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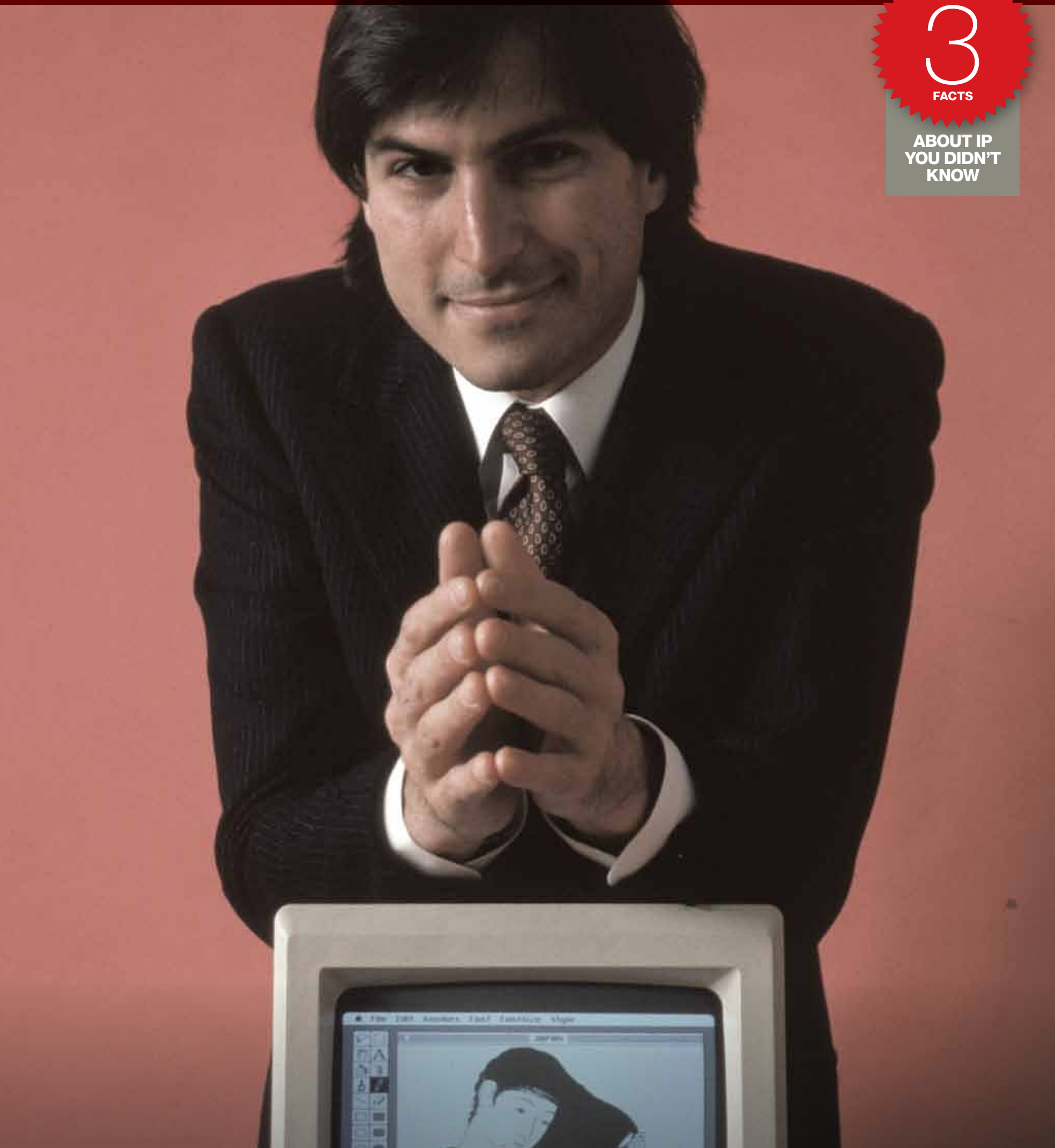
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**MEDIA
PLANET**

APRIL 2012

INTELLECTUAL PROPERTY

3
FACTS
ABOUT IP
YOU DIDN'T
KNOW



VISIONARY INNOVATOR

“(Steve Jobs’) patents and trademarks provide a striking example of the importance intellectual property plays in the global marketplace.”

David Kappos, U.S. Under Secretary of Commerce for Intellectual Property

PHOTO: GETTY IMAGES

**GOT A SOUND MARK
TO PROTECT?**

BOOM

WE HEAR YOU!

The team of leading IP lawyers at Cassels Brock
manages your IP portfolio *right* from the start.



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CHALLENGES



ACROSS INDUSTRIES
This cross-section of industries underscores the ubiquity of intellectual property.
PHOTOS: ISTOCK.COM

Businesses cannot afford to miss the opportunities and mitigate the risks that IP can present. In order to do so, it is imperative to have pro-active management policies and procedures in place so that all of your IP assets may be effectively leveraged.

Protecting a company's competitive advantage: Intellectual property

Intellectual Property in a nutshell

1 Most people have heard of intellectual property (IP), but few are very familiar with the different kinds of IP and how they can help to grow a business. IP rights protect what in many cases are a company's most valuable assets, such as business and original works. More and more Canadian businesses are starting to appreciate how IP rights can be exploited and leveraged to strengthen their competitive advantage in Canada and around the world. Intellectual property rights include patents, trademarks, copyright, industrial designs and trade secrets. Patents protect such things as machines and devices, compositions and processes. Trademark rights protect words, designs and other indicia used to distinguish different products and services in the marketplace. Copyright refers to a bundle of rights which protect literary, artistic, musical and dramatic works in various ways. Industrial design registrations protect the shape, pattern, configuration and ornamentation of products. Trade secrets are protected as confidential information. One or more of these

types of intellectual property may apply to any particular product or service.

Why businesses should care about IP

2 Even if a business has not previously taken advantage of IP rights, it is important to understand them. A basic knowledge of intellectual property is necessary in today's business landscape to appreciate not only how to capitalize on creativity, but also how to avoid infringement. Infringing the IP rights of others, even unknowingly, can lead to the forced abandonment of a marketing effort or halting the production and sale of a product, potentially at a high cost.

