OPEN INNOVATION – THE LEGAL IMPLICATIONS

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Introduction

- How can research, development and innovation be exploited to help Ireland’s economic recovery?

- The Open Innovation Model
  - Industry, universities and government collaborating together
  - External sourcing of knowledge and cooperation with other entities instead of in-house
  - Exchange of ideas, knowledge and technology
The Open Innovation Model

- Not to be confused with “open source”
- Legal implications of open innovation model
  - Intellectual Property Issues
    - Ownership of rights
    - How to protect intellectual property

Reasons to Protect Intellectual Property

- Valuable asset
- Can be used to raise finance
- Can be exploited commercially
  - Day-to-day business
  - Licensing
Reasons to Protect Intellectual Property

- Can set you apart from competitors
- Offers customers something new and different
- Can be part of a defence strategy
- Better protection means easier enforcement

What is Intellectual Property?

Intellectual property may consist of:

- Inventions
- Brands
- Logos
- Domain names
- Trading names
- Fixed works (e.g. books, articles, brochures, marketing materials and software)
- Shapes of products which are not merely functional
How do you protect your Intellectual Property?

- Registering it where available and appropriate
- Protecting it in practical ways
- Exploiting it
  - Can be used to generate income
  - Ensure that not vulnerable to challenge for non-use.
- Defending it when others exploit it without permission.

Patents

- Protect inventions
- Usually for 20 years
- Importance of searches
- Importance of watch services
- Always seek advice when modifying/varying an invention
Trade Marks

- Can be brands, logos, sounds, smells and colours
- The way that goods and services and/or a corporate identity are represented
- Must be distinctive - serves as a badge of origin

Trade Marks

- Passing Off
  - Common law protection
  - where it can be shown that a business has a reputation in the particular name
  - Should always register a trade mark where possible
- Importance of searches
Trade Marks

- Cancellation
  - using it in way it was registered?

- Specification
  - still accurate?

- Selling/Licensing unused marks

Trade Marks

- Company Names
  - Does a company already exist with name?
  - Consider registering business name incorporating trade mark

- Domain Names
  - Register trade mark as domain name
Design Rights

- Protection for the physical appearance of items.
- Can distinguish your goods from those of competitors.
- Can be registered and unregistered.
  - Unregistered design rights last for 3 years.
  - Registered design rights last for five years initially but can be renewed every five years for a maximum of 25 years.

Copyright

- Protection of original literary, artistic, musical or dramatic works.
- Not a registered right
- The copyright symbol and the date should always be placed on all hard copy items.
Territoriality

- Protection usually territorial for patents, trade marks and designs
  - Important to identify countries of interest
- Open Innovation Model seeks to use intellectual property rights for commercial benefit

Practical Ways to Protect Intellectual Property

- Clear agreements with employees
- Recordal of information in logbooks
- Confidentiality provisions
- Clear agreements with independent contractors
- Keep all information secure
Exploiting Intellectual Property

Examples of circumstances which may give rise to open innovation:

- University needs to partner with someone to progress an invention further
- Business needs university research resources
- Business has patents it no longer uses
- Ancillary Patents
  - Assigning patents you no longer need to someone else for consideration
- Licensing
  - “in-licensing” and “out-licensing”
  - owner (the licensor) permitting another (the licensee) to use the patent usually in exchange for a reward,
Basic Terms of Licence Agreement

- Royalties / Royalty-free
- What is being licensed?
- Termination
- Exclusive / Non-exclusive?
- Territories covered

Other Issues to be Considered

- Patent Pools
  - collection of patents needed to produce a particular product
- Cross licences
  - licensing of two or more patents between the parties.
- Co-existence agreements
- Collaboration
  - Who owns what?
- Apple – Facebook – Nokia / Microsoft
Dealing with Infringement

- **Enforcement**
  - if you do not enforce your rights you could end up losing them

- **Cease and Desist letters**
  - Amicable arrangement

- **Alternative Dispute Resolution**
  - Arbitration
  - Mediation

- **Litigation in Commercial Court**

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Defences to Patent Infringement

- Keep record of licences granted and received

- Is the patent you are supposedly infringing valid?

- Used invention before it was registered

- Using invention for private or non-commercial use
Global Challenges for Management of Intellectual Property

- Protecting new technology

- Counterfeiting
  - Not only a problem for luxury goods
  - Important to have authentication procedures
  - Important to have product guidelines
  - Pay attention to your supply chain

The Role of the Government in the Open Innovation Model

- Strong Intellectual Property Protection
  - Legislation
  - Cost of protection

- Sufficient resources for Customs/Gardaí

- Re-introduction of tax relief on patents
Conclusions

- Identify your intellectual property
- Protection through registration and other ways outlined
- Defend rights when infringed
- Consider partnerships and licences
- Information is key
- Beware of counterfeiting.

Questions?
Thank You

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