

## 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

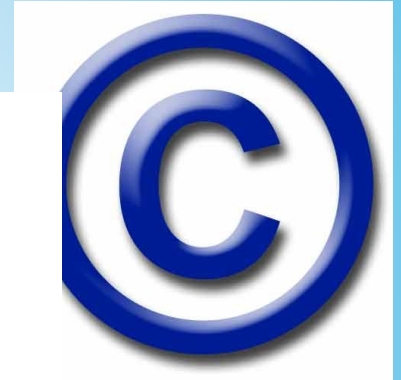
“ Contract

“ 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...





# 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 Chim



## “ 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 sou

“ 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)

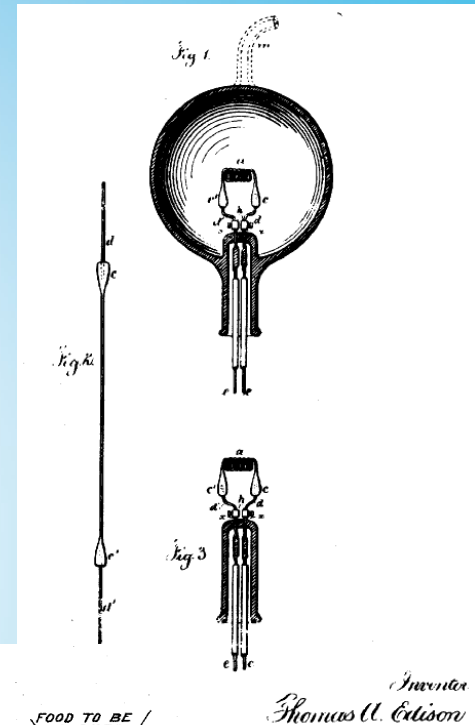
“ 1-click purchase (Amazon)