In addition to protecting various aspects of a business, IP rights can often be sold, licensed and traded, like more tangible assets. A growing trend in some industries is the cross-licensing of patents, through which companies work together to improve technologies and competitiveness while maintaining control over their own IP assets. Many other business activities provide opportunities to leverage intellectual property, for example developing R&D strategies or marketing plans, franchising and licensing, amongst others.

"A basic knowledge of intellectual property is necessary in today's business landscape to appreciate not only how to capitalize on creativity, but also how to avoid infringement."



Mark Eisen
President
Intellectual Property Institute of Canada

Getting started: How to protect IP

3 Any business which might have intellectual property to protect should speak with an IP professional to determine available options and timelines. IP lawyers and agents have specialized knowledge in the many nuances of IP protection, and will help a business to avoid pitfalls while ensuring that the right scope of protection is secured for each IP asset.

IP professionals can also help businesses exploit the value in their intellectual property, for example through proper licensing, and assist in enforcing rights against infringers. Through their unique skills and experience, many IP professionals can also provide guidance in the development of IP strategies and maintaining an international IP portfolio.

The Intellectual Property Institute of Canada (IPIC) is Canada's professional association of patent agents, trademark agents and lawyers practising in all areas of intellectual property. For a list of registered agents or for more information, visit IPIC's website at www.ipic.ca.

MARK EISEN
editorial@mediaplanet.com

Driving Canadian healthcare innovation

Billions of dollars that have flowed into Canadian universities and research labs to help fund innovation in healthcare could be at risk.

Canada has fallen behind in its ability to attract global investment that drives Canadian health research and innovation. Many of our global competitors have moved ahead of us, not only on the prioritization and protection of intellectual property, but on more efficient regulation. Twenty-five years ago, Canada made changes that positioned us as a world leader in this arena. Investment skyrocketed as a result but that was a long time ago, and the world has since moved on.

Canada is close to an agreement with the European Union on a wide range of trade and investment issues. This Comprehensive Economic and Trade Agreement (CETA) has the potential to level the playing field between us and our U.S., European and Japanese trading partners and competitors. If we cannot make progress in the context of this essential trade agreement, Canada's ability to compete against new and established players for our share of the multi-billion dollar health research budget will be seriously weakened. Canada's research-based pharma-



Deborah M. Brown
President and Managing Director, EMD Serono
Chair of the Board, Rx&D.

ceutical industry is part of our country's innovative future. Through cutting-edge medicines and vaccines, we deliver better health outcomes to Canadians every day. These innovations offer more cost-effective care and better results for patients. But there is much more to do. Canadians expect our industry to continue to develop new medicines, and to address those conditions for which we don't have many answers. That means we must drive healthcare innovation now and into the future - an effort that hinges on the development of modern-day public policy that aids in attracting international investment.

Our member companies have invested more than \$20 billion in Canadian research over the past twenty-five years. Annual research and develop-

ment budgets grew from \$93 million to over \$1 billion in 2012, a 1500% increase. These investments created thousands of high-value research jobs, with thousands more in manufacturing and supporting industries here in Canada.

Hanging on to these investment dollars, securing the future of more investments requires deliberate action now. Drug development costs have never been higher. Development timelines have never been longer. Many nations have not only improved the legal environment for their innovators, they have also streamlined regulatory and research incentive systems.

Here's how the new trade agreement would do the same for Canadian innovators. CETA includes three straightforward, simple and essential tools. Having an effective right of appeal for innovators in our patent regulations is a matter of basic fairness. Just as in all legal decisions, both parties should have equal rights to appeal an unfavourable decision by the court.

Second, patent term restoration ensures that inventors can claim some of the years of patent time that they currently expend on clinical trials or lose to government regulatory processes. Canada is one of only three OECD countries that do not have any form of patent term restoration.

Finally, our existing data protection regulation safeguards a health innov-

ator's submissions to Health Canada for eight years, but the EU's safeguards last two years longer. We need to match that.

These issues may seem abstract, but they are important to the health and well-being of Canadians. Innovation defines the future of health care. Just as in 1986, we can take action today to draw investment and encourage innovation for the 25 years.

New medicines and vaccines play an essential role in Canadians' healthcare. They are a growing part of front-line medical care. But contradictory to the claims of some, innovative pharmaceuticals are not a cost driver in today's system. Rather in recent years, they have become an increasingly critical element in a cost-efficient, sustainable system.

Canada's pharmaceutical healthcare innovators have been playing a central role in bringing new solutions to Canadians' healthcare challenges for decades and more so over the past twenty-five years. Canadian jobs, research strength, health and well-being depend on our ability to continue. To remain at the leading edge, in health and as a prosperous economy, we must adopt a CETA that positively addresses these three issues for the benefits it will deliver to Canadians.

DEBORAH M. BROWN
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WE RECOMMEND



PAGE 06

Patents VS. Trade Secrets
Understanding the right strategy.

"Trade secrets, most famously illustrated by the recipe for Coca Cola, can be any formula, plan or other co-ordinated information, used for competitive advantage, which is not generally known. . . Unlike patents, trade secrets are not protectable against those who independently discover the secret, including through reverse engineering."

Steve Jobs **p. 04**
1. Patents and trademarks that changed the world.

Obtaining valuable patent rights **p. 06**
2. Four things to get "Right" when patenting.

MEDIA PLANET

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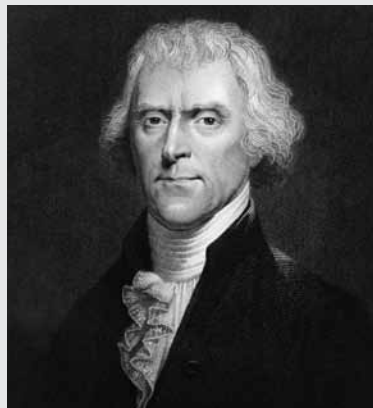
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ADVICE FROM THE PAST



➔ "If nature has made any one thing less susceptible than all others of exclusive property, it is the action of thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it."



THOMAS JEFFERSON, AUGUST 13, 1813
Politician, Inventor
PHOTO: ISTOCK.COM

NEWS

Bringing ideas through to commercialization **through public-private partnerships.**

FACT

1

OVER 80% OF THE CORPORATE VALUE IN THE S&P 500 IS COMPRISED OF INTANGIBLE ASSETS.

Closing the innovation Gap in Canada with students leading the way

■ **Question:** What is innovation and why is everyone so concerned about it?
■ **Answer:** Innovation is the ability to extract economic and social value from knowledge. Canada’s current and future prosperity and quality of life depends on how well it innovates.

