

# Course: Intellectual Property Law-Cambodia

## Lecture 1: Overview of Intellectual Property

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# Topics

- Patents ប្រកាសនីយបត្រតក្កកម្ម
- Utility Models ម៉ូដែលមានអត្ថប្រយោជន៍
- Designs គំនូរឧស្សាហកម្ម
- Trade Marks ម៉ាក
- Geographical Indications (GIs) ម៉ាកសម្គាល់ភូមិសាស្ត្រទំនិញ
- Plant Variety Rights សិទ្ធិអ្នកបង្កាត់ពូជដំណាំ
- Semiconductor Topography Rights គំនូរបង្ហាញនៃសៀគ្វីបង្រួម
- Copyright សិទ្ធិអ្នកនិពន្ធ
- Databases មូលចិន្តន័យ
- Trade Secrets ការសម្ងាត់ពាណិជ្ជកម្ម

# An anti-allergy sprayer and spray

*NEBU-ALLERG*

A university research team has developed a new **medicinal product which is very effective in treating certain allergies.**

**A nasal application** in the form of a **subtle mist** would be best. They designed a **nebulizer** and carried out some laboratory tests.

The nebulizer has *a special **nozzle design** that permits more effective delivery, by precisely forming tiny droplets of uniform size and speed to reach the optimal location inside the nose, allowing for better absorption.*

The **pumping system** has also been improved so that it delivers a fixed, precise dose of the product, sufficient to treat symptoms for a whole day.

For these reasons, the team thinks it could become a market leader.

The team showed a prototype of the sprayer to one of the engineering companies from the university's technology park. In collaboration with this company, they came up with an attractive design for the overall sprayer can which is suitable for commercialization.

*The design is minimal- "clean and clinical"- and comprises a **white can** with a **single green button**.*

The team considers the field of allergy products to be a growth market, so they asked an advertising agency to devise a strategy that could give them an important share of the market over the next few decades.

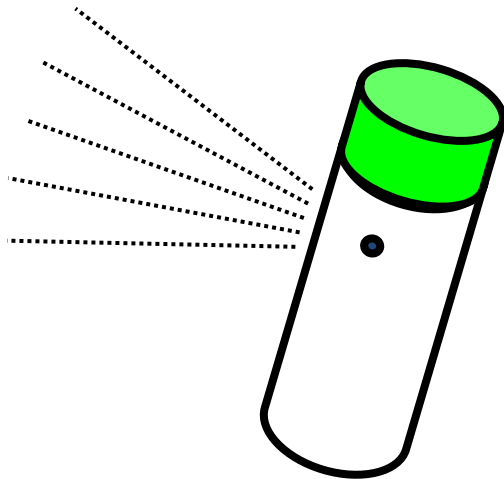
Together, they came up with a brand name, **NEBU-ALLERG**, and a plan to create an attractive logo. They think the slogan should emphasize simplicity and have suggested "**Press green for go!**". The advertising agency will design a website and other materials to support the promotional campaign.

### What you have to do

- Identify the various IP elements in this project.
- Suggest ways in which they can be protected.
- Identify potential contractual issues.

# Which elements can be protected?

- Medicinal product
- Nozzle
- Pumping system
- Sprayer can



- Brand name:
  - "NEBU-ALLERG"
- Logo
- Slogan:
  - "Press green for go!"
- Domain name
- Advertising material



# GENERAL INTRODUCTION

# { The different types of IP (I) }

<b>Legal right</b>	<b>What for?</b>	<b>How?</b>
Patents	New inventions	Application and examination
Utility models	New inventions	Application and registration
Copyright	Original creative or artistic forms	Exists automatically

## { The different types of IP (II) }

<b>Legal right</b>	<b>What for?</b>	<b>How?</b>
Trade marks	Distinctive identification of products or services	Use and/or registration
Registered designs	External appearance	Registration
Trade secrets	Valuable information not known to the public	Reasonable efforts to keep secret

Other forms of IP not shown here include plant variety protection (USA: "plant patents"), databases, geographical indications and semiconductor topography designs.