“ Types of Patents

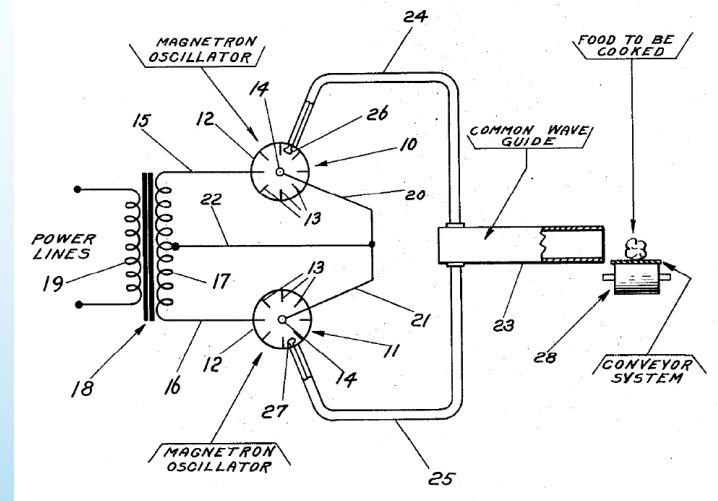
“ Utility Patent

“ 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

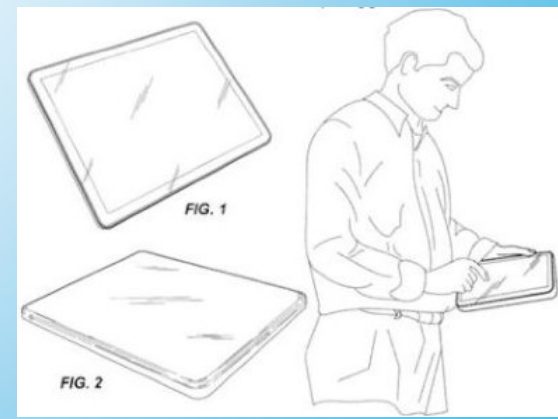
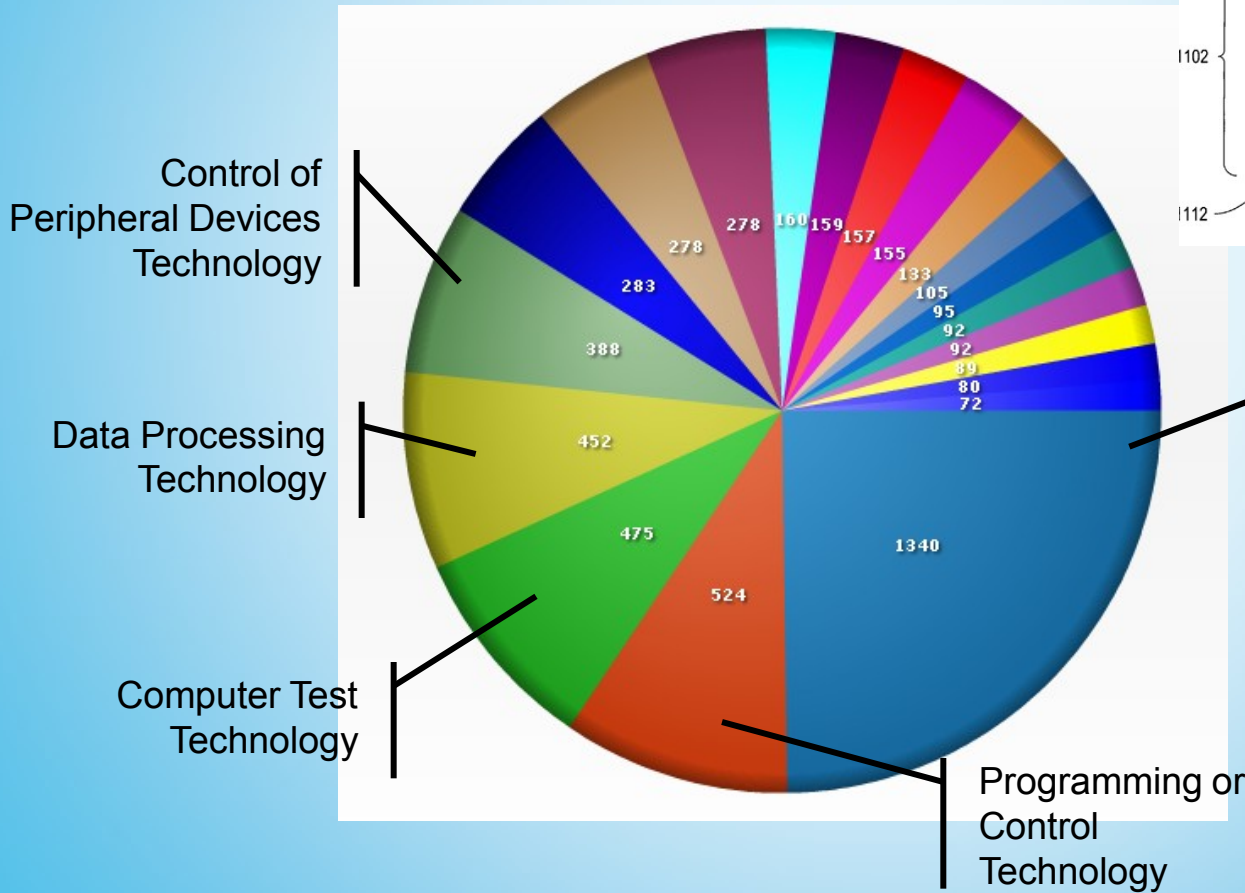
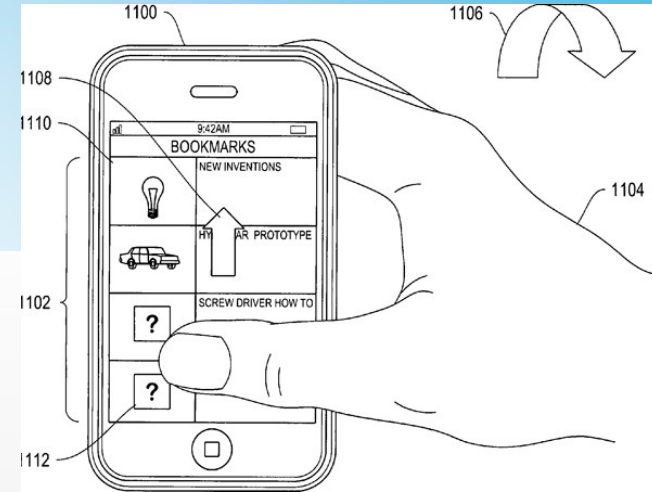
“ Likely front company for Apple