It all starts with an idea. According to the Conference Board of Ontario, “the generation, development and implementation of ideas to produce new and improved products, services and processes” is what drives a nation’s wealth. When it comes to ideas, Canada is wealthy. Its colleges and universities have a robust culture of basic research—bolstered by \$3 billion a year in Scientific Research and Experimental Development (SR&ED) tax credits.

Despite this support, Canada lags behind its peers in innovation performance. In a recent ranking, Canada received a “D” in innovation and was ranked 14th out of 17 peer nations in how well it turns its ideas into innovative, real-world solutions. This problem—known as the innovation-commercialization gap—has made Canada less globally competitive and put its economic future at risk.

Pat Horgan, Vice-president of Manufacturing, Development and Operations, IBM Canada, explains, “Canada has been fortunate and unfortunate to benefit from a dominant natural resources economy. However, we’re lagging behind because of underinvestment in research and development (R&D), which chokes innovation and stymies productivity.”

For more than a decade, government and various industry associations, such as the Canadian Advanced Technology Alliance, have been addressing this issue. One major solution that has emerged is applied research col-

laboration between colleges/universities and industry. Applied research is directed primarily towards a specific practical aim or objective, versus basic research, which is driven primarily by the curiosity of the researcher.

Through the Colleges Ontario Network for Industry Innovation (CONII), a network that links enterprises with colleges to pursue applied research initiatives, Ontario colleges have become major catalysts for innovation. According to Trish Dryden, Associate Vice-President, Research and Corporate Planning at Centennial College, CONII colleges work closely with small-to-midsize enterprises (SMEs)—companies with fewer than 500 employees that represent 99.8% of all companies in Canada.

Dryden says that these collaborations are pragmatic solutions that benefit all parties. They work because “this is about bringing theory and practice together.” She cites Centennial’s collaboration with Toronto-based Clear Blue Technologies (CBT), a company that develops hybrid wind and solar controllers for off-grid solutions, as a good example. When CBT needed support to create an off-grid power solution for street lights in remote locations, they came to Centennial. Dryden says, “Our math students helped them with mathematical modeling. Then our environmental technology students did real-world testing by setting up solar panels, turbines, and street lights in the parking lots on campus. Then we hooked CBT up with the School of Business and our Design students so they could get marketing support.”

When companies were polled about barriers to innovation, they cited lack of expertise and access to technology and equipment as major challenges. There are also the issues of time and intellectual property. Dryden says, “When you’re competing and

attempting to innovate, speed is of the essence. We can leverage multidisciplinary teams to complete projects. Also, companies gain intellectual property (IP) advantages. If the patent and IP is unencumbered, it allows them to attract investors.”

According to Andrew Currier, a Toronto-based attorney and co-founder of the firm Perry & Currier, “A high-quality patent filing makes a staggering difference to the final valuation of an innovation. To be successful it is critical that our innovation culture embrace and integrate IP strategy into the earliest phases of the innovation process. Otherwise, we are giving away, for free, our most valuable intellectual assets.”

Even large companies are looking to universities. IBM Canada has partnered with seven Ontario universities, with an investment of \$175 million, to support applied research. Horgan, from IBM, explains, “This is a unique innovation model. Ultimately, this will enable public-private sector research collaboration in high-performance computing and analytics to harness Internet-scale data and drive made-in-Canada commercial solutions for pressing societal challenges, including information technology, health and urban infrastructure.”

The benefits are bigger than economics. Dryden notes that there is a job creation component, as well as a social element—especially at Centennial, which has the largest number of international students in Ontario, as well as many who are the first to attain postsecondary education in their families. “Applied research and innovation are part of a whole broad global citizenship and social justice imperative—and we are deeply committed to that.”

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The next 25 years

Twenty-five years ago, Canada made a bold decision to drive more international investment to Canada’s life sciences sector.

The result? Pharmaceutical R&D investment in Canada soared from \$93 million in 1986 to \$1.3 billion in 2010 – a 1,500 per cent increase.

These investments have changed the lives of millions of Canadians.

Today, breast cancer hospitalizations are down by 72 per cent, diabetes by 30 per cent, prostate cancer by 70 per cent and respiratory diseases by 45 per cent¹, in part because of innovative medicines.

These results are staggering, but there is more to be done.

In the current CETA trade discussions between Canada and the EU, Canada has the opportunity to once again strengthen its pharmaceutical IP safeguards.

By supporting CETA, Canadian policymakers will spur the development of important new medicines, vaccines and innovative health research.

What will the next twenty-five years look like?

www.protecthealthcare.ca

It's up to us.



¹OECD Health Data, 2012



Canada's Research-Based Pharmaceutical Companies
Les compagnies de recherche pharmaceutique du Canada

Rx&D is the association of leading research-based pharmaceutical companies dedicated to improving the health of Canadians through the discovery and development of new medicines and vaccines.
www.canadapharma.org

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FACT

2

IP INFRINGEMENT IN THE FORM OF COUNTERFEITING IS A \$600 BILLION INDUSTRY WORLDWIDE.

Steve Jobs exemplifies this year’s theme for World Intellectual Property Day: Visionary Innovators. His vision in making sophisticated technology simple and fun to use transformed the way we interact with the digital world.

Apple’s late CEO, is about to become a Hall of Famer

A patent Hall of Famer that is...

The U.S. National Inventors Hall of Fame in Alexandria, Virginia and Invent Now, a supporting organization, are set to induct Jobs into the Hall on May 2 for patent number 7,166,791, Graphical User Interface and Methods of Use Thereof in a Multimedia Player. In other words, he will be honoured for the interface that made the iPod a huge success story, and paved the way for graphical innovation on the iPhone.

Though Jobs is being honoured posthumously, Invent Now had nominated him prior to his death. Typically, a panel of experts in the fields of science, technology and engineering screen the patents and make the final selections for inductees being considered for inclusion.

The criteria for induction into the Hall of Fame requires candidates to hold a U.S. Patent that has “contributed significantly to the nation’s welfare and the advancement of science and useful arts”, according to the mission statement. Though he

will be inducted posthumously, Jobs was originally up for inclusion prior to his death.

