

Introduction to intellectual property law

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What is intellectual property law ?

- Legal right to prevent copy or imitation of an « intellectual creation »
 - Limited (in time and/or in scope)
 - Exceptions to the general principle : freedom of enterprise
-
- National rights (may differ from country to country)
 - Subject to conditions and/or formalities (think about it timely)
 - Right to prevent, not a right to exploit (not a permit)
-
- Advantages :
 - Protect against copy/imitation/competition
 - Create partnerships / generate income
 - (Tax benefits)



What is intellectual property ?

- Protects « identity »
 - Registered Trademarks
 - Domain names
 - Trade names / unregistered trademarks
 - Company names
 - Protected geographical indications (parmesan cheese)
- Common characteristics
 - Protects the owner **and** the public/market (avoids confusion)
 - NOT limited in time (renewables)

What is intellectual property ?

- Grants a « reward »
 - Copyright (artistic/software)
 - Patent rights (technical)
 - Registered designs (appearance)
 - Database rights (investment in databases)
 - Plant variety rights (plants)
 - Computer chips topography
- Common characteristics
 - Broader monopoly (than the identity rights)
 - Limited in time (after expiry, public domain)

Two angles for the session :

Identify and protect « your intellectual property »



Avoid infringing on the « intellectual property of others »



Approach

- For each right :
 - Object of protection (what is protected)
 - Conditions for protection (incl. formalities & costs)
 - Scope of protection (what can you prevent)
 - Practical tips, diy, dos and don'ts

Trademark law



Trademark law

- Interbrands ranking 2020

01 +35% 222,999 \$m	02 +60% 200,667 \$m	03 +53% 166,001 \$m	04 +1% 165,444 \$m	05 +2% 62,269 \$m	06 -10% 56,894 \$m	07 -8% 51,595 \$m	08 -3% 49,268 \$m	09 -6% 42,816 \$m	10 -8% 40,773 \$m
11 -4% 39,756 \$m	12 -8% 36,971 \$m	13 +12% 35,178 \$m	14 -14% 34,885 \$m	15 +6% 34,366 \$m	16 -4% 34,119 \$m	17 -2% 31,720 \$m	18 +12% 28,011 \$m	19 New 26,060 \$m	20 -11% 21,694 \$m

Trademark law

- Object of protection :
 - « any signs
 - in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds,
 - provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings ».

Trademark law

- Word mark

COCA-COLA

- Figurative mark



- Semi-figurative marks



Trademark law

- Slogans

- “Parce que vous le valez bien”;
- “Vorsprung durch Technik” ;
- “Mannen weten waarom”; etc...

Parce que vous le valez bien.
L'ORÉAL
PARIS



Audi
Vorsprung durch Technik

Trademark law

- Colour marks



- Sound marks



- Positions marks

- Shape marks



Trademark law

- Condition for protection
 - The condition is in the definition : distinctive character
 - A mark may not describe « *the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services* »



- Verified by the « trademark office » (BOIP, EUIPO, USPTO etc)

Trademark law

- Condition for protection
 - Even when you have a registered trademark,
 - Your mark may lose a distinctive character if the public uses the mark as a generic term
 - Victims of their own success : aspirin, cellophane, escalator, pedalo, thermos, jacuzzi, Yo-Yo etc...

There is no such thing as a xerox.


You can't make a xerox. You can't go to the xerox. And you can't xerox anything. Ever.

You can make copies on the Xerox copier.
You can go to the Xerox copier or to a Xerox computer.
You can read a Xerox textbook.
It's taken us a lot of years to get our good name. And we intend to keep it. So we thought we ought to tell you how to use Xerox.

When referring to our trademark Xerox, it should always be followed by the descriptive word for the particular product, such as "Xerox copier" or "Xerox computer" or "Xerox textbook."

You know the old saying, "We don't care what you say about us as long as you spell our name correctly?"
Well, we do care.
Spell it right. But please use it right, too. **XEROX**

P.S. Please make copies of this.



If you use "Xerox" the way you use "zipper," our trademark could be left wide open. **There's a new way to look at it.**

No one likes to have their name open to misuse. Which is what happens when you use our name in a generic manner. Basically you're putting it in a compromising position which could cause it to lose its trademark status. That's what happened to the name "zipper" years ago. So when you use our name, please use it as an adjective to identify our products and services, such as "Xerox copier." Never as a verb, "to Xerox," in place of "copy," or as a noun, "Xerox," in place of "copies." Now that you're aware of all this, that should just about zip things up. Thanks.

