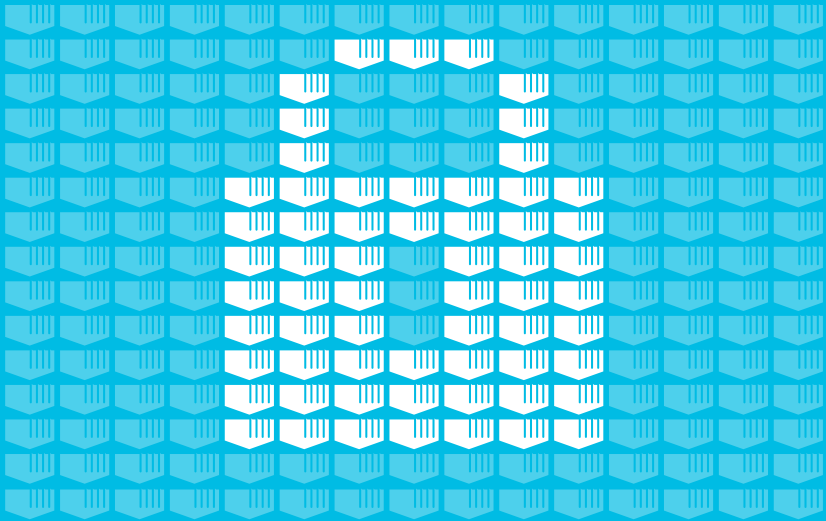




PATENT & TRADE MARK ATTORNEYS  
innovation.intelligence  
AUSTRALIA & NEW ZEALAND

# How to protect your Intellectual Property



skills, knowledge, intelligence



# Fisher Adams Kelly

- Patents
- Trade Marks
- Designs
- IP Strategy

As leading, globally trusted patent and trade mark attorneys, we have the skills, knowledge and intelligence to protect your intellectual property as a key business asset.

Our past experience lets us help secure your future by devising and managing strategies around innovation to maximize your opportunities.

Fisher Adams Kelly brand works **with** clients rather than **for** clients. We are committed to going the extra mile, regardless of the challenge. We are attentive to our clients business needs, taking the time understand the technology, market and industry to apply the law for commercial success. We provide advice, promising to explain the range of possibilities and to provide clear recommendations.



# Protecting the value of your major assets

All the world recognises great ideas and great brands! Businesses are built on them and fortunes are made from them but scarcely enough attention is given to protecting their ownership and uniqueness.

For businesses and individuals operating in today's highly competitive commercial environment, there can be no doubt that the protection of Intellectual property,

whether it is by Patent, Trade Mark or Registered Design, is paramount.

Our world is full of clever people! They can recognise and adapt an idea or image in an instant and copy and prosper from it just as quickly. The challenge then is to apply the full protection of the law at the earliest available opportunity to guard and protect your business's intellectual assets from those who would claim them as their own.

## Intellectual Property

Patents, Trade Marks, Registered Designs, Copyrights, Confidential Information

Intellectual Property can be described as legally enforceable opportunity to protect your ownership and right to commercially exploit your ideas/creations.

There is a lot to know about each of these subjects like which one applies in which circumstance and how to extract the greatest commercial benefits by making informed choices on the most effective form of protection.

The capacity for protection varies greatly and simply being willing to meet the costs associated with this style of protection is not the only criterion.

You must also have the comfort of trust... the trust generated by the knowledge that you are working in partnership with a firm of Patent and Trade Mark Attorneys who have achieved a place amongst the market leaders, based on superior levels of performance.

In the pages of this book you will find a broad outline of the steps you can take to identify and protect your most valuable assets, your Intellectual Property. We hope this information will prompt you to seek further, individual and more detailed advice on your specific needs.

# Patents

**Q: What is patentable?**

**A:** This varies from country to country. In Australia, basically anything is patentable (except methods of creating human life, unlawful or immoral acts) provided the invention is novel, useful and has 'inventiveness'. Examples include:

- Manufactured products (physical, chemical, pharmaceutical),
- Methods or processes for making products,
- Computer software – functionality,
- Business processes.

**Q: My idea just came to me – I didn't do any research surely it's not an invention?**

**A:** Most inventions are solutions to problems or improvements over known products or processes. A new invention doesn't have to be of the 'Eureka!' category so long as it gives a commercial advantage.

**Q: Why should I patent?**

**A:** The grant of patent is a statutory monopoly to make, use or sell inventive creations or to consent to others to make, use or sell, i.e. a licence, franchise, etc. Like insurance, a patent protects investment or provides a weapon to restrain copiers. Licensing income can offset research and development costs. You could decide to keep your idea secret by keeping it as Confidential Information (Trade Secret/Know How), but you need to ensure that others can't develop an equivalent by reverse engineering.

