



INTELLECTUAL  
PROPERTY  
OFFICE



# → Innovator's Guide

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LEADERS IN ENTERPRISE  
AND FINANCIAL EDUCATION



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HĪKINA WHAKATUTUKI

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# Innovation road map



*A 'genius' is a talented person who has done all their homework.*

**Thomas Edison (1847–1931)**



Innovation is more than just putting creative ideas down on paper. It is an orienteering race to reach the commercial finish line. There are many ways of getting there, but to be successful you need some intellectual property knowledge and a business plan to keep you on track.

## What is intellectual property?

Intellectual property (IP) is the umbrella term for 'creations of the mind'. IP assets like trade marks for marketing goods and services, patents for new inventions, and registered designs for eye-appealing product design features, have associated legal rights that allow people to control and be rewarded for their creative efforts. IP rights can be bought, licensed and sold.



# Innovation Hazards

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## ■ 1. Not having the right gear

IP protection is a good way of keeping a competitive edge. No company or investor will be interested in an idea if anyone can copy it or do it, or someone else already owns it. Successful entrepreneurs learn how to identify, capture and protect their IP, and how to avoid conflict with somebody else's IP rights.

Companies often mistakenly believe that company name and domain name registration automatically gives them the exclusive right to use 'their name' for branding. The best way to get nationwide protection for a new brand/ trade mark is to register the trade mark with the Intellectual Property Office of New Zealand (IPONZ).

## ■ 2. Jumping the gun

Secrecy can keep the IP protection options open. To get a valid patent or registered design, the invention or product design must be new and not obvious over what's known or used in New Zealand before the application filing date. Some innovations can be kept as 'trade secrets' if competitors can't discover the confidential information by analysing the commercial product (reverse engineering).

## ■ 3. Not checking out the competition

Find out if the creative idea already exists. Avoid wasting time working on someone else's idea. If it does exist or there is something similar out there, put the thinking cap back on and come up with something even better. A competitor will be just as keen to protect their rights as you are, especially if they have spent time and money getting an IP asset registered.

Even the big players can get it wrong. The reality television show band Rockstar Supernova may have to change its name because there are established bands called Supernova in countries where Rockstar Supernova wants to perform and sell its music. Unfortunately, these competitors' IP assets appear to have been left out of the market intelligence gathered during the television and brand name creation process. A trade mark has to be unique for your business to stand out from your competitors.

## ■ 4. Time penalties

Pace yourself. The life of a patent or design starts from the date the first application was filed. You can use up valuable protection time or waste money if you file too soon. If you delay too long, a competitor could get there ahead of you.

## ■ 5. Giving away information

Know how to label your documents, product designs and prototypes, and protect commercially sensitive information. Mark your drawings and any technical information 'Confidential' and include a copyright indicator (i.e. © + owner's name + year the original work was first created). If you are going to work on a project with someone else, sort out who will own what before you start to work together. Make sure that the agreement is written down, signed and dated.

## ■ 6. Losing sight of the finish line

Plan and be prepared to review your options. Applying for, renewing and enforcing a patent can be expensive. There are lots of IP options and filing strategies. If you are not certain which direction to head, get some help from IPONZ, a patent attorney or a mentor who's familiar with IP.



# The way forward – taking a creative idea from paper to profit

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## ■ The scenario

A new fangled 'whatsit' has been created. The blueprint is on the drawing board and the factory is ready to build a prototype. It's time to investigate the commercial potential of this creative product before more time and money is invested in this project. Di Namic has been assigned this task.

## ■ Commercial questioning

### 1. Does it already exist?

Di Namic runs a background check on the 'whatsit'. There has been no previous use or description of the invention to date. Agreements are in place to keep the project secret until the 'whatsit' is launched in the marketplace.

#### Searching

Inventors check to see if an invention is new by searching for earlier publications. The search results reveal what is known (legal term = prior art) and help to identify those design features that are innovative (legal term = novelty). The results may show that someone has got there first. The challenge is to then come up with something better. Knowing what already exists, what has failed or succeeded in the past and what someone else owns can help you invent and avoid legal disputes (legal term = civil litigation).