# { One product - many IP rights }

## Trade marks

- NOKIA
- Product "208"
- Start-up tone

## Copyright

- Software
- User manuals
- Ringtones
- Start-up tone
- Images



## Patents and utility models

- Data-processing methods
- Operating system
- Operation of user interface

## Designs

- Form of overall phone
- Arrangement and shape of buttons
- Position and shape of screen

## Trade secrets

- Some technical know-how kept "in-house" and not published

# { The IP System }

**Innovators**  
make significant investments  
in developing new products

**Competitors**  
benefit from their efforts

Heavy pressure  
may drive the  
innovator out of  
business

Can offer similar or identical  
products at a cheaper price

Get a free ride  
on the back of the innovator's  
creativity and inventiveness



**IP system**  
Rights over the use of inventions, designs,  
brands, literary and artistic works

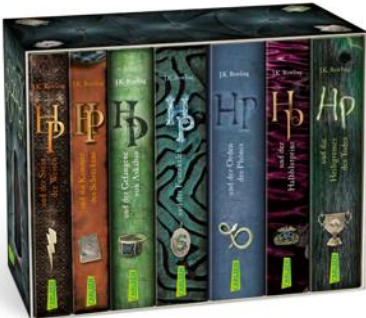
{ Examples of valuable intellectual property }



Coca-Cola®



Apple® iPod touch®



Harry Potter



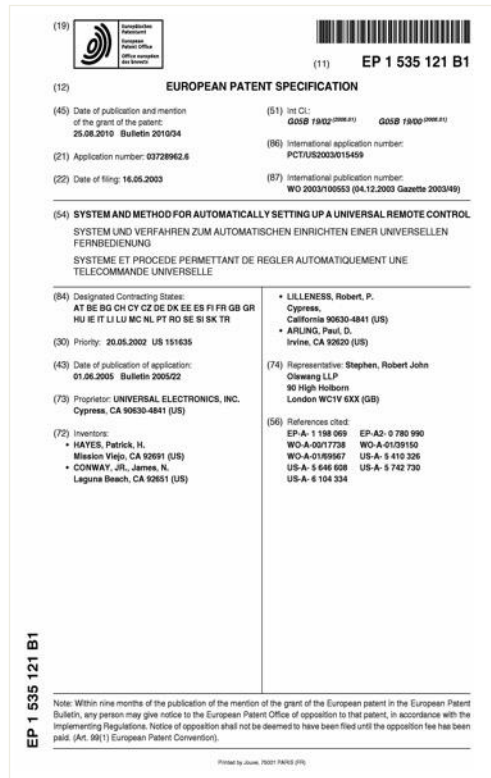
Polaroid® instant camera



DNA copying process

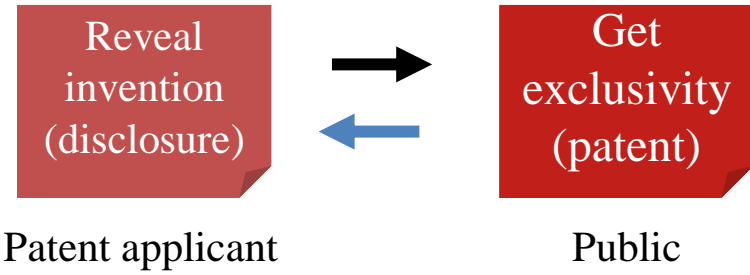
# PATENTS

# { What is a patent? }



- A legal title which grants the holder
  - the exclusive right to prevent others from making, using or offering for sale, selling or importing a product that infringes his patent without his authorisation
  - in countries for which the patent was granted
  - for a limited time (up to 20 years).
- In return for this protection, the holder has to disclose the invention to the public.

Patents are granted in nearly every country in the world!