# IP surrounding Apple's iPad™



“ Patented Technology...  
 “ Apple holds over 7,000 patents

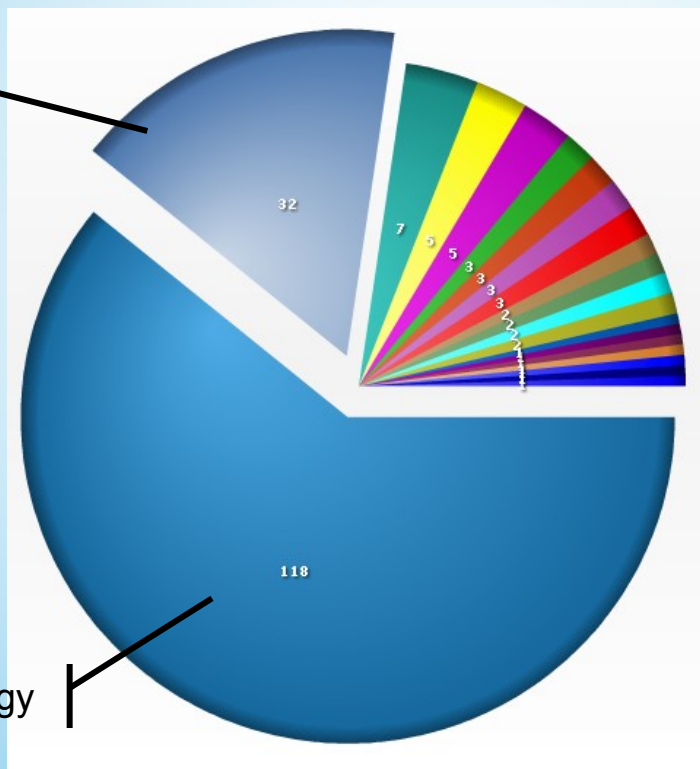


# IP surrounding Apple's iPad™

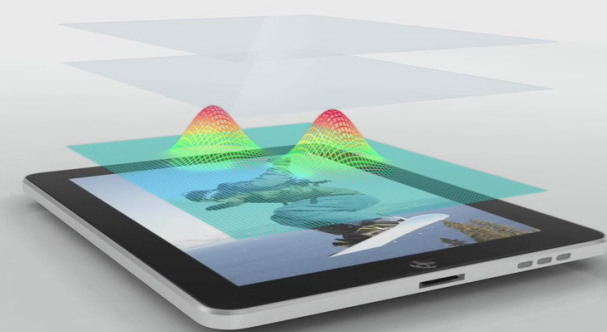
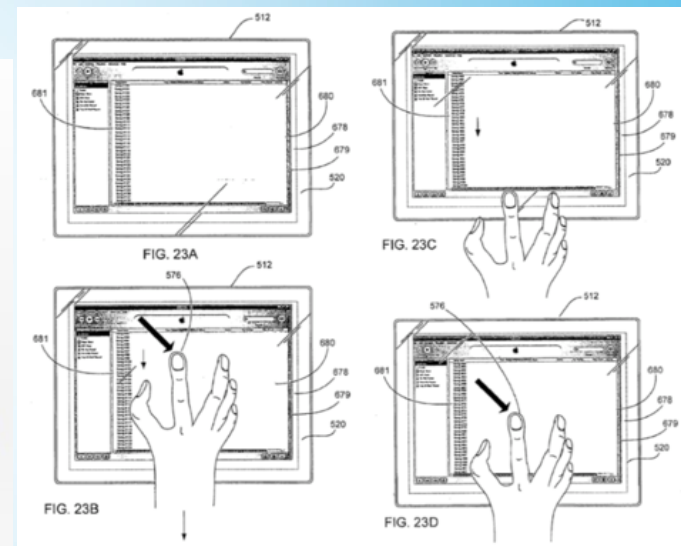
“ Patented Technology...

“ Apple has >200 Patents related to Multi-Touch Technology

Visual Indicators Technology



Input Technology



# IP surrounding Apple's iPad™

“ Copyright Protected Material...

“ Software

“ Product Literature

“ Web Site

“ Product Images

“ Icons

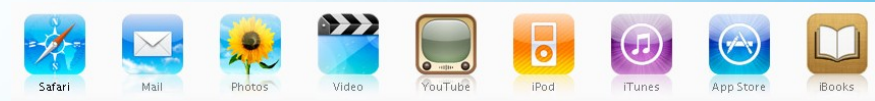
“ User Interface Design

“ Advertisements

“ Etc...



Copyright © 2010 Apple Inc. All rights reserved.





# 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**