 6000 telecommunications for \$4.5 Billion

日常業務關注-專利

- 了解你的產品和供應商 (know your products and suppliers)
 - 經銷商可能承擔賠償責任
 - Distributors can be liable
- 製造或銷售都是侵權 (Making, Selling are both infringements)

日常業務關注-專利

- 保持新發明的秘密
- Keep new inventions confidential
- 就業協議應包括知識產權
- Employment agreements should include intellectual property rights
 - 專利最初屬於發明家
 - Patents initially belongs to inventor(s)



商標 - TRADEMARKS

商標是甚麼？

- 商標是一個標誌，用以識別不同商戶的貨品和服務
- A trade-mark is a word (or words), a design, or a combination of these, used to identify the goods or services of one person or organization.

註冊商標, 普通法商標

- 沒有註冊商標仍具有法律上的權利
- Unregistered (common law) trademarks are legally enforceable
- But:
 - 可能需要在法庭上證明
 - may need to be proven in court

註冊商標的好處

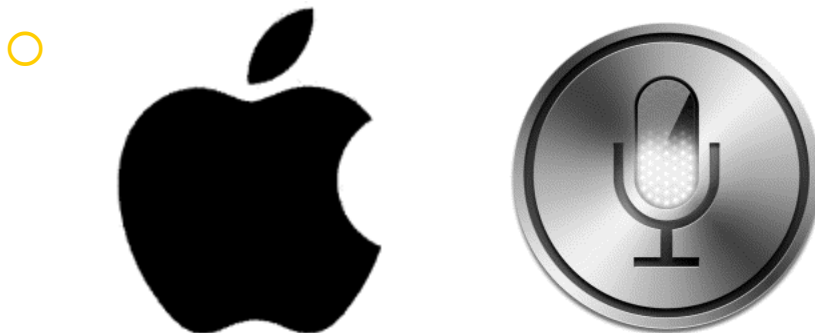
- 專用權的證明 (Prima Facie Proof of Rights)
- 全國有效 (Rights in all of Canada)
- 15 年 renewable

商標的例子



商標類型

- 字母商標 - Word Mark
 - – IPHONE 4S, SIRI
- 設計式樣商標- Design Mark



Above trade-marks owned by Apple Inc.

[其他人已經使用的商標?]

- 商標: IPHONE
- Other Existing Users:
 - Canada: COMWAVE
 - U.S.: CISCO

[解決 (Resolution)]

- Settlements:
 - With COMWAVE:
 - For undisclosed amount but COMWAVE agreed to discontinue it's use by November 2008
 - With CISCO:
 - For undisclosed amount but agreed that both can use the mark for their products

[If unable to settle?]

- 反對註冊 (Oppose registration)
- 申請撤銷 (Expunge)
- 控告假冒 (Sue for passing off)
- 控告貶值商譽 (Sue for depreciation of goodwill)
- 共存 (Co-exist)

日常業務關注 - 商標

- Marking (®, TM)
 - 如你未曾把商標註冊，使用®便屬犯罪
- 保持良好的記錄
 - 第一次使用或廣告的日期
 - 包括樣品
- 考慮登記重要的商標



外觀設計 – INDUSTRIAL DESIGNS

什麼是外觀設計?

- An industrial design is the visual features of shape, configuration, pattern or ornament applied to a finished article.
- 外觀設計只保護新設計形狀,外觀,裝飾和視覺上的美感

外觀設計不保護...

- 不保護產品的運作方式
- Does not protect features with utilitarian function
- 不保護生產或建設的原則或方法
- Does not protect method or principle of manufacture or construction.

外觀設計的好處

- 比專利便宜,更容易獲得
- 沒有實質性的考試
- 比較容易保護 (patent litigation require experts)
- 適宜用於某些產品
- 壽命長 (in some jurisdictions, i.e. 25 years in Europe, Hong Kong)

外觀設計例子

U.S. Patent

May 4, 2010

Sheet 1 of 2

US D615,083 S

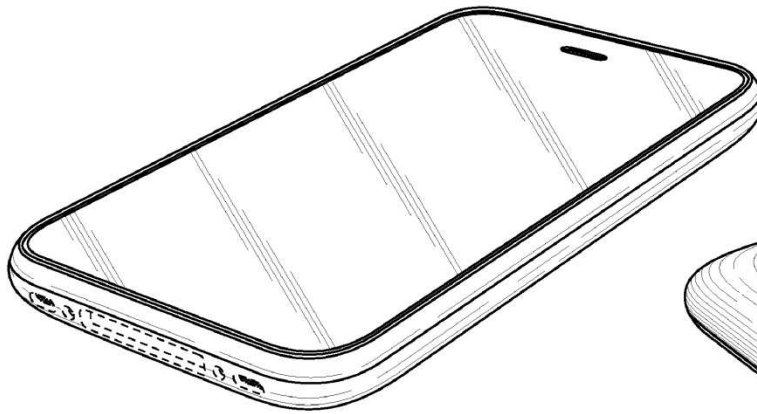


FIG. 1



FIG. 2

侵權 (Infringement)?



[侵權 (Infringement)?]

- 法律標準 = “design not differing substantially”
- Apple:
 - 在法庭申請禁制令
 - 申請進口禁令 (U.S. International Trade Commission)
 - 交叉許可?

日常業務關注-外觀設計

- 必須註冊才得到保護
- Only Registered Designs are protected
- 新穎的設計一定要被保密
 - 公開過的設計失去其新穎性
 - 只有一些國家有寬限期 (grace period)
- 如果知道最終產品的模樣,值得註冊



版權 - Copyrights

[何謂版權?]

- 創作家專有權利
 - produce, reproduce, perform or publish
 - convert it into a novel
 - reproduce, adapt and publicly present the work as a film
 - communicate the work to the public by telecommunication,
 - and more...

自動賦予的權利

- 作品要取得版權保護，毋須辦理任何手續
- Copyright arises automatically
 - Marking with a © and a date protects rights worldwide
 - Berne Convention

版權

- 作品的創作者，是作品版權的第一擁有人
- 時限為創作者死後50年
- 版權保護還包括精神權 (moral rights)

日常業務關注-版權

- 版權是一種複雜, 特殊的法律
- 確定所有的權利和權利人
 - Identify relevant rights and right holders
- 管理集體
 - Many rights in Canada administered collective

[多謝!]

■ 問題？