



**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada



INTELLECTUAL PROPERTY INSTITUTE OF CANADA
INSTITUT DE LA PROPRIÉTÉ INTELLECTUELLE DU CANADA



The Basics of Intellectual Property

Mala Joshi, Blaney McMurtry LLP

Canada

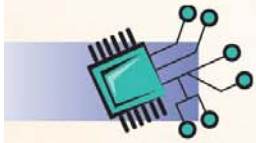


The Canadian Intellectual Property Office (CIPO)

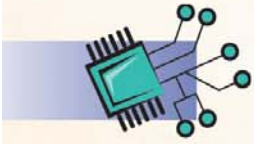
CIPO is responsible for the administration of the intellectual property (IP) system in Canada.

Intellectual Property Institute of Canada (IPIC)

IPIC is the national association of patent and trademark agents and lawyers working in all areas of IP.

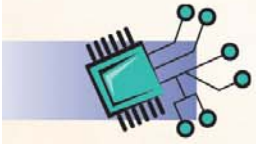


Why it is crucial to understand what IP is all about



- IP is a valuable business asset
- IP information and protection may help avoid costly mistakes
- Consult with proper information sources

Types of IP covered in this presentation



- Trade secrets



- Patents



- Trade-marks

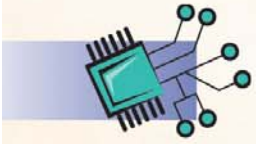
- Copyrights



- Industrial designs



Other types of IP

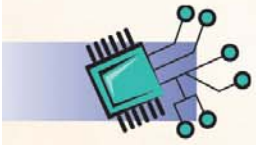


- Integrated circuit topographies



- Plant breeders' rights



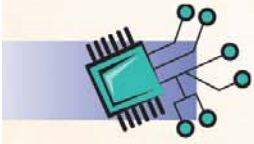


Trade secrets



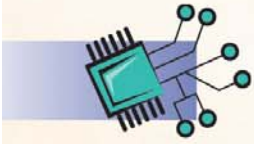
What is a “trade secret”?

Any confidential information used in a business that gives a competitive advantage, and that can be kept a secret.



- Specific product information
 - formula
 - pattern
 - device
 - compound
 - process
- Business information
 - customer lists
 - supplier lists
 - pricing
 - business plans

How is a trade secret protected?



- Confidentiality agreement
- Licence agreement
- Legal duty of confidence

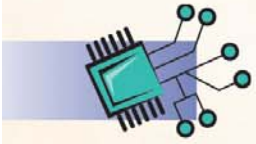


- **employees**
- **agents**
- **officers and directors**

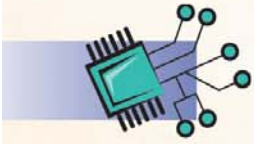


How long does protection last?

- Forever, as long as confidentiality is maintained
– this is an important difference between patents and trade secrets.



What if confidentiality is lost?

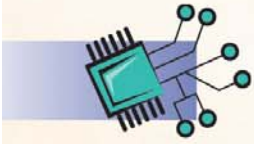


- If the trade secret is disclosed, protection is lost.
- In most cases, the only remedy is damages against the person disclosing the information.
- If the party receiving the information knew it was a trade secret, the Court may issue an injunction to prevent them from using the information.

Patents



The “deal” of the patent



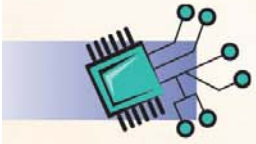
The owner provides a full public disclosure of the invention.



The Canadian government provides a grant of exclusive rights in Canada to the owner.

What is patentable?

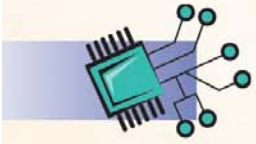
- a product
- a composition
- a machine
- a process
- or their improvement