**Q: What is the difference between one patent and another? What is the difference between one Patent Attorney and another?**

**A:** Unless your advisor fully understands your business background and the field of technology, there is a risk that your competitors could exploit loopholes inadvertently created in your patent. This is where the skills and experience of Fisher Adams Kelly's patent attorneys come in.

**Q: Are patents expensive?**

**A:** Cost is relative to the benefits of protection offered and the cost of research and development. Typical costs of initial patent applications vary from country to country:

- Australia \$3,000–\$5,000 depending on complexity
- United States \$6,000–\$7,000
- Asia/Europe/South America \$5,000–\$ 0,000 per country depending on translation costs.

As a general rule of thumb, the additional cost to final grant = twice initial application cost. Regional patent applications can protect multiple countries at a fraction of the cost for individual countries. Regional applications are available in Europe, Eurasia and some African countries.

**Q: Can I wait until my invention shows commercial promise and then seek patent protection?**

**A:** Some countries permit a 12 month grace period after first publication, but an International Patent Application covers over 140 countries including most developed countries and permits ultimate patent application costs to be deferred up to 31 months from the initial Australian patent application date. Cost: \$9,000–10,000 for an average International Patent Application.

**Q: I made the invention in my own time at my own expense - therefore, surely it's mine?**

**A:** If you are employed with an employment contract that says all inventions belong to your employer or otherwise your job description expects that you will engage in research or product development, the chances are that your employer beneficially owns the invention and can enforce ownership rights unless you seek a waiver.

**Q: Surely anyone can get around a patent by changing it by 10%. Surely it is okay to copy a patented invention for private use provided I don't sell it.**

**A:** Both of these are dangerous fallacies! Don't learn the hard (and expensive) way.

# Trademarks (Brands)

**Q: What is a trade mark?**

- A:** A trade mark or brand is a sign used to distinguish a traders goods/ services from the goods/services of other traders. The sign may be:
- a) a word or words (eg. KODAK),
  - b) a symbol or device (eg. the Holden lion),
  - c) a label (eg. a wine label),
  - d) a colour or colours (eg. pink colour for insulation batts),
  - e) a shape (the coca-cola bottle shape),
  - f) a sound (eg. Intel musical notes),
  - g) a smell (eg. a perfume) or
  - h) any two or more of the above in combination (eg. the Coke word in fancy script on a shaped bottle).

**Q: What is the difference between a trade mark and a brand name?**

- A:** None, they both embody the same goodwill of the business.

**Q: Why are trade marks important?**

- A:** Trade marks and their associated goodwill may be the largest asset of a business, especially for those providing services. A good trade mark increases in value with time and can quantify the value of a business.

**Q: Who owns a trade mark in Australia?**

- A:** The first person to use the trade mark is the owner and is entitled to seek registration.

**Q: Can two or more persons have the same trade mark?**

- A:** Yes, provided their respective uses are not likely to cause deception or confusion to consumers. For example, 'Pulsar' is used by different owners on motor vehicles (Nissan) and watches (Seiko).

**Q: Can a trade mark owned by one trader prevent use and registration of a non-identical trade mark by another trader?**

- A:** Yes, if the use of the two trade marks would cause deception or confusion to Consumers, for example trade marks which are not identical, but sound alike (eg. Canon/Kannon), used on the same or similar goods (eg. cameras/camera lenses).

**Q: What are the advantages of registering a trade mark?**

**A:** If you have to enforce rights in your trade mark against a third party, your registration is primary proof of your ownership of the trade mark. Registration places your claim to ownership on the public record, via the Trade Marks Register – persons searching the register will generally not adopt an existing trade mark to apply to their goods and/or services.

**Q: Can a single trade mark application cover the registration of a trade mark for both goods and services?**

**A:** Yes. All goods are classified into 34 classes; and all services into 11 classes; and an application can cover goods/services for more than one class. For example, a trade mark could be registered for (a) motor vehicles; (b) the sale of motor vehicles; and (c) repair services for motor vehicles.

**Q: Can a trade mark also be a trade name or business name?**

**A:** Yes – and vice versa, but only a registered trade mark can prevent unauthorised use by others.

**Q: What is the term of registration?**

**A:** The initial term is 10 years from the filing date; and the registration can be renewed indefinitely for further periods of 10 years each.

**Q: Does an Australian trade mark registration only cover Australia?**

**A:** Yes (Australia includes Norfolk Island). However, an Australian application or registration may provide a basis for foreign trade mark protection.

