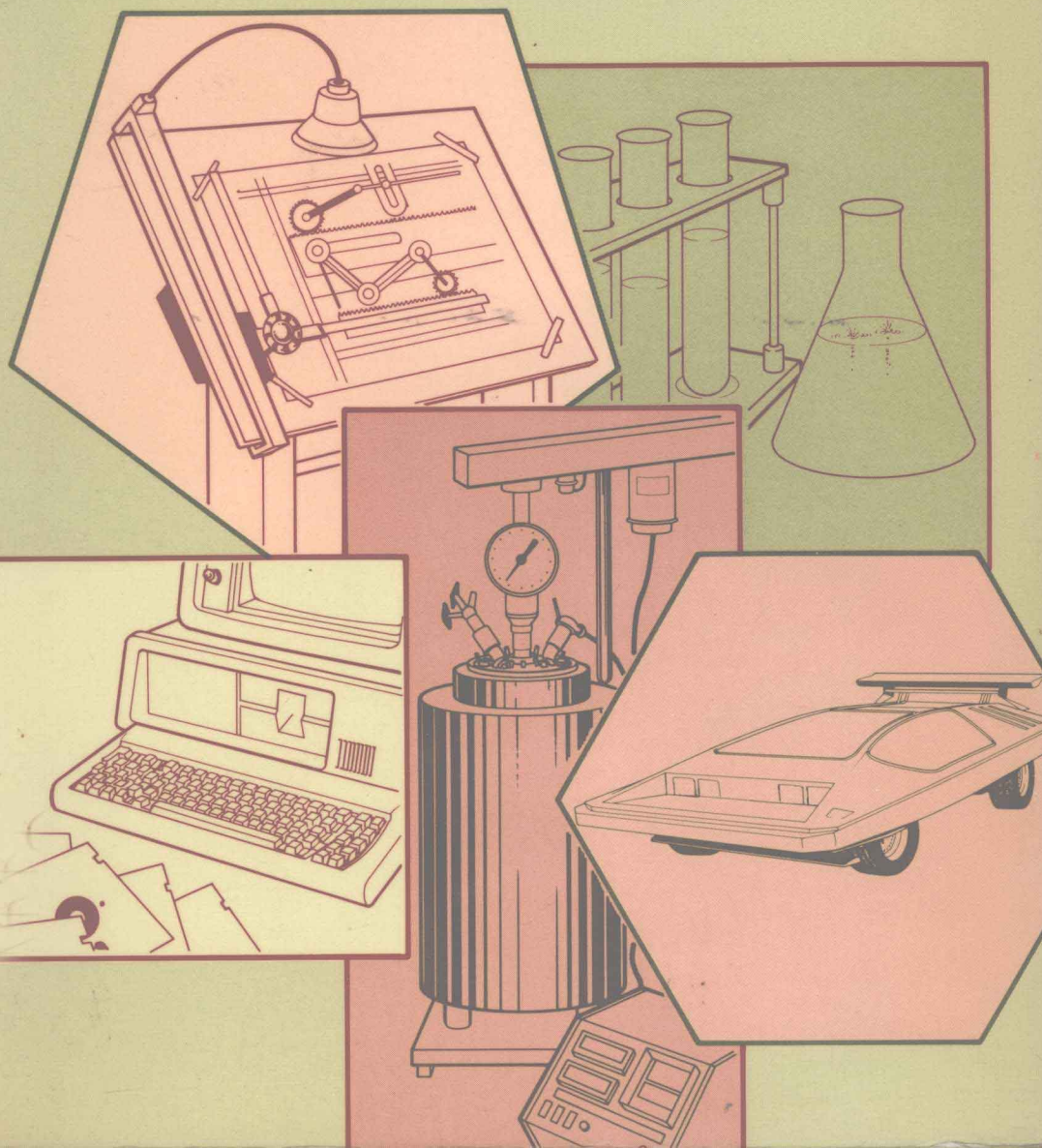


Protecting and Exploiting New Technology and Designs

KEITH HODKINSON



Protecting and Exploiting New Technology and Designs

KEITH HODKINSON

Lecturer, Faculty of Law

University of Manchester

Consultant, Marks and Clerk,

Chartered Patent and Trade Mark Agents

London

E. & F.N. SPON

New York

*First published in 1987 by
E. & F.N. Spon Ltd
11 New Fetter Lane, London EC4P 4EE
Published in the USA by
E. & F.N. Spon
29 West 35th Street, New York 10001*