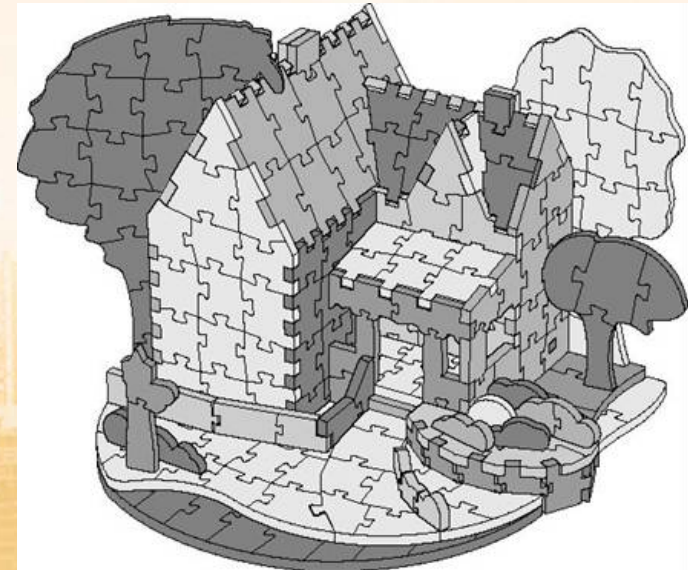
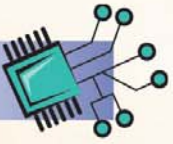
Patentability criteria

An invention is patentable if it is:

- **new**
- **useful**
- **unobvious**



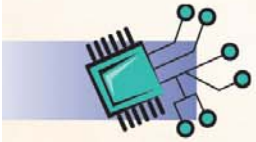
Patent No. 2050969: THREE-DIMENSIONAL, SELF-STANDING PUZZLE



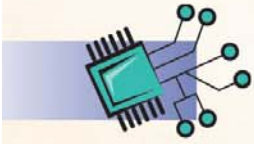
Key steps to obtain a patent



- Search
- No or recent public disclosure of invention prior to filing
- Drafting of the patent application
- Filing of the application



Key steps to obtain a patent (cont.)

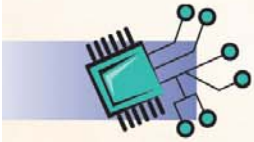


- Examination
- Advantages of using a patent agent

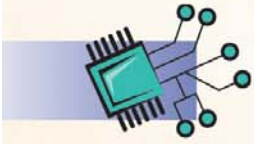
Patent protection

Once a patent is granted in Canada, the patent owner obtains:

- **the right to exclude others from making, using or selling the invention for a limited time in Canada**



Benefits of a patent

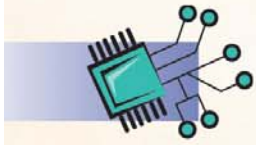


- Enforces exclusive rights
- Hampers competition
- Helps to increase market share and profit margins
- Promotes business deals
- Increases the notoriety of the owner
- Increases the solvency of the owner

Other benefits of patent information



- Identify trends and developments
- Discover new products
- Avoid duplication
- First look at competition
- Find solutions to technical problems
- Identify marketing and manufacturing contacts
- Prevents infringement

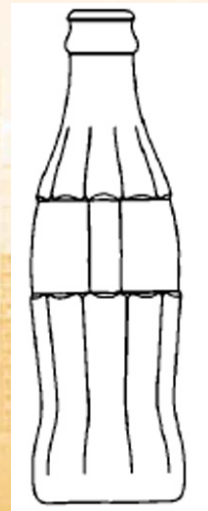


Trade-marks



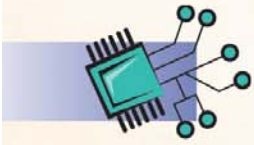
What is a trade-mark?

- Word(s) **KODIAK**
- Word & design
- Design
- Slogan “**ALL THE REST IS JUST TELEVISION**”
- Shape



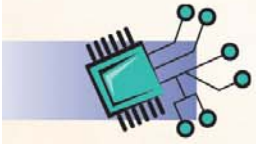
Reproduction courtesy of:

- KODIAK: Kodiak Group Inc.
- PUZZ3D: Wrebbit Inc., 2798140 Canada Inc. et Inventi Limited Partnership
- Girl & design logo: Schering-Plough Healthcare Products, Inc.
- ALL THE REST IS JUST TELEVISION: Astral Broadcasting Group Inc.
- Bottle & design: Coca-Cola Ltd.



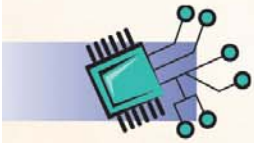
Purpose of a trade-mark

- Distinguishes your goods and services from another's
 - **the trade-mark is a source identifier**

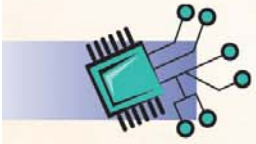


Use of a trade-mark

- Use on goods
 - appear on the goods (wrappers, labels, packaging)
 - at the time of sale
 - sales occur in the normal course of trade
- Use on services
 - appear on advertisements, promotional materials relating to the services offered and services available
- Trade-mark use?
 - trade-names and domain names



Trade-mark protection

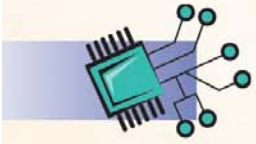


- Common law
- Trade-mark registration

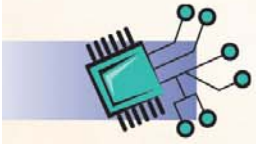
Trade-mark registration process



- Search
- Application to register

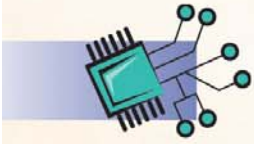


Trade-mark registration process (cont.)



