



DAVIES COLLISON CAVE

Intellectual Property Protection for Clean Technologies

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Intellectual Property (IP) Rights

Definition: *“ A product of the Intellect that has commercial value. ”*

Registrable Intellectual Property Rights:

- Trademarks
- Designs
- Patents

Non-Registrable Intellectual Property Rights:

- Copyright, Trade Secrets

Trade Marks

What is a Trade Mark?

- A commercial tool that is used to distinguish goods or services of a trader from those of other traders
 - Most common forms of Trade Marks: words or logos
- Possible to obtain exclusive ownership rights in a Trade Mark
 - Becomes a piece of property: Intellectual Property Right
 - Once rights are established, the owner can restrict use of the trade mark or use of similar trade marks by other traders.



Trade Marks are Consumer Signs

Sign includes the following or any combination of the following:

- any letter
- word
- name
- signature
- numeral
- device
- sound



- brand
- heading
- label
- ticket
- aspect of packaging
- shape
- colour



Trade Marks

How are Trade Mark Rights acquired?

1. Common Law

- Acquired by reputation gained through use of Trade Mark
 - Limitations to scope, extent and enforceability

2. Registration Scheme

- Statutory Registration System: Trade Marks Act 1995
- Administered by IP Australia
 - Registration provides legally enforceable proprietary rights
 - Does not require reputation or use upon application
 - Applies to entire country of registration
 - Can be renewed indefinitely



Registration of Clean Technology Trade Marks

- Use of words that are descriptive of the goods or services
- Use of 'fashionable' terms or abbreviations including 'enviro', 'eco', 'green', 'ozone', or 'clean'

THE CAN-O-WORMS

"EnviroFriendly" not likely to be capable of distinguishing goods or services



Examples of Registrable Trade Marks associated with Clean Technologies

- Invented words eg Rocla



- Devices eg CSIRO™



- Words or slogans which have no direct meaning in relation to the goods or services eg Apple™ for computers



- Acronyms with no direct relationship to goods eg



What you get at registration of your Trade Mark

- Exclusive ownership rights to use TM in relation to the goods or services selected for the term of registration
- Public notice of your claimed right to use TM in relation to the goods or services selected
- Customs has powers to take action to prevent importation of any TM infringing goods.



Trade Mark Use

- Can be deregistered for non-use
- Watch for generic use of the trade mark



- Do not use Trade Mark as a noun to describe the same or similar goods
- Trade Practices Act and “Greenwashing”





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Registered Designs



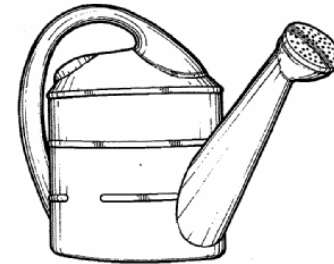
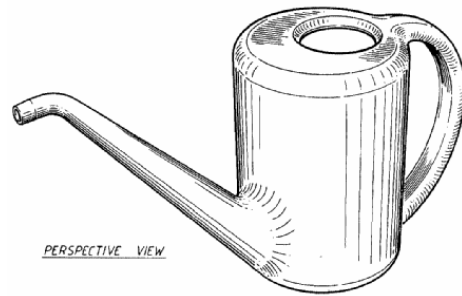
Intellectual Property Rights - Designs

- Protects the appearance of an article, i.e. shape or pattern
 - Does not protect functionality
- Registrable right: need to apply to obtain registration
 - Must meet threshold Requirements:
 - New
 - Distinctive
- No public disclosure of design prior to filing application.
- Term for a Design right in Australia: 10 years



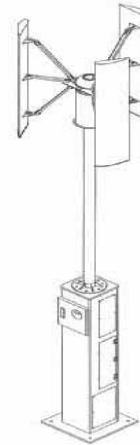
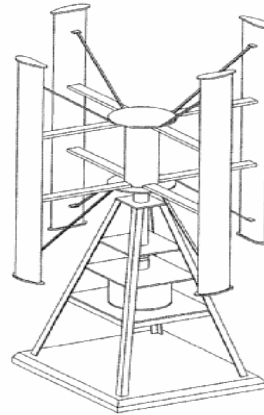
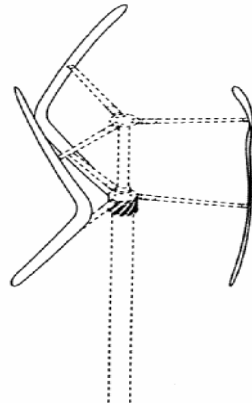
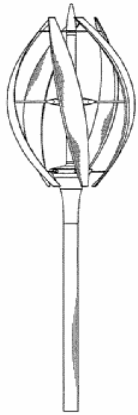
Examples of Registered Designs

- Watering Cans



Examples of Registered Designs

- Wind Turbines



Patents



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®
TM

Intellectual Property Rights - Patents

- Patents provide protection for 'inventions'
 - Are able to protect functionality not just the way something looks
- What can be protected?
 - Products and devices
 - Chemical and biological compounds and their uses
 - Methods and processes (including methods of treatment, chemical processes, computer software, and business methods)