© 1987 K. Hodkinson

*Printed in Great Britain at the
University Press, Cambridge*

ISBN 0 419 13810 2 (Hardback)
ISBN 0 419 13820 X (Paperback)

This title is available in both hardbound and paperback editions. The paperback edition is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, resold, hired out, or otherwise circulated without the publisher's prior consent in any form of binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser. All rights reserved. No part of this book may be reprinted, or reproduced or utilized in any form or by any electronic, mechanical or other means, now known or hereafter invented, including photocopying and recording, or in any information storage and retrieval system, without permission in writing from the publisher.

British Library Cataloguing in Publication Data

Hodkinson, Keith
Protecting and exploiting new technology and designs.
1. Patent laws and legislation — Great Britain
I. Title
344.1064'86 KD1369

ISBN 0-419-13810-2 ISBN 0-419-13820-X Pbk

Library of Congress Cataloging in Publication Data

Hodkinson
Protecting and exploiting new technology and designs.
Bibliography: p.
Includes index.
1. Patent laws and legislation—Great Britain.
I. Title.
KD1369.H63 1987 346.4104'86 86-31321
ISBN 0-419-13810-2 344.106486
ISBN 0-419-13820-X (pbk.)

Preface

The objective of this book is to provide a general guide to the protection and the exploitation of new technology and design, written from the point of view of the lawyer explaining to the non-lawyer (or the non-specialist lawyer) the essentials of the law and its many implications for business practice in this field.

It is hoped that the work will be useful as a reference book and an occasional 'dip-in' both for the company secretary, or the director of R and D or the licence negotiator, as well as for the non-specialist lawyer wishing to become acquainted with this field for the first time. For that reason the use of detailed legal references, case citations, etc. which are customary in a book directed at a specialist legal audience have been omitted, but the very complexity of the law and the practice in this area requires that some subjects be dealt with in a degree of detail to avoid the severe risks which accompany over-simplification. Unless otherwise stated the law explained is the law of England and Wales.

Inevitably some things have been left out. It is hoped that the selection and allocation of space to material is all in all balanced and useful. As with all law-related books material becomes out of date rapidly and the very recent Government White Paper Cmnd 9712, which is reviewed in Chapter 16, may accelerate the pace of the changes to come, but the essentials will largely remain the same and it is on the essentials that the book has concentrated. Stress has been placed on those areas which experience has shown to be most confusing to the non-lawyer.

Although they are in no way responsible for the content of this book I would like to thank my colleagues at the University of Manchester and at Marks and Clerk, patent and trade mark agents, Manchester, for their helpful comments and answers to queries, as well as to the others in legal practice and in R and D work in the North-West who have knowingly or otherwise contributed to my views on protection and exploitation of new technology and design. Responsibility for all errors remains mine.

Finally, E. & F.N. Spon Ltd, in bringing this book into being, have been patient both with my deadlines and with my typing.

KEITH HODKINSON

Manchester
1 July 1986

Contents

Preface	xiii
1 Introduction	1
1.1 The objectives of this book	1
1.2 What is intellectual property?	2
1.3 Why bother with intellectual property?	7
2 Protecting trade secrets and know-how	11
2.1 Why bother with trade secrets?	11
2.2 How do you protect trade secrets by law?	13
2.3 What types of information can you protect?	14
2.4 Protecting absolute and relative secrets	15
2.5 Who can you bind to keep trade secrets secret?	15
2.6 Proof of breach of confidence	24
2.7 Losing the right to keep information secret	24
2.8 Other ways of protecting trade secrets	25
2.9 Practical steps in protecting trade secrets	27
3 Protection for technology by patents	32
3.1 What is a patent?	32
3.2 Historical background to patents in the UK	32
3.3 International protection through patents	33
3.4 What inventions are patentable?	38
3.5 How do you apply for and obtain a patent?	44
3.6 What to tell the professional advisers	60
3.7 Who takes decisions about patents	62
3.8 Planning a patent application campaign	62
3.9 What rights does the patent give you?	64
3.10 The costs of patenting	69
3.11 Reacting to other people's patents	71
4 Designs	72
4.1 What is a design?	72
4.2 Historical background to design law in the UK	73