XEROX

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Trademark law

- Condition for protection
 - The opposite is also true : a descriptive term may become a distinctive trademark through extensive use (marketing, sales etc) :



Trademark law

- Condition for protection
 - A suggestive mark may be registered (>< descriptive)



Trademark law

- Condition for protection
 - But the ideal – for trademark protection – are names that have no meaning
 - fantasy names



- These names are easier to protect and have a broader protection

Trademark law

- Carefully choose your “classes”

List of Goods and Services by Class Order

Goods

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [12](#) [13](#) [14](#) [15](#) [16](#) [17](#) [18](#) [19](#) [20](#) [21](#) [22](#) [23](#) [24](#) [25](#) [26](#) [27](#) [28](#) [29](#) [30](#) [31](#) [32](#) [33](#) [34](#)

Services

[35](#) [36](#) [37](#) [38](#) [39](#) [40](#) [41](#) [42](#) [43](#) [44](#) [45](#)

42 : Evaluations techniques concernant la conception (bureaux d'ingénieurs) ; recherches scientifiques ; recherches technologiques ; [Recherche]
conception d'ordinateurs pour des tiers ; développement d'ordinateurs ; conception de logiciels ; développement de logiciels ; maintenance et développement de nouveaux produits pour des tiers ; conduite d'études de projets techniques ; architecture ; décoration intérieure ; élaboration (conception) de logiciels ; installation de logiciels ; maintenance de logiciels ; mise à jour de logiciels ; location de logiciels ; programmation pour ordinateurs ; analyse de systèmes informatiques ; conception de systèmes informatiques ; services de consultants en matière de conception et de développement de matériel informatique ; numérisation de documents ; logiciels (services cloud) ; informatique en nuage ; conseils en technologie de l'information ; hébergement de serveurs ; centres techniques de véhicules automobiles ; services de conception d'art graphique ; systèmes architecturaux industriels ; authentification d'œuvres d'art ; audits en matière d'énergie ; stockage électronique de données.



Trademark law

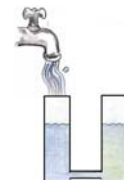
- Second condition for protection : availability
- If your mark is already registered :
 - The registration may be refused (or opposed);
 - You can be sued for trademark infringement.
- Scope of protection
 - The goal is to protect you and the public (identity rights)
 - Legally : three scenarios
 - “double identity”
 - “likelihood of confusion”
 - “enhanced protection”

Trademark law

- Scope of protection
 - **Double identity** :
 - use of a sign identical to the mark
 - for goods or services which are identical to the goods or services for which the trade mark is registered
 - Example:
 - Coca-cola registered for non-alcoholic drinks
- Against
- Coca-cola for non-alcoholic drinks

Trademark law

- Scope of protection
 - **likelihood of confusion** :
 - Use of a sign that is identical or similar
 - For identical or similar goods or services
 - That causes a likelihood of confusion on the part of the public in the territory
 - Examples :
 - Proximus registered telecommunication services
- Against
- Proxima for telecommunication services
 - Proximus for telephones



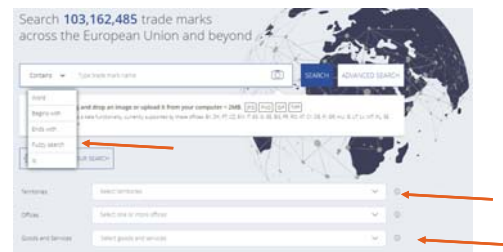
Trademark law

- Scope of protection
 - Enhanced protection :
 - Use of a sign that is identical or similar
 - For goods or services that are not similar
 - But the trademark has a reputation in the Union
 - and the use takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.
 - Examples : Facebook / fessebook



Trademark law

- Availability
 - A search is very important before you get attached to any name
 - Third parties may oppose your trademark application (3 months) and can even cancel your trademark later
 - Do it yourself :
 - Benelux (<http://register.boip.int>)
 - EUIPO (<https://euipo.europa.eu>)
 - TMview (<http://tmview.europa.eu>)
 - But keep in mind the similarity and the reputation
 - Noms de société (<http://kbopub.economie.fgov.be>)
 - Disponibilité de nom de domaine : bon indicateur mais PAS suffisant !



