

topic10(知识产权)

知识产权分类

知识产权定义

知识产权, 通常被称为 IP, 是指由人类智力或创造性活动创造的无形资产。知识产权允许人们像拥有有形财产一样拥有自己的创造力和创新。所有者可以控制并在使用他们的知识产权中获得回报, 这鼓励了进一步的创新和创造, 对我们所有人都有好处。 Intellectual property, often known as IP, refers to intangible assets created by human intellectual or creative activity. Intellectual property rights (IPRs) allow people to own their creativity and innovation in the same way that they can own physical property. The owner can control and be rewarded for the use of their IP, and this encourages further innovation and creativity to the benefit of all.

知识产权战略: 保护公司无形资产

- 产品/服务开发 Product / service development
知识产权保护 IP Protection
知识产权商业化 Commercialization
构思过程 Ideation process

商标 (trademark): 商标是指向消费者传达拥有者的、与一类产品或服务相关的特定名称或标志的排他性使用权。商标的基本功能是专门识别产品或服务的来源或原产地。因此它是商标权益与商业名称、商业识别度、徽标专用权产生于与商品和服务有关的标志的使用, 它持续 10 年, 之后只要没有异议, 它可以反复更新。 The essential function of a trademark is to exclusively identify the source or origin of products or services, so it serves as a badge of origin. Closely associates with business image, goodwill and reputation. Trademark exclusive rights arise from the use of the sign in relation to goods and services, it lasts 10 years after which it can be renewed repeatedly for as long as there are no objections

注册商标的法律要求

- 注册的法律要求: 1. 一个标志 2. 能够以清晰、精确的方式表现出来 3. 能够作为起源 4. Sign 2. Distinctive as to origin and precise manner 某些标志永远不能注册——不是标志, 没有特色, 描述性, 违反公序良俗, 欺骗性, 等等。有些商标不能注册, 因为市场上已经存在相同或相似的标志

产品外观设计 designs for product appearance 产品整体或部分特征, 特别对产品本身或其装饰的线条、轮廓、颜色、形状、纹理或材料。只有其实际形状、结构、图案或装饰所赋予的外观才能获得保护。外观设计权是在设计它的所有者在其所属地理区域内(英国/欧盟)阻止任何人复制其产品外部设计的权利。在美国设计专利注册可以持续 25 年, 但必须每五年更新一次。 A registered design protects the external shape of the product. Only the appearance given by its actual shape, configuration, pattern or ornament can be protected, not any underlying ideas. It gives the owner the right to stop anyone copying the external design of their product, within their geographical jurisdiction (UK / EU). In the US similar protection exists under the concept of a design patent. The registration can last 25 years, but it must be renewed at five-yearly intervals

注册要求

- 1. 新颖 2. 有个性

版权 (copyright): 版权是指对作品的复制和传播原始作品的排他性权利, 包括文字、图形、音乐、艺术、娱乐、软件等。版权保护仅延伸至表达方式, 而不延伸至思想、程序、操作方法或数学概念本身。为了版权的存在, 作品必须: 原创性要求: 原创作品必须源自创作者, 原创性思想的方式必须是原创作者, 以及属于受保护的主体。 Original literary, dramatic, musical and artistic works, including computer programs and databases are protected by copyright for duration of the author's life + 70 years after their death. Sound recordings, films, broadcasts and cable programmes, the typographical arrangement or layout of a published edition are protected by related rights for 50 years from the end of the calendar year in which the work was first made available to the public (except for films)

专有权、保护形式

- 1. 它从第一次被记录的那一刻起自动产生, 不需要任何正式的登记 2. 版权授予专有权, 如复制作品、向公众传播、提供或分发作品的权利 3. 歌曲将被作为作者作品受到版权保护, 歌曲的录音将受到相关权利的保护 1. It arises automatically from the moment it has been first recorded and does not require any formal registration 2. Copyright grants exclusive rights such as the right to reproduce the work, communicate it to the public, make it available, or distribute it 3. A sonata will be protected as an authorial work by copyright, a sound recording of the sonata will be protected by related rights