He became known as a visionary leader and marketing impresario at Apple’s launch events, yet he was ultimately an inventor, first and foremost. There are 323 patents that bear his name solely or among a group of inventors. The range of patents is fairly extensive too. There are designs for the first Macintosh computers from the 1980s, the original iMac from the 90s, the first iPod design and even the glass staircases seen in many Apple Stores.

Jobs will be joining some exclusive company at the Hall, including longtime friend and Apple co-founder, Steve Wozniak, who was inducted in 2000. Though they may not be household names, past inductees include Vint Cerf and Bob Kahn, inventors of TCP/IP, the basis of the Internet, Bob Metcalfe, who invented Ethernet, and audio visionaries Amar Bose and Ray Dolby. One notable induction this year is Gary Starkweather, who invented the

↓ FACT BOX

- **The iPod:** has revolutionized the way we experience music. iTunes makes it quick, easy, affordable – and legal – to buy and download music; within 16 days of its launch in 2003, it had recorded 2 million downloads.
- **The iPad,** the fastest selling technical device ever, has changed the way we surf the web and read books, newspapers and magazines.
- **More than 25 billion apps** have been downloaded from Apple’s App Store by over 315 million iPhone, iPad and iPod Touch users worldwide.
- **Logic and Garage Band** software programs make it easier for aspiring musicians to record and produce their own music.

laser printer when he worked with Xerox, and worked briefly with Jobs at Apple as well. Each of those inventions made a technological and economic impact for individuals and businesses. With this year’s 10 inductees, the Hall of Fame will have 470 total since it was established in 1995.

The World Intellectual Property Organization (WIPO) in Geneva has presented the public with an exhibit titled, The Patents and Trademarks of Steve Jobs: Art and Technology that Changed the World, which consists of 30 large iPhone-style panels, each displaying the front pages of some of the iconic patent and trademark filings listing Jobs as the inventor or co-inventor. The exhibit opened on March 30th and will run through to April 26th, World Intellectual Property Day.

It was originally unveiled at the U.S. Patent Office Museum in Alexandria before it moved to WIPO in Geneva. From there, it will be held at the Smithsonian in Washington, D.C. and after a brief hiatus, on to the

L.A. County Fair in Los Angeles.

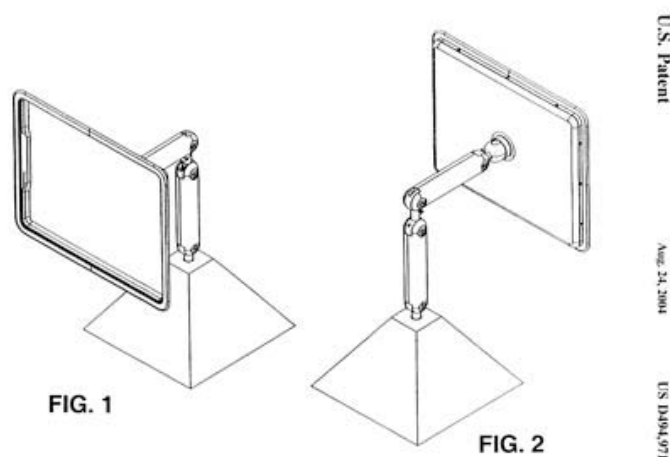
Aside from the exhibit, Jobs’ legacy lives on through the Apple products and services he demanded from his staff, and so passionately unveiled to consumers over the years. Some of them have elements based on his patents, while others were inspired by him during his two tenures at Apple.

Up to his death and till now, rumours persisted that he intended to take Apple into the flat-panel TV business, and he expressed interest in the TV space in his biography. Indeed, one of the last patents awarded to him posthumously in January as an inventor was an Apple TV patent for organizing episodic content and recording live broadcasts.

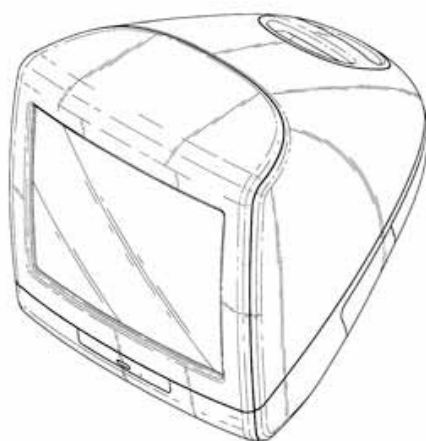
Time will tell if some of Jobs’ patents will lead to another digital revolution in the TV space.

TED KRITSONIS
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Apple patent display



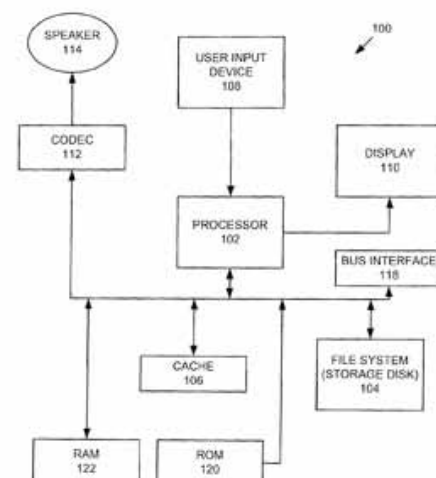
DISPLAY DEVICE WITH A MOVEABLE ASSEMBLY. The ornamental design for a display device with a moveable assembly, as shown and described.



COMPUTER ENCLOSURE. Upon returning to Apple in 1997, Jobs began work on the iMac, a new base-level computer that would begin the company’s turnaround. Released to the public in August of 1998, the iMac’s originally controversial design was outlined in this patent, filed on May 6, 1998.



MEDIA DEVICE. We claim the ornamental design for a media device, substantially as shown and described.



DESIGN OF THE IPOD USER INTERFACE. In a portable multimedia device, a method, apparatus, and system for providing user supplied configuration data are described. In one embodiment, a hierarchically ordered graphical user interface are provided. A first order, or home, interface provides a highest order of user selectable items each of which, when selected, results in an automatic transition to a lower order user interface associated with the selected item. In one of the described embodiments, the lower order interface includes other user selectable items associated with the previously selected item from the higher order user interface.

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THE VALUE OF PATENTS TO EARLY STAGE TECHNOLOGY ENTREPRENEURS

Technology entrepreneurs face high costs and uncertainty when patenting innovative technologies, with even greater costs and uncertainties when prosecuting someone else for infringement. Given resource constraints and the need to watch every dollar, should an early stage technology entrepreneur consider patenting to be an essential part of their business development?