Trademark law

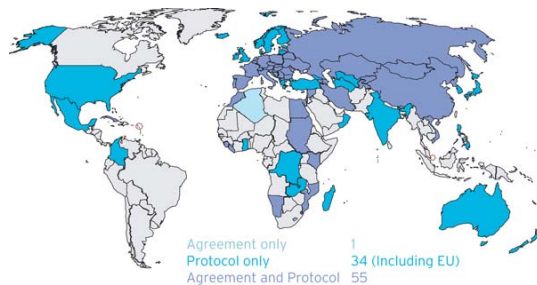
- Availability
 - Registered trademarks that have not been used within the last 5 years constitute a lesser risk
 - Why ?
 - In case of opposition, you can ask for « proof of use »
 - If no proof is provided, the opposition will be refused
 - And the registration could be revoked

Trademark law

- If you have concluded that your trademark is
 - Distinctive
 - Available
- You can file your trademark online with the relevant « trademark office » (BOIP, EUIPO, USPTO etc)
- The official taxes vary in function of territories and number of classes
 - Benelux trademark starts at 244 EUR <https://www.boip.int/>
 - Marque EU starts at 850 EUR <https://euipo.europa.eu/>
- For 10 years (renewable)
- Read the « guide to applicants »

Trademark law

- TIP 1/6 : consider using a professional « trademark agent » or lawyer :
 - Assess distinctiveness / respond to the office
 - If the mark is refused, the fees paid are lost (no refund)
 - Assess risk of opposition / defend an opposition
 - Request protection beyond Benelux/EU – international trademark system



Trademark law

- TIP 2/6 :
 - Check the availability as soon as possible (before you get too excited about your mark)
 - In general : **it is best to file as soon as possible**
 - You should file in all countries in which you wish to expand as early as possible



Trademark law

- TIP 3/6 :
 - Avoid descriptive signs
 - Also avoid suggestive signs
 - If suggestive, try to add a graphical feature



Trademark law

- TIP 4/6 : if you did not design your logo yourself (copyright)
- Have a good contract with the designer



- Pay attention to online logo makers (non exclusive licence)



Trademark law

- TIP 5/6 : individual trademark
- >< Collective marks/certification marks
 - Similar to an “individual trademark” but different :
 - Do not distinguish the goods/services of one undertaking but of multiple undertakings
 - Distinguish products/services based on common characteristics/quality
 - “Quality label”



Trademark law

- TIP 6/6 :
- Be aware of scams

EUIPA EUROPEAN INTELLECTUAL PROPERTY AGENCY **REGISTRATION INTERNATIONAL MARK OFFER**

IMPORTANT NOTICE
STATUS: PAYMENT PENDING
DATE: 14.03.2022
ORDER: [REDACTED]
CONTRACT: [REDACTED]

REPRODUCTION OF THE INTERNATIONAL MARK

[REDACTED]

Kind. Del. des. Eingr.
 Eingegangen
 13. März 2022

Rechts. Aut. Lgr. Aut. Rechts.

Date of registration	Publication date	Intern. registration number
08.10.2021	10.03.2022	[REDACTED]

Basic registration : DE (Germany), 21.04.2021, 30.2021 106 214.

Item	Description	Currency	Amount
001	Registration fee Intern. registration number [REDACTED]	EUR	2199,99
002	Processing fee	EUR	0,00
003	Value Added Tax	EUR	0,00
004	REGISTRATION TOTAL FEE	EUR	2199,99

PAYMENT DETAILS:
 Beneficiary: EUIPA-European Intellectual Property Agency
 Bank: KASPI BANK
 IBAN: KZ 24 7225 0000 1248 7287
 SWIFT/BIC: CASPKZKA

STATUS: PAYMENT PENDING
 Please pay **WITHIN 8 DAYS** using bank details listed
 Don't forget to quote your order number: [REDACTED]

Domain names



Domain names

- Not really an intellectual property right as such
- But functions in the same way because technically, you are the only one to have the right to use the address
- First come, first served
- But it is possible to « recover » a domain name if you have an intellectual property right

Domain names



- Why ?
 - TOO LATE (forgot to register an extension)
 - ERROR (forgot to pay the renewal fee)

Domain names

- If you have an intellectual property right and you can show that the domain name was registered in bad faith
 - For example : Menu Next Door
- Quick proceedings (arbitration – 2 to 3 months)
- Relatively cheap : between 1000 and 1700 euros
- Vary in function of extensions



Copyright



All rights reserved

Copyright

- Artistic and literary works
- No legal definition
- Article 2 Conv. Berne : « *The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or ramaticomusical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science..* »

Copyright

- Books



- Speeches

- *I have a dream that one day the red hill of Georgia, sons of former slaves and sons of former slave-owners will be able to sit down together at the table of brotherhood.*
- *I have a dream that one day, even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.*
- *I have a dream my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today"*

(M. L. KING, Lincoln Memorial, Washington D.C., August 28, 1963)

Copyright

- Characters



- Software



- Video Games



Copyright

- Paintings



- Sculptures



- Photographs



Copyright

- Films



- Music



- Architecture



Copyright

- Fashion



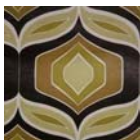
- Industrial designs



Copyright

- Two conditions:

- expression (no protection of ideas)
- original (« expresses the author's own intellectual creation »)

