

Other IP rights and AI



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Patents are not the only way

- Patents are not always the best way to protect new technologies
- Some existing industries adopt alternative approaches in certain circumstances
- Need to balance potential protection patents might give with downsides

Why are patents such a strong IP right?

- An absolute monopoly
 - No need to prove that an infringer had seen or was aware of your technology, if theirs falls within the claims, it infringes
- Relative ease of enforcement
 - Issues are relatively simple
 - What does the patent mean?
 - Does the alleged infringement fall within the claims?
 - Is the patent valid?
- No issue around how infringement was developed

So, what are the (potential) downsides?

- Patentability?
- Publication of an enabling disclosure
 - Teaching others how to work your technology
- Risk of failure to get grant/invalidity
- Difficulty of policing
 - How do you know if a third party is using your invention?
 - Problem in process patents or where how the infringer's product/service works is hidden
 - How do you prove infringement?
- Geographical limitations
 - Where do you have protection and where does infringement occur
 - Can you pursue infringer?
- Pre-grant window

So, what other protection might there be?

- Copyright
- Confidentiality
- “first mover” advantage and the brand

Copyright

- Protects embodiment, not idea
- Subsists automatically
- Upsides
 - No registration
 - Available (almost) everywhere
- Downsides
 - Needs copying of your coding
 - Doesn't protect the valuable idea
- More of a tool against counterfeiters than real competitors

Confidentiality

- A popular option in the process industries
- Keep your invention secret
- Only disclose to those who need to know and then under NDA
- Not universally enforceable
 - EU Trade Secrets Directive
 - US trade secrets

Benefits of secrecy

- Avoids requirement of enabling disclosure
- If you do maintain secrecy, competition can be effectively excluded
- No time limit on protection

Any downsides to secrecy?

- Does not prevent independent development of similar solutions
- Needs an obligation of confidentiality to exist
- Does not prevent reverse engineering
- Does not permit publication of your solution
- Not easy to police
 - Need to establish
 - Disclosure
 - Obligation of confidentiality
 - Misuse/publication
- Geographical issues in enforcement

When is secrecy best?

- Unpatentable subject matter
- Where proving infringement will be difficult
- Where infringers could operate successfully in remote jurisdictions
- Where the technology will have moved on in very short time
- Where the solution cannot be reverse engineered

And when is it not?

- Where the technology is easily reverse engineered
- where it's easy to prove how an infringement operates
- Where the product embodying the tech will be sold and operated in strong patent jurisdictions

Databases

- Database right
 - A right to prevent unauthorised extraction or use of a qualifying database
 - Owned by the person who invested in the compilation and verification of the database
 - Qualification by geography (citizen of or company established in EEA)
- Post-Brexit?
 - Equivalent right in UK
 - If UK not part of EEA then UK businesses/citizens not protected in EEA

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Thank
you

