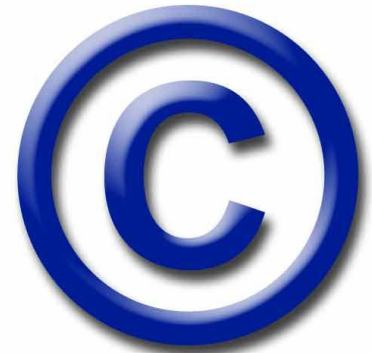
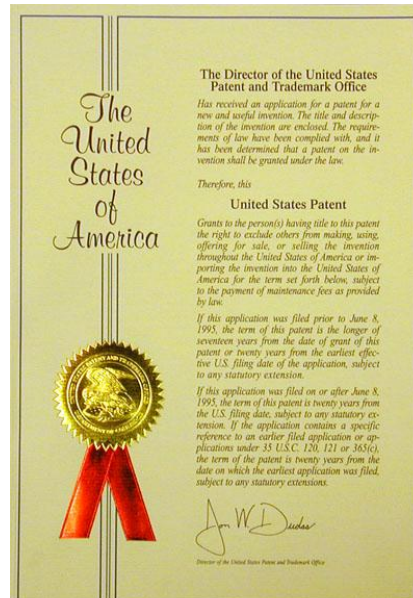


Agenda...

- What is Intellectual Property
- Why should I care?
- Overview of basic types of IP protection
 - With some emphasis on Patents...
- Apple Case Study

What is Intellectual Property (IP)...

- Intellectual Property (IP) is a group of legal rights that provides protection over things people create or invent.
- Typical methods of protection:
 - Contract
 - Trade Secrets
 - Copyrights
 - Trademarks
 - Patents



Why should I care about IP...

- Intellectual Property Protection can...
 - Attract investment \$\$\$\$\$
 - Or increasing exit valuation (e.g., IPO, M&A)
 - Deter others from stealing your ideas
 - Deter others from entering a market
 - Defend against other patent portfolios
 - License or Trade with others (Cross-License)
 - Provide alternative sources of income...

Methods of Protecting IP...

- **Contracts**
- **Copyrights**
- **Trademarks**
- **Trade Secrets**
- **Patents**

Contracts...

- **Affordable cost to gain protection**
 - Protection defined by contract
 - Examples:
 - non-compete terms
 - anti-reverse engineering terms
 - assignment of IP rights
- **Length of time protection lasts**
 - Flexible
 - Depends on terms of the contract
- **Commercial Importance**
 - always important at some stage of business
- **Enforcement – contract...**

Copyrights...

- **“Expression”**
 - Art, Writing, Music, Movies, etc...
- Any “work” reduced to a tangible medium of expression
- **Policy**
 - Moral rights of the Author
 - Europe
 - Incentive to produce
 - U.S.



Copyrights...

- **Free and Automatic**
 - Protection is automatic as soon as the work is reduced to a tangible medium...
- **Aspects of Protection**
 - Scope - Narrow
 - Term
 - Life + 70 years
 - Commercial (Work for Hire) - 120 years
- **Commercial Benefits**
 - Supports entire industries
 - Music
 - Movies
 - etc...

Trademarks...



TARGET®



Microsoft®



3M

Trademarks...

- **Identification of Source**

- Any word, name, symbol, or device or any combination thereof used by a person or which a person has a bona fide intention to use in commerce
 - § 45 Lanham Trademark Act (1946)
- Examples:
 - Google®
 - Coke®
 - Color Brown (UPS)
 - Sounds – Windows Start-Up, NBC Chimes, etc



- **Symbols**

- ® - used to indicate a Registered Trademark
- ™ - used to brand a product
- ℠ - used to brand a service

Trademarks...

- **Relatively inexpensive to obtain**
 - ~ \$500 - \$2,500
- **Protection lasts as long as the mark is used in commerce**
 - As long as the mark identifies source
 - Use it or lose it...
- **Commercial Benefits**
 - Powerful barrier to entry
 - Price support
- **Genericide...**
 - Popular marks must police use



Trade Secrets...