## { What exactly can be patented? }

Patents protect inventions which solve technical problems:

- chemical substances, pharmaceuticals
- processes, methods, uses
- products, devices, systems

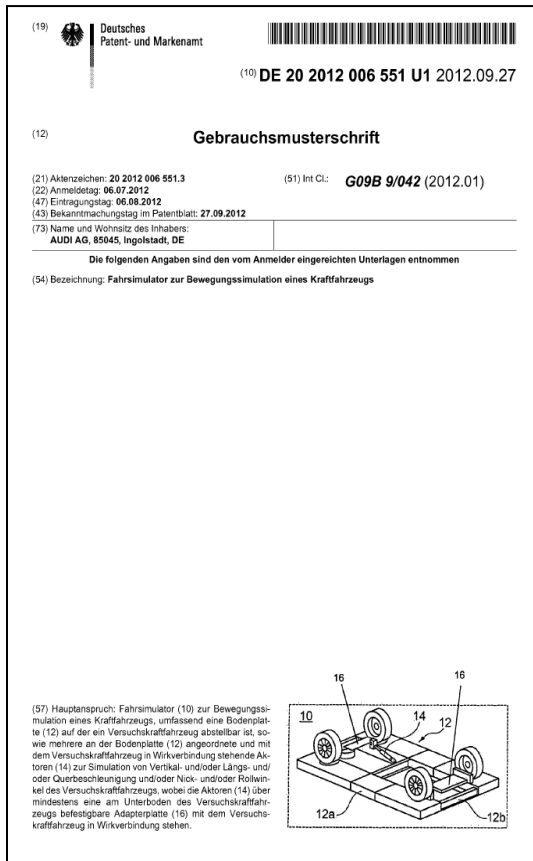
For an invention to be patented, it must usually be

- ✓ **new** to the world (i.e. not available to the public anywhere in the world)
- ✓ **inventive** (i.e. not an "obvious" solution), and
- ✓ susceptible of **industrial application**

In most countries, patents are not granted for business methods or rules of games as such, or for methods of treatment, diagnostics and surgery on the human or animal body.

# What is a utility model?

- A utility model grants the holder the exclusive right to prevent third parties from:
  - exploiting an invention (e.g. making, using, offering for sale)
  - without authorisation in the country where the utility model was registered
- for a short period (3 to 10 years). Cambodia – 7 years
- The holder has to disclose the invention to the public.



Reveal invention (disclosure)



Get protection (utility model)

# Scope of protection compared with patents

## Utility Models

- Registered territorial IP right
- Available in limited number of countries
- No central filing in Europe
- Protection for 3 -10 years
- Search reports in some countries only
- Registered and published after a few months
- Generally no substantive examination (novelty, inventiveness)
- Reviewed only in revocation or infringement proceedings

## Patents

- Registered territorial IP right
- Available in most countries
- Central filing possible (e.g. EPO for Europe)
- Protection for up to 20 years
- Search reports standard
- Application published after 18 months
- Substantive examination (novelty, inventive step)
- Grant or refusal after substantive examination procedure

# DESIGNS

# What is a design?

A design is the **outward appearance** of the whole or parts of a product resulting from its features.

- A product is any industrial or handicraft item.
- Requirements for protection
  - Novelty
  - Individual character (not Cambodia)
- Some exclusions

Example of a three-dimensional design



Design protection has two forms:  
registered and unregistered

- Design rights can be obtained through registration with IP offices
- Unregistered design rights are obtained through disclosure to the public and use

WIPO, *Looking Good: An Introduction to Industrial Designs For Small and Medium-Sized Enterprises in Nigeria*, Intellectual Property for Business, 2006, 5.