- Timing
- Costs
- Advantages of using a trade-mark agent

Unregistrable marks



- Name of goods or services in any language, e.g., gelato (Italian for ice cream)



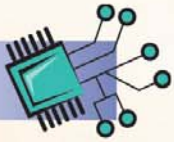
- Clearly descriptive of the goods or services, in English or French: **juicy** for apples



- Deceptively misdescriptive of the goods or services: **sugar sweet** for candy sweetened with artificial sweetener



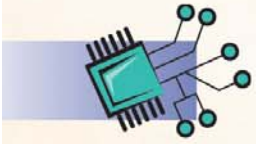
Unregistrable marks (cont.)



- Geographical origin of the goods or services, e.g., Atlantic Cod
- Name/surname: **Jane Smith** or **Smith**
- Confusing with another mark



Distinctive character



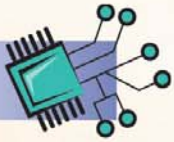
- Distinctive mark vs descriptive mark



- Acquired distinctiveness



Benefits of trade-mark registration



- Right to prevent others from using a confusing trade-mark



- Easier to protect right to use



- Increase value of mark
- Establish notoriety

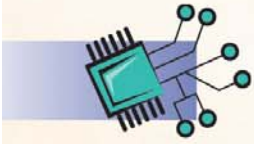


- Comfort that mark is unique to you



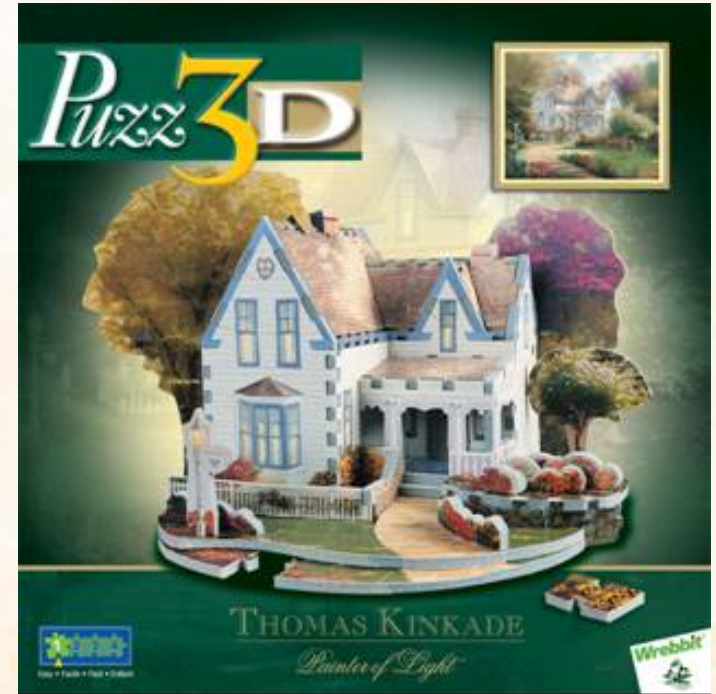
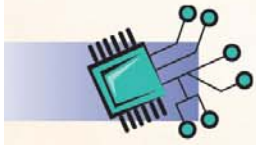
- Protection across Canada

Preservation of a trade-mark



- Use it or lose it
- Use it as registered
- Avoid generic use
- License its use to others
- Promptly stop unlicensed use

Marking

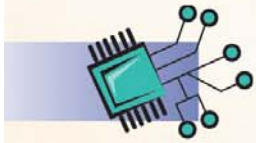


Wrebbit and Puzz3D are trade-marks owned by Inventi Limited Partnership, used under license. Manufactured and distributed by Wrebbit Inc.

Copyrights



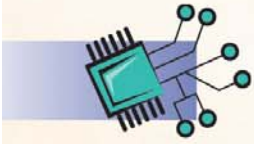
What is copyright?