- Shhh, don't tell anyone...
- Information that not known outside of an organization that provides a competitive advantage
- Examples:
 - Formula for Coca-Cola (Coke™)
 - Decided not to patent to keep secret FOREVER...
 - KFC's secret recipe
 - Only 3 executives have access to the recipe
 - WD-40
 - Guarded in a bank vault
 - Company mixes the formula in only three facilities to maintain the secret



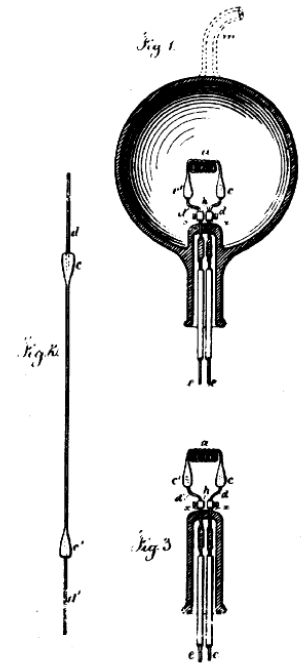
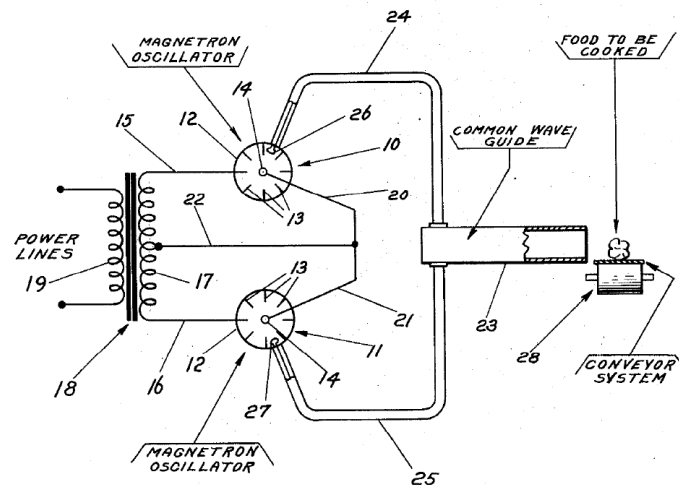
Trade Secrets...

- **Relatively low cost to gain protection**
 - Some consider it practically free
 - Must take precautions to maintain secrecy
- **Protection lasts as long as the secret remains a secret**
 - protects information/knowledge that can be kept “relatively secret”
- **Commercial Benefits**
 - Can provide critical barriers to entry
- **Enforcement...**
 - Enforcement complicated by variation in State law

Patents...

- **Protects implementation of technical ideas**
 - Article of Manufacture (e.g., light bulb)
 - System (e.g., cell phone)
 - Composition of Matter (e.g., compounds)
 - Process (e.g., process of making or using)
 - Microwaving Food (Spencer)
 - Search engine (Google)
 - 1-click purchase (Amazon)

- **Types of Patents**
 - Utility Patent
 - Design Patent
 - Plant Patent



Inventor
Thomas A. Edison

Patents...

- **Relatively expensive to obtain**
 - Initial filing ~\$8,000 - \$12,000
 - Prosecution ~ \$10,000+
- **Limited term of protection**
 - 20 years from filing
- **Commercial Benefits**
 - Exclusivity
 - Monopoly Pricing
 - Licensing

Patents...

- **What is the standard for getting a patent?**
 - New
 - Useful
 - Non-obvious
- **What do you get if you meet the standard?**
 - Right to exclude others from the invention for a limited time
 - Not a right to use the invention
- **What do you give up by getting a patent?**
 - You have to teach others how to make and use the invention
- **What do you risk by not patenting your invention?**
 - i.e., trying to keep it a trade secret
 - Someone else can patent it and exclude you from using it.

Patents...

- **Selecting what to Patent?**
 - Business Value:
 - What is the likely value of the technology?
 - Will exclusivity provide a competitive advantage?
 - Does the technology align with your commercial products?
 - Legal Strength:
 - What is the novelty over prior art?
 - Business Methods?
 - Exclusivity:
 - Will competitors have viable design-around options?
 - Can infringement be detected?

Patents...

- **Patent Strategy - Benefits from Patents**

- Monopoly Pricing

- Increase profit margins through exclusionary power

- Extra Income

- Generate income through licensing activities

- Access to Technology

- Cross-license to access other technologies

- Business Asset

- Can be used to assist in securing funding or obtaining desired exit valuations

- Marketing Tool

- Patent Pending
- Chilling effect on competition
- Demonstrated expertise in a particular field

Patents...

- **Patent Strategies**

- Aggressive/Licensing strategy

- Patent everything
 - Expensive up front, but ensures that you cover everything and eventually provides a revenue stream.

- Blocking strategy

- Patent technologies your competitors might use
 - Moderate costs but provides essential protection and cross-licensing opportunities if you can identify the key technologies.

- Defensive strategy

- Only patent key technologies
 - Lower initial costs, but you risk missing key technologies.

Patents...

- **Patent Strategies**

- Fences

- Patent critical features that are difficult to design around.
 - Keep costs in check while protecting key product areas

- Land mines

- File blocking patents, but sparingly

Patents...