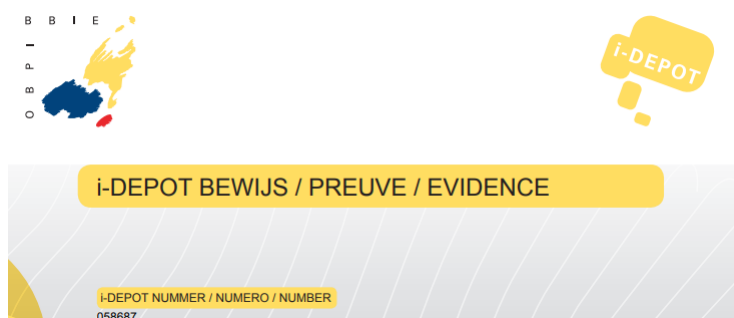


```
/**
 * Simple HelloButton() method.
 * @version 1.0
 * @author John Doe <doe.j@example.com>
 */
HelloButton()
{
    JButton hello = new JButton( "Hello, wor
    hello.addActionListener( new HelloBtnList

    // use the JFrame type until support for t
    // new component is finished
    JFrame frame = new JFrame( "Hello Button"
    Container pane = frame.getContentPane();
    pane.add( hello );
    frame.pack();
    frame.show();           // display the fra
}
```

Copyright

- No other condition
 - No registration
 - i-depot (<https://www.boip.int>)



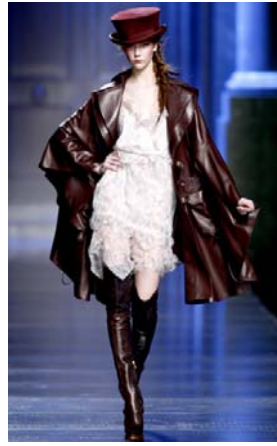
Copyright

- Economic rights
 - Reproduction (incl. adaptation)
 - Communication to the public (website, streaming, displaying etc)
- Moral rights (paternity, integrity, disclosure)
- Exceptions
 - parody,
 - private copy,
 - teaching,
 - citation etc.

Copyright



© Etienne Tordoir published on Weekend.be



© Xavier Raoux published on MarieClaire.fr

Copyright – illustrative « real life » cases



Studio100 v Greenpeace

Copyright – illustrative « real life » cases

Limit to parody :



Rechtbank van Eerste Aanleg te Antwerpen
van 15 januari 2015 (Luc Tuymans)

Copyright – illustrative « real life » cases



High Court of Justice (UK), 6 April 2022, [2022] EWHC 827 (Ch):
"I conclude that Mr S. had not heard "Oh Why" and in any event that he did not deliberately copy the OI Phrase from the OW Hook"

Copyright

- Duration : 70 years after the author's death
- Underlying idea : « artists » must be compensated for their creative works during their life and their children's lives.
- International standard : 50 years post mortem



Copyright

- Positive:
 - Low condition (originality)
 - Strong right : any reproduction/communication to the public
 - Automatic : no formality/no fee
 - Very long duration
- Negative:
 - Protects only against the copy (>< independant creation)
 - Limited to creative choices (vs technical choices)
- Key take away : if you use someone else's creation
 - Obtain the rights (assignment)
 - Or at least an authorization (licence)

Copyright – « Open Source »

- « Free » licences
- GPL, MIT, BDS, Apache, etc. for software
- Creative commons, Free Art Licence, Unsplash for artistic works
- <https://opensource.org/>
- Right to prevent the copy : « copy-right »
- Open source licences : « copy-left »
- No copyleft without copyright
- « Strings attached » :
 - « viral » effect,
 - Give credential,
 - No commercial use etc...
- « Free » as in freedom, not free beer / « some » rights reserved

Copyright– « Open Source »

- Landgericht Munchen I, 12 juillet 2007 (H. Welte v. Skype) :
 - *“If a publisher wants to publish a book of an author that wants his book only to be published in a green envelope, then that might seem odd to you, but still you will have to do it as long as you want to publish the book and have no other agreement in place.”*



Copyright- « Open Source »

- Civ. Nivelles, 26 octobre 2010 (Lichôdmapwa v. Théâtre de Spa)



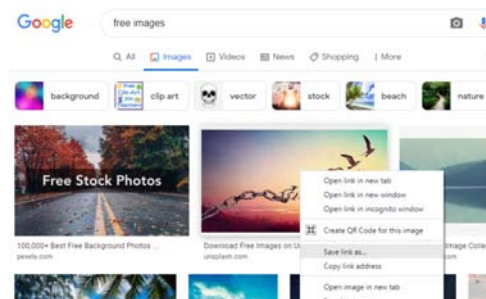
- “As a professional festival organiser, the defendant ought to at least get information about the particular licensing conditions”
- Breach of the 3 conditions
- Damages: 1500 EUR per breach