Contents

4.3	Means of protecting designs in the UK	73
4.4	International protection of designs	73
4.5	Registration of designs in the UK	74
4.6	Copyright protection of designs in the UK	83
4.7	Multiple protection of industrial designs	88
4.8	Foreign design laws	91
4.9	What to tell the professional advisers	93
4.10	Reacting to other people's designs	94
4.11	The costs of design protection	95
4.12	Non-industrial copyright	96
5	Trade marks and names	101
5.1	What is a trade mark?	101
5.2	History of trade mark protection in the UK	101
5.3	International protection of trade marks	102
5.4	Why bother with registering a trade mark?	104
5.5	Commercial factors in selecting a trade mark	104
5.6	Legal restrictions on trade mark registration	105
5.7	Types of registered trade mark: Part A and Part B marks	107
5.8	How do you register a trade mark?	110
5.9	Amendment of trade mark registrations	111
5.10	Special types of registered trade mark	112
5.11	Practical steps for safeguarding a trade mark	114
5.12	Foreign trade mark protection	115
5.13	Reacting to other people's trade marks	117
5.14	The cost of registered trade mark protection	118
5.15	Alternatives to registered trade marks	118
5.16	Foreign protection of unregistered trade marks etc.	119
6	Special protection problems	121
6.1	Introduction	121
6.2	Computer firmware and software	122
6.3	Biotechnology and genetic engineering methods	134
6.4	New plant varieties and seeds	139
6.5	Pharmaceuticals and new chemical substances	140
7	Ownership of inventions and designs	148
7.1	Introduction: the source of ownership disputes	148
7.2	The employee's position at common law	149
7.3	Employee inventions and the Patents Act	151
7.4	Registered designs and employee designers	153
7.5	Employee drawings, designs and the Copyright Act	154
7.6	Employee compensation schemes	154
7.7	Independent consultants' property rights	158
7.8	Contracting out of employee rights	159
7.9	Handling employee inventions internally	163

Contents

7.10	Handling employee compensation claims	165
7.11	Other potential ownership disputes	166
7.12	Unsolicited ideas from third parties	168
8	Aspects of managing research and development	171
8.1	Introduction	171
8.2	Research and development departments	171
8.3	Patent and trade mark departments	182
8.4	Using solicitor/barrister advisers	188
9	Licensing of intellectual property	192
9.1	Introduction	192
9.2	What is a licence?	192
9.3	Legal implications of a licence agreement	196
9.4	Options to grant or acquire a licence	199
9.5	Variations in licence format	200
9.6	The role of the licence agreement	201
9.7	To license or not to license?	201
9.8	Organizing for licensing	211
9.9	Packaging technology opportunities	214
9.10	Eliminating the options	215
9.11	Budgeting for the search for a licensee	215
9.12	The mechanics of licensing and assignment	215
10	Non-licensing options	217
10.1	Introduction to non-licensing options	217
10.2	Joint ventures with the rights owner	217
10.3	Take-over or merger of an existing concern	227
10.4	Using a solely owned manufacturing company	229
10.5	Using a technology broker	231
10.6	Assignment outright	235
10.7	Using contract research and development	236
10.8	Employee transfers or poaching	236
10.9	Imitation and copying	237
10.10	Conclusions	237
11	Evaluation, negotiation, implementation of technology agreements	238
11.1	Introduction	238
11.2	Evaluating a potential licensee or licensor, etc.	238
11.3	Preparing for a negotiation	243
11.4	Conduct of negotiations	246
11.5	Drafting terms of licences or joint ventures	248
11.6	Implementation and management of agreements	249
11.7	The licence documentation package	250
11.8	Resolving licence or joint venture disputes	252

