

Undesirability of Patents

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My Book

**The High-tech
Entrepreneur's
Handbook**
Jack Lang

**Paperback - 224
pages (2 November,
2001)**
**FT.COM; ISBN:
0273656155**



Cambridge Cluster

University
IPR Policy
changed

- **About 1500 companies**
 - Employing about 50,000
 - Technion ~30
- **Largest European cluster**
- **\$20 billion value created by Cambridge Alumni**
 - Stanford \$1000 billion?
- **Billion \$ market cap companies**
 - ARM,
 - Virata,
 - CSR,
 - Autonomy,
 - Cambridge Antibody
- **Cambridge Angels**





Quick Search

Advanced Search

Number Search

Last Results list

My patents list 12

Classification Search

Get assistance ↻

Quick Help

- » What is the "my patents list"?
- » How can I add documents to the "my patents list"?
- » How do I remove items from the list?
- » When will this list expire?
- » Do I need to enable "cookies" on my PC?

Compact | Print

MY PATENTS LIST

12 items in my patents list

Select all

Remove selected

- | | | |
|-----------|---|---------------------------------|
| 1 | Electronic programme scheduling system | remove <input type="checkbox"/> |
| | Publication info: EP1420591 - 2004-05-19 | |
| 2 | Automatic electronic programme scheduling system | remove <input type="checkbox"/> |
| | Publication info: EP1387583 - 2004-02-04 | |
| 3 | Low drag surface construction | remove <input type="checkbox"/> |
| | Publication info: FR2712640 - 1995-05-24 | |
| 4 | COMMUNICATION METHODS AND APPARATUS | remove <input type="checkbox"/> |
| | Publication info: ES2278183T - 2007-08-01 | |
| 5 | Service discovery protocol for coupled UWB data connectors | remove <input type="checkbox"/> |
| | Publication info: GB2434511 - 2007-07-25 | |
| 6 | Microwave frequency communication over cabling | remove <input type="checkbox"/> |
| | Publication info: AT361589T - 2007-05-15 | |
| 7 | Communications systems and methods | remove <input type="checkbox"/> |
| | Publication info: US2007025739 - 2007-02-01 | |
| 8 | Contactless connector systems | remove <input type="checkbox"/> |
| | Publication info: US2006159158 - 2006-07-20 | |
| 9 | ELECTRONIC PROGRAMME SCHEDULING SYSTEM | remove <input type="checkbox"/> |
| | Publication info: AT329458T - 2006-06-15 | |
| 10 | CONTACTLESS CONNECTOR SYSTEMS | remove <input type="checkbox"/> |
| | Publication info: WO2006067528 - 2006-06-29 | |
| 11 | Communication methods and apparatus | remove <input type="checkbox"/> |
| | Publication info: CN1720672 - 2006-01-11 | |
| 12 | AUTOMATIC ELECTRONIC PROGRAMME SCHEDULING SYSTEM | remove <input type="checkbox"/> |
| | Publication info: DE69928141D - 2005-12-08 | |

Data supplied from the **esp@cenet** database

Compact | Print

IPR

- **Intellectual Property Rights**

- Patent
- Copyright
- Trademark
- Others
 - URL
 - Registered Design
 - Design right
 - Database right
 - Plant breeders rights
- Trade Secret
 - NDA

Patents

- **Absolute right to invention**
- **Bern Convention**
- **Expensive: need professional advise**
 - Separate jurisdictions
- **Must be**
 - Novel
 - reducible to hardware (at least in UK)
- **Provisional Patent:**
 - low cost,
 - one-year,
 - can be challenged

Patent uses

- **Offense**
 - **Exert a monopoly**
 - E.g. Drugs, semiconductors
 - Increase barriers for market entry
- **Defensive**
 - **Establish “freedom of action”**
 - Markers for beancounters, investors etc
 - Company assets

Undesirability of Patents (except for drugs)

- **Typically**
 - Tech has many weak patents
 - Ways around
 - Drugs have strong patents (cartel)
- **Kills Network effects**
 - Few inventions stand alone
 - Utility increases with square of users
 - Standards and standards bodies – RANDZ terms
 - Bio (cartel) vs tech
- **Expense – con trick**
 - 3K first application
 - 10K grant
 - 100K international
 - 1M+ to defend
 - Thermo nuclear stand-off
- **Timescale**
 - Long time to grant
 - Moore's Law
 - Short lifetime

Undesirability of Patents

- **Untimely Publication**
- **Suppresses innovation**
- **Hard to administer**
 - No large IPR collection has ever worked
 - E.g NRDC, IBM, University
- **Conclusions**
 - Defensive rather than offensive for tech
 - Be very selective
 - Handy for bean counters, but suppress innovation
 - First stage only if you must
 - Use other protections
 - Good Customer relations
 - Trade secrets