It is the exclusive right to produce or reproduce an original work:

- literary
- dramatic
- musical
- artistic

Copyright ownership



- The author or creator is the first owner of copyright.



- Common exceptions:

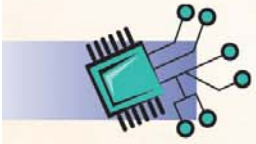
- **work created by employee in the course of employment**
- **commissioned photograph, portrait or engraving**



- Most works created by independent contractors are owned by the contractor.



Rights of copyright owner

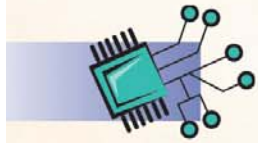


The copyright owner has the exclusive right to:

- **copy**
- **publish**
- **modify**
- **translate**
- **authorize others to do those things**

Copyright is automatic

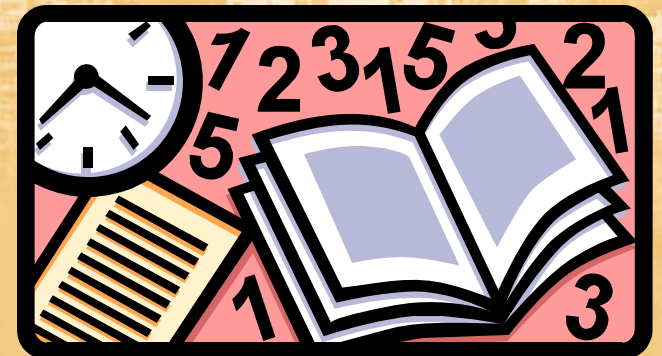
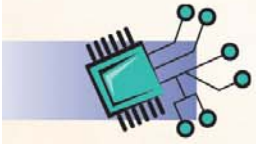
- Use proper marking
- Register copyright
- Consider having the original work witnessed and dated




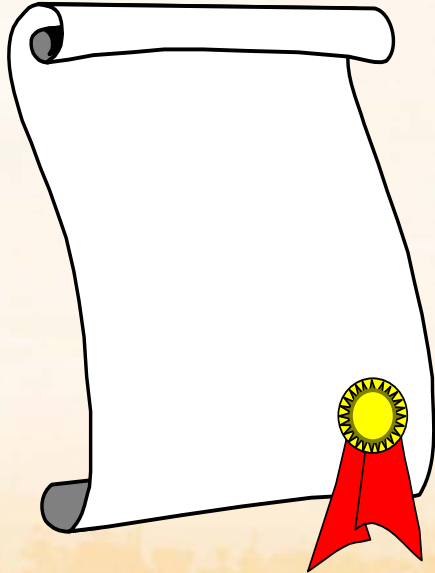
© Owner's name, year

Term of copyright

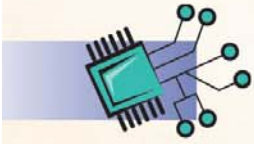
- Life of author plus 50 years
- Common exceptions:
 - **joint authorship**
 - **anonymous works**
 - **posthumous publication**
 - **movies**
 - **photographs**



Benefits of registration

- 
- 
- Use the copyright certificate in court to establish ownership
 - Burden of proof shifts to the challenger
 - Increased damages for infringement

Moral rights



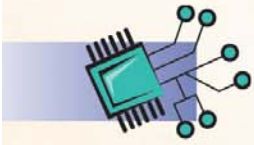
- Right to be named as author or to remain anonymous
- Right to integrity of the work
- Author can prevent uses or changes that would damage honour or reputation
- Moral rights cannot be assigned
- They can be waived in whole or in part

Industrial designs

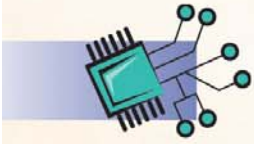


What is an industrial design?

The visual features of shape, configuration, pattern or ornament or any combination of those features applied to a manufactured article made by hand, tool or machine.

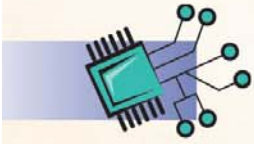


Key steps to obtaining industrial design protection



- No or recent public disclosure of the design prior to filing
- Filing of the application
- Examination — originality
- Registration of the design
- The advantages of using a patent agent

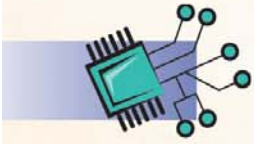
What is protected?