The answer to this question depends on the nature of the technology, current market conditions and industry expectations. Patenting can provide a fundamental competitive advantage for a technology venture that enables it to provide a novel product or service with limited likelihood that a competitor will offer an identical technical solution; increasing the likelihood that the venture will be profitable. With the often lengthy public disclosure process, the granting of a provisional patent not guaranteed together with Patent Office claims which may only allow a small number of the original claims, there are definitely risks in patenting. Indeed, in certain technology fields,



Dr. Andrew Maxwell, M.B.A., P.Eng.
Chief Innovation Officer,
Canadian Innovation Centre

a technology may become obsolete before the patent is even granted. As a consequence, the decision to patent is complex and requires a more complete evaluation of the overall business strategy before the decision to patent or not to patent is taken.

That said, in most cases technology entrepreneurs often find it worthwhile to patent, not only for the obvious benefits identified, but also because having an issued patent can create additional value for the entrepreneurs. At the simplest level, the filing of a provisional patent acts as a signal to potential partners and investors of the novelty of your innovation, and provides evidence the entrepreneur will use the legal recourse behind the patent to create a significant barrier to entry for potential competitors.

An issued patent, or even the filing of a provisional patent has other direct benefits, particularly in regard to the entrepreneur's ability to share detailed knowledge of the technol-



Josie Graham
COO & Director, Projects and Studies
Canadian Innovation Centre

ogy with others without fear that the idea will be stolen. This enables the entrepreneur to pre-sell the solution to potential customers and partners, and receive early and rapid feedback that allows him or her to improve the innovation. Further, as many technologies may be required to allow a product to get to market, a company with a patent can more easily cross-license his or her technology, creating freedom to operate for the new venture, as well as the potential to license the technology for another application.

Patents can also be used strategically without recourse. The mere presence of a patent can enhance a product resulting in a perceived value which can also increase the company's reputation. Further, providing a distributor evidence of a patent will encourage them to work with you and discourage them from working with a company the entrepreneur claims in infringing the patent. This is likely because the distributor will

wish to avoid the hassle and associated legal costs of participating in a potential lawsuit. Finally, a patent provides some evidence to a potential investor that the entrepreneur has developed an ingenious and useful solution with a clear barrier to entry for potential competitors. This enables the investor to increase his or her confidence level in both the venture's ability to be profitable, and the likelihood that the venture will achieve a successful exit strategy.

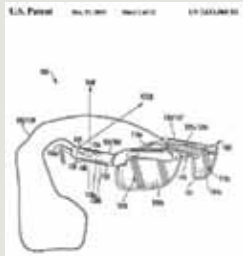
Andrew is the Chief Innovation Officer at the Canadian Innovation Centre. He plays a strategic role in the creation of new technology based businesses, from government, academic and industry perspectives. This has allowed him to understand the realities of commercialization.

Josie is the Chief Operating Officer at the Canadian Innovation Centre. She provides Business Planning and Market Entry strategies, along with Validation Assessments and Alignment studies. Her backgrounds in Economic Development and Marketing have allowed her to work with entrepreneurs to help them commercialize their technologies and business ideas.

DR. ANDREW MAXWELL, JOSIE GRAHAM
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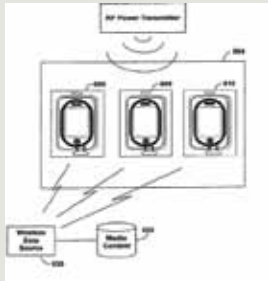
NEW WEIRD AND WACKY PATENTS

The future is now



Google glasses

Google announced that they would be developing a pair of augmented reality glasses that would present informational displays to users based upon voice and motion commands. The device will wrap around the bottom of your forehead, like regular glasses. On the right side there will be a small display, that when located close to your eye, will give a clear display of relatively simple graphics. There will also be a headset with earphones and microphone built in. The processor and battery would be located next to the display on the right side of your head.

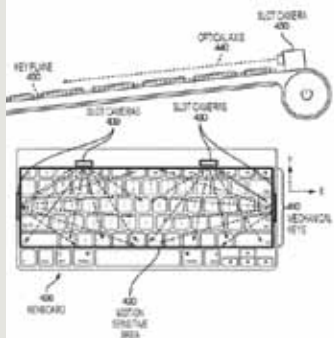


Apple charging packaging

Apple has a patent application which would allow wireless charging in its portable devices. The patent application titled "Active Electronic Media Device Packaging", describes an active packaging which would allow for supplying power, data or both to electronic gadgets while the devices are housed within the active packaging. Power could be transmitted through one or more wireless techniques or by a direct power connection to an external power supply. Moreover, the active packaging could include at least one antenna to receive a radio frequency (RF) signal from an RF power transmitter. It could be an external antenna or incorporated within the packaging.

Nokia's vibrating tattoo patent for phones

Nokia has taken out a U.S. patent on technology used to create special tattoos that can pick up phone signals and send a "perceivable impulse" to your skin via magnetic waves from the ink, which contains iron. According to the patent, the tattoos could even allow you to customize sensations as if they were ring tones. The patent also includes a temporary stick-on tattoo option for those who aren't too sure about the idea.



Keyboard with motion Gesture Recognition

The keyboard would have four "slot camera's" around the perimeter of the keyboard that would enable tracking of the user's finger movements in order to provide the normal mouse or trackpad cursor tracking or scrolling. In the patent Apple explains the keyboard would likely have two modes; a keyboard and a mouse mode that could be toggled to switch between them. The two modes could then mean that a mouse or trackpad could be rendered obsolete by the use of this keyboard and it's motion gestures.

NEWS



FACT
3
AS OF MARCH 28TH, 2012, THE CANADIAN INTELLECTUAL PROPERTY OFFICE (CIPO) NOW ACCEPTS SOUND TRADE-MARKS.

BALANCE
The tech industry has been characterized by a wave of patent litigation: Samsung VS. Apple; Yahoo VS. Facebook. Small-to-medium-sized enterprises are no exception.
PHOTO: ISTOCK.COM

Intellectual property protection: insurance for innovation

Is your IP covered?