Contents

12	Common licence agreement terms	254
12.1	Introduction and the general approach	254
12.2	Recitals clauses	256
12.3	Parties to the agreement	257
12.4	Definitions clauses	257
12.5	Specifying the duration of the agreement	258
12.6	Commencement date	260
12.7	The scope of the licence	260
12.8	Know-how disclosure terms	261
12.9	Dealing with infringers	261
12.10	Trade mark control clauses	262
12.11	Confidentiality	262
12.12	Quality control, promotion, etc.	263
12.13	Termination	266
12.14	The interpretation clause	266
12.15	Administration	267
12.16	Warranties as to validity of rights licensed	267
12.17	Sublicences	268
12.18	Choice of law	268
12.19	Arbitration	268
12.20	Illegality or invalidity	270
12.21	<i>Force majeure</i> clauses	270
12.22	Waivers etc.	271
12.23	Government approvals	271
12.24	Indemnity clauses and product liability	271
13	Pricing technology transfer	274
13.1	Introduction	274
13.2	Evaluating a technology transfer price	274
13.3	Factors affecting the valuation of a licence	275
13.4	Drafting payment clauses in licences	277
13.5	Downpayments and disclosure fees	277
13.6	Royalties and related payments	278
13.7	Service and other special fees	280
13.8	Currency place and method of payment	281
13.9	Protection of royalty rates against inflation	281
13.10	Non-monetary payments	282
13.11	Verification and account keeping	283
13.12	Securing payment of the royalties and other fees	284
13.13	Controlling prices of the items licensed	284
13.14	Negotiation fees and option fees	284
14	Restrictions on exploiting	286
14.1	Introduction	286
14.2	UK restrictions on exercise of patent rights	286
14.3	UK restrictions on use of registered designs	290

Contents

14.4	UK competition law affecting licensing	290
14.5	EEC competition law affecting licensing	292
14.6	USA antitrust law and intellectual property	302
14.7	Extra-territorial application of the US laws	305
14.8	Antitrust and intellectual property rights	306
14.9	US antitrust and joint R and D ventures	308
14.10	USA's general approach to licence agreements	308
14.11	Remedies for infringement of US antitrust law	310
14.12	Third World restraints on licensing	310
14.13	Export administration control laws	310
14.14	Conclusions	314
15	Enforcing rights in new technology and design	315
15.1	Introduction	315
15.2	The decision to bring or fight an action	315
15.3	Unjustified threats of litigation	317
15.4	Where is the infringement action fought?	318
15.5	Who can sue for infringement?	321
15.6	Who can be sued for infringement?	321
15.7	Infringement action procedures	322
15.8	Collecting evidence of infringements	327
15.9	Remedies for infringement of rights	330
15.10	Award of costs in infringement actions	333
15.11	Using public authorities to enforce rights	334
15.12	Insuring against litigation	336
15.13	Planning a litigation campaign	336
15.14	Alternatives to litigation	337
16	Prospects for reform	339
16.1	Introduction	339
16.2	Trade secrets (Chapter 2)	339
16.3	Patents (Chapter 3)	339
16.4	Design copyright (Chapter 4)	340
16.5	Trade marks (Chapter 5)	340
16.6	Special protection problems (Chapter 6)	340
16.7	Employee rights (Chapter 7)	341
16.8	Patent agents (Chapter 8)	341
16.9	Patent litigation etc. (Chapter 15)	341
16.10	Information sources (Chapter 17)	342
17	Information sources about technology, design and licensing opportunities	343
17.1	Introduction	343
17.2	Patents as a source of technical information	343
17.3	Designs as a source of information	352
17.4	Trade marks as a source of information	353

Contents

17.5	Other sources of technology and business data	353
17.6	Information on venture capital sources	360
17.7	Summary of information sources and addresses	360
18	Conclusions about intellectual property	362
18.1	The merit of the intellectual property system	362
18.2	Arguments for intellectual property rights	363
18.3	Arguments against intellectual property rights	367
18.4	Summary	373
Appendix 1	Useful addresses	377
(a)	Some professional organizations	377
(b)	Some public information sources	377
(c)	Some private sector information sources	378
Appendix 2	Countries party to international conventions	380
(a)	Parties to the Patent Co-operation Treaty	380
(b)	Parties to the European Patent Convention	380
(c)	Members of the Paris Convention	380
Appendix 3	Sample and draft letters, contracts, record forms	382
(a)	Draft contract of employment term on inventions	382
(b)	Sample collective agreement: University of Sussex	383
(c)	Sample collective agreement: British Railways Board	384
(d)	Sample employee invention record form	385
(e)	Sample letter to research employee leaving the employment of a firm	386
(f)	Draft letter offering to make confidential submission	388
(g)	Sample draft confidential disclosure agreement	388
(h)	Sample draft research or development consultancy agreement	390
(i)	Draft option to take out a licence agreement	394
(j)	Employee's acknowledgement of employer's title	396
(k)	Draft assignment of patent and invention rights	397
(l)	Draft assignment of rights in invention not yet made the subject of a patent application by an employee to his or her employer	398
(m)	Draft assignment of copyright in an existing work	399
(n)	Draft assignment of copyright in a future work	399
(o)	Draft 'package' intellectual property licence	400
(p)	Draft letter drawing infringement to attention of infringer of patent rights	408
(q)	Draft letter requesting correct usage of trade mark by a trade journal	408
Appendix 4	Licensing negotiation checklists	410
(a)	Technology evaluation checklist for licensee/licensor	410
(b)	Commercial evaluation checklist for licensee/licensor	411
(c)	Legal evaluation checklist for licensee/licensor	411