设计专利 (design patent) 设计专利提供了一种法定权利, 可以排除其他人使用与设计专利中描述的相似的外观设计生产并销售具有该产品。设计专利可以被看成是一件产品装饰性设计的“版权”。

专利分类

实用新型专利 (utility patent) 美国法律允许为与下列事物有关的发明申请专利: 新工艺、机器、制品、合成物, 以及对上述事物的任何有用的改进。 Patents are granted to individuals and organisations who can by claim to a new product, process, or to an improvement of an existing product or process that was not previously known (只记住这个)

法律要求被授予专利的发明的要求、特点: Patents - Requirements

工业应用 industrial application 如果发明可以是机器、产品或工艺, 则该发明应被视为能够进行工业应用专利是关于产品/工艺的, 因此最终目标是工业应用。即被授予专利的发明必须在某种情况下被人应用。 The invention shall be taken to be capable of industrial application if it can be a machine, product or process. Patents are about products/processes and therefore the final aim is industry application (unlike, for example, PhD research) 新颖 (novel): 新的发明是还没有公开的, 在现有产品、出版物或先前专利中未公开发明。新颖性的定义还与实际发明的披露有关。 An invention shall be taken as to be new if it does not form part of the 'state of the art' - the Patent Act 1977 section 2(1) (UK) A state of the art is defined as: 'all matter, in other words, publications, written or oral or even anticipated which will render a patent invalid 在英国, 如果你要申请一个专利, 它必须从未在公众里出现过 创造性步骤 inventive step 当对本领域技术人员来说不显而易见时, 发明应被视为包括创造性步骤 an invention shall be taken to involve an inventive step when it is not obvious to a person skilled in the art

所需维持年费 Annual fees required 可能很贵 组织必须权衡成本和收益 I - Can be expensive I - Organisations have to weigh up the cost vs the benefits (如果一个专利需要每年交高昂的专利费, 但是无法投入生产的话就会导致亏损)

专利代理人 Patent agents 拥有科学知识或者法律知识的专家 必须有专家资格专利并给他人侵权行为 I - Experts who have scientific or engineering and legal knowledge I - Experts will have to be paid to prepare patents and check for infringements by others

法院费用 Court fees 只拥有专利没有意义, 除非能执行它 可能意味着昂贵的诉讼费 I - There is no point in having a patent unless you enforce it I - This can mean expensive litigation in national courts

上诉权 Offensive right 要求专利所有人起诉侵权者, 这很贵, 专利侵权不会导致自动罚款, 只有专利所有人通过其他组织或个人的行为 requires that the patent owner sues the infringer I - This is expensive I - Patent infringement does not lead to an automatic fine, only the patent owner polices the actions of other organisations or individuals (也就是说如果别人侵犯了你的专利权, 不会自动对他罚款, 只有你发现并上诉了才能对他进行罚款)

现有技术 Prior art 专利中描述的发明, 无论是否要求保护的发明的一部分, 都被法律系统认为是公开的 an invention described in a patent, whether part of the claimed invention or not, is considered by the legal system to be known publicly

防御性权利 Defensive right 以专利形式公开现有技术是对所有者的防御性保护, 它可以阻止竞争对手为公开的发明申请专利。因此, 尽早申请很重要 the disclosure of this prior art in the form of the patent is a defensive protection for the owner - it can block a competitor from patenting the disclosed invention I - Therefore it is important to apply early

(比如现在有一项技术, 你和你的竞争对手都在研究。如果你提前把这个技术申请专利的话, 那么这个技术就归你所有, 别人就不能用或者和你进行交易, 这样就在技术上去据优势, 来保护自己的公司, 由于专利是先到先得, 所以如果别人先申请了的话你就申请不了)

专利地域性: 国际专利条约一般是指, 在决定谁在其他国家享有优先权时, 以你在自己国家的申请日为申请日

在专利期间内, 只有所有者(个人或组织)才能从发明中受益。专利所有者可以在自己法商业上利用他们的想法, 也可以以其他方式或专利使用, 从而找到一个替代收入来源。这组织没有资源或市场知识来开发与专利相关的发明特别有用 Only the owner (individual or organisation) can benefit from the invention for the duration of the patent