Trademarks

- Right to exclusive use of name or mark
 - classes of goods
 - Local jurisdiction
 - in USA use must be shown
- Company name does not imply trademark
 - Nor does URL
 - But “Passing Off” legislation might help

Copyright

- **Copying prohibited**
 - but not re-invention
 - “clean-room” clones
 - Techniques: include nonsense signatures
- **Self-declarative**
 - Copyright <year> <Author>
 - library rights
 - Include statement of rights (e.g. backup)
- **Typical uses: software, music, film, books etc**
- **“Copyright is dead but it just doesn’t know it yet”**

Internet and Copyright

- **Overextension of Copyright**

- 70 years from death of Author (e.g. Mickey Mouse)
- DRM etc

- **“Fair Use” text only**

- “Deep linking” other than through the main page
 - Probably OK but
 - Germany Paperboy case,
 - US: Ticketmaster vs Microsoft
 - UK: Shetland Times vs Shetland Chronicle in the UK
- “Direct Linking” eg directly linking in another’s picture without permission
NOT OK

- **Search Engines**

- Still undecided; Kelly v. Arriba Soft Corporation
- Implicit permission by omitting the NOINDEX tag

Property or Protectionism?

● Are Intangibles Property?

- According to [ABC News Online](#) (March 30 2005), a Shanghai online gamer has killed a fellow player because the victim stole his virtual sword, sold it and kept the \$462 resulting from the sale. Before taking matters into his own hands, the accused man had approached the police for support but was told that the property didn't exist, and therefore there was nothing the law could do about it.

● Copying is not Theft

- Owner still has it
- Used to remove rights
 - e.g can't resell downloaded tunes
 - Home taping exception/PVR
 - What do you buy when you purchase a Sky Movie?
 - “Managed copying”
 - Copyleft

● There is no consistency.

- Different rights and obligations
- Different jurisdictions and enforcement
- Different uses in different industries



Issues

- 1. Technological Challenges and the Nature of Property (e.g., Digital Content)**
- 2. Organizational Challenges (e.g., Open Source)**
- 3. Ethical and Moral Challenges**
- 4. Strategic Implications (i.e., what does it all mean for a manager or an entrepreneur?)**
- 5. Public Policy Implications (e.g., does IP protection foster innovation?)**

Technological Challenges

- “Information wants to be free” (Brand/Stallman)
 - Countermeasures
 - DRM
 - But remember lending libraries
 - “Fritz” chip
 - Switch costs
 - Moore’s Law, (but bandwidth demand is faster)
 - Search engine dominance
 - What price?
 - Oligarchies
 - *** “Combination of high fixed/low marginal costs, high switching costs and network externalities lead to a dominant firm model” ***
 - One sentence summary of information economics
 - Extinguish third party rights

Organizational Challenges (e.g. Open Source)

- **Virtual Societies/ social networking**
- **Open Source movement:**
 - Eric S Raymond: The Cathedral and the Bazaar
 - **Market rather than hierarchical**
 - **Reputational rewards**
 - **GPL and variants**
 - Copyleft

Ethical and Moral Challenges

– Civil Liberties

- “He who controls the present controls the past; He who controls the past controls the future”
- FoI
- Search engine dominance

– Who owns your identity?

- Government, Visa, Microsoft?

Strategic Implications

- Is the invention
 - Stand alone
 - No network externality
 - No standard
 - No integration with anything else
 - Blocking
 - Sufficient to give control of a market
- Examples:
 - Drug discovery
 - Books/Music/Film
 - Baby feeder
 - <http://www.mandyhaberman.com/>
- Counter-examples:
 - Wifi
 - Browsers
 - GIF image format

Strategic Implications II

- Stand alone markets
 - IPR important
 - Effective cartel/oligarchy
 - Therapeutic drug discovery
 - Publishing
- Everything else (High tech, software etc)
 - Thermo nuclear war standoff
 - Freedom to operate
 - Need IPR to get to the table
 - Bean counters
 - Speed of adoption critical
 - Standards
 - Additionality

Public Policy Implications (e.g., does IP protection foster innovation?)

- http://en.wikipedia.org/wiki/Intellectual_property
- Is granting a monopoly the best way of rewarding innovation?
- Can 75 years be justified for copyright (originally 14 years)
- Should you be able to patent Software and Business Methods (e.g. One click)
- Weak patents and strong courts?

Summary

- **Patents may not give the protection you expect**
 - **Costly to defend**
 - **Premature publication**
 - **High risk gamble**
- **Patents may inhibit innovation**
 - Reward large corporates, not small inventors**
 - Stifle innovation**