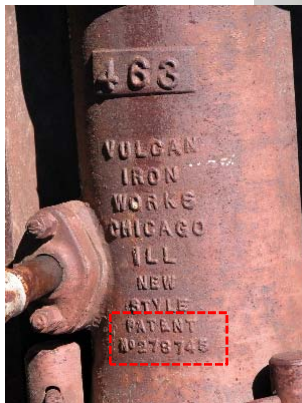
“This license is the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can’t change them in any way or use them commercially.”
<http://creativecommons.org/licenses/>

Copyright- « Open Source »

- Royalty free <-> Free
- Use « public domain » images (e.g. <https://unsplash.com/>) or buy them
- Do NOT download them from Google Images
 - Getty Images
 - ImageRights
 - PermissionMachine etc...

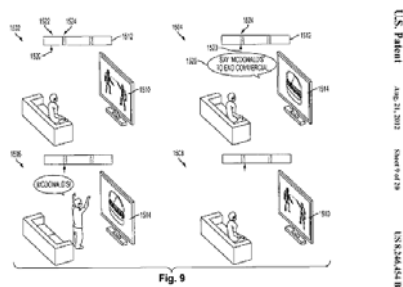


Patents

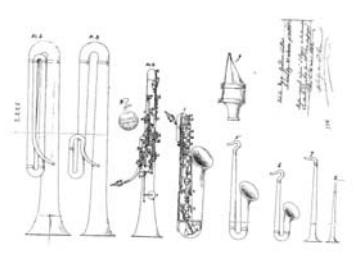


Patents

- What can be patented ?
 - Inventions : « technical solution to a technical problem »
 - Process or product



Process : Method to transform an advertisement into a min-game



Product : Wind instrument

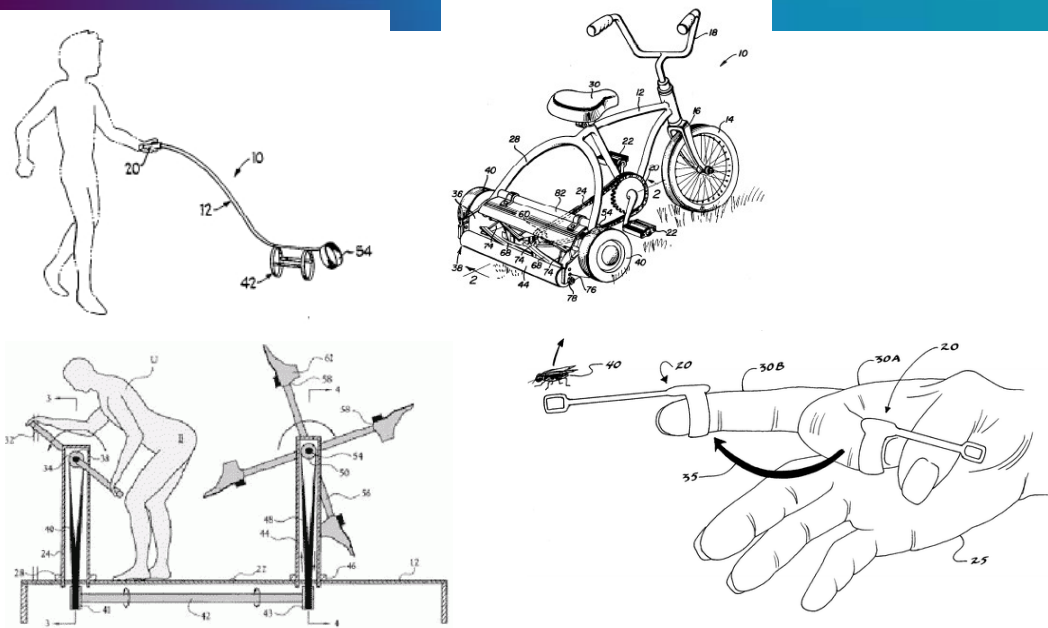
Patents

- The most robust IP right
- Does not just protect a name or an expression but a « solution »
- Protects against « independent creation » (true monopoly)
- Underlying idea :
 - Give : Explain in details your solution to the society
 - Receive : You are ensured a monopoly for a limited time
- Attention :
 - Fixed (short) duration (20 years)
 - Very strict conditions :
 - Strict examination by the patent offices (average examination time : 3-4 years)
 - Expensive (not just filing but also annual fees « annuities »)

Patents

- Object of protection
- Technical solutions
- Other than :
 - discoveries, scientific theories and mathematical methods ($E=MC^2$)
 - aesthetic creations (copyright / designs)
 - schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers (abstract)
 - presentations of information (annual accounts).
 - Vegetal varieties and animal races.