- Original aesthetic features of a product
- Examples:
 - ornamentation on clothing or footwear
 - shapes of bottles or other containers
 - shape of the body of a vehicle
 - electronic icons

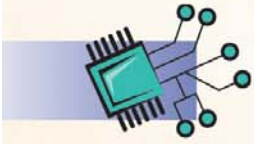


What cannot be protected?



- Manufacturing process
- Functional features of an article
- Principle of construction
- Materials used in the construction of an article
- Useful purpose the design serves
- Colour
- Ideas
- Internal components of the article, not seen in the assembled article

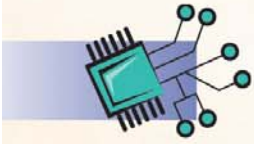
Benefits of registration



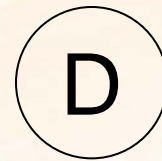
Registration of an industrial design gives the owner exclusive rights to a design for a limited time, allowing the owner to prevent:

- **the making, importing, renting, selling, offering or exposing for sale or rent of any article in respect of which the design is registered.**

Marking



- The proper mark is:



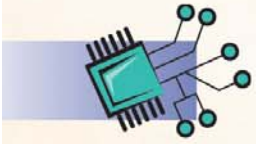
Owner's name

- Marking is not required, but recommended
- Mark must be placed on the article, its label or packaging

Assignment and Licensing



Assignment and licensing of IP rights



Assignment

- transfer of rights



Licence

- permission to use certain rights



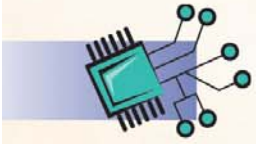
Resources



Warning — Beware of fraudulent and misleading solicitation

- Invention promotion companies
- Trade-mark publishing companies

**Contact CIPO, IPIC or your
intellectual property professional
for more information.**



Contact CIPO

www.cipo.gc.ca

Tel.: (819) 997-1936 or

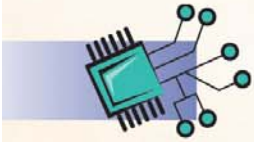
1-900-565-2476 (\$3 flat rate)

E-mail: cipo.contact@ic.gc.ca

Place du Portage I

50 Victoria Street, 2nd Floor

Gatineau QC K1A 0C9



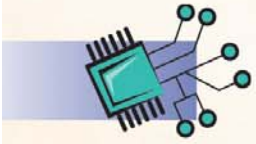
Contact IPIC

www.ipic.ca

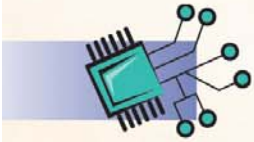
Tel.: (613) 234-0516

E-mail: info@ipic.ca

606-60 Queen Street
Ottawa ON K1P 5Y7



On-line databases



Canadian patents, trade-marks, copyrights and Industrial designs

- www.cipo.gc.ca



US patents and trade-marks

- www.uspto.gov



European patents

- www.espacenet.net



European trade-marks

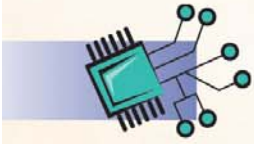
OHIM (Office for Harmonization in the Internal Market)

- www.ohim.eu.int

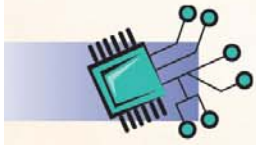


CIPO's Client Service Centre provides:

- information and publications on various aspects of IP;
- detailed information on filing requirements;
- consultation with an information officer;
- searching guidance and access to IP databases;
- lists of all registered patent and trade-mark agents in Canada.



Stand out from your competitors and make IP your best business ally!





Canadian Intellectual Property Office
An Agency of Industry Canada

Office de la propriété intellectuelle du Canada
Un organisme d'Industrie Canada

Stand out from your competitors

Patents

Trade-marks

Copyrights

Industrial designs

Integrated circuit topographies



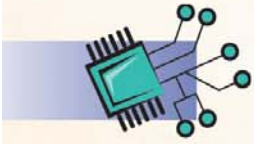
Make intellectual property your best business ally




	Patents	Trade-marks	Copyrights	Industrial designs	Integrated circuit topographies	Plant breeders' rights
Term						
Protection						
Protects against	The Canadian IP System at a glance					
What is protected						



Summary



- IP is a valuable business asset
- IP information and protection may help avoid costly mistakes
- Consult with proper information sources



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INTELLECTUAL PROPERTY INSTITUTE OF CANADA
INSTITUT DE LA PROPRIÉTÉ INTELLECTUELLE DU CANADA



Questions?

Canada





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