Contents

(d) Administration checklist for licensee/licensor	412
--	-----

Index	413
--------------	------------

1

Introduction

- 1.1 The objectives of this book
- 1.2 What is intellectual property?

- 1.3 Why bother with intellectual property?

1.1 THE OBJECTIVES OF THIS BOOK

This book is concerned mainly with the protection and exploitation of new technology and designs through the use of intellectual property rights: in other words, through:

- (1) Patents
- (2) Registered designs
- (3) Plant variety rights
- (4) Copyright
- (5) Trade marks
- (6) Know-how and trade secrets

The term intellectual property rights is a general one which covers all of these separate legal rights. Sometimes people will use the term industrial property rights: it means basically the same thing, but it has a rather narrower import, since it excludes those aspects of copyright dealing with artistic and literary works which are generally not thought of as industrial. This book will use the wider term to cover the rights listed above.

The book discusses which types of new technology and design you can protect and how you can protect them using the intellectual property rights both here in the United Kingdom and overseas. It discusses some of the options that are available in exploiting a new piece of technology or design and pitfalls to avoid in managing intellectual property rights. The book also points to the use of intellectual property data as a source of new technical, design and other business information.

The task of the book is to raise your awareness of intellectual property as a means both of protecting and exploiting technology and design; and to give practical advice on the questions which you should be asking your professional advisers, on the information you should be providing them with and on the steps you should take to acquire and exploit an intellectual property right.

The purpose of the book is not to turn you overnight into a do-it-yourself patent agent, lawyer or general business adviser. It could never do that because, in practice, there are no ready-made answers to most of the problems to be discussed.

Instead, it has been written from the point of view of a lawyer or a patent agent

Introduction

explaining to the non-lawyer client (who might be a research worker, or a commercial manager, or even perhaps a personnel manager dealing with employment problems) some of the legal and commercial implications of new technology and designs and how the law can help or hinder the acquisition and exploitation of rights in them according to the various decisions that person has to make. It concentrates on options, when to act, what questions to ask and of whom to ask them.

Above all, the book has a simple message. It is that being aware of intellectual property always means very careful planning ahead and organizing your R and D procedures so as to make the acquisition of intellectual property rights easier. It means having to educate even relatively junior staff about the basic precautions to be taken at a practical level internally to safeguard a company's position. It means ensuring that the sales staff and negotiators dealing with others outside the company are aware of the importance of confidentiality, of the potential of licensing deals and of the need for care in agreeing any licences. It means a constant flow of information between R and D, finance, sales and legal sections or outside advisers: in essence, it means good communication. Therefore the book is concerned with the practical implications of intellectual property for the internal management of a firm and the necessity for a flow of information to maximize its potential for the protection and exploitation of technology and design.

1.2 WHAT IS INTELLECTUAL PROPERTY?

People often only identify the term intellectual property with patents. But as we have seen above, the term covers a very wide range of rights of relevance to industry. For present purposes these rights can be very briefly summarized to give an idea of their scope (see Table 1). They will be looked at in more detail in later chapters.

1.2.1 Patents

A patent is a legal monopoly which is granted for a limited time to the owner of a new invention which is capable of industrial application: in essence, a patent is concerned with new technology, in the form of novel machines, processes and substances. In most of Europe, the duration of a patent is now twenty years, but it differs in other countries, so that – for instance – it lasts only seventeen years in the USA and in Canada.