Patents



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Patents

- Conditions for protection : novelty
 - New : not in the « state of the art ».
 - The state of the art : “everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application”
 - Absolute condition :
 - Anywhere in the world
 - In any language
 - No matter how it became public (with very rare exceptions)
 - Including if made public by you !
 - Be aware of your own disclosures
 - Confidentiality agreement / NDA

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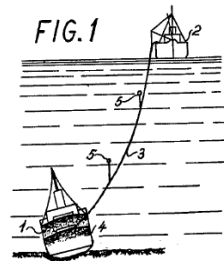
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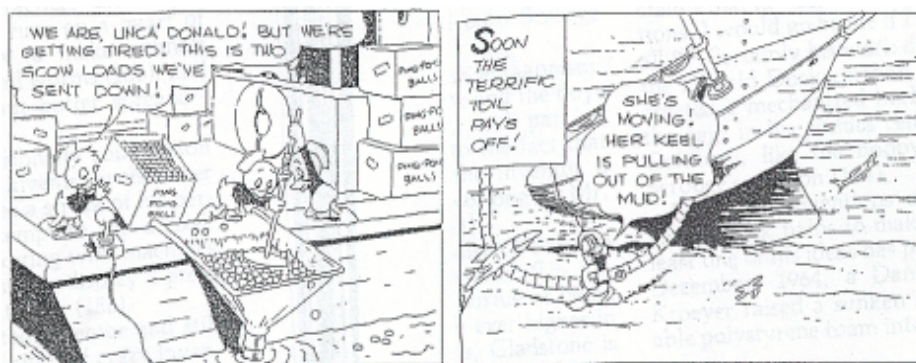
Patents

- Example :

NL 6514306
*"buoyant bodies 1
 are inserted into a
 sunken vessel 4
 through a tube 3
 from a salvage
 ship 2."*






Patents



'The Sunken Yacht', © 1949 Walt Disney

Patents

 <p>(19) Europäisches Patentamt European Patent Office Office européen des brevets</p>	 <p>(11) EP 1 263 291 B1</p>
<p>(12) EUROPEAN PATENT SPECIFICATION</p>	
<p>(45) Date of publication and mention of the grant of the patent: 19.04.2006 Bulletin 2006/16</p> <p>(21) Application number: 00968142.0</p> <p>(22) Date of filing: 18.10.2000</p>	<p>(51) Int Cl.: A21D 13/08 (2006.01) A21B 5/08 (2006.01)</p> <p>(86) International application number: PCT/GB2000/003998</p> <p>(87) International publication number: WO 2001/065945 (13.09.2001 Gazette 2001/37)</p>
<p>(54) METHOD FOR A NEW DOUGHNUT VERFAHREN ZUR HERSTELLUNG EINES NEUEN KRAPPENS PROCEDE DE PREPARATION D'UN NOUVEAU BEIGNET</p>	
<p>(84) Designated Contracting States: AT BE CH CY DE DK ES FI FR GB GR IE IT LI LU MC NL PT SE</p> <p>(30) Priority: 07.03.2000 GB 0005340</p> <p>(43) Date of publication of application: 11.12.2002 Bulletin 2002/50</p> <p>(73) Proprietor: Donuts & Company Limited Chelsea, London SW3 2ND (GB)</p> <p>(72) Inventor: HUTCHINSON, Jeffrey Chelsea, London SW3 2ND (GB)</p> <p>(74) Representative: Evans, Claire et al Marks & Clerk Incorporating Edward Evans Barker 90 Long Acre London WC2E 9RA (GB)</p>	<p>(56) References cited: GB-A- 2 015 315 US-A- 4 175 483 US-A- 4 293 572</p> <ul style="list-style-type: none"> • DATABASE WPI Section Ch, Week 198419 Derwent Publications Ltd., London, GB; Class D11, AN 1984-117380 XP002157195 & JP 59 055140 A (DENMARK KK), 3 March 1984 (1984-03-03) • DATABASE FSTA [Online] INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANFURT/MAIN, DE; 83-4-08-e0491, MORRIS, C. E.: "Low-fat fried foods at 40% less energy cost" XP002157194 & FOOD ENGINEERING, vol. 53, no. 11, 1981, pages 146-147, Albany, N.Y., US <p>Remarks: The file contains technical information submitted after the application was filed and not included in this specification</p>


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Patents

1 **EP 1 263 291 B1** 2

Description

[0001] The invention relates to a new process and apparatus for preparing a doughnut. In particular, the invention relates to a method of making a yeast-raised doughnut. There are two general types of doughnut, cake doughnuts made from a mix with baking powder which produce a heavy dense product, and yeast raised doughnuts which are lighter and more spongy. Cake doughnuts are generally ring doughnuts whereas yeast raised doughnuts are generally filled products.