■ **Question:** In a litigious environment, what's the best way to level the playing field for businesses that want not only to protect their patents, but also to realize the full value of their creativity, drive and hard work?
■ **Answer:** It's important for businesses—especially start-ups and small—and mid-sized companies to understand the risk of patent litigation and create a proactive risk-management plan for their intellectual property (IP).

The idea of being able to take an innovative idea and develop it through hard work into a thriving enterprise is a cherished notion in North America that is admired by people around the world. However, the ability to pursue this free-enterprise dream is not as straightforward as it seems. IP exposure can be one of the biggest threats to a company's very survival.
“Business owners often don't realize what insurance they don't have. The day someone launches a patent-related lawsuit, they realize that there are things for which they aren't covered,” explains Mike Smith of Vancouver-based CMW Underwriters.
Specifically, companies are vulnerable to two IP-related threats—patent trolls and grasshoppers. According to Robert Fletcher,

“Without specialized IP insurance in place to fund expensive lawsuits, the result is always the same—an initial struggle and then the little guys runs out of funds and capitulates.”

Founder and CEO of the Louisville, Kentucky-based Intellectual Property Insurance Services Corporation (IPISC), “Although patent trolls don't make a product, they are notorious for aggregating patents and then targeting and suing companies for the sole purpose of extracting royalties.” Often these suits are of a frivolous nature. He characterizes grasshoppers as “entities that move quickly to practice a profitable invention, knowing the 'little guy' lacks the resources to do anything about it.”
Once a company gets pulled into an IP litigation situation, the financial results can be devastating. Fletcher says, “Without specialized IP insurance in place to fund expensive lawsuits, the result is always the same—an initial struggle and then the little guys runs out of funds and capitulates.”
According to information from a

recent issue of “Insurance Journal,” patent lawsuits are both time-consuming and expensive. On average, it costs \$2.8 million to litigate a patent lawsuit in a U.S. court when the amount being disputed is between \$1 million and \$25 million.
The way to shift the balance of power is by having IP insurance—which was pioneered in the late 1980's by IPISC. According to Fletcher, the way to protect clients' IP— including their patents, trademarks, copy rights and trade secrets—is by providing the money needed to effectively defend against infringement allegations as well as pursue infringing parties.
In their most recent newsletter, IPISC cites the example of a female entrepreneur who by dint of a good idea and a lot of hard work succeeded in creating a thriving, growing business based on a single product. Her business became recognized for “its

innovative, patented 'made in the USA' products. At one point, a much larger company decided to copy her product and enter the marketplace. She repeatedly notified the other company to stop their infringing activity—and they did. She was lucky. At that point, she went to IPISC and got an IP Abatement insurance policy. Surely enough she eventually needed it.”
There are four types of IP insurance. The main two types are abatement insurance, which allows a company to defend against an infringer and defense insurance to defend against a claim of patent infringement. There is also multi-peril insurance (a combination of abatement and defense) and unauthorized disclosure of confidential information insurance.
The stakes are high. Smith notes that most companies don't have IP insurance and are at risk. But there is an even bigger risk—the risk of not being able to compete fairly in the business world and what that means to individuals and society as a whole. After all, as Fletcher says, “Innovation fueled by the possibility of individual gain is the most powerful economic stimulus in the world.”
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TIPS



David French
after 35 years as a patent and IP attorney is now the CEO of Second Counsel Services, providing guidance and workshops in the management of patents and Intellectual Property: www.secondcounsel.com

Obtaining valuable patent rights

To obtain a patent simply disclose and define a new arrangement that leads to a useful result. It is as easy as that. But to obtain a **valuable patent** the following four “Rights” must be present:

- Right invention**
1 Something people will want that you can make at a price they are willing to pay. The invention must be appealing and affordable.
- Right market circumstances**
2 No other existing close alternatives that will compete. The market circumstances must be favourable.
- Right patenting opportunity**
3 A feature in your product that is new and inventive, thus qualifying for patent protection. Something about the product must be novel.

- Right execution**
4 A rigorous write-up of the invention prepared by a patent professional and inventor working together. It is a tragedy to waste a good patenting opportunity.

The value of a patent is the gap that separates a novel patentable feature from the closest competing alternative. Inventors should anticipate what their competitors will try to do if the invention is a success. Think of alternate ways, outside the scope of the first draft patent claims, to avoid infringement. Then revise the invention, the application, and the patent claims to close the loophole. Success!