The price that an owner of an invention has to pay for the grant of a patent monopoly is to register the invention, to prove it to be novel and inventive and of a type which is patentable in law and to disclose it in an official journal in sufficient detail to enable any suitably skilled person in the same technical field to reproduce it. If it is properly drawn up the patent granted to the owner can in some cases protect even an underlying inventive concept which forms the basis of the patented invention itself and not just the particular example of that concept which the inventor came upon.

The owner of a validly granted patent may in law prevent others from exploiting or using the patented invention without his or her consent for the duration of the monopoly and seek damages if they are proved to have done so. But merely to have a

Table 1 *Summary of intellectual property in the UK*

NAME OF RIGHT	REQUIREMENTS	DURATION	PROTECTION
Patent	Inventions which are novel, inventive and capable of industrial application and are not otherwise excluded from protection by law	20 years	Monopoly
Registered design	Features of shape, pattern, ornament, which are industrially applied in an original design and are not otherwise excluded from protection by law	15 years	Monopoly
Copyright	(1) Original drawings of functional designs (2) Original drawings of non-functional designs (3) Original works of artistic craftsmanship: prototypes	Author's life plus 50 years 15 years from first marketing 15 years from first marketing	Protection from copies Protection from copies Protection from copies
Registered trade mark	Device, name, signature, word, letter or combination that is: (1) Name of company, individual, firm, represented in a special or particular manner (2) Signature of applicant or predecessor in business (3) Invented word (4) Word or words having no direct reference to the character and quality of the goods or services and not being geographical or a surname in its ordinary meaning (5) Any other distinctive mark, with evidence of distinctiveness	7 years then renewable for periods of 14 years at a time	Monopoly, subject to certain limitations in favour of honest concurrent users prior to registration
Plant varieties and seeds	New varieties distinctive from other breeds, uniform and homogenous in continued reproduction, whether wild or artificially induced	15–25 years	Monopoly

Introduction

patent does not give the owner the right to use or exploit a patented invention: that right may still be affected by other laws such as the health and safety regulations, or the food and drugs legislation, or even by other patents where what has been patented is a mere refinement of someone else's earlier patented invention whose patent is still in force. It is in a sense a purely negative right.

The patent is in law a property right and it can be given away, inherited, sold, licensed and can even be abandoned like other property. But it is conferred by the state and it can also be revoked by the state in certain cases even after grant, and whether or not it has in the meantime been sold or licensed. It may, for instance, be found to be invalidly granted for want of novelty or inadequate disclosure of the invention. It may also be subjected to a compulsory licence in favour of another person if it has been inadequately exploited by the owner. These matters will be looked at later but a very important point to grasp from the start is that such patents are generally granted by the state only in respect of the territory governed by that state. There is no such thing as a world patent. The same is equally true of the other intellectual property rights dealt with in this book. All are national in character.

1.2.2 Registered designs and design copyright

Registered designs protect features of shape and ornamentation applied to articles produced industrially (as opposed to individual works of art, sculptures and the like). Some common examples include designs for the patterns of ornamentation on tea sets, designs for the shapes of furniture, coat hooks, or household objects such as draining racks for crockery, for the surface of a golfball, toys, luggage and a whole host of similar objects. Registered designs create legal monopolies in much the same way as patents but they do not protect any of the functional aspects of the product nor the underlying technical concept.

Like a patent, a registered design confers a legal monopoly, but in this case one which can last for only fifteen years in the UK. Unlike patent law, the law on designs differs markedly in other countries. Like patents a design can also be revoked before expiry in certain cases, and compulsory licences in them may be granted in extreme cases. Like patents they have to be examined for both novelty and certain other legal requirements and they must be registered and published in an official journal for the monopoly to be granted.

Design copyright by contrast protects the shape of an article even where not industrially produced, not by conferring a legal monopoly in it but by protecting it only from copying – there is no protection from another person coming up with the same idea independently. Use of this design copyright is possible by invoking it to protect the articles indirectly: it in fact protects the production drawings on which the article was based or occasionally the prototype for the article. Again, the law of the UK on design copyright differs markedly from that of other countries.

UK design copyright is also wider than registered design protection in that it protects not only features of shape or ornamentation but also the appearance of many functional designs with no eye appeal which the law on registered designs cannot protect – for example, the shape of an engineering component can be protected by design copyright to prevent other manufacturers from making and

What is intellectual property?

selling rival versions of the same design in shape even though there is nothing new or original in the design of the component except for its shape, which was itself dictated by the construction of the rest of the machine, subject to limited exceptions relating to the supply of the spare parts market.