[0002] Presently, yeast raised doughnuts or donuts are made by frying. The process generally comprises the following steps:

1. Mixing a dough mixture - containing, for example, wheat flour, dextrose, vegetable oil, salt, raising agents, emulsifiers, defatted Soya flour, whey powder, milk protein, skimmed milk powder, stabilisers, flavourings, colour and flour treatment agents - with

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20

[0006] In JP-A-03-127941, there is disclosed a method of manufacturing foodstuffs by baking whilst giving a flavour of fats or oils, i.e. a fried taste. In particular an example describes a method of making a 'doughnut'. However, the object of the invention is to give a fried taste to a food stuff that is not generally fried or for dough mixtures which can not withstand the frying process. The Japanese document discloses: mixing a dough mixture of flour, yeast, sugar, eggs and seasoning with water; injecting the mixture in an automatic injector to form doughnut rings which are soft and deformable; pre-treating the bases at 100°C on a net conveyor in an oven; spraying hot fat at 180°C and baking at 190°C. According to the disclosure when a similar doughnut mix was fried it did not survive the frying process. The product of the process according to the Japan document is a very heavy, dense cake product which could not have been fried.

[0007] GB 2015315 discloses a new moisture barrier applied to a fried doughnut.

[0008] WO-A-98/30105 discloses a glaze applied to a

... several pages (give all the details)

Patents

Claims

- | | |
|---|--|
| <p>1. A method of manufacturing a doughnut, comprising two spraying steps in which a proven yeast dough mixture product is coated with cooking fat, and an intervening baking step.</p> | <p>1. Procédé de préparation d'un beignet, comprenant deux étapes de pulvérisation, au cours desquelles un produit de mélange de pâte levée à la levure est enduit d'une graisse à frire, et une étape de cuisson intermédiaire.</p> |
|---|--|

Method of manufacturing a doughnut in three steps:

1/ Spraying step with cooking fat

2/ Intermediary baking step

3/ New spraying step with cooking fat

Patents

YEAST RAISED BREADS AND BAKED GOODS

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a towel. Put the dough in a warm (85° to 90°) place and let it rise for 45 minutes to 1 hour, or until it has doubled in volume. Beat the quinoa dough for 3 more minutes on medium speed; punch the rye and carob doughs down.

Roll out the dough to about 1/2" thickness on a floured board and cut it with a floured doughnut cutter. Transfer the doughnuts to an oiled cookie sheet with a spatula. **Brush the tops of them with oil.** Let them rise again until they have doubled in volume, about 20 minutes. **Bake at 400°** for 10-15 minutes, or until they are golden brown. **Immediately brush them with oil** and sprinkle them with or shake them in a bag with the coating, if desired. Makes about 11 to 12 quinoa, carob, or apple-juice-sweetened spelt doughnuts, 12 to 13 rye doughnuts, or 15 to 16 spelt doughnuts if the dough is made with sugar or honey.

Patents



Patents

- Conditions for protection : inventive step
 - Inventive step: if, having regard to the state of the art, it is not obvious to a person skilled in the art.
 - Novelty : all elements must be described in the same document
 - Inventive step : a combination of documents



Patents

- The novelty and inventive step are « examined » by the patent offices (EPO, USPTO etc)
 - Search for prior art (in previous patents, in scientific publications, on the Internet etc).
 - Long process : 3-4 years
- All patents and patent applications are published :
 - <https://worldwide.espacenet.com>
- Possible to consult a PATLIB center for a first advice (free of charge)
 - (11 Centers in Belgium : http://www.epo.org/searching-for-patents/helpful-resources/patlib/directory/bycountry-item_5.html)
- Costs :
 - Drafting + filing + taxes (approx. 5.000 EUR)
 - The more countries you wish to cover, the higher the costs (up to 50K EUR)
 - Possibility to delay high costs for up to 18 months (for example to find financing or investment)

Patents

- Subsidies :
 - Wallonia :
 - <https://www.cheques-entreprises.be/cheques/cheque-propriete-intellectuelle/>
 - <https://www.wallonie.be/fr/demarches/se-faire-accompagner-en-matiere-de-propriete-intellectuelle-cheque-propriete-intellectuelle>
 - Flanders :
 - <https://www.vlaio.be/nl/subsidies-financiering/kmo-portefeuille>
 - Brussels :
 - <https://innoviris.brussels/fr/patents>