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PANEL OF EXPERTS

	Question 1: How will Bill C-11 affect the average consumer? How will it affect the average creator?"	Question 2: Does Bill C-11 go far enough to bring Canada in line with its international obligations?	Question 3: What's next for copyright legislation in Canada once Bill C-11 becomes law?
 <p>Casey Chisick Partner, Cassels Brock & Blackwell LLP Certified Specialist in Intellectual Property (Copyright)</p>	<p>I'm not sure the average consumer is inclined to go to the trouble of breaking a digital lock in order to access or manipulate content. While people have strong views about whether locks should be used at all, prohibitions against circumventing them may not change very much for the average-consumer. On the other hand, consumers will benefit from a lot of new exceptions that in most cases will deprive creators of the right to get paid. Bill C-11 will make it a lot harder for most creators to make a living.</p>	<p>To me, the real question is whether it goes too far. Canada is required to limit any new copyright exceptions to certain special cases that do not conflict with the normal exploitation of works or unreasonably prejudice the legitimate interests of creators. Whether it's expanding fair dealing to apply to apply to "education" (without defining that term), allowing extensive private copying without compensation to rightsholders, or creating a broad new exception for user-generated content, there's a real risk that the bill goes beyond the allowable boundaries.</p>	<p>Before Bill C-11, no meaningful changes to the Copyright Act had been made since 1997, and the latest round of reform started more than a decade ago and involved three failed bills before this one finally made it out of committee. The debates have been so contentious and drawn-out that Ottawa is surely experiencing acute copyright fatigue. Despite more work needing to be done, I don't think we'll see further reform for at least five years. Meanwhile, we can expect Bill C-11 debates to continue before the courts, who will now be left to sort out some big questions left unanswered by the legislation.</p>
 <p>Jay Kerr-Wilson Partner, Fasken Martineau DuMoulin LLP Areas of focus: Copyright, broadcasting and telecommunications.</p>	<p>Bill C-11 provides a number of new exceptions to copyright that are intended to benefit consumers. These include the right to record television programs for later viewing, the right to copy music and other content onto devices, and the right to make mash-ups and post them online. Rights owners, including creators, will be given new legal tools to enforce their rights in the digital environment including new protections for digital locks. However, the consumer exceptions discussed above could reduce revenue from licensing opportunities for some rights owners.</p>	<p>Once Bill C-11 is passed, Canada will almost certainly meet its international obligations under the two 1996 internet copyright treaties. Canada will exceed its international obligations with respect to the strength of the protection it will provide for digital locks, given that the digital locks will trump many of the consumer rights provided in the bill. Canada's law will impose obligations on ISPs and search engines that are not required under the treaties.</p>	<p>Bill C-11 contains a requirement that the Copyright Act be reviewed every five years, which almost guarantees that many of the policy debates surrounding C-11 will be revisited regularly. As well, Parliament may decide to deal with the fallout from the five copyright-related appeals that the Supreme Court heard in December. Those decisions should be released sometime this year. Canada may face continued pressure to agree to further copyright reforms as part of its trade negotiations with Europe and the Asia-Pacific Region.</p>
 <p>Margaret Ann Wilkinson Professor and Faculty Scholar, Western University Director of the Area of Concentration in Intellectual Property</p>	<p>The effects of the Bill will be overshadowed by increased use of contracts and other legal instruments: consumers will increasingly find the uses they can make of materials different in their private and work lives. At work, many people, including those working in schools and provincial governments, will be insulated from the effects of Bill C-11 by contractual and other payments made by their institutions but at home, in private, the same people may find access diminished unless they enter into their own personal contracts.</p>	<p>Yes. Canada's first obligation is to our own society and economy. Ideally Canada only agrees to international obligations reflecting Canada's principles and interests. The oldest continuing international copyright tradition belongs to international public law; the more recent is found in international trade law. Found now in two different aspects of international ordering, there can be a tension around copyright reform. With Bill C-11, the Canadian government has steered a course which will be unique to Canada and this seems to be a very prudent move.</p>	<p>The World Intellectual Property Organization has begun to consider international protection of users' rights. Parliament and the Supreme Court have already made Canada a leader here but we need to ensure consumers cannot be asked to sign away their statutory rights in any contract with a copyright holder. There are also technical aspects of copyright administration, especially details of processes before the Copyright Board, which remain underdeveloped in our Copyright Act and one might hope our legislators will turn their attention to these matters next.</p>

Protecting and Exploiting IP: Patent Protection vs. Trade Secret Protection

The question which is the better choice—patent or trade secret—is not susceptible to easy answer. It requires case by case analysis.

Canadian patents provides owners with robust enforceable rights relating to inventions which are new and useful arts, processes, machines, manufactures or compositions of matter. Assuming the invention qualifies, in exchange for full, public invention disclosure through the patenting process, the owner has a monopoly defined by the claims in the patent, to make, use and sell the invention for 20 years from the filing date of the patent application. The patent owner can take legal action

against those who “infringe” - that is, who interfere with that monopoly - to restrain such activities by injunction during the remaining term of the patent, and also for money damages or an account of the infringer’s profits.

Trade secrets, most famously illustrated by the recipe for Coca Cola, can be any formula, plan or other co-ordinated information, used for competitive advantage, which is not generally known.

Trade secrets and patents can be sold, transferred or licensed. The primary advantages of trade secrets over patents are that: i) while an invention must satisfy certain criteria to be patentable, including requirements of inventiveness and novelty, trade secret can protect non-patentable subject matter; ii)



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unlike patents, trade secrets rights generally have no time or geographic limitations. Properly managed, trade secrets are entitled to protection indefinitely, as long as they remain secret; and iii) a patent publishes the invention, which may be a process or formula the use of which is impossible to detect in a final product, rendering enforcement difficult.

However, caution is required in electing the trade secret option. Trade secrets are protected only by agreements (express or implied), and legal action to inhibit disclosure or misuse and money damages for lost opportunity; Canadian common law provides limited protection. Maintenance of trade secrets also requires substantial, potentially costly security efforts, including

contractually binding those who to whom the secret is disclosed. These include restrictive covenants in employment agreements and confidentiality provisions in licenses or other agreements with contractors, customers and suppliers of the holder. Most important, unlike patents, trade secrets are not protectable against those who independently discover the secret, including through reverse engineering; and while a trade secret owner may seek legal action to restrain the disclosure/misuse of a trade secret, once a trade secret is publicly disclosed, anyone may use it.

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LES (USA & CANADA)

2012 ANNUAL MEETING

CONNECTING + COLLABORATING



October 14-17
Sheraton Centre Toronto
Toronto, Ontario, Canada

Licensing Executives Society: *Business From Innovation*

Globally, Intellectual Property is an increasingly important asset and the identification, valuation and commercialization of IP has become essential.

LES (USA & Canada), the world's leading IP commerce organization, will host its Annual Meeting. October 14-17 in Toronto, exploring a range of cutting edge subjects

Business executives, government officials, scientists, academicians, and lawyers will discuss: **Convergence of High Tech and Life Sciences:** The accelerating merger of life sciences, physical sciences and engineering is spawning new technologies including nano scale drug delivery mechanisms, predictive models for disease, biomaterials and bioinformatics. **Connecting with the Crowd:** new application of the “wisdom of crowds” concept, leveraging the knowledge and experience of attendees to address controversial licensing issues. **Is there a Patent Bubble:** Canadians are familiar with Nortel's \$4.5 billion patent sale. Speculation over patent sell offs by Nokia and RIM is rampant. Attendees will evaluate concerns over a “bubble,” where price is out of proportion to real value. **Connecting with the Bench:** Justice Roger Hughes and Judge Paul Michel, well-known and respected jurists from Canada and the US, will review difficult legal issues including limits to patentability, patent office analyses of patent applications, and complex science in the courts.

More information: www.les2012annual.org

Counterfeits that kill

Saving \$3 on a knock-off circuit breaker could cost you your home, or worse.

When one thinks of counterfeit products, knockoff Gucci bags, Rolex watches and Louboutin shoes come to mind, but a marked increase in counterfeit electrical products and consumer electronics could prove to be an ongoing public safety hazard for consumers.

The illicit counterfeit trade has become a billion-dollar industry that can almost rival other transnational trades, like drug and human trafficking. The operations behind them may be very large or localized networks that do business together. It's not uncommon to find that a counterfeit electronic item was manufactured in Southeast Asia, packaged in North America, and then distributed to other markets.