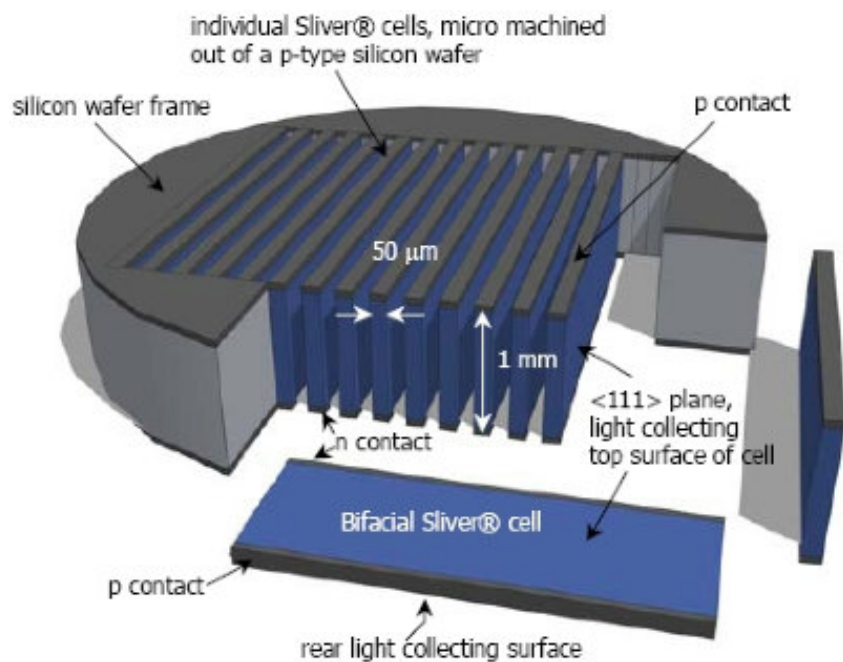


Intellectual Property Rights - Patents

- No public disclosure of invention prior to filing application
- Term for a Patent right in Australia
 - 20 years (standard patent)
 - 8 years (innovation patent)



Examples of Clean Technology inventions protected with patents - **Sliver® solar cells**

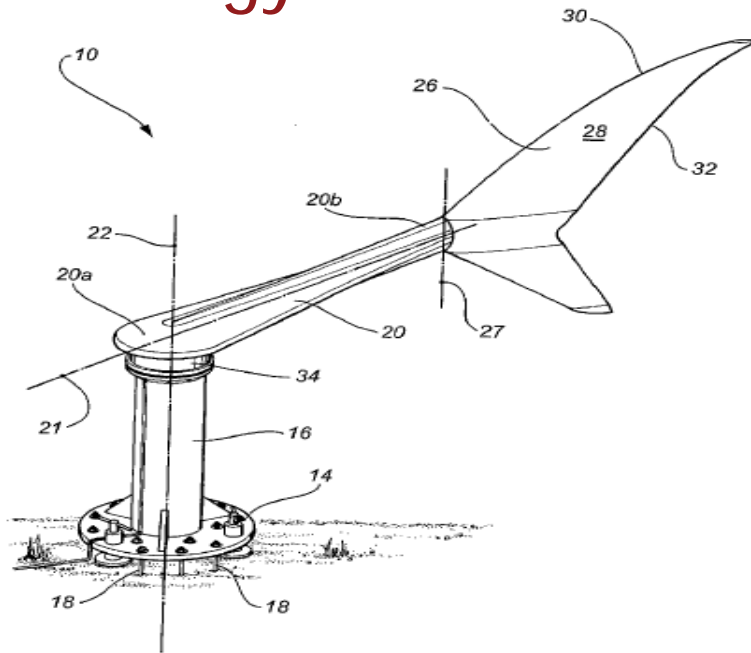


- AU Patent No. 2002220348
- Developed at ANU; assigned to Origin Energy Solar Pty Ltd
- use up to 90% less silicon
- can be arranged in series/parallel to provide high voltage, low current modules
- transparent modules
- flexible modules



Examples of Clean Technology inventions protected with patents

Energy Converter



- Biopower Systems have developed a tidal energy device that mimics a fish tail. The 'tail' oscillates about the base, that houses a generator, converting tidal flow energy into electrical energy.

- Major Investments
 - CVC REEF (Renewable Energy Equity Fund) \$1m
 - REDI Grant (Renewable Energy Development Initiative) \$5m
 - Lend Lease Ventures \$6m.



Why Patent?

- “Patents enable companies to stake out and defend a proprietary market advantage. Properly deployed, patents can translate into category-leading products, enhanced market share, and high margins.”