# Scope of protection

- Exclusive right
- Principle of territoriality
- Duration
  - registered design rights: maximum 25 years
  - unregistered design rights: 3 years
  - 5 years (renewed twice, each 5 years)

# TRADE MARKS

## { What is a trade mark? }

- A trade mark is **any sign**, capable of being **represented graphically**, which **distinguishes the goods and services** of one undertaking (company or organisation) from those of another
- Many different types: **word, figurative, colour, shape**
- Absolute grounds for refusal
  - **Distinctiveness**
- Relative grounds for refusal
  - When peaceful co-existence of marks is impossible

# Scope of protection

- Exclusive right, but
  - principle of speciality
  - principle of territoriality
- Potentially perpetual (renewal every ten years)
- Risk of loss of protection if:
  - not used (after five years)
  - found to be invalid
- Allowed uses
  - private purposes only

# GEOGRAPHICAL INDICATIONS

# What are geographical indications?

- Geographical indications identify a good as originating in the **territory of a country or a region or locality in that territory**, where a given quality, reputation or other characteristic of the good is essentially attributable to **its geographical origin**.

# Difference between PGIs and PDOs

- Protected Geographical Indications
- Protected Designations of Origin
- Stricter conditions apply to PDOs:
  - Link between place name and product is essentially or exclusively due to the particular geographical environment.
  - **All stages** from production, processing and preparation are located in the **defined geographical area**.

# PLAN VARIETY RIGHTS

# What are plant variety rights?

- Exclusive exploitation rights for new plant varieties
- Four requirements for protection:
  - novelty
  - distinctness
  - uniformity
  - stability
- Right holder = breeder
- Obtained through registration

# Scope of protection

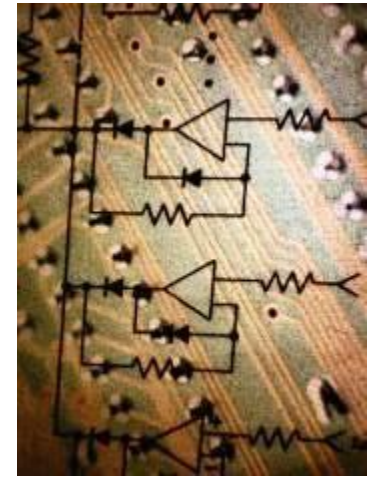
- Duration
  - At least 20 years
  - At least 25 years for varieties of vine and tree species
- Subject-matter
  - Propagating material
  - Harvested material
- Acts subject to authorisation
- Exceptions

# SEMICONDUCTOR TOPOGRAPHY RIGHTS

# What are semiconductor topography rights?

Semiconductor topography rights protect layout designs of integrated circuits.

- Three-dimensional components and layers and their interconnections



## Substantive requirements

- Original, i.e. the result of the creator's own intellectual effort
- Not commonplace

## Formal requirements

TRIPS member states may prescribe:

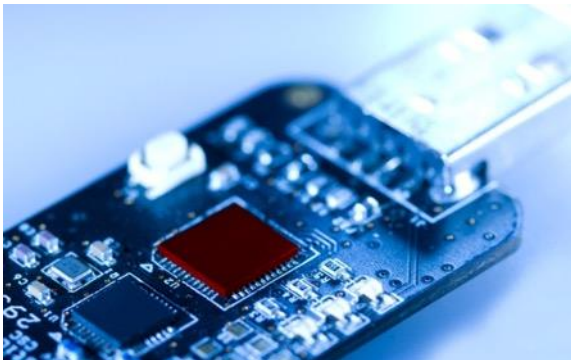
- registration
- disclosure of electronic function
- registration fee
- commercial exploitation

# Scope of protection

Rights prevent others from reproducing, selling or importing part or all of the protected design and of products incorporating it

## Duration of protection

10-15 years from the date of creation of the layout design  
Cambodia – 10 years



## Exceptions and limitations

- No infringement if for private use, research or teaching
- Reverse engineering to foster innovation
- Independent creation of an identical design

# COPYRIGHT

# What is copyright?

- Copyright protects any production of the human mind, such as literary and artistic works.
  - This production must be an expression and not a mere idea.
  - The expression must be original.
- Copyright creates a special legal relationship between authors and their work.
- It confers legal protection for a limited period of time.