- Dealing with a Competitor's Patents
 - **The right to Exclude**
 - A patent gives the owner the right to exclude others...
 - ...but a patent does not grant any affirmative rights
 - **Blocking Patent**
 - Someone else might have a dominant patent
 - **Freedom to Operate**
 - Knowledge of potentially problematic patents may give rise to an affirmative duty to determine whether or not your product infringes
 - Legal opinion-of-counsel

Patents...

- **Dealing with a Competitor's Patents**
 - Options for dealing with a “problem patent”
 - **Design around the claims**
 - Identify claim elements that you can avoid
 - **Invalidate the patent**
 - Find prior art that invalidates the problem claims
 - Ideally a single published document that discloses all of the claim elements and pre-dates the patent's priority date
 - **License the Patent**

Patents...

- **Damages for Infringement**
 - Injunction
 - Lost Profits
 - Reasonable Royalty
- **Cost of Litigation**
 - \$2M+ if case goes to trial

Patents...

- **Recent Damage Awards**

- ***\$290M*** verdict upheld on appeal in Microsoft v. i4i (2009)
- ***\$192M*** jury verdict in hazardous waste recycling patent suit (2009)
- ***\$250M*** damages awarded to Medtronic in stent patent case against Boston Scientific (2008)

- **Settlements**

- ***\$1.35B*** paid by Medtronic to settle spinal implant patent dispute, purchasing 700 patents (~\$2M per patent) (2005)
- ***\$612M*** Amount Blackberry-maker Research In Motion agreed to pay NTP in patent infringement dispute settlement. (2006)

Apple IP Case Study...

What sort of IP did Apple take into consideration in launching the iPad?



IP surrounding Apple's iPad™

- **Trademark – iPad™**

- IPAD word mark registration at USPTO in July 2009

- Registration entered by IP Application Development LLC (likely a front company for Apple)
- 8 other live Trademark registrations for IPAD on file with USPTO

- Apple May Face iPad™ Trademark Fight With Fujitsu

- (Law360 - <http://ip.law360.com/articles/146235>)
- Fujitsu owns a Trademark registration to IPAD in the area of hand-held computing device for wireless networking in a retail environment...