A design copyright may last much longer than the registered design, depending on whether the design to be protected by design copyright is also a registerable one or not. If it is then protection may be limited to only fifteen years whether or not the design was in fact registered; if it is not protection may last for up to fifty years after the death of the person who was the author of the drawing or plans or prototype upon which the article is based. Where both the registered designs protection and design copyright protection are available, each type of protection has advantages and a decision will often have to be made as to which form of protection to opt for. There may also be occasions on which there is a choice between a patent and design copyright. This will be discussed later in the book.

1.2.3 Copyright

Quite apart from its artistic connotations, use can also be made in the UK and also in most other countries of the law of copyright to protect many written materials of commercial value such as technical instruction (e.g. car maintenance) manuals. Any record of research and testing and of other written and similarly stored information may also be protected from copying or commercial reproduction. Almost anything requiring effort to compile, such as logarithmic tables, customer lists, catalogues, directories, or trade journals, is capable of protection by the law of copyright. It can also protect computer software, the reproduction of which can be a lucrative business and which it is now essential to protect. Copyright lasts for a long time, until fifty years after the death of the author of the copyright work, and it can be acquired automatically, without any formality, cost or registration in the UK and many other countries, and subject only to very low costs and simple formalities in other countries.

1.2.4 Trade marks

Trade marks identify your association with goods or services placed on the market by you and help to distinguish them from other similar goods or services. They do not protect the ideas or designs behind the goods or services themselves from imitation or even duplication, but merely prevent other traders from claiming or deceiving customers into believing that goods or services in fact produced or marketed by them were produced or marketed by you, and in certain cases from using your trade mark without your authority, for instance in an advertisement in which comparisons are made between goods bearing your trade mark and goods bearing someone else's trade marks. Thus, for example, a company whose own products have acquired a reputation of quality and reliability may rely on its trade marks, to prevent a rival or new company from marketing its goods under that trade mark or a confusingly similar trade mark in an attempt to benefit from a reputation which it has done nothing to acquire.

Introduction

In the UK trade marks can be protected both at common law, in which case they are acquired merely through the course of time and by gaining a reputation in the mark, which may be limited in geographical area or range of product, or by registering a statutory trade mark, which will usually gain protection throughout the whole country in the range of goods or services for which it has been registered. The scope of protection also differs slightly depending on the type of trade mark acquired.

The trade mark differs from the other statutory intellectual property rights mentioned so far in that it is potentially eternal. To take one example, the UK's first statutory trade mark, the Bass Red Triangle, registered in 1876, is still registered and in use today. Most countries of the world do have well-established trade mark systems that differ in strength and character from place to place, but follow broadly the same principles. Trade marks do not travel well, in general, because of the importance of cultural factors in their popularity, and often it will be necessary to use different marks for different export trade markets, though this is changing.

1.2.5 Plant seeds and varieties

New plant seeds and varieties are protected in many countries not by patents but by a separate legal regime, which protects the reproductive material of the plant from commercial reproduction and exploitation without the consent of the owner of the registered material. These laws confer legal monopolies similar to conventional patents. Similar legislation exists in many other countries.

1.2.6 Trade secrets

Trade secrets are not strictly true intellectual property rights in law but in practice have the same commercial significance and are dealt with in much the same way. They are not in law property rights at all, but depend on the imposition of personal obligations on others. It is possible to protect a trade secret in many countries by imposing legal obligations on those who come into contact with the information not to disclose it or use it without authority, where that information is not generally known and is of a legally confidential nature. The means of doing so varies from country to country. In the UK it is by use of the law of confidence, sometimes supplemented by the law of contract.

Trade secrets may protect many things which lack the novelty required for patent or other protection, but they are equally often an alternative to such a patent or similar protection. A wide range of secret information from technical secrets such as formulae, know-how, and processes, to information about a firm's customers, employees, business information about its projected prices and sales strategy etc., can be legally protected in this way but only under certain conditions and in certain circumstances.

The law does not confer a monopoly in a trade secret of this kind, so it is not possible to protect trade secrets from some independent discovery by another person, but the unauthorised use or disclosure of information, if directly or indirectly obtained from the owner or licensee of a trade secret, can often be