CSA Group is a leading international, not-for-profit organization and public safety is its priority. CSA Group develops standards and codes for retail or aftermarket products sold to consumers and businesses. It also tests and certifies those electrical, gas, plumbing and personal protective equipment products against the applicable safety standards for sale in Canada and the U.S. As electronics grow in popularity,

customs agents in both Canada and the U.S. have seized more counterfeit electrical products than in previous years, says Terry Hunter, Manager, Anti-Counterfeiting and Intellectual Property Enforcement Investigations as part of the CSA Group's Legal and Risk Management Department team.

"Any product that has value will be counterfeited somewhere," says Hunter. "Sometimes counterfeits are discovered through returns where manufacturers receive a damaged or defective product only to find out that it's a fake. A number of companies report these types of issues, which makes it clear that no company is immune to the problem."

CSA Group's certification mandate doesn't apply to battery-operated goods, Hunter says, meaning that they only certify electrical or electronic products that "connect to the grid" by plugging into an outlet. When it comes to the battery-operated products, the CSA and other similar organizations certify the charging components, like AC adapters and battery chargers. He adds that they are among the most counterfeited electronic items worldwide.

"To keep their product cheap, no-name brands won't go through the certification process, but will still use a certification mark illegally so they



LIGHT, CAMERA...
More than a year ago it was brought to CSA Group's attention that some decorative LED lights being installed in an entertainment complex in Canada had been prematurely burning out and in some cases overheating and smoking when they failed. The LED's had been taken down and returned to the supplier. The supplier contacted CSA Group to verify that the LED's were certified. After an examination it had been determined that the LED's had been labeled with counterfeit CSA certification labels. All of the counterfeit product was then accounted for and quarantined. An investigation was conducted and the manufacturing source identified and dealt with in an appropriate manner. All the counterfeit lights had been secured and shipped to a material recycle plant in China and destroyed under the supervision of a CSA Group investigator.
PHOTO: CSA GROUP

can sell it in North America," he says. "They can also sell them so cheaply because they don't follow any labour laws, use substandard materials, don't pay for marketing and offer no warranty coverage."

The fact they use substandard materials is where the safety hazard comes in, Hunter adds. AC adapters and other components that tend to get hot during operation require certification for the very reason that they could cause fire or electrocution. That's the worse case

scenario, though it's also highly likely that the fake product will break down in a short time anyway, he adds.

According to an Intellectual Property Crime report from the Royal Canadian Mounted Police (RCMP), Canadian consumers spent \$24 million on counterfeit and pirated goods in 2010, which was an increase of 30 per cent from 2009. Electronics, electrical products and batteries only represented a combined 10 per cent of the overall figure but the report indicated a growing number of seizures.

Where you shop makes a big difference, Hunter says, because most major reputable retailers have systems put in place to prevent illicit products entering their supply chain, and employ their own factory auditors.

"As a consumer, it's worth asking if the price is too good to be true, and if the packaging is of high quality because legitimate companies market their products to be attractive," he says. "Are there spelling mistakes on the packaging? Is the manufacturer's address or contact information printed somewhere? Is there even a warranty or certification label? Looking for these things helps make consumers more aware."

Since much of this is coming from overseas, Hunter says CSA Group and other accredited

certification bodies work with Interpol as part of an industry-wide initiative to stem the flow of counterfeit products globally. Customs and law enforcement on both sides of the border are also getting better at seizing them. "We spend a lot of time training and educating them about counterfeiting and what to look for, and we have a certified product listing that the public and law enforcement can access as well," he says.

But in a sluggish economy, consumers are understandably looking for the best deals, and cheaper products, regardless of brand or origin, could fit the bill, he adds.

"People will keep buying cheap electronics and electrical products, whether they know they're knockoffs or not," Hunter says. "But there is a real risk of fire or malfunction in buying a cheap extension cord or power bar, so when people are educated that these products aren't safe, maybe they'll go back to buying proper legitimate products. **Counterfeits can kill and saving a few dollars is not worth putting your safety or that of your loved ones at risk.**"

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In addition to putting public health and safety at risk, the socio-economic costs of counterfeiting are immeasurable. In order to further save production costs, counterfeiters sometimes use child labour. Counterfeiting is a widespread underground economy that erodes a country's revenue systems. Revenues taken away from sales of legitimate good alone are estimated in the billions of dollars annually. Counterfeiters do not pay taxes that support the community and legitimate manufacturing. Jobs throughout the established distribution networks are at risk from lost sales to counterfeits. Counterfeiting is a growing crime that puts consumers worldwide at risk on a daily basis. No longer restricted to designer apparel, watches or movies, counterfeiters are producing fake products across all categories of consumer and industrial products.

A single counterfeit can cause untold property damage due to fire, explosion, contamination or flooding.

No manufacturer is immune to counterfeiting. Large scale sophisticated production operations run by criminal elements, including organized crime syndicates and extremists have the capacity to mass-produce near-perfect fake goods and ship them worldwide. From brand name consumer electronics to household plumbing fixtures, almost all product categories are affected. The goods may look identical to the real thing on the outside, but criminals make their profits by cutting corners on important safety features such as wiring, fuses, paints, or flame resistance. The resulting counterfeits can kill.

What precautions should consumers take to reduce their chances of buying counterfeit products?

- Look for and inspect the mark:** Avoid electrical products if a certification mark from a recognized certification organization such as CSA Group is missing. Look closely at the mark to ensure it matches with the design and colour of certification marks from the same organization on other similar products.
 - Be cautious of inferior packaging:** Counterfeit packaging often has poor design or only partial illustrations. Misspellings and unclear printing on products and labels may be another indicator of a fake product. Check for a discrepancy between the contents of the product package and its description, as well as missing product information, warnings, warranties or operating instructions.
 - Look for a recognized name:** When a product doesn't include a brand identifier or trademark, it may be a counterfeit. Brand-name companies want you to know whose product you're buying. Also look for missing return addresses or company contact information.
 - Beware of huge bargains:** If the pricing seems too good to be true, it probably is.
 - Buy solid products:** Check the "look and feel" of goods. Fake products sometimes appear lighter than normal and even feel poorly made.
 - Know your retailer:** Buy only from reputable, well-known stores with clearly stated return or exchange policies.
- Extra caution must be exercised when buying online.**

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