**Q: What happens if a registered trade mark is not used?**

**A:** If the registration is at least 5 years old, and is not used for a continuous 3 year period, it can be removed from the Register by others for non-use.

**Q: How should I identify my trade mark?**

**A:** a) For a registered trade mark, the correct marking is ®.  
b) For an unregistered trade mark, you can use the marking ™.

# Registered Designs

**Q: What is a registered design?**

**A:** A registered design protects the appearance of an article rather than its functionality, which is usually best protected by patents. The appearance of an article refers to the shape of the article and/or the pattern appearing on the article.

**Q: When and why should I register my design?**

**A:** Applications for registered designs must be filed before the design is publicly disclosed. Registered designs can provide a legal remedy against unauthorised copying of the design, currently for up to 10 years.

Examples of registrable designs include designs for: furniture, clothing, vehicles, appliances, electronic devices, sporting equipment and containers. Non registrable designs include fixed building structures, medals, plans, maps, certificates and forms.

# Copyright

**Q: What is copyright?**

**A:** Copyright is the property of the author of an original work. Original works include literary, dramatic, musical and artistic works. Copyright protects how an idea or information is expressed, rather than the underlying idea or information itself. The term of copyright currently lasts for the life of the author plus 70 years.

**Q: How do I obtain copyright and what does it protect?**

**A:** Copyright is established when the original work is created and there is no facility in Australia for formal registration (you do not have to apply for copyright). Copyright provides the author with the exclusive rights to reproduce, prepare derivatives of, distribute copies of by sale, rental or lease, perform or display, the copyrighted work.

Copyright is only infringed when the copyrighted work or a substantial part of it is copied without the copyright owner's authorisation.

There is an overlap in the laws of copyright and registered designs, which can prevent the possibility of dual protection under copyright and designs law.



# Choosing Fisher Adams Kelly

Fisher Adams Kelly has achieved the position as one of our profession's market leaders as a result of the experience and specialist knowledge that exists within our dedicated team of professionals.

We regularly are the preferred choice of universities, Scientific Institutions and Research Centres, as well as a long and loyal list of corporate clients both large and small. This is a direct result of the fact that our people are highly qualified in a wide range of scientific and technical disciplines... you will find they speak your language!

**Fisher Adams Kelly represents clients effectively across all scientific and technical disciplines, including...**

- Mechanical and Electrical Engineering
- Information Technology and Computer sciences
- Laser, Optical and Medical physics
- Chemical and Physical Chemistry sciences
- Pharmaceutical Chemistry, Biotechnology, Molecular Biology, Immunology and Pharmacology
- Defence Technologies
- Process Technologies
- Business processes
- Greentech/Cleantech

A network of trusted associates is used to assist in the establishment and enforcement of our clients intellectual property rights in overseas countries.

# A few of the clients who benefit from our experience and expertise...

Pauls, CSL, CQMS (Central Queensland Mining Supplies) Bartercard, Capilano Honey, Coffee Club, Poolrite, Uniline, Driza-Bone, Unilife, EGR Plastics, One Steel, Queensland Institute of Medical Research, Leukemia Foundation, Steel Foundations, Everhard Industries, Ludowici, Nautilus Minerals Inc, Crimsafe and Leica Geotech.

We represent a number of foreign clients for both Australian and overseas patent and Trademark matters. This accumulated experience and expertise will be yours when you choose Fisher Adams Kelly as your Intellectual property protection partners.

## **Government entities**

Include Queensland health, Department of Primary Industries, Queensland Rail, Queensland Motorways, CS Energy, Energex, Stanwell Corporation, Commonwealth Scientific and Industrial Research Organisation (CSIRO) as well as the State of Queensland.

## **University clients**

Include University of Queensland, Griffith University, University of southern Queensland, James Cook University, Queensland University of Technology and Sunshine Coast University.

## **Overseas clients**

Include Motorola Solutions Inc, Vesuvius, Parmalat SPA, Apotex Inc, Isotechnika Inc., Weatherford and The John Hopkins University.



# Our reputation

“The one word I’d use to describe dealing with Fisher Adams Kelly is ‘confidence’ ..... They are committed to giving the most efficient and worthy outcome.”

Stephen Brabeck  
Director, Crimsafe

“Fisher Adams Kelly are attentive to my needs and provide me with excellent service. They give me peace of mind.”

Salvatore Battaglia  
Founder, Perfect Potion

“Fisher Adams Kelly not only gives us clear advice about the law, but actually thinks about our business from a commercial perspective.”

Jennifer Morgan  
Insurance & Corporate Services  
Manager, Parmalat

Contact Fisher Adams Kelly today for an obligation-free discussion on the most effective form of protection for your Intellectual Property.



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