- iPad registered in July 2009 in multiple countries

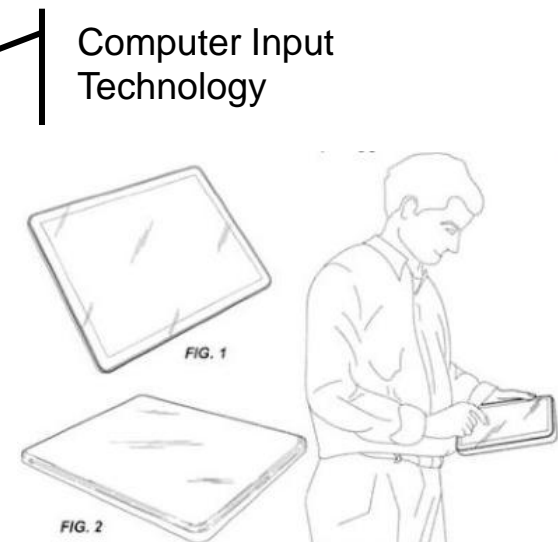
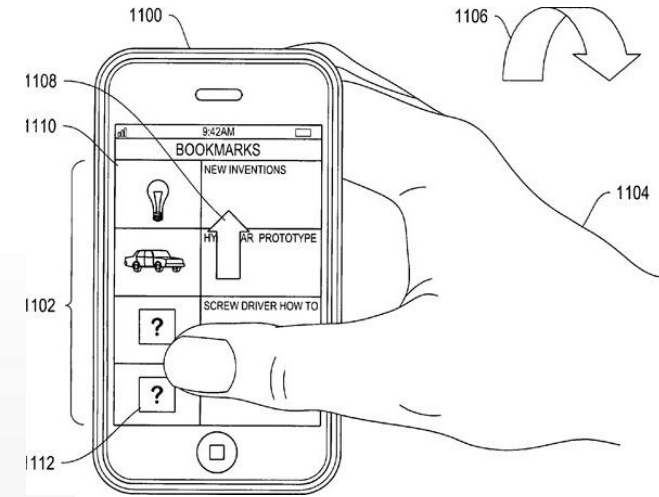
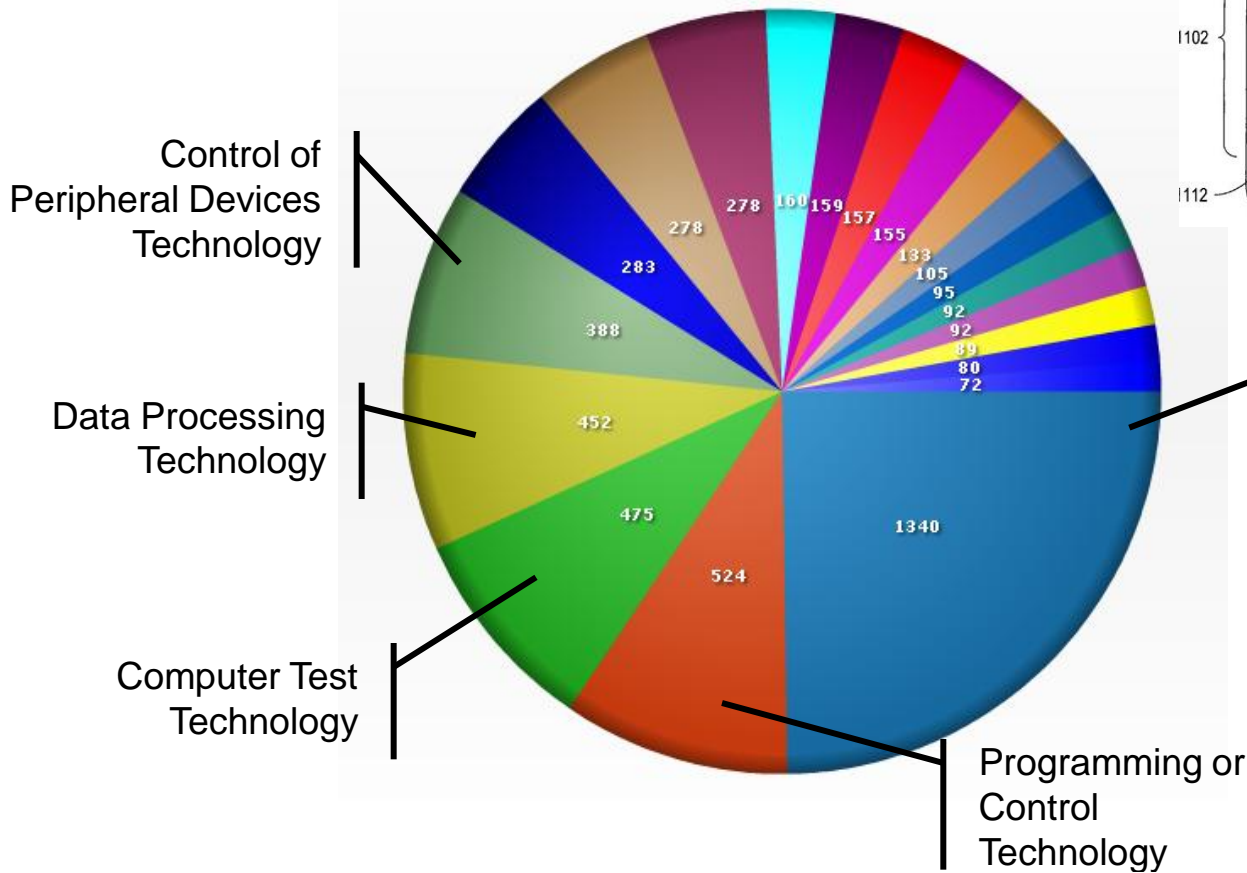
- Canada, Europe, Hong Kong, etc...
- Registrations entered by Slate Computing
 - Likely front company for Apple



IP surrounding Apple's iPad™



- **Patented Technology...**
 - Apple holds over 7,000 patents



IP surrounding Apple's iPad™

- **Copyright Protected Material...**

- Software
- Product Literature
- Web Site
- Product Images
- Icons
- User Interface Design
- Advertisements
- Etc...



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IP surrounding Apple's iPad™

- **Trade Secrets?**

- By definition we cannot know the extent of the technology within the iPad protected by Trade Secrets

- Likely Candidates:

- Software
 - OS, Applications, etc...
 - Processor
 - A4 chip
 - A new Apple specific design



IP surrounding Apple's iPad™

- **Contracts...**(i.e. Confidentiality Agreements)
 - Employment Agreements
 - Suppliers
 - Hardware fabrication
 - Product Literature
 - Etc...
 - Partners
 - AT&T
 - Verizon

Intellectual Property Goals...

- **Develop a proactive approach toward protecting your intellectual property**
 - (1) Make sure existing features are covered
 - Integrate patent filing into product development process
 - (e.g., design review, or even concept review)
 - (3) Watch and analyze competitor's filings and file blocking patents, as appropriate.
- **Develop a proactive approach to product clearance of your products**
 - Identify any problem patents early in the design process
 - Design-around, invalidate, or license problem patents