- *Rivette and Kline*, "Discovering new value in intellectual property", *Harvard Business Review*, Vol. 78 No.1, pp.54-66 (2000)

Xerox copier market monopoly: double-digit margins and earnings growth

- Attract Investment

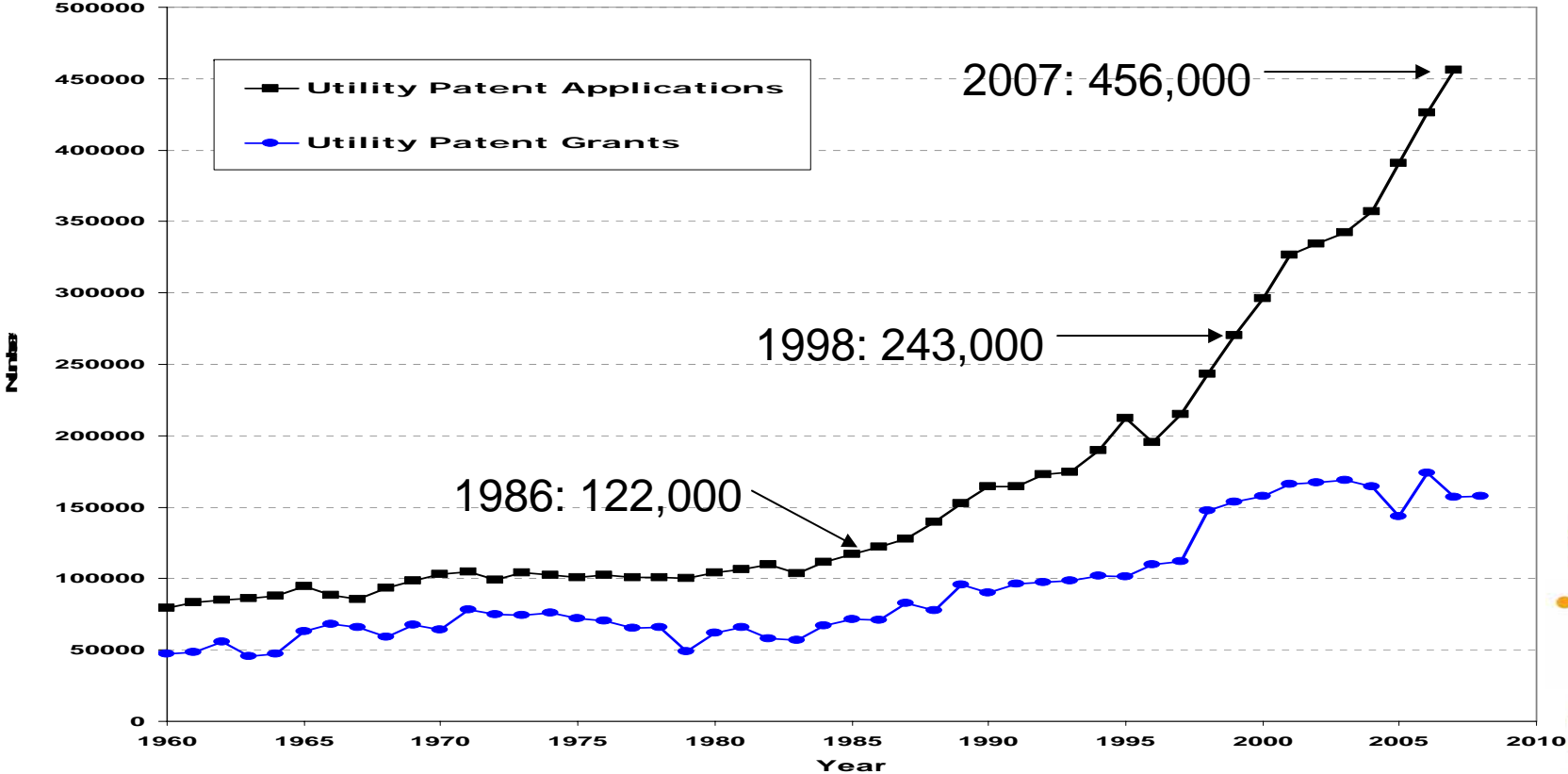


uses of patents

- to directly protect a proprietary product or process
- to block competitors from developing competing products or processes ('bracketing')
- licensing to provide income stream
 - IBM: from US\$30M in 1990 to ~US\$1B in 2000 (\approx US\$20B product sales)
- cross-licensing to obtain technology or avoid royalty payments
 - Dell 1999: patents used as collateral for US\$16B cross-licensing deal with IBM that provides it with lower cost components: avoids IBM royalty payments
- cross-licensing to avoid or settle litigation
- valuable assets in their own right
- marketing tool
- communicate asset picture and earnings potential to investors



US Annual Patenting Activity



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Value of Intellectual Property

- Knowledge economy: shift from tangible to intangible assets
- Most of company value may be in IP
 - “even for manufacturing firms, the bulk of their value now lies in their intellectual assets.”
- Rivette & Kline
- Risks: consider your IP position
 - develop IP portfolio
 - searches
 - manage IP



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TM