Legal documents like employment contracts and confidentiality agreements contain clauses to keep commercially sensitive information secret. Inventions should be kept secret for as long as possible to leave the option open for patent and registered design protection.

IP law is complex, so it's best to get help from a patent attorney.

#### Evidence

Generally, an owner of a patent has proven that the claimed invention is novel. IPONZ examines the patent claims, checking that no one else has used or described the inventive features. A judge can also make a decision on whether any of the claims that define the scope of the invention are too broad or not new (legal term = patent validity) or decide whether there has been any unauthorised use (legal term = infringement).

### 2. Will people want to buy it?

Di Namic shops around. There is nothing out there quite like it. This product when released won't stay on the shelf for long.

#### Marketing facts

Inventions need to be one of a kind or better than the competition to sell. The invention can solve a problem (e.g. a new vaccine) or fulfil a need (e.g. a remote control).

#### Targeting

Inventions can be designed for a specific customer group, for example, a Braille computer scanner for sighted people who want to convert the Braille dot letters into text. Knowing customers' needs can help you invent and plan an advertising campaign (commercial term = market research).



### 3. How can you protect it?

The 'whatsit' has great commercial potential. It's patently obvious; book a meeting with the inventors and patent attorneys when the research and development work is completed.

#### Business savvy

If an idea seems profitable, learn how to protect it. As long as the invention is kept secret, you can file a New Zealand patent application at any time. However, if the application is delayed too long, the risk is that someone else might come up with the same idea and file first. If the competitor's application is granted, the claims of that patent could prevent you commercialising your invention.

IPONZ is responsible for the granting of patent, trade mark and design registrations.

### 4. Forward thinking

Di Namic checks out the competition. Acme Ltd had a patent for a new production method. This could be useful for a number of product lines including the 'whatsit'. All the renewal fees have been paid. Acme may agree to license this patented method.

#### Planning

A patent protects an invention for up to 20 years. Renewal fees are paid to keep the patent in force. If the patent lapses or expires, the invention as shown and described in the patent specification is no longer protected.

Patent rights can be enforced to stop anyone without the owner's permission making, using, importing or selling the invention. A licensing agreement sets out how the IP right can be used and the type of reward (e.g. a royalty payment for every product made) the owner will receive.



## Find Out More

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### ■ How do I find out more about patents, trade marks and designs?

Please visit the IPONZ website: [www.iponz.govt.nz](http://www.iponz.govt.nz), call 0508 4 IPONZ (0508 447 669) or email [info@iponz.govt.nz](mailto:info@iponz.govt.nz). The World Intellectual Property Organization (WIPO) website: [www.wipo.int/sme/en/index.html](http://www.wipo.int/sme/en/index.html) contains information on international IP protection. Professional assistance is available from a registered patent attorney. A full list of New Zealand registered patent attorneys is available on the IPONZ website.

### ■ How do I find out more about plant variety rights?

Please visit the IPONZ website: [www.iponz.govt.nz](http://www.iponz.govt.nz), call 0508 447 669 or email [info@iponz.govt.nz](mailto:info@iponz.govt.nz).

### ■ How do I find out more about copyright?

Please visit the IPONZ website [www.iponz.govt.nz](http://www.iponz.govt.nz), and Copyright Council of New Zealand website: [www.copyright.org.nz](http://www.copyright.org.nz).

### ■ How do I find out more about company names?

Please visit the Companies Office website: [www.business.govt.nz/companies/](http://www.business.govt.nz/companies/), call 0508 COMPANIES (0508 266 726), email [info@companies.govt.nz](mailto:info@companies.govt.nz).

### ■ How do I find out more about 'Dot NZ' domain names?

Please visit the Office of the Domain Names Commissioner website: [www.dnc.org.nz](http://www.dnc.org.nz) or email [info@dnc.org.nz](mailto:info@dnc.org.nz).

### ■ How can I find a patent attorney?

The list of registered New Zealand patent attorneys is available on the IPONZ website: [www.iponz.govt.nz](http://www.iponz.govt.nz). If your students are interested in becoming a patent attorney, more information can be found on the IPONZ website and New Zealand Institute of Patent Attorneys Inc. website: [www.nzipa.org.nz](http://www.nzipa.org.nz).

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