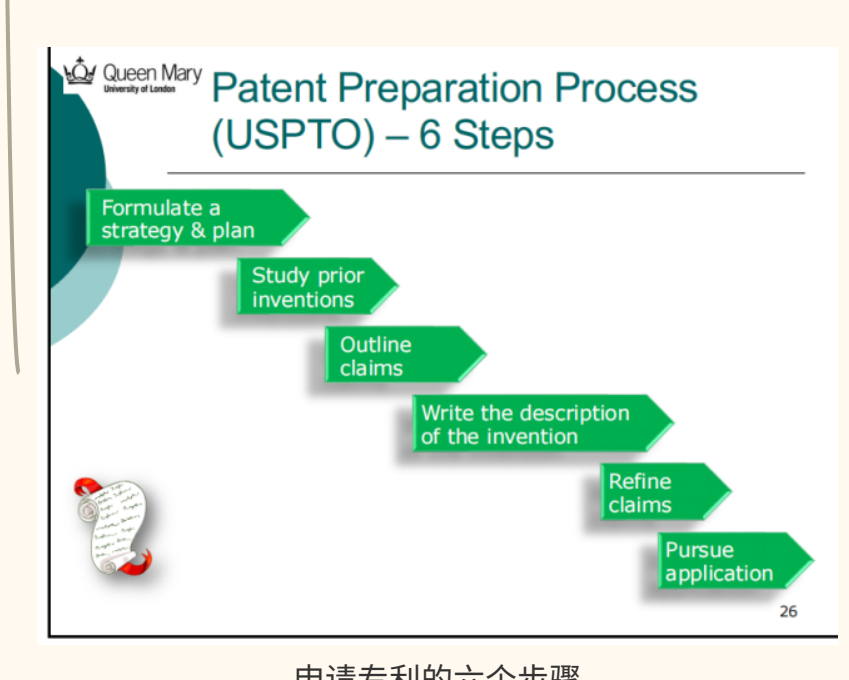
专利的好处 Patent owners can commercially exploit their ideas themselves or they can charge other organisations to use their patent - thereby identifying an alternative source of income This is particularly useful where an organisation does not have the resources or market knowledge to exploit the invention associated with the patent (比如实用专利权/专有技术使用权入股)

原则上, 必须申请专利。申请专利的国家为了享有专利保护, 专利申请者应符合形式和实质要求, 专利发明应向公众公开。这通常是在专利局进行, 从而找到一个替代收入来源。这通常要求需要法律专家的帮助。如果专利权, 就要由专利所有人在法庭上为专利保护, 这对小企业来说可能非常昂贵, 而且很难打赢官司的。但专利对大型企业: A patent must be applied for, in principle, in each country in which you seek patent in order to enjoy patent protection, an application for a patent shall comply with both formal and substantive requirements, and a patented invention shall be disclosed to the public These requirements can be legally and technically complex, and their compliance often requires a legal expert's assistance it is up to the patent owner to defend a patent in the courts if there is infringement, which can prove very expensive and often impossible for a small business Annual fees are needed to keep the patent in force

首先是专利申请很难, 你要符合专利申请的条件。其次申请的专利应该向公众披露, 对于某些发明可能不想公开。而专利又是个很复杂的事情, 不仅需要技术专家还得请法律专家。如果侵权诉讼你要支付一笔高昂的律师费用和其他费用。而且一旦你申请专利就能确定, 并且很难打官司同时每年还得上交专利年费。

发明领域 描述解决的问题 发明背景 描述“现有技术” 列出优于现有方法的优点 发明内容 详细叙述 最佳模式: 实现本发明的最佳方式 使用示例和实施模式 摘要 这项发明到底是什么

专利里的内容 Field of the invention Describe the problem addressed Background of the invention Describe the "prior art" List advantages over existing methods Summary of the invention Detailed description Best mode: the best way to implement the invention Examples of use and modes of implementation Claims What exactly is the invention



申请专利的六个步骤