Patents

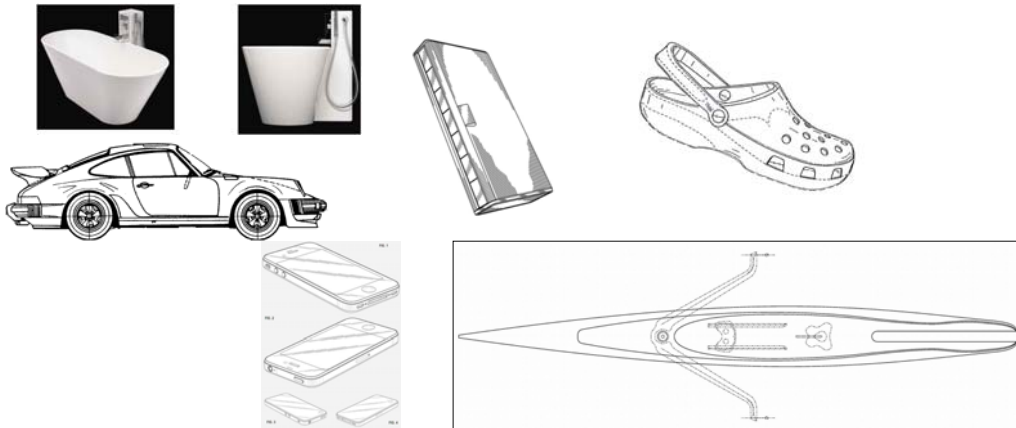
- Pro's:
 - Strong monopoly
 - Protects a solution also against independent creation (>< copyright protects expression against copy)
 - Helps attract investors
 - Tax incentive (Innovation Income Deduction)
- Con's:
 - Expensive
 - Complex and very strict conditions
 - Limited to 20 years
- In case of doubt :
 - First reseach Espacenet
 - Free advice with PATLIB + subsidies
 - Do not publish and do not disclose to anyone without NDA

Registered designs



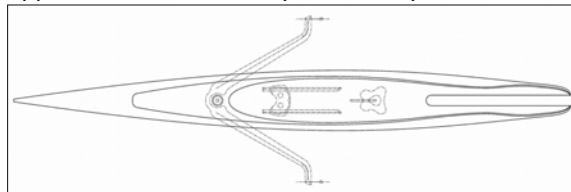
Registered designs

- What can be protected ?
 - « the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation; »



Registered designs

- Conditions for protection
 - Novelty (BUT not absolute >> patent) :
 - New if the design could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community
 - New even if publicly disclosed by the creator in the last 12 months (grace period)
 - Individual character : « *if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public* »
 - Appearance not exclusively dictated by technical constraints



Registered designs

- Scope of protection : protects against independent creation (similar to patents)
- But protects only appearance
- No examination
- Cheap protection (350 EUR for the entire EU)
- Lasts 5 years (renewable up to 25 years)

Registered designs

- Pro's:
 - Stronger than copyright (prevents independent creation)
 - Relatively cheap
 - Uniform protection throughout Europe
 - Registration (>< copyright)
- Con's:
 - Limited duration (25y)
 - Not free
 - Strict conditions (although less strict than patent)

Database rights



Database rights

- Conditions for protection:
 - a substantial investment (qualitatively and/or quantitatively)
 - in the obtaining, verification or presentation of the contents
- No other condition (no registration required)
- You can prevent :
 - The extraction or re-utilisation
 - Of the content of your database :
 - The entire content
 - A substantial part of the content
 - A non substantial part of the content (if repeated and systematic)

Database rights

- Duration : 15 years (resets after each new substantial investment)
- Examples :



Database rights

- Pro's:
 - No registration and free (of course you need to show an investment)
 - Protects data that are not otherwise protectable
- Con's:
 - Limited duration (but can be reset by new investments)
 - Conditions can be restrictive (e.g. client database)

Contractual aspects

- Importance of good contracts from the beginning
 - Employment contract
 - Consultancy agreement
 - Order
- IP contracts - terminology
 - Licence – assignment
 - Royalties, upfront, MG, etc...
 - Warranties and indemnities



Disputes

- Civil proceedings
 - Injunction
 - Damages
 - Settlement
 - Ex parte proceedings
- Criminal proceedings
- Customs proceedings

Tax

- Intellectual property is no longer « only » to protect your creations
- It can also protect you from taxes...
- Patents : Innovation Income Deduction
- Copyright : taxation at 7,5% (15 – 15/2)
- Talk to your accountant !



Take the test !

- Good recap (only available in French and Dutch)
- Answer a few questions and get guidance : <https://www.ideescan.be>





Thank you for your attention

Any questions ?

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