# Scope of protection

## Economic rights

- relate to the economic exploitation of the work
- are freely transferable or licensable

## Moral rights

- relate to a moral interest of the author
- are always retained by the author

## Exceptions and limitations

## Infringement and remedies

# DATABASES

## { What is a database? }

- A database is a collection of **independent** works, data or other materials arranged in a **systematic** or methodical way and individually accessible by electronic or other means.

## { Scope of protection }

- Directive 96/9/EC on the legal protection of databases
- Copyright protection
  - Structure
  - Originality
  - Authorship
  - Limited protection
- *Sui generis* protection
  - Contents
  - Investment
  - Maker
- Computer programs excluded

# { Rights and limitations }

- Copyright
  - Restricted acts
  - Exceptions
- *Sui generis* right
  - 15 years
  - Prevent:
    - Extraction
    - Re-utilisation

# TRADE SECRET

# What are trade secrets?

- Information that
  - is not generally known or easily discovered
  - has a business, commercial or economic value (actual or potential) because the information is not generally known
  - is subject to reasonable efforts to maintain secrecy
- Unlimited life, provided the information does not become public knowledge.

# Scope of protection



Products/processes  
where reverse  
engineering is difficult

# Means of protection

## Practical

- Limited access to information
- Encryption of data
- Monitored entry to installations

## Contractual

- Restrictive covenants in employment contracts
- Non-disclosure agreements

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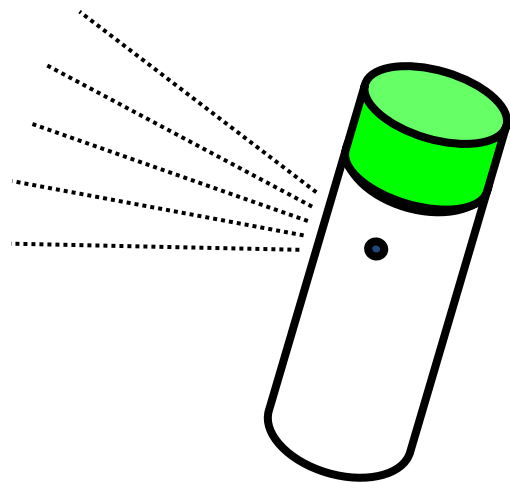
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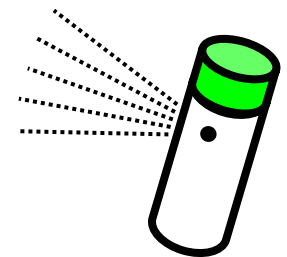


# Patents and designs (I)

## Medicinal product

### Patents for

- the active ingredient?  
(the "chemical X")
- the method of making X?  
*Better as a trade secret?*
- the formulation?  
(combination of X with other ingredients)
- the ~~method~~ of use?  
(i.e. ~~treatment~~ of allergies using X)



# Patents and designs (II)

## Nozzle

- patent
- utility model

## Pumping system

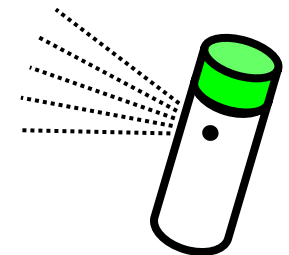
- patent
- utility model



## Sprayer can

- designs: registered and unregistered
- trade mark

*But who owns all this IP?*



# Trade marks, copyright and domain names

▪ **Brand name:** NEBU-ALLERG

trade mark ®

▪ **Logo:**

trade mark ®



▪ **Slogan:** "Press green for go!"

trade mark ®

▪ **Advertising material:**

copyright ©

▪ **Domain names:**

- www.nebu-allerg.com
- www.thegreenbutton.com

*Who owns all this IP?*

# References

- EPO, and EUIPO. *Intellectual Property Teaching Kit: IP Basics*. 2nd Edition. Munich: EPO Munich, 2016.
- WIPO. *Looking Good: An Introduction to Industrial Designs for Small and Medium-Sized Enterprises in Nigeria*. Intellectual Property for Business, 2006.